

**NGB**  
**NEPA HANDBOOK**



**Guidance on Preparing Environmental Documentation for  
Army National Guard Actions in Compliance with the  
National Environmental Policy Act of 1969**

*Prepared for*

**Army National Guard**

*by*

**US Army Corps of Engineers  
Mobile District**

*with Technical Assistance from*

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**June 2006**



DEPARTMENTS OF THE ARMY AND THE AIR FORCE  
NATIONAL GUARD BUREAU  
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NGB-ARE

JUN 30 2006

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army National Guard (ARNG) Policy Guidance for Compliance with the National Environmental Policy Act (NEPA) of 1969

1. References:

- a. 42 USC 4321 – 4347, The NEPA of 1969, 1 January 1970.
- b. 40 CFR 1500 – 1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA, 29 November 1978.
- c. 32 CFR 651, Environmental Analysis of Army Actions, 29 March 2002.
- d. The National Guard Bureau (NGB) NEPA Handbook, Guidance on Preparing Environmental Documentation for Army National Guard Actions in Compliance with the NEPA of 1969, May 2006.

2. The enclosed NEPA Handbook is the ARNG's policy guidance for implementation of references 1a, 1b, and 1c. It includes detailed information on the preparation, review, and processing of ARNG NEPA analyses, responsibilities of participants in the NEPA process, supplementary reference materials, and recommendations for effective compliance.

3. The NGB NEPA Handbook is an essential resource for all participants in the ARNG NEPA process. Participants are encouraged to follow the procedures established in this document.

4. Point of contact is Colonel Jerry Walter, Chief, Environmental Programs Division at DSN 327-7963 or 703-607-7963.

Encl  
as

A handwritten signature in black ink, appearing to read "Matthew L. Murphy".

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SUBJECT: Army National Guard (ARNG) Policy Guidance for Compliance with the National Environmental Policy Act (NEPA) of 1969

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## 1.0 INTRODUCTION AND OVERVIEW

### 1.1 Application of the National Environmental Policy Act to Army National Guard Activities

The Army National Guard (ARNG), a component of the United States Army, is a federal agency, subject to federal laws and regulations. The ARNG's actions and activities encompass a broad spectrum of mission-related and installation<sup>1</sup> support activities including, but not limited to, the following:

- Real property development planning
- Real property acquisition, granting of rights for specific use, and disposal
- Military construction
- Equipment modernization
- Military training
- Force management
- Environmental management plans
- Innovative Readiness Training

The ARNG considers environmental stewardship an integral part of its mission. Nonetheless, ARNG activities, by their very nature, have the potential to directly and indirectly adversely affect the environment as they are conducted or implemented. Because of this potential for unintended environmental damage, the need to comply with environmental laws and policies, and the responsibilities inherent in good stewardship, ARNG planners, managers, and commanders share a responsibility for the protection of human health and the environment and for the care and wise use of the natural and cultural resources entrusted to them. The ARNG's compliance with environmental laws and policies is complicated by the fact that units are located throughout the United States, activities are often conducted on widely separated sites throughout a state, and military and civilian Guard personnel frequently change assignments as a result of rotation and promotion. In addition, because the ARNG is also a state agency, it may engage in state missions that are subject to individual state-level requirements.

The National Environmental Policy Act of 1969 (NEPA) (see [Appendix A](#)) requires that federal agencies consider and document the potential environmental effects associated with major federal actions conducted within the United States, its territories, and its possessions, including all waters and airspace subject to the territorial jurisdictions of the United States.<sup>2</sup> With the exception of the U.S. Army Kwajalein Atoll in the Republic of the Marshall Islands,<sup>3</sup> the provisions of NEPA are not applicable in foreign nations (e.g., NEPA would not apply to an ARNG proposed action in Bosnia or Kuwait). As discussed in Section 3.10, for major federal actions conducted outside the United States, other statutes and regulations for assessing the potential environmental effects of

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<sup>1</sup> The definition of an *installation*, as used by the ARNG, pertains to the boundaries of the state and includes all ARNG facilities and training areas.

<sup>2</sup> The territories and possessions of the United States include Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

<sup>3</sup> Through an agreement with the Marshallese Government, U.S. actions at the U.S. Army Kwajalein Atoll are subject to NEPA compliance in accordance with Council on Environmental Quality (CEQ) regulations.

such actions might be applicable. Activities in foreign countries might also be subject to the host nation's requirements for environmental planning. The applicability of such requirements is normally addressed in status of forces agreements or other agreements.

Except in some state emergency situations, the ARNG acts as a federal agency, and therefore it must comply with the requirements of NEPA, its implementing regulations, and other related federal statutes. The NEPA process, described later in this section, ensures that the ARNG considers environmental factors in conjunction with the technological, economic, and mission-related components of a decision and that the public is informed and appropriately involved in the decision-making process.

## **1.2 Purpose of the Handbook**

At one time or another, almost anyone associated with ARNG activities might be called upon to contribute to, or might be affected by, the NEPA process—through participation as a preparer of required analysis and documentation, a data provider, a reviewer, a planner, a decision maker, or an implementer awaiting guidance before beginning an action. NEPA implementation and compliance, however, are often complicated by frequent changes in participants at all levels as a result of the normal rotation of military and civil service personnel. Newcomers, military and civilian, need to quickly and thoroughly understand their roles in the NEPA process to participate effectively. The purpose of this manual is to provide a common frame of reference and to familiarize all participants with the purpose and procedures of the NEPA process in order to facilitate compliance for ARNG activities and, by so doing, to ensure that environmental considerations are consistently integrated with—and form part of the basis for—the planning and implementation of ARNG actions.

The handbook is intended to provide comprehensive “one-stop” information consistent with NEPA and its implementing regulations but specific to the ARNG. The information is presented in a simple, understandable, and manageable format, suitable for use throughout the ARNG to (1) standardize and streamline the process for NEPA compliance and (2) outline the roles and responsibilities at each participating level. The handbook provides detailed information needed by all participants in the NEPA process, including proponents, preparers, and reviewers. It provides step-by-step guidance, recommendations, and suggestions for effective and efficient compliance. It also describes the applicability and some of the unique requirements of related environmental statutes and regulations to major federal actions conducted by the ARNG outside the United States. Users are encouraged to follow closely the guidance and procedures presented in this handbook. Exceptions should be discussed in advance with the National Guard Bureau (NGB), Environmental Programs Division (ARE), Conservation Branch.

Various states have also adopted a requirement for an environmental review based on a state environmental statute. This handbook does not specifically discuss compliance with state statutes that are similar to NEPA. ARNG organizations with the requirement to conduct state-level environmental reviews are encouraged to negotiate an alternative review process with the state government that will allow fulfillment of both federal and state regulatory requirements concurrently.

This NEPA handbook is being developed as a “living” document, compiled in a looseleaf format, to facilitate updating as new guidance becomes necessary to address additional or changing issues. This handbook is not a reinvention of current Department of Defense (DoD), Army, or ARNG NEPA guidance; rather, it is a comprehensive guide for the ARNG for implementing current laws, regulations, and policies related to NEPA as the act applies to ARNG activities. It

includes a variety of helpful “how-to” information and “lessons learned” for ARNG personnel involved in the NEPA process, whether they are newcomers or experienced practitioners.

### 1.3 What the Handbook Covers

The handbook provides comprehensive guidance divided into 10 sections.

- Section 1*     **Introduction and Overview.** Provides interpretive background information on NEPA and an overview of the ARNG’s NEPA process. It is intended primarily for persons with limited NEPA experience.
- Section 2*     **Roles and Responsibilities.** Identifies key players and describes the various levels and nature of ARNG, Army, and other participant involvement in the NEPA process.
- Section 3*     **NEPA Interface with Selected ARNG Programs and Actions.** Describes ARNG actions and the applicability of NEPA and other regulatory requirements to them.
- Section 4*     **Planning and Initiating a NEPA Analysis.** Describes the initial stages of the NEPA process and provides directions for properly characterizing, framing, and focusing NEPA analysis and documentation.
- Section 5*     **Categorical Exclusions and Records of Environmental Consideration.** Describes the purpose of a Categorical Exclusion (CX) and Record of Environmental Consideration (REC) in the NEPA process, including when and how to use them.
- Section 6*     **Environmental Assessment Preparation and Content.** Provides program-focused information and guidance on the Environmental Assessment (EA) process and format required by the ARNG under the President’s Council on Environmental Quality (CEQ) regulations (40 Code of Federal Regulations (CFR) Parts 1500-1508, *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (see [Appendix B](#)) and the Army’s NEPA regulation (32 CFR Part 651, *Environmental Analysis of Army Actions*).<sup>4</sup> ([Appendix C](#)).
- Section 7*     **Environmental Impact Statement Preparation and Content.** Provides program-focused information and guidance on the Environmental Impact Statement (EIS) process and format required by the ARNG under the CEQ regulations and the Army’s regulation.
- Section 8*     **Resources and Analyses.** Provides specific guidance for data collection and analysis of environmental resources and conditions most often encountered in

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<sup>4</sup> The preamble to 32 CFR Part 651, published on March 29, 2002, provided, “This final rule is a revision of policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations in the Code of Federal Regulations (CFR). These guidelines *replace* policy and procedures found in current Army Regulation 200-2, Environmental Effects of Army Actions.” (Emphasis added.) Until the Army re-issues AR 200-2 to reflect the CFR version of its regulation, the better practice when referring to the Army’s NEPA regulation is to cite only 32 CFR Part 651.

evaluating ARNG proposed actions, including guidance on treating cumulative effects.

*Section 9*     **Document Review, Processing, and Approval.** Describes the mechanics, reviews, and approvals for the ARNG’s NEPA process from the early stages of analysis and document development to the initiation of the action.

*Section 10*   **References.** Identifies sources of information of interest to the NEPA practitioner.

## 1.4    **The National Environmental Policy Act and Its Implementing Regulations**

NEPA was signed into law by President Nixon on 1 January 1970.<sup>5</sup> It is a federal statute that requires the identification and analysis of potential environmental effects of certain proposed federal actions before those actions are initiated. NEPA legislated a structured approach to environmental impact analysis in the planning of federal agency programs and projects. Specifically, it requires that for every proposal for legislation and other federal actions, federal agencies use a systematic, interdisciplinary approach that evaluates the potential environmental consequences associated with the proposed action and considers alternative courses of action. In general, NEPA analyses are not required for ongoing operations and activities unless a change to them is being considered.

NEPA also contains specific requirements for informing and involving the public. It is a “full disclosure” law with provisions for public access to and full participation in the federal decision-making process. The intent of NEPA is to protect, restore, or enhance the environment through well-informed federal decisions. The act is premised on the assumption that if federal proponents consider the environmental effects of proposed actions and provide information on those effects to the decision makers and the public, the quality of federal decisions will improve.

### 1.4.1   **The NEPA Process**

The ARNG’s NEPA process is designed to facilitate high-quality decision making that is based on a clear understanding of an action’s potential for environmental consequences. The process also includes taking additional actions that protect, restore, and enhance the environment. It is a fundamental management-support mechanism that involves:

- *Predecision analysis*, a forecast tool (i.e., an environmental impacts analysis) that informs the decision maker and also gives the public the opportunity to provide information relevant to the pending decision.
- *Postdecision management*, a requirement to measure actual performance against desired goals and objectives.

The process is accomplished by

- Integrating other environmental requirements into NEPA analyses and ARNG decisions
- Operating on the principle of “full disclosure”
- Involving the public

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<sup>5</sup> National Environmental Policy Act, Public Law 91-190, 42 U.S.C. 4321 – 4347, as amended.

- Seeking and analyzing relevant technical information using a multidisciplinary approach
- Identifying associated direct, indirect, and cumulative effects
- Appropriately documenting analyses, their results, and decisions resulting from them
- Summarizing technical information for the public and the decision maker
- Identifying a preferred course of action after considering realistic alternatives
- Designing and implementing mitigation and monitoring, where appropriate

#### 1.4.2 Implementing Regulations and Guidance

From 1973 to 1978, the CEQ had guidelines in effect for the preparation of environmental impact analyses. Executive Order 11991 (*Protection and Enhancement of Environmental Quality*) directed the CEQ to establish regulations for these studies. The CEQ solicited extensive public and agency input and in 1978 issued its regulations at 40 CFR Parts 1500-1508. The Council's goals were to reduce paperwork, reduce delays, and produce better decisions based on better analyses. The regulations emphasized that agencies should clearly and concisely present only the most pertinent background information, emphasizing an analysis of real alternatives and issues.

NEPA and the CEQ regulations require federal agencies to develop internal implementing procedures to ensure that environmental factors are considered in decision making by using a systematic, interdisciplinary analytical approach. Three CEQ memoranda issued in the early 1980s—*Forty Most Asked Questions* (Appendix D), *Scoping Guidance* (Appendix E), and *Guidance Regarding NEPA Regulations* (Appendix F)—have clarified various aspects of the CEQ regulations. More recently, CEQ issued a handbook on analyzing cumulative effects, entitled *Considering Cumulative Effects under the National Environmental Policy Act* (January 1997).<sup>6</sup>

DoD Instruction 4715.9 (*Environmental Planning and Analysis*) provides NEPA guidance for the military services and other DoD components in the United States. DoD Directive 6050.7 (*Environmental Effects Abroad of Major Department of Defense Actions*) includes provisions applicable to ARNG actions conducted outside the United States. For the ARNG, the applicable implementing regulation for NEPA is the Army directive, published at 32 CFR Part 651, *Environmental Analysis of Army Actions* (Appendix C). Specifically, 32 CFR Part 651 "... applies to actions of the Army and Army Reserve, to functions of the Army National Guard (ARNG) involving federal funding, and to functions for which the Army is the DoD executive agent" (32 CFR 651.1(e)).

32 CFR Part 651, which incorporates and elaborates on CEQ and DoD regulations and guidance, does the following:

- Sets forth policies, responsibilities, and procedures for integrating environmental considerations into Army and ARNG planning and decision making.
- Describes the Army and ARNG process for preparing an environmental assessment (EA) or an environmental impact statement (EIS). (See Section 1.5 for an explanation of these terms.)

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<sup>6</sup> CEQ's handbook on cumulative effects can be found at CEQ's web site at <http://ceq.eh.doe.gov/nepa/nepanet.htm>.



- Establishes criteria for determining Army and ARNG actions that may be “categorically excluded” from requirements to prepare an EA or an EIS.

On an as-needed basis, the NGB provides specific NEPA guidance through issuance of guidance memoranda. This mechanism permits timely updating of practices and announcement of new or revised requirements for completion of NEPA documentation. Proponents need to be aware of the requirements in the latest NGB guidance memoranda because NGB review of NEPA documentation proceeds on the basis of information contained in them.

In some cases, particularly where the property of another federal agency is involved, the ARNG will need to be aware of that other agency’s NEPA implementing regulations for preparing and documenting the NEPA analysis. Early coordination with the other agency is required in any such case (see Section 2.2.4).

### **1.4.3 Complying with NEPA**

NEPA requires the ARNG to make a definitive statement about (1) the potential environmental effects of the proposed action, (2) adverse effects that cannot be avoided, and (3) alternatives to the proposed action. The analysis must fully disclose the environmental effects of the action and demonstrate that the ARNG proponent and the decision maker have taken an interdisciplinary “hard look” at the environmental consequences of implementing the action.

A quality analysis is essential to making quality decisions. Good analysis must build on regulatory compliance, legal sufficiency, appropriate mitigation, provisions for mitigation monitoring, consideration of public concerns, and adherence to ARNG and appropriate state-level NEPA guidance—all identified and incorporated into the analysis from the start.

The environmental analysis of an ARNG proposed action must parallel other decision support processes to help commanders and principal staff officers make sound decisions. It cannot be an “after-the-fact” justification for implementation of decisions already made. Such justification can lead to regulatory agency and public mistrust, the potential for otherwise avoidable adverse effects on the environment, and a court order stopping the action. What the analysis *must* do is inform the leadership, clearly and concisely, of all the potential environmental consequences of the proposed action.

### **1.4.4 Integration of Other Environmental Regulations**

The NEPA process does not replace either the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so that the decision maker has a concise, comprehensive view of the major environmental issues and requirements and can understand the interrelationships and potential conflicts among the environmental components of a proposed action. NEPA is the “umbrella” that facilitates project coordination by integrating compliance requirements that might otherwise proceed independently. Examples of other environmental statutes and regulations often integrated into the NEPA process are shown in Figure 1-1. An example of an AR that implements these other laws is AR 200-1, *Environmental Protection and Enhancement*.

According to CEQ regulations, the requirements of NEPA must be integrated “with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively” (40 CFR 1500.2(c)). The purposes of integrating the NEPA process into early planning for ARNG activities are as follows:

# National Environmental Policy Act (NEPA)

NEPA is a comprehensive process that provides for the unification and integration of environmental compliance requirements associated with federal actions.

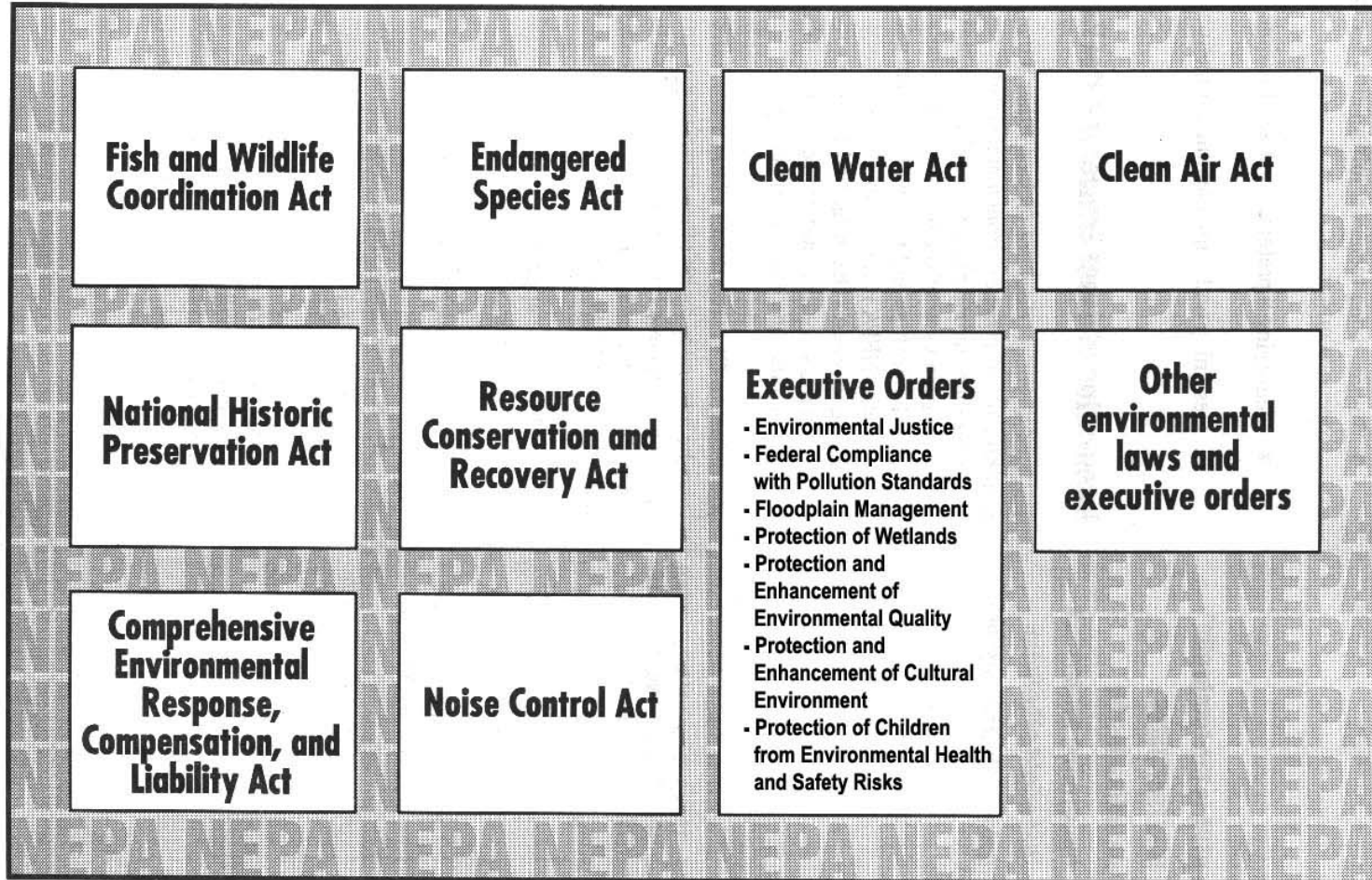


Figure 1-1. Integrating Other Environmental Regulatory Requirements into the NEPA Process

- Ensuring appropriate consideration of regulatory requirements during the NEPA process.
- Eliminating delay and duplication of effort.
- Emphasizing cooperative consultation among agencies before and during the development of programs and the preparation of the NEPA analysis.

Applying an integrated NEPA process early in ARNG planning and decision making results in better decisions, a document made more meaningful through the coordinated and focused efforts of all interested parties, and the timely completion of all required environmental analyses.

## **1.5 Basic Components and Documents of the ARNG NEPA Process**

The NEPA process includes various levels of environmental analysis and documentation, as shown in Figure 1-2. The type of ARNG action proposed, the environmental issues involved, and other considerations associated with the action determine the level of analysis and documentation required. The basic documentary components of the process (not all of which might apply in a given situation) are summarized in the following sections.

### **1.5.1 Categorical Exclusion**

A categorically excluded action is an action that has been determined not to have a significant effect on the human environment, either individually or cumulatively, and does not normally require formal environmental analysis. Every federal agency has a list of such actions. Appendix B of 32 CFR Part 651 (see [Appendix C](#)) contains the Army's list of 52 categorically excluded actions. Section 5.0 of this handbook provides detailed guidance on the appropriate use of CXs for ARNG actions.

### **1.5.2 Record of Environmental Consideration**

A REC is not a NEPA document but an official "decision document" in the ARNG's NEPA process. It is a written record that an action has been evaluated and either (a) falls under the categorical exclusion requirements specified in 32 CFR Part 651 or (b) has been appropriately analyzed and documented in another NEPA document. A REC should briefly describe the proposed action, provide its anticipated time frame, and explain why further environmental analysis is not needed. Section 5 of this handbook provides detailed guidance on preparing a REC and the requirements for completing an accompanying checklist.

### **1.5.3 Environmental Assessment**

The CEQ regulations (40 CFR 1508.9) describe an EA as a concise public document that provides sufficient evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FNSI). Its purpose is to assist the decision maker in understanding the environmental effects of a proposed action and alternatives, and in determining whether any effects are significant and thus warrant the preparation of an EIS. An EA is the type of NEPA analysis most commonly conducted by the ARNG for actions that require written consideration of the environmental effects of a proposed action beyond the preparation of a REC. ARNG procedures provide the public the opportunity to review and comment on an EA and any accompanying draft FNSI.

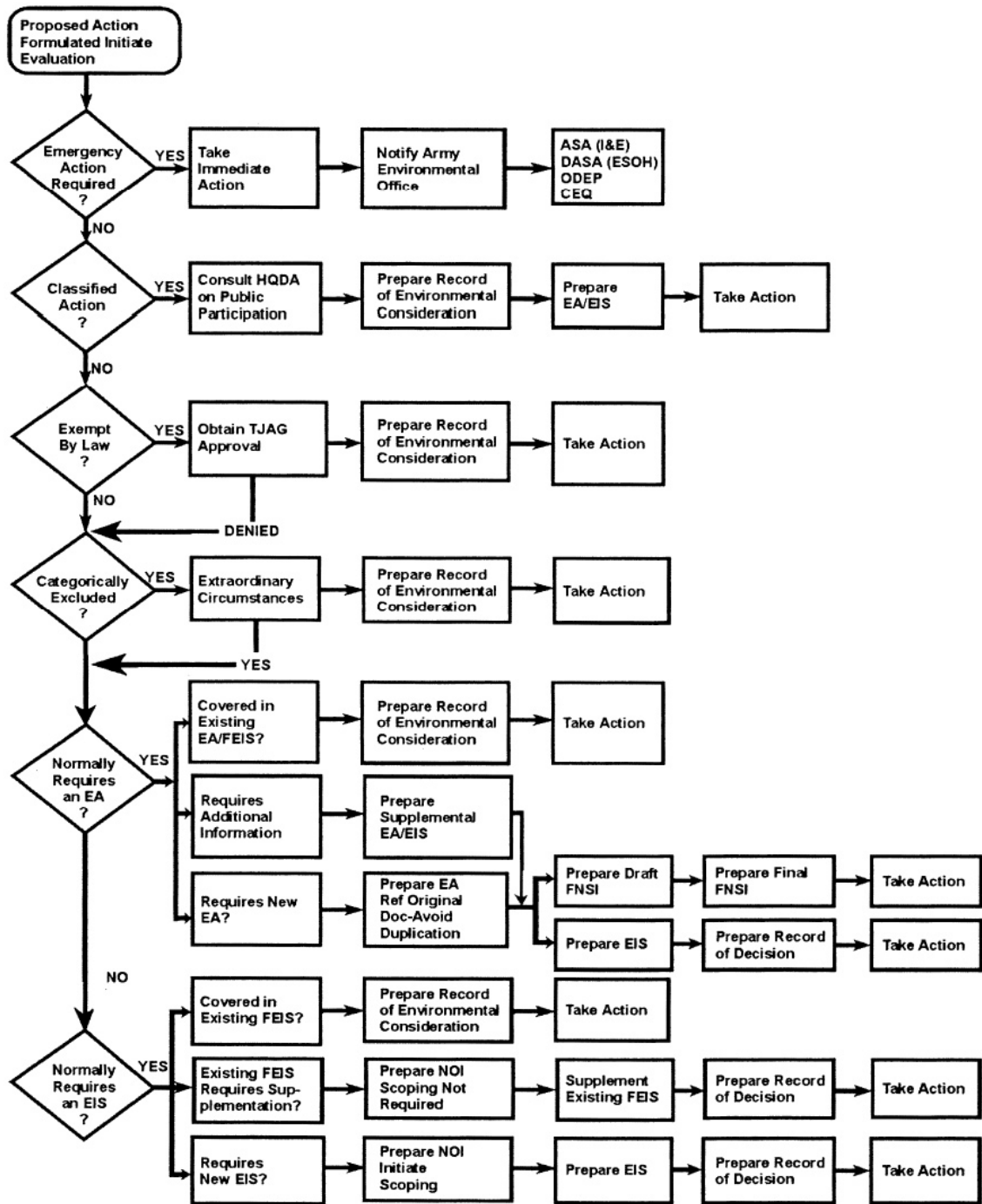


Figure 1-2.  
Summary of the ARNG's NEPA Process

An EA results in one of the following decisions: to prepare a FNSI, to initiate a Notice of Intent (NOI) that the ARNG intends to prepare an EIS, or to take no action on the proposal. An EA should not be initiated when significant effects are obvious or can be presumed.<sup>7</sup> The CEQ regulations (40 CFR 1501.3) allow an agency to initiate the EIS process at any time without preparing (or completing) an EA. Section 6 of this handbook contains step-by-step procedures for preparing ARNG EAs.

In some instances, an ARNG proponent will need to identify and evaluate only a limited number of environmental resources. In such a case, a focused EA consisting of 5 to 15 pages should be prepared, and opportunity for public review and comment should be provided.

Proponents must be especially attentive to focusing their impacts analysis. Only those environmental resources that could potentially be affected by a proposed action or that are of public concern should be included in the Affected Environment description and analyzed under Environmental Consequences. Environmental resources that are unaffected by a proposed action should be identified during scoping (see Section 1.5.6). The level of detail to be applied to each resource area should be commensurate with the level of importance and concern for that resource and the issues it presents. If a particular resource is excluded from discussion, an explanation for why it was excluded (e.g., it would not be affected by the proposed action or alternatives, or it is covered by prior NEPA reviews) should be provided in the introduction to the section describing the Affected Environment. (See 40 CFR 1501.7(a)(3) for further discussion on this topic.) Use of this approach will demonstrate that the proponent has focused the required “hard look” on those resources on which a significant impact might actually occur. An example of a concise EA is the NGB’s *Army National Guard Programmatic Environmental Assessment for Fielding of UH-60 Black Hawk Helicopters*, April, 2002.

#### **1.5.4 Finding of No Significant Impact**

If an EA concludes that the resulting effects are not significant, a FNSI is prepared to document this conclusion and explain that an EIS will not be prepared. A FNSI includes a brief description of the proposed action and any alternatives considered, a short discussion of environmental effects likely to result from the action, and a summary of facts leading to the FNSI. The draft FNSI also identifies a point of contact and provides the address of the proponent’s organization. Army regulations specify that a draft FNSI must be made available to the public for 30 days before the final FNSI is issued and the proposed action is initiated. Although the FNSI is a stand-alone legal document, it should always be attached to the final EA when submitted for public review. The FNSI and the EA to which it applies should be retained on file by the proponent’s organization for 5 years. Sample draft and final FNSIs are shown in [Appendix G](#).

#### **1.5.5 Notice of Intent**

The NOI is an official public notification that a formal, usually full-scale NEPA analysis (EIS) is planned for a proposed action. The NOI is published in both the *Federal Register* and local newspapers to advise the public and other entities of the ARNG’s intent. The NOI identifies the purpose and need for the action, states the proposed action, identifies reasonable alternatives (to the extent known at the time), and presents the expected issues to be analyzed. It also “starts the

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<sup>7</sup> The CEQ regulations use the terms *effects* and *impacts* synonymously and interchangeably. Because the term *impact* can signal, in a legal context, the need for an EIS, it is preferable to use the term *effect* in an EA when describing the environmental consequences resulting from a proposed action unless those consequences are significant.

clock” for public involvement by outlining the ARNG’s public scoping process, as applicable, and gives the name, address, and telephone number of the ARNG’s point of contact. Although normally used for EISs, NOIs may also be used for EAs, particularly those that assess actions of national interest. A sample NOI is shown in [Appendix H](#).

### **1.5.6 Scoping Process**

Under CEQ regulations, “scope” consists of the range of actions, alternatives, and impacts to be considered in an environmental impact analysis. To determine the scope of a NEPA analysis, ARNG proponents are to consider three types of actions other than unconnected single actions (connected actions, cumulative actions, and similar actions), three types of alternatives (no action, other reasonable courses of actions, and mitigation measures), and three types of impacts (direct, indirect, and cumulative). The proponent’s determinations with respect to these matters begin the process of identifying the content of the NEPA analysis.

Scoping is also the generally formal process of involving others in refining the types of actions, alternatives, and impacts noted above, as well as identifying the issues and resources to be considered for analysis. Scoping occurs at the beginning of the NEPA process. Good scoping is essential to a good analysis. Scoping begins by involving federal agencies, state and local governments, special interest groups, and the public in identifying issues and concerns.

The scoping process may consist of solicitation of written comments (including those submitted electronically), a meeting (or series of meetings), or both. The decision on which mechanisms and techniques to use depends on time and resource constraints and the likelihood of controversial issues. Scoping also assists in initiating collection of baseline data to be described in the Affected Environment section of the EIS. Scoping can result in changes, additions, or deletions to the scope, alternatives, and focus of the analysis. Army regulations require scoping for an EIS. Although formal scoping involving the public is not required for an EA, in many cases it has proven beneficial.

### **1.5.7 Environmental Impact Statement**

An EIS is a detailed study that analyzes the environmental effects of a proposed action and its alternatives and includes an extensive public involvement process. The potential for significant environmental effects or serious public controversy associated with a proposed action is usually the basis for preparing an EIS. Like an EA (as defined in Section 1.5.3), an EIS analyzes the effects of the proposed action and alternatives on the natural and socioeconomic environment. It describes the baseline (affected environment) against which effects are evaluated and then identifies potential consequences and appropriate mitigation. An EIS, however, is typically more detailed than an EA in explaining environmental issues and resulting effects. The public is given formal opportunity to comment on the draft EIS (DEIS) and to review the final EIS (FEIS). An exception to the public’s opportunity to comment occurs, however, in the case of actions that are classified for national security reasons (see Section 3.9 for a discussion of classified actions). Following completion of an EIS, a decision on the proposed action is documented with a Record of Decision (ROD) (see Section 1.5.9). Section 7 of this handbook contains detailed guidance on preparing ARNG EISs.

### **1.5.8 Notice of Availability**

A Notice of Availability (NOA) is a formal public notification that an agency’s environmental document is being made available to other agencies and the public. Published in the *Federal*

*Register*, it is intended to inform the public of the availability of a DEIS or the findings of an FEIS (or of an EA/FNSI of national interest) and to initiate a formal comment or review period. Similar notices for EISs and RODs are also published in local newspapers. In most cases, public notices for EAs and FNSIs are published only in local newspapers and not in the *Federal Register*. A sample NOA is shown in [Appendix I](#).

### **1.5.9 Record of Decision**

A ROD is a concise public document issued at the completion of an EIS that identifies the findings and conclusions reached by the ARNG in making its decision for a preferred alternative. It summarizes the major issues and considerations, describes the potential effects, documents the decision, and identifies necessary steps (mitigation measures) to lessen the effects on the environment. The ROD, or NOA of the ROD, is published in the *Federal Register*; similar notices are published in local newspapers.

## **1.6 NEPA Concepts Commonly Encountered**

### **1.6.1 Cumulative Effects**

CEQ regulations (40 CFR 1508.7) define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.” Cumulative effects, therefore, result from the combination of individual effects of multiple actions over time. In the preparation of NEPA documents, cumulative effects must be evaluated along with the direct effects (those which occur at approximately the same time and place as the proposed action) and indirect effects (those which occur later in time or farther removed in distance) of each alternative action. Evaluation of cumulative effects should extend to all relevant matters within the appropriately defined ecosystem potentially affected by a proposed action. Preparers of the environmental impacts analysis must establish logical temporal and spatial boundaries (regions of influence) when examining potential cumulative effects. As cumulative effects are identified, they must be evaluated for their significance (just as effects on individual resources are).

For guidance on the analytic treatment of cumulative effects, see Section 8.20.

### **1.6.2 Mitigation**

The intention of mitigation is to reduce the adverse effects of an action on the environment. CEQ regulations (40 CFR 1508.20) identify five ways to mitigate environmental effects—avoiding, minimizing, rectifying, reducing or eliminating, or otherwise compensating for an environmental effect. Another mitigation technique the ARNG uses is an “adaptive management strategy” (see Section 8.21). Mitigation measures identified in a NEPA document and committed to as part of the decision must be funded by the proponent and accomplished. Depending on the mitigation commitments identified for a particular action, a monitoring and enforcement program might also be required. For further discussion on mitigation commitments, see Section 8.21.

While conducting analyses for EAs, preparers might discover potential consequences that are “significant” and thus might normally require preparation of an EIS. Proponents may then reevaluate their actions and propose further measures to mitigate probable adverse environmental effects. If it is found that such mitigation would prevent a proposed action from having significant effects, the proponent may conclude the NEPA process with a “mitigated EA/FNSI”

rather than preparing an EIS. See Section 6.9 for further guidance on this approach. Mitigation measures specified in the FNSI are judicially enforceable.

### **1.6.3 Consultation**

Numerous laws, regulations, and federal policies obligate the proponent to enter into consultation with interested agencies or parties to determine fully the consequences of implementing a proposed action. The results of all consultations should be reduced to writing and included in the appropriate NEPA document as appendices. See Section 8.22 for a complete discussion of consultation requirements encountered in ARNG NEPA practice.

### **1.6.4 Programmatic Documentation**

Programmatic NEPA documents are prepared for analyses conducted on an areawide or subject/topic basis, or for broad federal actions that include a number of phases of individual actions or involve the adoption of new agency regulations or programs. With broad actions, agencies may analyze the effects of their proposals based on common geographic locations or similarities of effects or by stages of development (40 CFR 1502.4). In the following discussion, programmatic documents refer to NEPA documents, which are distinguished from real property development plans, a type of programmatic document that is limited to installation planning. For ARNG proponents, use of programmatic documentation is authorized under 32 CFR 651.27. For additional discussion of programmatic documentation, see 32 CFR 651.14(c).

Programmatic documents may require subsequent additional or tiered (Section 1.6.7) site-specific NEPA analyses (RECs, EAs, or EISs). In such cases, the programmatic document provides the baseline from which the additional studies can be drawn. Any appropriate follow-on NEPA documents can then concentrate on site- or phase-specific issues. The follow-on documents can efficiently incorporate by reference information from the programmatic document (i.e., summarize and cite from existing documentation) to reduce their size without degrading the adequacy of the analysis or agency/public review. (See also 40 CFR 1502.21 for further discussion on this concept.) Examples of broad ARNG actions that could benefit from programmatic documentation include the multi-state fielding of a major weapon system, the promulgation or revision of certain ARNG regulations, and major ARNG force restructuring programs.

Programmatic environmental documents are typically initiated and overseen by NGB-ARE for multi-state actions. Although the NGB will usually act as the proponent for these documents, the baseline and site-specific information must be gathered by the states identified in the document. Close coordination with the NGB and full support from the affected states are required to realize the reduced costs and accelerated evaluation process that a programmatic document can provide. State participation in the development of programmatic environmental documents, achieved through early and fully knowledgeable “buy-in,” is essential for force structure and equipment fielding actions.

See also the discussion of “tiering” in Section 1.6.7.

### **1.6.5 Supplemental EA/EIS**

A supplemental EA or EIS contains additional analysis and documentation on a proposed action and alternatives. It is prepared when conditions become substantially altered from the action initially proposed or when changes in alternatives or baseline conditions occur after preparation



of the initial EA or EIS. According to CEQ guidance, if such changes occur and the proposal has not yet been fully implemented, or if the original analysis addresses a program currently under way, and the EA or EIS is more than 5 years old (see Figure 1-2), the document should be reexamined to determine whether the changes are sufficient to necessitate preparation of a supplemental EA or EIS (see CEQ *Forty Most Asked Questions*, Number 32 [[Appendix D](#)]). Additionally, if circumstances significantly change after public release of a draft EA or DEIS but before the final EA or FEIS has been circulated, supplementing the draft document might be appropriate. (Refer to 40 CFR 1502.9(c)(1) and CEQ *Forty Most Asked Questions*, number 29(b), for further discussion on this concept.)

### 1.6.6 Legislative EA/EIS

NEPA requires that a “detailed” statement be included in a recommendation or report to Congress on a legislative proposal (per 40 CFR 1506.8). A legislative EA/EIS is intended to satisfy this requirement. The Army has satisfactorily prepared both legislative EAs and EISs in meeting this requirement. CEQ regulations describe the differences between a legislative NEPA analysis and other forms of EAs/EISs described in the Council’s regulations and in this handbook. For example, legislative EISs do not result in the filing of a ROD.

### 1.6.7 Tiering

In the early stages of developing a proposal, the proponent might not be able to identify fully the potential environmental effects that could be associated with the action, either because there is not enough information or because the proposed action has not been developed sufficiently to be clearly defined. When complete information is lacking up front, incremental decision making can minimize risks and still ensure progress toward a generally defined set of goals. These incremental decisions lend themselves to a stepwise process of environmental analysis referred to as tiering.

Tiering is the process of preparing multiple levels of environmental review, typically addressing general matters in a large-scale EA or EIS (e.g., national program statements) with subsequent smaller-scale EAs or EISs (e.g., regional or installation-specific program statements). The smaller-scale EAs or EISs often incorporate the general discussions included in the broader analysis by reference and concentrate on the issues specific to the site or particular phases of the program, thereby avoiding duplication of paperwork. (See CEQ *Guidance Regarding NEPA Regulations*, [Appendix F](#) in this handbook, for further discussion on tiering.)

Tiering occurs when a proponent builds an analysis on an existing analysis that was prepared in anticipation of later, typically site-specific proposals. Supplementation occurs when a proponent updates an analysis because circumstances surrounding an original proposed action have changed. Both of these situations differ from incorporation by reference, which involves the use of any other analysis to support a new proposal.

Tiering is appropriate when the sequence is as follows:

- From a larger program (or plan or policy) EA or EIS to a smaller program (or plan or policy) EA or EIS that is more focused, of lesser scope, or more site- or action-specific.
- From an EA or EIS on a specific action at an early stage (such as concept plan or site selection) to a subsequent EA or EIS on that action at a later stage (such as site-specific project design).

If environmental analyses are tiered, decision makers can focus on making environmentally informed decisions on only those issues that are “ripe” for decision making (40 CFR 1502.20). Other benefits of tiering include the following:

- Early identification of potential “show-stopper” issues.
- More opportunities to recognize and deal with controversial issues earlier in the decision-making process.
- More time and management options for developing solutions or mitigation measures to prevent unnecessary environmental damage.

### **1.6.8 Segmenting and Sequencing**

CEQ regulations require that related or connected actions (actions with a common purpose, timing, effects, or location) be analyzed in a single document (40 CFR 1502.4(c) and 1508.25). Splitting an action into several smaller actions and analyzing them individually to avoid preparing a comprehensive environmental analysis is called segmenting. Segmenting is prohibited because the significance of the environmental effects of an action as a whole might not be evident if the action is broken into its component parts and the effects of those parts are analyzed separately. An example of segmenting would be to analyze separately the environmental effects of a small unit’s field training during maneuvers when the intent of the overall action is to conduct a major field training exercise. Similarly, it would not be acceptable to analyze separately individual elements of an integrated natural resources management plan since the overall intent of implementing the plan is integrated management of all of an installation’s natural resources on an ecosystem basis.

Certain “interim” actions, on the other hand, are a form of sequencing, which is permissible. An example of an interim action would be the movement of aircraft to a particular location in a fielding proposal with no operational use of the aircraft until completion of the NEPA analysis. Actions that meet all of the following conditions are considered sequencing rather than segmentation:

- The interim action does not prejudice the ultimate decision for the program.
- The interim action does not produce an irreversible or irretrievable commitment of resources.
- The interim action is consistent with the reasonable alternatives being considered as part of the broader NEPA analysis.
- The interim action itself is covered by another NEPA analysis.
- The broader NEPA analysis evaluates the cumulative effects of the action.

Proposed interim actions must also be reviewed and the appropriate level of NEPA analysis and documentation applied (e.g., REC/CX, EA/FNSI). Interim actions that are prohibited as segmentation include any that would involve an irreversible or irretrievable commitment of resources or the foreclosure of future options.

### **1.7 NEPA Training Courses and Information Available to the ARNG**

Additional in-depth NEPA training might be appropriate for some ARNG staff responsible for program implementation. NEPA training available to ARNG staff is described below. Interested persons should contact the Environmental Training Officer, Conservation Branch Chief, or NEPA Team Leader at the NGB-ARE.

NGB-ARE provides basic training in NEPA at conservation training for ARNG personnel. This training is intended for ARNG personnel who are newly-assigned to NEPA duties and for those who seek a refresher course on NEPA rudiments.

Using NGB and contractor support, Duke University in Durham, North Carolina, provides university-level training to the ARNG in the development and writing of NEPA documents. This 1-week, for-credit course trains ARNG students from around the country, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the trust territories in the preparation of EAs and EISs and the proper application of CXs. Students bring “real world” proposed actions to the course and, through a series of lectures and practical exercises develop the detailed outlines and text of the appropriate documents.

A number of educational institutions and organizations offer other academic and professional development NEPA courses. Related to public involvement as an internal part of the NEPA process, the NGB Public Affairs Office also sponsors level 6 and 10 training courses in risk communication.

The following relevant publications also are available:

- Bass, R.E., A.I. Herson, and K.I. Bogdan. 2001. *The NEPA Book: A Step-by-Step Guide on How to Comply with the National Environmental Policy Act*. Solano Press Books, Point Arena, California.
- Battelle Press. 2000. *The Environmental Impacts Statement Process and Environmental Law*. Battelle Press.
- Canter, L.W. 1996. *Environmental Impact Assessment*, 2<sup>nd</sup> ed. McGraw-Hill, New York.
- Clark, R., and L. Canter, eds. 1997. *Environmental Policy and NEPA—Past, Present, and Future*. St. Lucie Press, Boca Raton, FL.
- Eccleston, C.H. 2001. *Effective Environmental Assessments*. CRC Press.
- Fittipaldi, J.J., and E.W. Novak, 1980. *Guidelines for Review of EA/EIS Documents*. USACERL TR-N-92.
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- Freeman, L.H. 1992. *How to Write Quality EISs and EAs—Guidelines for NEPA Documents*. Shipley Associates, Bountiful, UT.
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- Mandelker, D.R. 1992. *NEPA Law and Litigation*. Clark Boardman Callaghan, New York. (Includes annual supplements).
- Marriott, B. 1997. *Environmental Impact Assessment—A Practical Guide*. McGraw-Hill, New York.

## **2.0 ROLES AND RESPONSIBILITIES**

Developing and executing a NEPA analysis might require the participation of a number of staff and command elements within the ARNG. Participants must understand their responsibilities, and all must function as a team by maintaining a high degree of communication, interaction, and coordination, particularly when these responsibilities involve providing timely information, concurrence, or approval within an individual's or organization's area of responsibility. This section describes typical roles and responsibilities of the ARNG, the NGB, and other participants. For a step-by-step discussion on participant involvement during the review, processing, and approval of EAs and EISs, refer to Section 9 of this handbook.

### **2.1 Proponents**

#### **2.1.1 Proponent Identification**

The NEPA process includes a variety of critical roles and responsibilities. Identifying the proponent for the action is usually one of the first matters encountered. Typically, the NEPA process begins when the proponent, the person or staff element responsible for planning and implementing an action, identifies a proposal for meeting a specific mission-related need. The proponent may be an ARNG organization, the Army, another DoD military service, a non-DoD agency, or a state or local organization or person responsible for developing the specific plan of action. The proponent is sometimes not the only, or even primary decision maker on a proposed action. Many proposed actions require approval or concurrence of the leadership at many levels, depending on command and installation procedures and policies, as well as the scope of the action. It is the federal decision maker who serves as the signer of the final NEPA document. All actions must include NGB coordination; if a FNSI is prepared for an EA, NGB signature on the FNSI is also required.

The proponent for federally funded ARNG actions is the NGB division in whose area of responsibility the action rests. The NGB division performs the procedures required in the environmental process with the states or territories that are affected by the proposed action. Thus, the proponent for proposed training activities would be the NGB Operations Division, and for proposed construction activities, it would be the NGB Installations Division. Sometimes a broad program-type action by the NGB will affect several state ARNG organizations, in which case the responsible NGB division is the proponent. ARNG actions, such as military construction, training events, equipment fielding, and real property acquisition are, in some cases, authorized, supported, or directed by a higher headquarters. An action directed by a higher headquarters does not necessarily constitute proponenty. The proponent may be identified as the group or agency having the greatest influence on the proposed action, requesting the implementation of the proposed action, or receiving the greatest benefit from the proposed action.

In many cases, however, the proponent can be an ARNG state-level agency or office. For example, proponents for ARNG actions may include a state ARNG proposing to implement a Real Property Development Plan, an Integrated Natural Resources Management Plan, or a new or expanded use for a local training area. For proponenty responsibilities in Innovative Readiness Training projects, see Section 3.8.

In other cases, a non-ARNG agency may be the proponent for an action involving the ARNG. For example, the U.S. Air Force might be the proponent if it proposes to conduct aircraft operations over an ARNG-controlled range area. Likewise, should the Air National Guard propose to designate new airspace, such as a Military Operations Area (MOA) adjacent to an

ARNG installation's restricted airspace area, the Air National Guard would likely be designated as the proponent for creation of the MOA. In similar vein, another Department of the Army entity, such as the U.S. Army Forces Command or the U.S. Army Reserve Command may be the proponent.

Except with respect to environmental management plans, the state environmental office or NGB-ARE is seldom the proponent for an action; these entities generally support the proponent in conducting the NEPA analysis. Environmental staffs may coordinate NEPA analysis, advise the proponent, and assist in staffing the NEPA document, but the proponent is still responsible for providing critical information and data concerning the action and for overseeing preparation of the NEPA document.

Compliance with NEPA is funded from the proponent's mission funds (generally not the environmental account) as an integral cost of the proposed action. Activities such as equipment fielding, real estate transactions, and new construction all require the proponent to identify and program, early on, funds to cover the entire NEPA process. The environmental staff is still responsible for ensuring technical sufficiency of the document and proper staffing and coordination is accomplished. Only for such projects that are directly related to an environmental activity, such as preparing Integrated Natural Resources Management Plans or Integrated Cultural Resources Management Plans, should environmental funds for NEPA be authorized.

Mitigation measures for reducing or offsetting potential adverse environmental impacts are normally identified during the NEPA process. The proponent for the proposed action is responsible for funding of mitigation and monitoring. Mitigation measures identified in either a FNSI supporting an EA or in a ROD accompanying an EIS must be identified as a funding requirement, to include funds necessary to monitor mitigation impact. Generally, only mitigation actions that are not associated with a particular law or regulatory requirement should be requested using the NEPA category in the funds request process. All other requests should be categorized according to the appropriate law or regulatory driver for requiring a mitigation measure to ensure compliance as a proposed activity is implemented.

### **2.1.2 Responsibilities of the Proponent**

The proponent is responsible for the overall NEPA compliance associated with the proposed action, which includes preparing and distributing documentation, collecting data through surveys and other special studies (e.g., noise and air emissions measurement and environmental baseline surveys), meeting any public involvement requirements (to include preparation of any public news releases), and funding all of the associated costs of documentation and NEPA compliance. The proponent is also responsible for the content, accuracy, quality, and conclusions of the NEPA analysis.

The proponent must clearly define the proposed action, all reasonable alternatives (including the possibility of taking no action), and the underlying purpose of and need for the action; staff the documents through the review and approval process; ensure that all review comments are incorporated; and sometimes make the final decision. The proponent is then responsible for the implementation and sustainment of the proposed action, as well as any potential impacts related to the action. The proponent also funds and undertakes any mitigation measures committed to in the NEPA document to reduce or compensate for environmental damage when it cannot be avoided. Mitigation commitments should be listed as line items (or the equivalent) in the proponent's budget for proposal implementation. The responsibilities described here remain with the proponent even if another organization or a contractor prepares the NEPA analysis and

documentation.

It is NGB policy that the proponent of an action being evaluated under NEPA is responsible for funding of the environmental impacts analysis documentation. For instance, NEPA analysis of proposals related to training are funded by the Plans, Operations and Training Office or the Office of the Deputy Chief of Staff for Operations; analysis of force structure actions are funded by the Force Integration Readiness Office. Documentation submitted to NGB-ARE by the states and territories may properly reflect responsibility for its preparation by ARNG staff functions other than the environmental office.

The proponent's responsibilities may be broader when actions are proposed to occur outside ARNG installations. When working with other DoD components or agencies, it is important for the proponent to identify early on who is the responsible landowner, document content required to meet multiple agencies' needs, who is the decision maker, and who will have signatory authority on the FNSI or ROD.

## **2.2 Key Participants**

### **2.2.1 State ARNGs**

State ARNG participation and coordination are central to the ARNG NEPA process. Because a state ARNG organization could serve as a proponent, as a contributing office, or merely as a reviewer, the state's level of participation might vary from situation to situation. In addition, each site at which an action requires NEPA analysis might have a slightly different group of responsible persons, and each group needs to know how to efficiently participate in its portion of the NEPA process. It is essential that the state ARNG communicate and coordinate with the NGB before initiating – and throughout – the NEPA process. When a state ARNG organization is the proponent, the NGB provides guidance and oversight to the state ARNG's NEPA process. Although internal state ARNG organizations vary, the general structure of NEPA responsibilities within state offices is as follows.

**The Adjutant General.** The Adjutant General (TAG), who reports to the state governor as well as the NGB, is the senior National Guard military official at the state level. The Adjutant General is responsible for ensuring that the purpose of and need for a proposed action originating with a state are well identified and communicated. When a proposed action is subject to NEPA, the Adjutant General is responsible for directing the appropriate state ARNG staffing of internal draft and final documents and ensuring that adequate NEPA analysis is prepared.

**Environmental Program Manager.** The Environmental Program Manager (EPM) (or state Environmental Manager/Specialist) is the designated point of contact for facilitating the environmental process at the state level. The representative acts on behalf of the installation and is responsible for ensuring that the ARNG satisfies all applicable environmental requirements. Although the Environmental Program Manager may act as a proponent for environmental plans and guidance (Integrated Natural Resources Management Plans, Integrated Cultural Resources Management Plans, and the like), his or her most important responsibilities are to ensure that other proponents recognize their responsibilities under NEPA and satisfy environmental documentation requirements and to ensure that mitigation commitments are carried out and monitored. The responsibilities of the Environmental Program Manager also include assisting in the preparation and staffing of the necessary environmental documentation, coordinating the NEPA process with the NGB, maintaining the administrative record, providing available technical information on existing environmental conditions on the installation, and informing the

Staff Judge Advocate of the progress of the NEPA process.

**Public Affairs Officer.** The Public Affairs Officer (PAO) is the official spokesperson for the installation where the proposed action is to occur. It is not advisable for proponents or other installation staff to independently provide information to news media or the local community regarding official ARNG business. The Public Affairs Officer should establish and maintain liaison with The Adjutant General, the Environmental Program Manager, the Staff Judge Advocate, the NGB, the installation commander, the installation coordinator, and other installation offices with respect to public affairs issues. By maintaining liaison, the Public Affairs Officer can provide necessary public affairs guidance and can ensure compliance with required public affairs actions for the state ARNG's environmental program.

In support of NEPA actions, the Public Affairs Officer coordinates with proponents, The Adjutant General, the Environmental Program Manager, the Staff Judge Advocate, and the NGB Public Affairs Office in preparing press releases, public notices, decision documents, reports, and other information. The Public Affairs Officer also handles the dissemination of such information to local media, local officials, and citizen groups. The offices should work together closely to ensure that all information released to the public is accurate, appropriate, and timely. To make sure information is easily understood by the public, the Public Affairs Officer should review all draft technical documents. If necessary, the Public Affairs Officer may direct questions to or seek advice from the NGB. The Public Affairs Officer should maintain a record of all news releases, public meetings or briefings held, queries answered, and coverage in print media, as well as summaries of transcripts of electronic media reports. Copies of news clippings should be submitted directly to the NGB Public Affairs Office.

The Public Affairs Officer is responsible for coordinating with the NGB Public Affairs Office to plan and conduct any public meetings or hearings for the installation. He or she is responsible for responding to queries from the public and news media about project and public meeting information. Replies to queries should be prompt (1 day) because delay might be perceived as a lack of concern on the part of the ARNG. If a complete answer is not immediately available, an interim response should be supplied until a satisfactory answer can be given (within 1 week). The Public Affairs Officer should coordinate all queries with the NGB Public Affairs Office. Sometimes the NGB designates the Public Affairs Officer as the point of contact for the receipt of comments on NEPA documents.

**Staff Judge Advocate.** Legal counsel from the Staff Judge Advocate (SJA) is responsible for reviewing all NEPA documents and advising staff on legal issues. State Environmental Program Managers may request that the Staff Judge Advocate office provide a legal review of the NEPA documents prior to review by the NGB Office of Chief Counsel. This office supports the ARNG in discussions with other government agencies or private interests concerning compliance with NEPA.

**Other State ARNG offices.** Other state offices might be required to provide review and comment on NEPA documents. Generally, an office becomes involved when the NEPA action relates to its responsibilities as an office. For example, the Aviation Office would be included in the NEPA process for a proposed action involving airspace use. Other state ARNG offices that might be required to review and comment include the Command Logistics Office (CLO), Construction and Facilities Management Office (CFMO), Force Integration Readiness Office (FIRO), Plans, Operations and Training Office (POTO) or Office of the Deputy Chief of Staff for Operations (ODCSOPS), and Military Personnel Office. As necessary and appropriate, any other offices not previously discussed should assist proponents in the early identification of

environmental issues related to their respective functional areas. In addition, they should also apprise the Environmental Program Manager of any potential environmental compliance problems. Depending on project requirements, other state offices might also need to participate in the implementation and/or monitoring of certain mitigation measures.

### 2.2.2 Environmental Programs Division (NGB-ARE)

The Environmental Programs Division (NGB-ARE) is the action office for the NGB NEPA process. The key to successful processing of environmental documents is establishing and maintaining a chain of command for all steps in the analysis and document preparation process. For a NEPA analysis, the proponent (the entity requiring the action) is in charge. In some cases, the NGB could be the proponent; in others, the NGB could be a contributing office and a reviewer. Regardless of the type of action, a formal procedure should be established to ensure each entity is aware of what the others are doing throughout the long process.

The NGB maintains the expertise to ensure that all ARNG NEPA documentation is completed in a professional, timely, and reasonable manner. As the proponent below HQDA level, the NGB is responsible for the environmental analysis and documentation “from cradle to grave.” The NGB must ensure adherence to the approved environmental analysis and documentation schedule through close coordination and clear communication with all participants.

The NGB, as the executive agent of DoD for all matters pertaining to the ARNG, is responsible for review of ARNG NEPA documents. Normal NGB staffing of an EA or EIS includes the offices described in the paragraphs that follow.

**Deputy Director, ARNG.** The Deputy Director, ARNG has overall authority in approving and executing EAs/FNSIs and in providing NGB-level approval of EISs/RODs on behalf of the ARNG. The Deputy Director, ARNG may also delegate approval authority for EAs and EISs to another appropriate federal official.

**Chief, Environmental Programs Division.** The Chief, Environmental Programs Division is responsible for the effective and efficient performance of the Environmental Programs Division (NGB-ARE; see below). Since 2000, the Deputy Director, ARNG has historically delegated the decision making authority for EAs and FNSIs to the Chief, Environmental Programs Division.

**Environmental Programs Division (NGB-ARE).** The action office for the NGB NEPA process is usually the NGB-ARE. This office provides guidance and monitoring for the planning and development of NEPA documents at the state level. NEPA documents prepared at the state level are staffed through NGB under the direction of this office. When NEPA documents are prepared at the NGB level, the NGB-ARE oversees their preparation and coordinates the staffing and review process of the documents within NGB. This office may also assist in ensuring funding is made available for the NEPA process and in providing contractor support, as needed, for preparing NEPA documents.

**Office of Chief Counsel.** Legal counsel from the NGB Office of Chief Counsel is responsible for advising staff on legal issues and reviewing all NEPA documents for legal sufficiency. The purpose of the legal sufficiency review is to ensure that all legal issues of the NEPA process have been addressed. A legally sufficient document is one that procedurally complies with CEQ, Army, and ARNG regulations and published policies, and identifies and analyzes all relevant issues and conditions. A legally sufficient NEPA document must accomplish the two goals of NEPA—to provide for informed decision making by the federal agency and to disclose to the



public the environmental effects of the proposed action and alternatives. Legal counsel must ensure that the document clearly identifies and analyzes the proposed action; reasonable alternatives; effects associated with the proposed action and alternatives, including cumulative effects; and means to avoid or minimize adverse effects (mitigation measures).

The Office of Chief Counsel also interprets NEPA and CEQ regulations and provides information on which agencies have legal jurisdiction over the proposed action or have special expertise. Specific legal issues, such as compliance with the Clean Air Act, the Endangered Species Act, and other statutes and regulations, should also be addressed in coordination with and using guidance provided by the Office of Chief Counsel.

**Public Affairs Office.** The NGB Public Affairs Office speaks officially for the NGB. It is not advisable for proponents or other NGB staff to independently provide information to news media or the local community regarding official NGB business. The responsibilities of the Public Affairs Office differ, depending on whether the NGB is the proponent.

When NGB is the proponent, the Public Affairs Office is directly involved in managing public affairs related to the NEPA process. In this case, the Public Affairs Office plays a role similar to that of the Public Affairs Officer at the state level, as outlined in Section 2.2.1. The NGB might delegate some responsibilities to state ARNG representatives, such as communication with local communities and media, but the overall responsibility will still belong to the NGB.

When a state ARNG is the proponent, the Public Affairs Office performs more of an oversight and guidance role with respect to public involvement issues. The Public Affairs Office is required to maintain liaison with The Adjutant General, the Environmental Program Manager, the Staff Judge Advocate, and other NGB offices. In support of NEPA actions, the Public Affairs Office prepares press releases, public notices, and other information. The Public Affairs Office provides guidance for the planning, coordination, and conduct of any public meetings or hearings for the state ARNG. The Public Affairs Office supports the NEPA process and reviews all NEPA documents. When an EIS is necessary, the Public Affairs Office assists in the development and review of the Public Affairs Plan prepared before an NOI is issued.

**Other NGB offices.** Other NGB offices may be required to provide review and comment on ARNG NEPA documents. Typically, an office becomes involved when the NEPA action relates to its responsibilities. For example, the Force Integration Division is included in the NEPA process for a proposed action that involves Army force structure changes. Other NGB offices that might be required to review and comment include the Operations Division, Personnel Division, and Aviation Division. As necessary and appropriate, any other offices not previously discussed should assist proponents in the early identification of environmental issues related to their respective functional areas. In addition, they should apprise the NGB-ARE of any potential environmental compliance problems associated with an action.

### 2.2.3 Headquarters, Department of the Army

Headquarters, Department of the Army (HQDA) is the executive element of the Department of the Army. As the highest level headquarters in the Army, HQDA exercises directive and supervisory control over all other levels. In the broadest context, HQDA is composed of the Office of the Secretary of the Army; Office of the Chief of Staff, Army; the Army Staff; and specifically designated staff support agencies.

HQDA becomes involved in the ARNG NEPA process only if an EIS is required or, in rare

instances, when an EA involves an action of national significance. The NGB-ARE is responsible for coordinating the NEPA process with HQDA as necessary. The following HQDA offices are typically involved in the NEPA process; as necessary, other HQDA offices might be required to provide review and comment on ARNG EAs and EISs:

- Deputy Assistant Secretary of the Army for Environmental, Safety, and Occupational Health, or DASA (ESOH).
- Deputy Chief of Staff for Operations and Plans (ODCSOPS).
- Office of the Directorate of Environmental Programs (ODEP).
- Office of the Chief of Public Affairs (OPA).
- The Surgeon General.
- The Judge Advocate General, Environmental Law Division.
- Office of General Counsel.
- Office of the Congressional Legislative Liaison (OCLL).

#### **2.2.4 Lead and Cooperating Agencies**

The preparation of ARNG NEPA analyses can require assistance from a number of contributing agencies. If more than one federal agency proposes or is involved in the same action, or is involved in a group of actions directly related to each other, a “lead agency” must be designated with primary responsibility for preparation of the NEPA document. The following factors are often used to determine lead agency designation: (1) magnitude of the agency’s involvement, (2) approval or disapproval authority over the proposed action, (3) expertise with respect to environmental effects, (4) duration of the agency’s involvement, and (5) sequence of the agency’s involvement. Further discussion on lead agency designation is provided in 40 CFR 1501.5 (see [Appendix B](#) in this handbook).

Federal agencies other than the ARNG having special expertise, specific interests, or legal jurisdiction with respect to a proposed action and the resulting environmental effects may act as “cooperating agencies” at the invitation of the proponent or lead agency. The participation of cooperating agencies must be requested as early as possible in the NEPA process. Cooperating agencies participate in the scoping process and, as requested by the lead agency, support the analysis and preparation of the NEPA document. In addition, cooperating agencies might have their own regulations or requirements that must be met or considered. Examples of other federal agencies that might serve as cooperating agencies are other DoD services, U.S. Fish and Wildlife Service, National Marine Fisheries Service (“NOAA Fisheries”), Bureau of Land Management, Bureau of Reclamation, and U.S. Forest Service. Similarly qualified state or local agencies, including tribal historic preservation officers, may also serve as cooperating agencies. A federally recognized Indian tribe may, by agreement with the lead agency, become a cooperating agency if the action is proposed to occur on a reservation. Specific requirements and other responsibilities for a cooperating agency can be found in 40 CFR 1501.6.

For situations where state ARNG actions are proposed to occur on another agency’s property, the proponent for the action might need to obtain permission or concurrence from the agency before implementing the action. The land-holding agency in such case might want formal recognition in the NEPA document or to serve as a cooperating agency. The land-holding or cooperating agency may participate in decisions, review of the document, and concurrence on the NEPA process.

Two issues often arise when an ARNG proposal involves activities on another agency's property: the land-holding agency might wish to become a signatory to the decision document (FNSI or ROD), and the land-holding agency might seek to have the ARNG NEPA document adhere to the procedural requirements of the land-holding agency. In these cases, ARNG proponents should coordinate with NGB-ARE to determine how to proceed. The following three principles are used to guide resolution of inter-agency procedural conflicts involving NEPA compliance.

- The ARNG must comply with 32 CFR Part 651 and guidance issued by NGB-ARE. Absent publication of rules pursuant to Administrative Act Procedures, ARNG proponents do not have the authority unilaterally to forego Army NEPA procedural requirements in favor of another agency's procedural requirements.
- In accordance with CEQ and Army regulations, ARNG proponents may adopt NEPA analyses prepared by other agencies. In similar fashion, CEQ regulations allow other federal agencies to adopt environmental impacts analyses prepared by ARNG proponents. Adoption enables agencies to issue their own decision documents for those aspects of proposals directly affecting their specific interests. For example, where a state ARNG proposes to construct a maintenance facility on a U.S. Air Force installation where it is a tenant, the state ARNG might prepare an EA and NGB might issue a FNSI. The Air Force could then "adopt" the ARNG EA and, based on it, issue its own FNSI in satisfaction of its own regulations requiring NEPA compliance for all construction on base.
- Preparation of NEPA documentation fulfilling more than one agency's requirements is not unduly burdensome. At the outset of the environmental impacts analysis, proponents need to consult with the other interested agency to determine that agency's needs (both substantive and procedural).

Application of the foregoing principles will resolve most inter-agency issues where a proposed action is planned to occur on another agency's property. Proposals likely to require recourse to the foregoing principles are those that would occur on property managed by the U.S. Air Force, U.S. Navy, Bureau of Land Management, and U.S. Forest Service. Where the involvement of these agencies is necessary, the ARNG proponent may elect to enter into a memorandum of understanding to record any agreed-upon procedures or measures designed to ensure that the NEPA requirements of all participants are met in the most efficient and effective manner. ARNG proponents should consult NGB-ARE for any questions involving these procedures.

## 2.3 Other Participants

### 2.3.1 Federal, State, and Local Agencies

All DEISs and FEISs are filed with the U.S. Environmental Protection Agency (EPA) in accordance with CEQ regulations (40 CFR 1506.9). In accordance with Section 309 of the Clean Air Act (Title 42 of the United States Code [U.S.C.], Section 7609), EPA is also given authority to review and comment on EISs and notify proponents of any deficiencies. EPA publishes the availability of EISs and its findings on document reviews in the *Federal Register* on a weekly basis.

NEPA requires that proponents consult early with other federal, state, and local agencies that have jurisdiction by law over some aspect of a proposed action or can provide special expertise during the NEPA process. Examples include consulting with the U.S. Fish and Wildlife Service on endangered species habitat; with the State Historic Preservation Office (SHPO) regarding historic structures; and with other state environmental agencies on air quality, hazardous and solid

waste management, floodplains, and wetlands. Federally recognized Indian tribes also fall into this category. Several examples of ARNG coordination letters sent to outside agencies are provided in [Appendix J](#). [Appendix J](#) also includes guidelines for preparing “No Adverse Effect” and “No Historic Properties Affected” SHPO letters.

### **2.3.2 Organizations and Individuals**

For proposed actions, the federal government is required to consult with interested private individuals and organizations during the NEPA process when their involvement is reasonably foreseeable. An example of this would be a proposal to conduct field training on land adjacent to private property or to cross private property to reach training lands. Private individuals and organizations can also be a source of valuable information or expertise on particular sites or subject matter. Such individuals and organizations are often identified during the scoping process.

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### 3.0 NEPA INTERFACE WITH SELECTED ARNG PROGRAMS AND ACTIONS

The ARNG conducts a variety of programs, actions, and activities that often require special or unique application of the NEPA process. Included in these are the preparation of Real Property Development Plans (RPDPs); real property acquisition, granting use, and disposal; military construction, and base operations and maintenance; equipment modernization; military field training; force structure management and stationing; the preparation of environmental management plans; and Innovative Readiness Training. The ARNG also may be involved in actions classified for reasons of national security, deployments for operations conducted outside the United States, emergency actions, and actions exempt in whole or in part from NEPA's procedural requirements. This section describes these categories of actions, the applicability of NEPA, and special requirements for applying the NEPA process to them. It also describes the applicability and unique requirements of other related statutes and regulations involved in the assessment of potential environmental effects resulting from ARNG deployments conducted outside the United States, its territories, and its possessions.

#### 3.1 Real Property Development Planning

##### 3.1.1 Applicability of NEPA to Real Property Development Planning

Real property development planning within the ARNG is based on the requirements and guidance contained in AR 210-20, *Real Property Master Planning for Army Installations*. Real property development planning results in compatible uses of real property within specified classifications of areas, such as airfields, maintenance, supply/storage, administration, community facilities, and open space, among others.

The level of environmental review pursuant to NEPA that is appropriate to installation planning depends largely on the type of development plan to be prepared (programmatic or detailed) and the level of planning (statewide or facility-specific). Appropriate NEPA analysis can be accomplished for either type of plan or planning level once decisions on the structure of the planning processes are made. Timing is the critical element. Plan implementation cannot properly begin until the environmental consequences of proposed actions have been appropriately analyzed. With a programmatic EA in place, most facilities projects should be able to be "tiered" to a REC or assessed for site-specific effects in a focused EA. Given the current state level orientation of the ARNG planning process, a suggested efficient and cost-effective approach to NEPA analysis is for a generic assessment of effects at the program level (see Section 1.6.4) followed as necessary by

- Tiering to a REC or, if necessary,
- Tiering to a focused site-specific EA, and
- Performing a detailed analysis of site-specific alternatives in an EIS only for complex projects where significant impacts or controversy could be expected.

Environmental impacts analysis of real property development planning is limited in what can or should be analyzed in a single NEPA document. Only projects that are reasonably close in time to the expected date of FNSI signature should be analyzed in a NEPA document. Speculative construction or training projects that proponents would "like to have" should not be included. Elimination of "wish list" projects from NEPA documentation may reduce the number of EAs received by NGB-ARE for review. This comports with the general principle that lean, concise EAs tend to be superior to EAs clogged with numerous proposed sub-actions.

## 3.2 Federal Real Property Acquisition, Granting Use, and Disposal

Federal real property transactions require considerable attention to safeguard all relevant ARNG interests. At one level, ARNG personnel must ensure that interests in federal real property are properly recorded. At another level, ARNG personnel must ensure that uses of federal real property are consistent with environmental values and comply with the universe of statutes and regulations applicable to ARNG federal activities.

The U.S. Army Corps of Engineers' *Real Estate Handbook* (ER 405-1-12) provides valuable information on the preparation of and requirements for real property reports and acquisition planning reports, as well as other topics related to federal real property transactions. The handbook also provides detailed information on the environmental documentation required for federal real property transactions.

Planning Resources for Infrastructure Development and Evaluation (PRIDE), a personal computer relational database application program, provides an automated tool to manage real property inventories, building information schedules, general ledger account code reports, and other matters at Army and ARNG installations. It is a user-friendly system for accumulating and reporting real property data, and it improves the user's ability to monitor and report real property use and assignment, and the capitalization of facilities on an installation. Information stored in the database system can be a valuable asset for preparing NEPA analysis and documentation.

To help real estate professionals, proponents, and environmental personnel execute their responsibilities related to real property, the NGB has developed its *National Guard Bureau – Army National Guard Real Estate Manual for Federal Property* to provide advice and instruction on various ARNG real property transaction processes and procedures. The manual provides succinct, detailed information needed to successfully participate in, and comply with, these processes and procedures at all levels. The manual describes what must be accomplished to execute a real property transaction and provides step-by-step guidance on how to prepare the required documentation. In addition to the normal array of topics associated with real estate processes and procedures, the manual includes specific information on base realignment and closure (BRAC) actions, focusing on the ARNG perspective of receiving licenses to operate active component properties being closed.

### 3.2.1 Applicability of NEPA to Federal Real Property Acquisition, Granting Use, and Disposal

NEPA applies to proposed actions involving acquisition, granting use, and disposal of federally supported real property, which are described below:

- Acquisition of interests in federal real property includes purchase, condemnation, donation, transfer (from another federal agency), withdrawal (of federal lands), recapture, and leasing. Fee interests are permanent. Permits, licenses, leaseholds, and options are temporary interests. Easements may be permanent or temporary.
- Granting use of real estate includes transactions such as leases, licenses, permits, easements, and consents. In some instances, a Report of Availability precedes a grant of use of federal real property by the ARNG.
- Disposal actions include transfer to another agency, sale to the public, negotiated sale to a state or local government body, demolition, donation to a public body, relinquishment of use of public domain lands, and abandonment in place.

Mere transfer of title or interest in real property does not, in and of itself, cause environmental

effects. Rather, it is the use to which newly acquired property might be put that must be the focus of NEPA analysis. When the ARNG acquires title to or obtains an interest in federal real property, or when the ARNG grants use of federal real property to another entity, NEPA analysis must identify the types of activities proposed and their direct, indirect, and cumulative environmental effects. As a general rule, when the ARNG disposes of federal real property, analysis of potential environmental effects is the responsibility of the transferee or the proponent of future activities on the property.

### **3.2.2 References to NEPA in Federal Real Property Acquisition, Granting Use, and Disposal Guidance**

Three directives specifically pertain to acquisition, granting use, and disposal of federal real property by the ARNG:

- AR 405-10, *Acquisition of Real Property and Interests Therein*. This directive sets forth the authority, policy, responsibility, and procedures for the acquisition of real property and interests therein for military purposes by the Army and the ARNG. AR 405-10 does not specifically task the preparation of NEPA documentation in conjunction with acquisition of property and interests therein. Its silence concerning NEPA obligations is likely due to the fact that the CEQ regulations were promulgated in 1978, after AR 405-10 was issued. 32 CFR Part 651, however, requires preparation of NEPA documentation for “projects,” a term that would encompass actions to acquire real property interests.
- AR 405-80, *Granting Use of Real Estate*. This directive establishes policies for granting use of real property and provides specific guidance for leases, licenses, permits, and easements. It also serves as the source of instruction for preparation of the Report of Availability of property for non-Army use. Section 4-8 (Environmental, cultural, and historical factors) provides that the Army will not authorize the use of real estate, water, and other natural resources when the use conflicts with the goals and intent of overall Federal policy on environmental quality and historical preservation. Further, all actions will comply with applicable Federal or state environmental, historical, and cultural protection requirements as well as any applicable coastal zone management plans, floodplain, and wetland management. Section 4-4 requires the preparation of a Report of Availability prior to outgrant of Army real property. Such a proposed action requires analysis pursuant to NEPA.
- AR 405-90, *Disposal of Real Estate*. This directive sets forth authorities, responsibilities, policies, and procedures for disposal of military and industrial real estate under the custody and control of the Army worldwide. Section 1-6 (Special considerations) mandates that all actions associated with real estate disposal will comply with environmental, historical, and cultural protection requirements in applicable Army regulations. Ensuring compliance might require consultation in accordance with Section 106 of the National Historic Preservation Act (see Section 8.6). Furthermore, actions in coastal states must be consistent with coastal zone management plans to the maximum extent practicable, and actions in floodplains and wetlands must comply with Executive Orders 11988 (*Floodplain Management*) and 11990 (*Protection of Wetlands*).

### **3.2.3 Suggestions for Preparing NEPA Analyses Involving Federal Real Property Acquisition, Granting Use, and Disposal**

A Real Property Specialist must ensure that all actions relating to real property and real property transactions are performed within all federal, state, and local environmental program guidelines.



NEPA compliance related to federal real property transactions is obtained in the same manner as compliance for other major federal actions having a significant effect on the quality of the human environment. A proponent for a federal real property transaction may rely on a ROD prepared in conjunction with an EIS, a FNSI prepared for an EA, or a REC based on one of the CXs listed in 32 CFR Part 651. Some evaluations or measures must precede decision making in a ROD, FNSI, or REC:

- NEPA documentation must be prepared prior to final action on a Report of Availability (which underlies granting use of federal real property).
- As specified in AR 200-1, it is Army policy to prepare an Environmental Baseline Survey (EBS) to determine the environmental condition of properties being considered for federal acquisition, outgrants, and disposal. Reassignments within Army easements, licenses, and permits do not require an EBS; however, one may be generated in extraordinary circumstances. The EBS is used to identify the potential environmental liabilities associated with federal real property transactions. The NGB encourages the development of an EBS on all real property transactions. States may also require a document similar to an EBS for state or local real property transactions. In accordance with AR 200-1, pertinent information contained in an EBS will be incorporated by reference or as actual text into the appropriate NEPA document.<sup>8</sup>
- A Finding of Suitability to Lease (FOSL) and a Finding of Suitability to Transfer (FOST) are documents used to record specific determinations related to hazardous waste and other types of contamination that might be present on federal property intended for disposal or grant of use. Like the EBS on which they are based, both the FOSL and FOST are subject to federal and state regulatory agency review before completion. Refer to AR 200-1 for information on processing of the FOSL and FOST.

Some federal real property transactions do not require detailed NEPA analysis (see Appendix B of 32 CFR Part 651 for a listing of CXs pertaining to real property). For example, if an ARNG transaction of federal real property is consistent with an existing land-use plan that has been environmentally assessed, or if the transaction is between federal agencies and will result in no significant land use changes, a CX may be used to achieve compliance with NEPA. 32 CFR Part 651 should always be consulted to determine whether a REC is required to document the use of a CX for a particular action.

Two areas warrant particular attention when performing NEPA analysis of acquisition, granting use, or disposal of federal real property interests. First, accuracy in the description of real property interests is absolutely essential. When describing interests that may be acquired or disposed of, care must be taken to correctly identify the type of interest (e.g., fee, leasehold), property description (areal extent), and duration. For easements, it is necessary to identify the most influential and useful properties, as well as the duration of the grant. In cases involving property adjoining a river, caution must be taken to identify any interests held in or proposed for submerged lands; permit authorization for actions affecting or occurring in such submerged lands might reside in another agency or the state. The second area of attention is that some types of real property transactions permit, encourage, or rely on the preparation of NEPA documentation by future property users. This is especially the case where the ARNG is in a position to approve a

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<sup>8</sup> An EBS is highly useful as an informational resource for preparing NEPA documents. Proponents are cautioned that an EBS is not a NEPA document and that it is not appropriate to rely solely on an EBS for decision making on proposed actions.

leasehold, license, or permit authorizing another entity's proposed action. When NEPA documentation is prepared by an entity other than the ARNG, it remains incumbent on the ARNG to ensure the sufficiency of the documentation to support whatever decisions are ultimately reached.

### 3.3 Army Compatible Use Buffers and Conveyance of Surplus Real Property for Natural Resource Conservation Purposes

Sections 2811 and 2812 of the National Defense Authorization Act for Fiscal Year 2003 (as amended by Section 2822 of the National Defense Authorization Act for Fiscal Year 2006) expand the military services' capabilities to protect the interests of installations. These two provisions respond to concerns of military leaders, voiced to Congress, regarding issues involving encroachment, other constraints on military use of real property, and natural resource conservation. As a result of the legislation, an installation may create an Army Compatible Use Buffer (ACUB). An ACUB is a partnership between the Army and an eligible entity for acquisition by the entity of land or an interest in land and/or water rights from one or more willing sellers. Formal agreements may provide for limiting encroachment through acquisition of development rights, conservation easements, and other means in accordance with applicable laws.

ACSIM has overall management responsibility for ACUB and conveyance programs. HQDA G-3 has overall management responsibility for range and training land acquisition program. Army ACUB policies are contained in a G-3 (DAMO-TR) memorandum of May 19, 2003, *Army Range and Training Land Acquisitions and Army Compatible Use Buffers*.

Statutory authorities for creation of an ACUB are found at 10 U.S.C. § 2684a, as amended (*Agreements to Limit Encroachment and other Constraints on Military Testing and Operations*) and § 2694a (*Conveyance of Surplus Real Property for Natural Resource Conservation Purposes*). The following summarizes the two key legislative provisions.

- Section 2811 of the National Defense Authorization Act for Fiscal Year 2003 (codified at 10 U.S.C. 2684a) enables the military services to enter into agreements to limit encroachment and other constraints on military training, testing, and operations. The provision enables the Army to enter into an agreement with an eligible entity to address the use or development of real property in the vicinity of a military installation for purposes of (1) limiting any development or use of the property that would be incompatible with the mission of the installation or (2) preserving habitat in a manner that could eliminate or relieve current or foreseen environmental restrictions adversely affecting installation activities. Eligible entities include a state, a political subdivision of a state, and a private entity that has as its stated principal organization purpose or goal the conservation, restoration, or preservation of land and natural resources. An agreement under Section 2811 may provide for the acquisition by the entity of all right, title, and interest in and to any real property, or any lesser interest in the property, as well as the sharing by the United States and the entity of the acquisition costs. Annual reports are to be submitted to Congress describing the status of ACUB projects.
- Section 2812 of the National Defense Authorization Act for fiscal year 2003 (codified at 10 U.S.C. 2694a) enables military services to convey surplus real property for natural resource protection. The provision enables the Army to convey to an eligible entity any surplus real property that (1) is under the administrative control of the Army, (2) is suitable and desirable for conservation purposes, (3) has been made available for public benefit transfer for a sufficient period of time to potential claimants, and (4) is not subject

to a pending request for transfer to another federal agency or for conveyance to any other qualified recipient for public benefit transfer under real property disposal processes. Eligible entities include a state, a political subdivision of a state, and a nonprofit organization that exists for the primary purpose of conservation of natural resources on real property. The deed of conveyance of any surplus real property will require the property to be used and maintained for the conservation of natural resources in perpetuity; property not so used or maintained will, at the option of the Army, revert to the United States.

Section 2811 provides authority to enter into an agreement with a partner for the partner to acquire real property. Suitable tracts would be those which could serve as a buffer between an installation and non-military land uses. Section 2812 provides authority to dispose of real property. Installations are prohibited from entering into binding agreements under either of the legislative provisions until HQDA has approved the proposal.

NEPA compliance for creation of any ACUB follows the authorities and procedures outlined in Section 3.2, above. In essence, NEPA compliance for the creation of an ACUB is covered in a REC and Check (CX F1). It is submitted with the ACUB proposal to NGB. No EBS is required for an ACUB.

### **3.4 Military Construction/Operations and Maintenance**

Military construction can be described in several categories—facility maintenance and repair, minor construction, emergency construction, replacement of facilities damaged or destroyed, unspecified minor military construction Army (UMI), and major construction (MILCON). MILCON for the ARNG is referred to as Military Construction, Army National Guard (MCARNG). MCARNG is defined as the erection, installation, or assembly of a new facility; the acquisition, expansion, extension, alteration, conversion, or replacement of an existing facility; the relocation of a facility from one installation to another; and installed equipment made a part of the facility, related site preparation, excavation, filling, landscaping, or other land improvements.<sup>9</sup> MILCON funds are appropriated through Congress for 5 years but authorized for 3 years from the year in which they are appropriated.

#### **3.4.1 Applicability of NEPA to Military Construction/Operations and Maintenance**

ARNG actions falling within this category are major actions the ARNG undertakes that usually have the potential to affect the environment. Construction projects often cause a variety of effects on air quality, noise levels, water resources, biological resources, and cultural resources. NEPA should be appropriately integrated into the decision-making process for new construction and for operations and maintenance activities. ARNG military construction funds may not be used for preparing environmental documents. Operations and maintenance or other operating funds are the proper sources for funding the preparation of environmental documents associated with proposed ARNG military construction projects.

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<sup>9</sup> A *facility* in this case is defined as any interest in land and/or armory or other type structure including storage buildings, or complex of structures together with any supporting road and utility improvements, normally needed for proper development, training, operation, and maintenance of ARNG units.

### 3.4.2 References to NEPA in Military Construction Guidance

Routine maintenance and repair actions, including those involving some minor construction activity, are categorically excluded from more detailed analysis (see Appendix B to 32 CFR Part 651). Construction that does not alter land use can also be categorically excluded, but a REC must be prepared. Screening criteria must be applied before CXs may be used for any military construction project (see Section 5.0 for discussion of the use of screening criteria). The ARNG checklist must also be applied (see Section 5.2 and [Appendix K](#)). Any action that does not meet the CX screening criteria would require a higher level of NEPA analysis. These precautions would especially be true of UMI construction because it would generally involve new construction and possibly be classified as major construction (MCARNG). Paragraph 5.1 of National Guard Regulation (NGR) 420-10, *Construction and Facilities Management Office Operations*, provides that “Construction and other types of sustainment, restoration, and maintenance projects shall comply with applicable requirements of the National Environmental Policy Act ... and other environmental requirements.”

NEPA requirements and documentation procedures for MILCON are described in paragraph 3-3 of NGR (AR) 415-5, *Military Construction, Army National Guard (MCARNG) Project Development*. Further details are provided in Chapter 5 of NG Pam 415-5, *Army National Guard Military Construction Program Execution*. The NEPA process must be integrated early in the planning and decision-making process for a construction project. NGR (AR) 415-5 cites AR 200-2 (which has been replaced by 32 CFR Part 651) as the guidance for preparing environmental analysis and documentation. Environmental documentation is required during the predesign stage of the construction project. The onus is on state ARNG organizations to complete NEPA documentation and associated consultation early in the MILCON development process, as provided for in All States Log Number P04-0020 Deadlines for Military Construction Projects in Fiscal Years 2006, 2007, and 2008 (January 21, 2005), which established “certain essential milestones for ARNG MILCON projects.” The policy letter is provided in [Appendix W](#). Environmental documentation must accompany proposals throughout the ARNG review process, including the submission of construction approval documents, DD Forms 1390/91.

### 3.4.3 Suggestions for Preparing NEPA Analyses Involving Military Construction

**Military construction planning.** In recent years, Army and Corps of Engineers planners have turned to the use of formal planning sessions, known as “charettes,” to develop and refine concepts for military construction projects. These intense discussion sessions can last anywhere from one day to several days, depending on the complexity of the proposed project. Charettes convene project customers, design agents, and installation representatives and take advantage of a multi-disciplinary approach to site planning. They have been found beneficial because they help ensure the facility user’s needs are fully and accurately identified. They also ensure that project scope complies with Army standards, criteria and cost engineering requirements; the site meets the requirement; the site meets environmental compliance or mitigation techniques; and the project scope and costs are accurate, complete and clearly defined. A charette’s methodology involves exploring options and design alternatives and reducing choices to a preferred solution, with the goal of reaching consensus on schematic design. In many cases, the preferred solution represents an optimal outcome that takes into account facility functions, green space, parking and traffic, landscaping, safety, and a host of site-specific factors. In normal course, the approved solution becomes the basis for a detailed DPW project design.

Charette participants vary according to the project’s characteristics and planning needs. Attendees often include the representatives of the user/customer and the facilities, environmental,

master planning, information management, community activities, provost marshal, force protection, and safety offices. NGB-ARE urges ARNG personnel responsible for preparation of NEPA documentation to attend charettes to contribute to sound planning and to ensure their being informed of relevant projects at an early stage of project development.

**NEPA funding.** Approval channels and funding thresholds vary for different types of construction. Additionally, a project can be state-funded or federally funded or have a combination of funding sources. These differences can make the timeliness of NEPA decision making difficult. In accordance with paragraph 1-5f of NGR 415-10 (*Army National Guard Facilities Construction*), NEPA requirements must be met for all construction proposals involving federal funds. State funds should be used to comply with state environmental requirements, as applicable. In accordance with the Military Construction Codification Act (10 U.S.C. 2801 et seq.), the preparation of environmental documentation and associated investigations are considered advanced planning for projects and must be funded from other than MILCON funds.

**Schedule.** A project may be constructed in phases; however, the NEPA analysis must consider the entire project to prevent segmentation (see Section 1.6.8). The construction schedule can also be affected by the availability of funding. Proponents must be aware of Future Years Defense Program planning and MILCON planning to ensure NEPA evaluations occur in a timely manner, consistent with construction schedules. MILCON funding can often slip as a result of the congressional approval/appropriation process. This factor should be taken into consideration when analyzing the effects associated with the timing and duration of implementing the proposed action. This factor could be especially important when considering the cumulative effects of other construction projects on and in the vicinity of the installation.

**Project documentation.** Evidence of appropriate NEPA analysis must accompany the DD Forms 1390/91 or NGB Form 420-R when a construction proposal is submitted and throughout the ARNG review and decision-making process. These forms also contain requirements for specific project information. Item 14 of DD Form 1390 requires entries on construction costs for addressing any air pollution, water pollution, or occupational safety and health shortfalls. In addition, the form's query for a Detailed Requirements Statement requires specific discussion concerning the Clean Air Act and protection of wetlands. DD Form 1391 also includes a Detailed Requirements Statement section that must contain a summary of environmental effects. The standard format for the Detailed Requirements Statement in DD Form 1391 is explained in Appendix F of NG Pam 415-5, *Army National Guard Military Construction Program Execution*. Statements and declarations made on DD Form 1391 must be substantiated with appropriate environmental analysis and documentation. This is not a "boilerplate" document; entries must be critically evaluated and must accurately represent existing conditions. Completion of an ARNG environmental checklist can be a starting point for both meeting the information requirements of DD Forms 1390/91 and, if required, preparing an EA or EIS (see Section 5.2 and [Appendix K](#) in this handbook). When NGB Form 420-R is submitted for in-house approval by the U.S. Property and Fiscal Office, NEPA documents, as appropriate, should be included in the project file. A sample DD Form 1390/91 is shown in [Appendix L](#).

**12.400 Program.** The state- and congressionally driven 12.400 program requires annual identification of ARNG facility shortfalls and the submission of appropriate NEPA documentation on proposed construction projects. The Adjutant General submits proposed projects, in accordance with DoD construction criteria guidelines, to the Chief of Installations at NGB in the ARNG Readiness Center in Arlington, Virginia. After Congress authorizes, approves, and appropriates funds for the project and the NGB reviews and approves all plans,

specifications, bidding documents, contracts, and other documentation, the award can be made.

### **3.5 Equipment Modernization**

The ARNG is charged with maintaining properly trained and equipped units available for prompt mobilization for war, for a national emergency, or as otherwise needed. This readiness requires that the ARNG have access to the most current technology. Modernization of the ARNG's field artillery units, aviation units, and associated training programs, ranges, and training areas is crucial. Equipment modernization involves many different divisions and branches of the ARNG. The ARNG modernization program is designed to improve operational and strategic mobility, lethality, agility, survivability, and situational awareness through the use of advanced technology. Because technological improvements are constantly being developed, equipment upgrading is a continuous and necessary process for combat, combat support, and combat service support units. For instance, in the latter part of the 1990s, force structure changes affecting the ARNG reflected an increased reliance on ARNG combat support units to carry out the Army's missions.

In October 1999 the Secretary of the Army and Chief of Staff of the Army unveiled their vision for the opening decades of the 21<sup>st</sup> Century. This vision focuses on taking care of people, maintaining readiness, and transforming the Army into a force that is strategically responsive and dominant at every point on the spectrum of conflict. Transformation of the Army will result in a force that is more responsive, deployable, agile, versatile, lethal, survivable, and sustainable. To achieve these characteristics of the objective force, over a period of many years the Army will substantially alter the weapons systems, vehicles, and other equipment it relies on to carry out its mission. The ARNG should expect to see considerable activity in the equipment modernization arena.

Equipment fielding, an inherent part of the equipment modernization program, involves stationing of new or replacement equipment at various ARNG training sites. Fielding can include such activities as tank and other weapon system upgrades and the stationing of new tactical wheeled vehicles. The need for continuous equipment modernization is often the reason for the fielding of new or different equipment. Equipment fielding supports the ARNG's need to maintain readiness, to develop proficiency in the use of new or improved weapons, and to integrate seamlessly with regular Army forces upon mobilization in the event of war.

#### **3.5.1 Applicability of NEPA to Equipment Modernization**

The fielding of new equipment must be analyzed in accordance with NEPA and its implementing regulations because using or maintaining the new or replacement equipment could result in environmental effects not associated with existing systems. The U.S. Army Environmental Center's *NEPA Manual for Materiel Acquisition* (July 2004) addresses NEPA considerations and sources of assistance in the deployment and operational support phases of the weapon system development and modernization process.<sup>10</sup>

#### **3.5.2 Reference to NEPA in Equipment Modernization, Materiel Acquisition, and Fielding Guidance**

The DoD and Army publications listed below provide guidance for integrating environmental

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<sup>10</sup> The manual is available at <http://aec.army.mil/usaec/acquisition/nepamateriel0407.pdf>.

considerations into the materiel acquisition process:

- DoD Directive 5000.1, *The Defense Acquisition System*.
- DoD Instruction 5000.2, *Operation of the Defense Acquisition System*.
- DoD 5000.2-R, *Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs*.
- AR 70-1, *Army Acquisition Policy*.
- Department of the Army Pamphlet (DA PAM) 70-3, *Army Acquisition Procedures*.

### 3.5.3 Suggestions for Preparing NEPA Analyses Involving Equipment Modernization, Materiel Acquisition, and Fielding

Users should consult the *NEPA Manual for Materiel Acquisition* for specific guidance on applying NEPA to the materiel acquisition process. Prepared for members of the Army materiel acquisition community, the manual provides information for integrating the requirements of NEPA into the materiel acquisition process.

The NEPA considerations described below are focused specifically on the fielding aspects of the process, including ARNG equipment modernization programs.

- If the proposed action involves the fielding of equipment to multiple states and territories, a Programmatic Environmental Assessment (PEA) or Programmatic Environmental Impact Statement (PEIS) completed early in the equipment mobilization planning process might eliminate the need for stand-alone environmental reviews for each location at which equipment fielding is being planned (see Section 1.6.4). This document would ideally take the form of a supplement (PEA or PEIS) to the environmental analysis performed and updated during Phase I and Phase II of the materiel acquisition process. Programmatic fielding NEPA analyses may, however, require additional supplemental or follow-on (tiered) site-specific NEPA analyses (either EAs or EISs) if lack of information or program uncertainties do not permit adequate analysis of impacts at the affected locations.
- Proposed fielding actions might be associated with stationing proposals and/or real property development planning, land acquisition, training land management, new construction, or facility rehabilitation or modification. NEPA guidance on addressing these related types of actions is presented elsewhere in this section.
- If the proposed fielding involves modified or similar equipment, and if existing and up-to-date NEPA analyses and documentation address the environmental effects of the present equipment, the NEPA analysis for the proposed fielding should focus on any changes in equipment performance characteristics, maintenance procedures and materials, facility requirements (including ranges), and their associated environmental effects. Cumulative effects also must be considered.
- NEPA analysis for fielding actions is a problematic area for ARNG NEPA compliance. The shift in responsibilities for NEPA analysis from the “acquisition community” to the “facilities community” has historically created a “crack” through which many such handoffs have slipped. Installation environmental staff must work closely with force structure and stationing staff and installation master planners to ensure that all participants in the planning process can initiate required studies, including NEPA analyses, early in the materiel fielding planning process.

- Historically, new equipment has sometimes arrived at ARNG facilities before completion of the required NEPA analysis. Installation environmental staff should closely coordinate with affected units to ensure that modernization programs are not jeopardized by premature use of the new equipment in ways that could be considered an “irreversible or irretrievable commitment of resources” (see Section 7.7).

### **3.6 Military Training**

To be effective, training must reflect the realism of combat and combat support for both small and large units. This requirement for realism results in the need for ARNG units to periodically use large natural areas, as well as urbanized terrain, for maneuver and range training. ARNG training lands must be managed so as to be able to sustain training activities from both an operations and environmental standpoint. Integrated Training Area Management (ITAM) programs, Integrated Natural Resources Management Plans (INRMPs), Integrated Cultural Resources Management Plans (ICRMPs), pest management plans, and Statewide Operational Noise Management Plans (SONMPs) help provide the environmental framework in which to determine the effects of training on lands used by the Army and ARNG. Consideration of alternative training scenarios and application of the ITAM program lessen the effects of repeated training activities in the same areas and ensure both training and resource sustainability.

#### **3.6.1 Applicability of NEPA to Military Training**

Military training activities are subject to NEPA analysis. Appropriate NEPA analysis can help lessen the adverse effects of training.

Executing training to doctrinal standards to maintain the readiness of units affects the environment. To minimize the Army’s (and ARNG’s) impacts on land used for training activities, the ITAM program was developed to provide a balance between use of land for training and testing and the mandates of environmental stewardship and training area sustainability. Information collected for the ITAM program is often useful in preparing a NEPA analysis on proposed training-related actions. The ITAM program and NEPA require trainers and environmental staff to use a systematic team approach to mission planning and NEPA compliance. NEPA, as part of the planning process, can be used to identify the requirements of other environmental laws applicable to training land management and field training. NEPA also can be a proactive measure to ensure compliance with those laws while training is conducted. Cumulative effects analysis in training-related NEPA documents assists in determining temporary or long-term environmental impacts caused by training or training facilities. Trainers should consult with the environmental staff at their installation as soon as active planning begins for training activities to avoid unnecessary delays or unacceptable constraints on training realism and mission accomplishment.

In the ARNG, the Plans, Operations, and Training Officer is charged with initiating planning for training activities. This officer is responsible for ensuring that required NEPA analysis is completed and should coordinate with the installation environmental staff and others for assistance in performing the required NEPA reviews. Principal documents include Range Development Plans and the Range and Training Land Program.

#### **3.6.2 References to NEPA in Military Training Guidance**

NGR 25-5, *Army National Guard Training Areas*, requires that during the training site development process, environmental planning and analysis are necessary after the need for a



development plan for a training site has been determined. Action- or activity-specific environmental documentation may be required even if a training site development plan is not needed (see also Section 3.1.1).

Paragraph 1-16d of AR 350-19, *The Army Sustainable Range Program*, provides that the NGB, through the Adjutants General of the States and Territories, manages all Sustainable Range Program functions in and on ARNG installations. Paragraph 1-24 of the same directive provides that senior mission commanders will coordinate with the garrison commanders to support the completion of NEPA analysis and documentation and sign and approve all EA, EIS, and supporting NEPA documents for all Sustainable Range Program activities.

### 3.6.3 Suggestions for Preparing NEPA Analyses Involving Military Training

Unless adequately covered by other NEPA analyses or categorically excluded, proposed actions involving training land management (such as land or maneuver rights acquisition or range construction) or military field training such as major field exercises must be appropriately analyzed in an EA or EIS. Including a description of the nature and effects of ongoing training activities in the affected environment section of a Real Property Development Plan or INRMP EA/EIS provides a useful platform for subsequent tiering to other EAs or EISs for similar actions. Baseline information collected in connection with EAs or EISs for land withdrawal actions or major field exercises likewise can facilitate the development of concise analyses for other proposed training land management and field training activities on an installation.

If the training proposal might lead to further uses of the training site, or if it is general in nature and applicable to an entire training program, a programmatic EA or EIS might be needed. An example of a programmatic environmental document for training-related activities is an EA for a 5-year training plan or an EA that evaluates environmental impacts of a proposed multiyear lease to use off-post land for training. See Section 1.6.4 for further discussion on programmatic NEPA analyses. To minimize the need for individual, detailed EAs for routine training activities, “generic” descriptions of various types of training activities conducted on an installation and their environmental effects could be made a part of the installation’s Real Property Development Plan.

Several types of training activities, such as classroom training and tactical exercises without troops, can be categorically excluded from further NEPA analysis. Refer to the list of CXs in Appendix B of 32 CFR Part 651 ([Appendix C](#) in this handbook) and Section 5.

### 3.7 Force Structure Management and Stationing

Changes in social, economic, environmental, and political trends, both nationally and internationally, create conditions requiring reanalysis of the National Military Strategy. The Army Long-Range Planning System (ALRPS) provides the senior Army leadership’s strategic vision and Program Objective Memorandum (POM) long-range goals for a period of 10 to 20 years into the future. The Army Plan (TAP) provides Army and ARNG priorities and resource allocation guidance for the mid-range period. Elements of these planning processes include both force structure and base structure. Force structure addresses manpower and organizational issues and is reflected in the creation of and changes in Tables of Distribution and Allowances (TDAs) and Tables of Organization and Equipment (TOEs). Base structure addresses facility, training land, and environmental issues and requirements and is primarily reflected in the following plans and programs:

- Land Use Requirements Studies (LURS)

- Range and Training Land Program (RTLTP)
- Integrated Training Area Management (ITAM) program
- Integrated Natural Resources Management Plan (INRMP)
- Integrated Cultural Resources Management Plan (ICRMP)

Force restructuring may result in the activation or deactivation of ARNG units or involve organizational realignments. Base restructuring can result in the addition of facilities to the ARNG inventory or can result in the need to close or realign ARNG facilities, with the associated relocation of units and reassignment of personnel.

Force structure planning and base structure planning are linked conceptually and functionally by planning for stationing. Army Regulation 5-18 (*Army Stationing and Installation Plan* [ASIP]) establishes a database used to forecast the projected force structure for planning and programming of real properties required to support personnel and activities. Army stationing strategies (ALRPS and TAP) provide the strategic framework for formulating stationing requirements and act as an operational blueprint for stationing forces and for defining the infrastructure required by the strategy. The ASIP establishes the foundation for master planning and base operations resource programming at ARNG installations.

This section addresses NEPA applications for actions associated with force structure management and stationing. Base structure planning and related actions and activities, including facility, training land, and environmental, cultural, and natural resource management actions, are addressed under other topics in this section. Base realignment and closure is covered in the Army's most recent *Base Realignment and Closure Manual for Compliance with the National Environmental Policy Act*.

### **3.7.1 Applicability of NEPA to Force Structure Management and Stationing**

The development and modification of TDAs and TOEs and proposed reductions or realignments of civilian or military personnel that fall below the thresholds for reportable actions prescribed by AR 5-10, *Stationing* are categorically excluded from NEPA analysis (see CX b-12 in Appendix B to 32 CFR Part 651). Other proposed changes in force structure, such as unit activations, deactivations, and realignments, must be appropriately analyzed and documented in accordance with 32 CFR Part 651. Stationing, therefore, not only is the functional link between proposed changes in force structure and base structure, but also, as reflected in the following quotation from paragraph 2-1(e) of AR 5-10, is often the trigger for the requirement to incorporate environmental considerations into force structure planning.

“Final Department of the Army approval of recommended stationing actions is dependent upon a comprehensive (NEPA) analysis of feasible stationing alternatives that properly balances operational requirements and environmental and resource impacts.”

Environmental documentation must be included in the stationing notification package sent to the ARNG brigade and division for approval. The Chief of the NGB serves as the coordination office for ARNG stationing actions.

Stationing actions often also involve changes in equipment fielding and use. See Section 3.4 for the applicability of NEPA to ARNG equipment modernization programs.

### 3.7.2 References to NEPA in Force Structure Management and Stationing Guidance

AR 5-10, *Stationing* incorporates all aspects of NEPA, including consideration of alternatives (paragraphs 2-1 and 5-2); analysis and documentation (paragraph 5-6); cumulative effects analysis (paragraphs 1-7 and 3-10); carrying capacity or sustainability of training lands (paragraphs 2-2 and 5-2); and socioeconomic impact analysis and public involvement (paragraphs 5-4 and 5-5). The regulation also shows clearly the close relationship between—and the need to integrate—force structure management, stationing, and base structure management planning, including planning for construction, necessitated by force structure and stationing proposals.<sup>11</sup>

### 3.7.3 Suggestions for Preparing NEPA Analyses Involving Force Structure Management and Stationing

The instructions for stationing documentation (paragraph 5 of AR 5-10) contain detailed guidance on integrating NEPA analyses into stationing packages. The need to appropriately consider the “cumulative effects” of stationing proposals and the “capability of training land to support training densities” (carrying capacity/environmental sustainability) must be a central feature of EAs or EISs prepared for realignments at “gaining” installations. See also Section 3.4 for guidance on preparing NEPA analyses for equipment fielding associated with ARNG equipment modernization programs.

Several force management actions are categorically excluded from NEPA analysis. For example, under CX (b)(12) in Appendix B to 32 CFR Part 651, an action is categorically excluded if the reduction or realignment of civilian and/or military personnel falls below the thresholds for reportable stationing actions as prescribed by statute (10 USC 2687) and does not involve related activities such as construction, renovation, or demolition activities that otherwise would require an EA or an EIS. Preparation of a REC, however, is required. MTOE development, likewise, is a categorically excluded action (see Section 5).

## 3.8 Environmental Management Plans

Environmental management plans for ARNG installations typically include the following:

- Integrated Natural Resources Management Plan (INRMP)
- Integrated Cultural Resources Management Plan (ICRMP)
- Integrated Pest Management Plan
- Endangered Species Management Plan (ESMP)
- Integrated Training Area Management (ITAM)
- Statewide Operational Noise Management Plan (SONMP)

These plans contain details on management goals, objectives, and proposed implementation

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<sup>11</sup> To be more accurate, the reference in paragraph 5-1(e)(3) of AR 5-10 to “Ongoing Mission Environmental Analysis” should be to “information on Real Property Development Planning and Contributory Plan environmental documentation.”

measures for the stewardship of specific resources.<sup>12</sup> Army, ARNG regulations, or other directives that prescribe the plans generally contain provisions for their periodic review and update and might contain guidance for coordination with outside agencies as well as with other installation planning and management functions.

### 3.8.1 Applicability of NEPA to Environmental Management Plans

The actions and activities associated with implementing ARNG environmental management plans are subject to environmental analysis in accordance with NEPA. CEQ regulations and 32 CFR Part 651 both strongly encourage incorporating appropriate environmental analysis into the plans themselves. NEPA analyses so incorporated must satisfactorily meet the procedural requirements contained in CEQ and Army regulations. An example format for a combined INRMP/EA is presented in [Appendix M](#).

Separate but concurrent preparation of management plans and their associated NEPA analyses is another approach. It is obviously preferable to the preparation of separate and sequential documents but, like the latter approach, must avoid the inefficiencies and unnecessary costs of duplication of effort and delay.

### 3.8.2 References to NEPA in Environmental Management Plan Guidance

Table 3-1 provides references to NEPA requirements applicable to specific environmental management plans.

**TABLE 3-1. NEPA GUIDANCE IN ENVIRONMENTAL MANAGEMENT PLAN REGULATIONS AND DIRECTIVES**

| Environmental Management Plan                 | NEPA References  |
|---|--|
| Integrated Natural Resources Management Plan  | Paragraph 2-2 of AR 200-3; Part I (Section 5) of <i>Guidelines to Prepare Integrated Natural Resources Management Plans for Army Installations and Activities</i> (April 1997) |
| Integrated Cultural Resources Management Plan | Paragraph 4-1 of AR 200-4; Section 2-3 of DA PAM 200-4, <i>Cultural Resources Management</i>   |
| Integrated Pest Management Plan               | Paragraphs 1-4, 2-6, and 2-12 of AR 200-5  |
| Endangered Species Management Plan            | Paragraphs 11-5 and 11-6 of AR 200-3; Paragraph 2.3 of the <i>Manual for the Preparation of Installation Endangered Species Management Plans</i> (March 1995)                  |
| Integrated Training Area Management           | Paragraph 1-5e of AR 350-19  |
| Statewide Operational Noise Management Plan   | Chapter 7 of AR 200-1.   |

### 3.8.3 Suggestions for Preparing NEPA Analyses Involving Environmental Management Plans

The following provides a summary of requirements and suggestions applicable to applying NEPA to environmental management plans. Note that if there are no significant changes between an initial environmental management plan and a plan update, the update can often be categorically excluded using CX (b)3. In these cases, the EA for the initial plan must be referenced in the

<sup>12</sup> Other plans, such as Hazardous Waste Management Plans, Spill Contingency Plans, Fire Management Plans, and Erosion Control Plans, are generally not covered in separate Army or National Guard regulations containing plan-specific guidance relative to NEPA requirements.

REC/Check (see Section 5.2), and the FNSI must be attached.

**Integrated Natural Resources Management Plan (INRMP).** Actions associated with INRMP implementation must be assessed for their environmental effects. Section 2-2(b) of AR 200-3, *Natural Resources – Land, forest, and Wildlife Management*, states that “natural resources management plans should be incorporated into Installation Master Plans as a supplemental document, or ‘component plan’ according to AR 210-20, *Master Planning for Army Installations*, to allow for consolidation in the installation master plan NEPA document.” Otherwise, NEPA compliance for INRMP actions must be accomplished either during their initial development or when the major 5-year revision to the INRMP is conducted.

The NEPA document prepared for an INRMP should be an appendix to the plan or integrated within it. If integrated, NEPA elements should be clearly discernible. At least two alternatives should be considered—“implement the plan” and “no action” (continue current management practices). Other management options considered in arriving at the recommendation presented in the plan (preferred alternative) should be described and the reasons for their not being adopted explained. Part I (Section 5.2) of *Guidelines to Prepare Integrated Natural Resources Management Plans for Army Installations and Activities* (April 1997) suggests that where specific proposed management actions cannot be described, the NEPA document must establish some significance criteria that will guide future prescribed activities.

Paragraph 4.2.2 of DoD Directive 4715.3 (*Environmental Conservation Program*) requires that natural resources management plans incorporate the principles of ecosystem management. NEPA analysis conducted for implementation of a natural resources management plan should, therefore, include an analysis of effects at the ecosystem level.

In addition, paragraph 2-2 of AR 200-3 specifies that funding for the preparation of NEPA documentation for Installation Master Plans, including the natural resource “component plans,” will come from installation-appropriated funds.

**Integrated Cultural Resources Management Plan (ICRMP).** As outlined in paragraph 4-1(a) of AR 200-4, *Cultural Resources Management* and paragraphs 2-3(c) and 2-5(a) of DA PAM 200-4, it is recommended that an EA be prepared to support and implement the ICRMP. Paragraph 2-4(h) of DA PAM 200-4 specifies that the public involvement plan recommended for inclusion in ICRMPs should be integrated to the maximum extent possible with the public involvement requirements of NEPA. The integration of public involvement requirements for both the ICRMP and the accompanying NEPA document can result in both time and cost savings.

**Integrated Pest Management Plan.** Paragraph 1-4 of AR 200-5, *Pest Management*, specifies that Army Pest Management Program actions are to comply with environmental protection and improvement policies per AR 200-2 (now replaced by 32 CFR Part 651). Although such actions focus largely on the outdoor application of pesticides, including aerial applications, they also include the disposal of pesticides. Guidance specific to the preparation of Integrated Pest Management Plans is provided in AR 200-5.

**Endangered Species Management Plan (ESMP).** As outlined in Paragraph 11-6(f) of AR 200-3 and in Section 2.3 of the Army’s *Manual for the Preparation of Installation Endangered Species Management Plans*, NEPA applies to actions taken in managing listed and proposed threatened and endangered species and their critical habitats. Consultation, conference, and biological assessment procedures under Section 7 of the Endangered Species Act (ESA) should be consolidated with NEPA to minimize duplication of effort and to avoid delay. By conducting

consultations with the appropriate agencies early on, the NEPA analyses may be concluded more quickly and with less difficulty. Proponents may combine ESA and NEPA documentation to reduce paperwork as long as the requirements of both statutes are met.

Like INRMPs discussed above, the preparation of NEPA documents for ESMPs will be funded with installation-appropriated funds.

**Integrated Training Area Management (ITAM) Program Plans.** Paragraph 1-5 of AR 350-19, *The Army Sustainable Range Program*, refers to analysis of actions impacting the environment in the context of the Sustainable Range Program's core programs (i.e., the Range and Training Land Program and Integrated Training Area Management Program). To minimize the need for individual, detailed EAs for routine training activities, "generic" descriptions of various types of training activities conducted on an installation and their environmental effects could be made a part of the installation's Real Property Development Plan (see also Section 3.1.1). The related concept of environmental sustainability may also be addressed in NEPA analyses for proposed actions associated with ITAM implementation plans and projects.

**Statewide Operational Noise Management Plans (SONMP).** The SONMP seeks to control environmental noise to protect the health and welfare of people and to reduce community annoyance from environmental noise to the extent feasible, consistent with ARNG training activities. ARNG environmental noise policies are based on land use compatibilities as indicated by objective noise levels. Under the environmental noise program, the ARNG will continually evaluate the impact of noise that may be produced by ongoing and proposed ARNG actions and activities and minimize impacts and annoyance to the greatest extent practicable.

### 3.9 Innovative Readiness Training

Innovative Readiness Training (IRT), formerly often referred to as "troop training projects" or "Community Service Projects," provides the ARNG an option to meet its mobilization requirements, enhance morale, and contribute to recruiting and retention. Authority for the ARNG and other DoD components to participate in the IRT program derives from Title 10 U.S.C. § 2012 (*Support and services for eligible organizations and activities outside the Department of Defense*). The law authorizes units or members of the armed forces to provide support and services to non-defense organizations. It requires that assistance be incidental to military training, not adversely affect the quality of training, and not result in a significant increase in the cost of the training. Moreover, the training must meet valid training requirements, and individual members' assistance must be directly related to their specific military specialties.

DoD Directive 1100.20 (*Support and Services for Eligible Organizations and Activities Outside the Department of Defense*) (April 12, 2004) implements the IRT. The directive sets forth DoD policy and program requirements and assigns principal responsibility for program administration to the Under Secretary of Defense for Personnel and Readiness.

The Assistant Secretary of Defense for Reserve Affairs develops, coordinates, and oversees the implementation of DoD policy for IRT activities, serves as the OSD focal point for all IRT activities, and monitors all IRT activities to ensure compliance with guidance and policy requirements in DoD Directive 1100.20.

Guidance issued by the Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) articulates nine factors applicable to every IRT project. The first four of these are guidelines; the rest are requirements. OASD/RA reviews all IRT project submissions and

requires that each project adhere to these nine factors:

- Consists of activities essential to the accomplishment of military readiness training and offers incidental benefits to the community in which the training activities occur.
- Provides support and services that, in the case of assistance by a unit, will accomplish valid unit training requirements and, in the case of assistance by an individual member, will involve tasks directly related to the specific military occupational specialty of the member and fall within the member's scope of duties.
- Is conducted in a federally funded training status under Title 10 or Title 32 of the U.S. Code.
- Does not endorse or favor any non-governmental entity (whether profit or nonprofit), commercial venture, religion, sect, religious or sectarian group, or quasi-religious or ideological movement.
- Identifies a military officer responsible for conducting each project, who will be responsible for obtaining all required documents for package submission and for coordinating with other points of contact participating in the project (including gathering final project costs for After Action Reports).
- Includes certification of non-competition with other available public and private sector service organizations.
- Includes review and endorsement by the military Staff Judge Advocate/Legal Officer; United States Property and Fiscal Officer responsible for obligating and disbursing federal funds; Plans, Operations, and/or Training officials; Medical, Nursing, or Dental officials (if applicable) for regulation compliance; Adjutant General of the project state(s); and intergovernmental agencies (if applicable).
- As applicable, includes appropriate environmental protection documentation, evidence of coordination with the Army Corps of Engineers, and land use agreements.
- Identifies emergency evacuation of civilians (if applicable) by other than military vehicles, except in the event of life-threatening emergency or other exigent circumstances as authorized by military service regulation.

IRT projects are carried out primarily by healthcare services, general engineering, and infrastructure support and assistance personnel in combat service support and combat support units. ARNG IRT projects are funded from operations and maintenance and pay and allowances accounts. Additional funding, allocation of which is controlled by OASD/RA, is available from supplemental funding provided by Congress.

### **3.9.1 Applicability of NEPA to Innovative Readiness Training**

IRT projects represent a broad cross section of activities. Examples of IRT activities include, but are not limited to, constructing rural roads and aircraft runways; small building and warehouse construction in remote areas; transporting medical supplies, equipment, and material to medically underserved areas of the country; and providing medical and dental care to Native Americans, Alaska Natives, and other medically underserved communities. Activities such as these fall squarely within the scope of 32 CFR Part 651 and its requirement to evaluate the environmental effects of Army actions. The following are examples of IRT projects in which the NGB and ARNG have participated:

- *Southwest Border Projects.* California’s Task Force Grizzly, Arizona’s Task Force Diamondback, and New Mexico’s Task Force Lobo serve as training platforms where Soldiers construct fencing, build roads, and create drainage ditches which will help U.S. immigration officers to more effectively patrol the United States-Mexico Border. The purpose of these multi-year projects is to enhance the Border Patrol’s ability to engage and apprehend illegal border crossings into the United States.
- *Guard Care.* This multiyear medical project involves providing medical services such as immunizations, pediatric wellness clinics, dental evaluations, vision and blood testing, physical examinations, and referrals to people from medically underserved communities.
- *Operation Reefex.* This multiyear engineering and infrastructure project has been ongoing since the 1980s. The project involves creating artificial reefs by placing excess and obsolete combat vehicles, which had been demilitarized and cleaned, at designated offshore areas. ARNG participation in the project provides hands-on training in transporting vehicles, on- and off-loading vehicles, and securing vehicles for movement.

### 3.9.2 References to NEPA in Innovative Readiness Training Guidance

NGB-ARE *Memorandum for State Environmental Program Managers* (August 9, 2004) identified IRT projects as typical ARNG actions subject to environmental impacts analysis. The memorandum provided that “The IRT projects must be reviewed under NEPA and the documentation is submitted to NGB Operations Division (NGB-ARO).”

Within the NGB, responsibility for the IRT Program resides in the Operations Division (NGB-ARO). As noted earlier, DoD requires that all IRT project submissions demonstrate appropriate environmental protection documentation.

### 3.9.3 Suggestions for Preparing NEPA Analyses Involving Innovative Readiness Training

All IRT project proposals are to be submitted to NGB-ARO and are to be accompanied by the NGB-ARE version of the Environmental Checklist (see [Appendix K](#)). The checklist must cite a categorical exclusion or indicate that an EA is to be completed. If an IRT project cannot be categorically excluded, the proponent is responsible for securing funding to accomplish an EA or EIS, as appropriate.

Many IRT projects may be categorically excluded (possibly requiring a REC). For instance, the routine repair and maintenance of buildings, roads, grounds, and the like are categorically excluded from more detailed analysis. In addition, construction projects that do not significantly alter land use may also be categorically excluded. A construction project, in this case, would require a REC. The Army’s current list of CXs render several types of IRT projects amenable to CX disposition. These include:

- Non-construction activities in support of other agencies or organizations involving community participation projects and law enforcement activities.
- Construction of an addition to an existing structure or facility, and new construction on a previously developed site or on a previously undisturbed site if the area to be disturbed has no more than 5.0 acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, or hazardous waste (REC required).
- Demolition of non-historic buildings, structures, or other improvements and disposal of debris from them, or removal of a part of them for disposal, in accordance with



applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

- Road or trail construction and repair on existing rights-of-way or on previously disturbed areas.
- Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).
- Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with U.S. Army Corps of Engineers permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and storm water control structures (REC required).
- Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable, and similar electronic equipment that uses existing rights-of-way, easements, distribution systems, or facilities (REC required).
- Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to, removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint or work on historic structures).
- Routine repair and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to, grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original condition; pruning vegetation, removing dead, diseased, or damaged trees, and cleaning culverts; and performing minor soil stabilization activities.

### 3.10 Classified Actions within the United States

An exception to the normally open NEPA process occurs when actions are proposed that, for reason of national security, must be classified in whole or in part. Although classified information cannot be openly disseminated to regulatory agencies and the public, classification does not relieve a proponent of the necessity to assess the potential environmental effects that would result from implementing a proposed action. Depending on the type of ARNG action proposed, an EA or an EIS might need to be prepared in accordance with 32 CFR Part 651. The public dissemination of classified information contained within or associated with the NEPA document however, must be handled in accordance with AR 380-5, *Department of the Army Information Security Program*.

When the use of classified information (e.g., performance characteristics of a new weapon system, the application of advanced technologies and materials, and unique training requirements for special forces) is necessary in supporting a NEPA analysis, such information should be discussed in a classified appendix or addendum, separate from the main body of the EA or EIS. This approach might allow for disclosing the bulk of the document that is unclassified to other agencies and to the public, thus minimizing the classification issues. In other cases, the entire document might require appropriate classification. Only properly cleared reviewers and decision makers with a “need to know” would be provided the classified portions.

As shown in Figure 1-2, coordination with HQDA is required before beginning the NEPA

process for proposed ARNG actions that are classified. Refer to 40 CFR 1507.3(c) and 32 CFR 651.13 for procedures on addressing classified actions and details on handling classified information in environmental documents.

### 3.11 Deployments for Operations Conducted Outside the United States

ARNG deployments for military operations outside the United States are conducted for a wide range of activities. These activities can include those associated with war and operations other than war, the latter of which focus on deterring war and promoting peace. Noncombat actions conducted overseas by the ARNG include humanitarian assistance and disaster relief, nation building, security assistance, field training exercises, foreign internal defense, counterdrug operations, evacuation of noncombatants, and peacekeeping. Such operations can also involve other U.S. and foreign forces. Although some military operations are conducted for one purpose, others might have multiple purposes, such as the 1994-1995 operation in Haiti that was intended to combine nation building and security missions.

#### 3.11.1 Applicability of NEPA to Actions within the United States That Support Overseas Deployments

When ARNG activities are conducted in the United States (including those located within U.S. territories and possessions) in support of deployments conducted outside the United States, the domestic activities not designated as emergencies are still fully subject to NEPA in accordance with 32 CFR Part 651. Examples include transportation and port embarkation/debarkation activities conducted within the United States in preparation for and following participation in foreign peacekeeping operations or multinational training exercises conducted overseas. Note that proponents have available for their use a CX for routine movement of personnel, as well as the routine handling and distribution of non-hazardous and hazardous materials, in conformance with federal and state regulations. As discussed in Section 3.11, ARNG actions that occur in the event of an emergency are usually exempt from NEPA (see 32 CFR 651.11).

#### 3.11.2 Applicability of Other Environmental Planning Regulations to Deployments Conducted Outside the United States

32 CFR 651.54 specifies that the environmental effects of major ARNG actions abroad must be considered as an integral part of all decisions. In addition to the requirements identified in the Army's regulation, DoD Directive 6050.7 (*Environmental Effects Abroad of Major Department of Defense Actions*) (see [Appendix N](#)) provides the underlying DoD policy and procedures for taking into account environmental considerations when authorizing or approving certain major federal actions that would potentially do significant harm to areas outside the United States. DoD Directive 6050.7 implements the requirements of Executive Order 12114 (*Environmental Effects Abroad of Major Federal Actions*) ([Appendix O](#)), with respect to major DoD actions that might adversely affect the environment of a foreign nation, a protected natural or ecological resource of global importance (e.g., certain species of marine mammals and rainforest ecosystems), or the global commons.<sup>13</sup> It is important to note that the deployment of ships, aircraft, or other mobile

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<sup>13</sup> Executive Order 12114 refers to "global commons" as geographic areas located outside the jurisdiction of any nation, including ocean areas outside territorial limits and the continent of Antarctica. However, in 1993 the District of Columbia Circuit Court of Appeals ruled that NEPA applies to National Science Foundation activities in Antarctica (*Environmental Defense Fund v. Massey*, 986 F.2d 528 [C.A.D.C., 29 January 1993]). The Court's decision was based on Antarctica's not being a nation or a global commons (like the open oceans). Rather, it is a continent without a sovereign where nations can pursue common interests. To ratify the 1991 *Protocol on Environmental Protection to the Antarctic Treaty* and to implement its

military equipment is not, in itself, a major federal action for purposes of this directive. Key requirements of DoD Directive 6050.7 and 32 CFR Part 651, as well as other related environmental statutes and policies applicable to ARNG deployments outside the United States, are discussed in the following paragraphs. Specific responsibilities of HQDA and other Army agencies for review of environmental effects abroad resulting from major Army (and ARNG) actions are prescribed in 32 CFR 651, Subpart H.

**Environmental analysis and documentation.** As described in 32 CFR Part 651 and DoD Directive 6050.7, several different forms of environmental analysis and documentation are prepared for DoD actions conducted outside the United States, depending on the geographic area that could be affected. The prerequisite for DoD activities that would result in significant harm to the global commons calls for preparation of an “environmental impact statement” that is similar in form to an EIS as defined under NEPA but has different administrative and procedural requirements. In some cases, an “environmental assessment” can first be prepared to determine whether the proposed action is major and federal and whether it significantly harms the global commons. For actions that normally do not, individually or cumulatively, result in significant harm to the environment, DoD may provide CXs, as established by the Assistant Secretary of Defense. If an action is covered by a CX, no environmental assessment or environmental impact statement as contemplated by the DoD directive is required.

For DoD actions that would cause significant harm to the environment of a foreign nation or to a protected global resource, two other types of environmental documents are used:

- **Environmental Studies (ESs).** ESs are used to document bilateral or multilateral studies of actions that are relevant or related to the United States and one or more foreign nations, or to an international body or organization in which the United States is a member or participant.
- **Environmental Reviews (ERs).** ERs are prepared unilaterally by DoD or in conjunction with another U.S. federal agency for actions that affect the environment of a nation not involved in the undertaking.

Major federal actions are considered to significantly harm the environment of a foreign nation or a protected global resource only when (1) they generate products, emissions, or effluents that are prohibited or strictly regulated by U.S. federal law because their toxic effects create a serious public health risk or (2) they include a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. No specific environmental documentation or reviews are required with respect to federal actions outside the United States that affect only the environment of a participating or otherwise involved foreign nation and do not involve toxic products, emissions, or effluents, or physical projects that are prohibited or strictly regulated by U.S. federal laws or involve resources of global importance that have been designated for protection.

In certain instances, general exemptions established by Executive Order 12114 (see [Appendix O](#)) may be applicable. DoD also has the authority to approve additional exemptions on a case-by-case basis, such as for emergencies, national security considerations, or exceptional foreign

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environmental safeguards as well as clarify the application of NEPA, President Clinton, on 2 October 1996, signed the Antarctic Science, Tourism, and Conservation Act of 1996 (Public Law 104-227). As specified in the act, the environmental impact assessment procedures contained in the *Protocol* fulfill obligations under Section 102(2)(C) of NEPA. (R.S. Cunningham, *Environmental Review: A Gateway to International Cooperation, Proceedings of the 22<sup>nd</sup> Annual Conference of the National Association of Environmental Professionals*, 1997.)

policy requirements, and for class exemptions when there is a group of related actions that preclude or are inconsistent with the preparation of environmental documents and the implementation of other requirements prescribed by Executive Order 12114. Refer to DoD Directive 6050.7 (see [Appendix N](#)) for a complete listing of the general exemptions, along with a description of specific requirements regarding the application and preparation of each of the environmental documents identified in this section.

**Environmental compliance standards for ARNG actions at installations.** In addition to the requirement to prepare environmental documents for major federal actions conducted outside the United States, ARNG operations and other actions conducted at DoD installations in foreign nations are subject to the minimum standards for environmental compliance promulgated by DoD Instruction 4715.5 (*Management of Environmental Compliance at Overseas Installations*) (see [Appendix P](#)). Compliance with these environmental standards protects human health and the environment in foreign countries where DoD maintains substantial installations.<sup>14</sup> Compliance conditions should be recognized in any studies prepared in accordance with DoD Directive 6050.7.

DoD Instruction 4715.5 directs that DoD must comply with Final Governing Standards (FGS), when established, for a particular foreign country. Because of differing national laws, unique sets of FGS are applicable to individual nations. FGS are currently established for a number of countries, including Great Britain, Germany, Belgium, the Netherlands, Italy, Spain, Panama, Korea, and Japan. In countries where FGS have not been established (e.g., Canada), the standards presented in DoD's *Overseas Environmental Baseline Guidance Document* (OEBGD), dated October 1992, are used unless the OEBGD is inconsistent with applicable host-nation environmental standards or standards under applicable international agreements, and unless these other applicable standards provide more protection to human health and the environment. In cases of inconsistencies, the more protective standard is normally used unless specific international agreements exist.

Before authorizing or approving ARNG actions in foreign countries, ARNG proponents should review the specific requirements in DoD Instruction 4715.5, along with the applicable FGS or the OEBGD, to determine the necessary procedures to be taken to inform decision makers of environmental considerations.

**Environmental annex for overseas operations orders and plans.** The overseas compliance policies reflected in the FGS and OEBGD do not apply to off-installation operational and training deployments, such as in cases of hostilities or when U.S. forces operate as part of a multinational force not under full control of the United States. Joint operational and training deployments conducted off DoD installations located in foreign countries are, however, required to comply with the environmental management practices and environmental compliance standards contained within the environmental annex incorporated into operation plans or orders. Referred to as "Annex L," *Environmental Considerations*, this annex is a requirement of Unified Combatant Command environmental procedures. The sample annex provided in [Appendix Q](#) is designed to comply with DoD Directive 6050.7 and Executive Order 12114.

The purpose of Annex L is to provide guidance to protect the health and welfare of U.S. personnel, and the human health and environment of the affected nation, during the conduct of

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<sup>14</sup> This requirement is not applicable to DoD installations that do not have a potential effect on the natural environment (e.g., facilities and offices that are primarily administrative) or where DoD components exercise temporary control.

deployments resulting from implementation of the order or plan. It should include major assumptions used; environmental protection responsibilities for service components and deployed commanders; a concept of operations; and specific operational requirements in the areas of drinking water, wastewater, solid waste management, spill prevention and control, hazardous waste management (nuclear, biological, and chemical), natural resources, and cultural resources.

**Classified information.** Any classified information used in support of DoD Directive 6050.7 or other related directives and regulations will be safeguarded in accordance with procedures contained in DoD Directive 5200.1 (*DoD Information Security Program*). The security requirements of Executive Order 12958 (*Classified National Security Information*), as amended by Executive Order 13292 (*Further Amendment to Executive Order 12958, as Amended, Classified National Security Information*), however, take precedence over any disclosure requirement in DoD Directive 6050.7.

### 3.12 Actions Exempt from NEPA

Figure 1-2 shows a series of steps and levels of analysis in the ARNG's NEPA process, which includes early identification of actions that are determined to be emergencies or are otherwise exempt from NEPA. Descriptions of these types of actions are provided in the subsections that follow.

**Emergencies.** ARNG operations initiated in response to an emergency (whether the emergency is situated within or outside the United States) are usually exempt from NEPA if timely action is required for the promotion of national defense and the protection of national security, human life, or property. 32 CFR 651.11 specifies requirements for notification and consultation with various levels of government in the event of emergency actions; however, the regulation also stipulates that such actions may proceed if compliance with NEPA procedural requirements would delay the needed emergency actions. The regulation also specifies that a public affairs plan should be developed as soon as possible so that channels of communications between the media, the public, and the ARNG remain open. Although the requirement for NEPA analysis and documentation typically would not apply to emergency-related actions, HQDA may still require environmental "After Action Reports" to be prepared. All other ARNG actions that are not necessary to control the immediate effects of an emergency remain subject to prior NEPA analysis in accordance with 32 CFR Part 651. The Army's requirements for agency consultation, and preparation of a public affairs plan or "After Action Reports," are not, however, applicable to state call-ups of the ARNG during a natural disaster.

**Actions covered by another regulation.** NEPA does not apply to an ARNG action that is already covered by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In a memorandum dated January 16, 1992, the Department of Justice, Environmental and Natural Resources Division stated that, as a matter of law, NEPA does not apply to CERCLA activities. The Department of Justice explained that, in its opinion, NEPA's specific requirements are "either duplicative of, or in conflict with, those of CERCLA." Thus, if an ARNG site is undergoing remediation for contaminated soil under CERCLA, NEPA is not used to analyze and publicly disclose the environmental effects associated with the remedial action because alternatives analysis and public involvement are provided for under CERCLA.

Regulations other than NEPA sometimes require the ARNG to seek approval from federal, state, or local governments before undertaking an action that might affect the environment. For example, states might have their own impact assessment laws that proponents must consider before undertaking any action (see Figure 3-1). Adherence to these regulations does not exempt

the action from NEPA requirements. The proponent must perform the appropriate NEPA analysis as well as comply with any applicable state or local requirements. ARNG sites with the requirement to conduct or participate in state-level environmental reviews are encouraged to negotiate a joint review process with the state government that will allow concurrent fulfillment of both federal (NEPA) and state environmental analysis and regulatory requirements.

**Actions with statutory exemptions.** Although rare, some actions may be exempted from NEPA by other laws as enacted by Congress. For example, Public Law 101-510 (1990 Defense Base Closure and Realignment Act) waives certain procedural elements of NEPA. Specifically, Public Law 101-510 waives the procedures of NEPA because the act would have applied to the action of recommending bases for closure. Because of this law, NEPA applies only to the decision of disposal of property and the relocation of functions at receiving bases. The ARNG interprets the creation of reserve component enclaves for the continuation of similar functions at closing or realigning bases as falling under this exemption. Future ARNG proposed actions within an enclave would, however, require NEPA analysis.

Additional factors can influence whether ARNG NEPA analysis is required or the extent of that analysis. Because the ARNG operates on both the federal and state levels, some confusion often arises as to whether a proposed ARNG action is subject to NEPA. If an ARNG action is funded wholly or in part by federal funds granted for that action, the action is subject to NEPA. Examples of ARNG federal actions include construction projects, equipment fielding, land acquisition, and the implementation of real property and resource plans. If an action is funded wholly by the state, NEPA might not apply. In cases where states have their own environmental impact assessment laws (see Figure 3-1), however, the state laws might be more stringent than NEPA. State-level ARNG actions include those undertaken during mobilization by the state governor to assist with natural disaster relief.

The list below shows states that have environmental planning requirements similar to NEPA, along with citations to the state laws and the identity of the responsible organizations:

| State or Territory        | Reference  | Point of Contact                                       |
|---------------------------|--|--|
| California                | CAL. PUB. RES. CODE §§ 21000 – 21177                                   | Office of Planning and Research/State Clearinghouse    |
| Connecticut               | CONN. GEN. STAT. ANN. §§ 22a-1 to -1i                                  | Office of Policy and Management                        |
| District of Columbia      | D.C. STAT. §§ 8-109.01 to -109.11                                      | Department of Consumer and Regulatory Affairs          |
| Georgia                   | GA. CODE ANN. §§ 12-16-1 to -8, amended by 2004 Ga. Laws 463           | Department of Natural Resources                        |
| Guam                      | Exec. Order No. 96-26  | Planning and Review Division                           |
| Hawaii                    | HAW REV. STAT. §§ 343-1 to -8, amended by 2000 Hawaii Laws Act 50      | Office of Environmental Quality Control                |
| Indiana                   | IND. CODE §§ 13-12-4-1 to -10  | Department of Environmental Management                 |
| Maryland                  | MD. NAT. RES. §§ 1-301 to -305   | State Clearinghouse Review                             |
| Massachusetts             | MASS. GEN. LAWS ANN. Ch. 30, §§ 61 - 62H                               | Executive Office of Environmental Affairs              |
| Minnesota                 | MINN. STAT. ANN. §§ 116D.01 to -.11                                    | Environmental Quality Board                            |
| Montana                   | MONT. CODE ANN. §§ 75-1-101 to -324                                    | Environmental Quality Council                          |
| Nevada/California - Tahoe | Article VII, Tahoe Regional Planning Compact (NEV. REV. STAT. 277.220) | Tahoe Regional Planning Agency                         |
| New Jersey                | Exec. Order No. 215  | Office of Permit Coordination and Environmental Review |
| New York                  | N.Y. ENVTL. CONSERV. §§ 8-0101 to -0117                                | Department of Environmental Conservation               |
| North Carolina            | N.C. GEN STAT. §§ 113A-1 to -13  | State Clearinghouse                                    |
| Puerto Rico               | 12 P.R. LAWS ANN. §§ 1121-1127   | Environmental Quality Board                            |
| South Dakota              | S.D. CODIFIED LAWS §§ 34A-9-1 to -13                                   | Division of Environmental Services                     |
| Virginia                  | VA. CODE ANN. §§ 10.1-1188 to -1192                                    | Office of Environmental Impact Review                  |
| Washington                | WASH. REV. CODE ANN. §§ 43.21C.010 to .914                             | Department of Ecology                                  |
| Wisconsin                 | WIS. STAT. ANN. §1.11  | Science Service Bureau                                 |

Source: CEQ, 2005 (<http://ceq.eh.doe.gov/nepa/regs/states/states.cfm>, accessed December 16, 2005)

FIGURE 3-1. STATES WITH ENVIRONMENTAL IMPACT LAWS

## 4.0 PLANNING AND INITIATING A NEPA ANALYSIS

The first step in planning and initiating an ARNG NEPA analysis is mapping out, in general terms, what activities are to occur and organizing resources to accomplish the work. To ensure that adequate time and resources are allocated to the analysis, the proponent must make an initial decision on the appropriate level of analysis and documentation, develop a well-defined description of the proposed action and alternatives, and determine the scope of the analysis. Having this information, as well as the desired implementation date for the proposed action, the proponent can prepare a plan for the NEPA analysis that will support project schedules and other requirements.

This section identifies several major steps that occur early in the NEPA process. Familiarity with the elements of the NEPA process discussed in this section will permit the proponent to make intelligent, well-planned resource allocations, develop a workable schedule, and start the NEPA analysis process in the right direction. The material addressed in this section is only the initial part of the overall task. Data gathering, impact analysis, document preparation and review, and other management tasks must also be initiated, supervised, and completed.

### 4.1 Selecting the Appropriate Level of Environmental Review and Documentation

The NEPA process begins with identification of the proposed action by the proponent. Consideration of the proposed action, its location, and its duration in light of the location in which it is proposed to occur is essential to deciding the appropriate level of analysis. Under procedures established in CEQ regulations (see [Appendix B](#)) and 32 CFR Part 651 (see [Appendix C](#)), there are three basic levels of environmental analysis and documentation—CX, EA, and EIS. (Refer to Section 1.5 of this handbook for definitions of these terms.) The determining factors in selecting the appropriate level hinge on the type of action proposed and the anticipated significance of the environmental effects associated with the action. Historically, most ARNG proposed actions evaluated under NEPA, other than those categorically excluded from detailed analysis, have involved the preparation of EAs. Early coordination with the Environmental Program Manager and/or the NGB-ARE can assist the proponent in selecting the appropriate level of analysis.

The second step in the NEPA process is to determine whether the proposed action is categorically excluded, in which case the action requires neither an EA nor an EIS because the ARNG has determined that the action would not have an individual or cumulative adverse effect on the environment. If the action is not segmented from a larger action, does not involve any extraordinary circumstances, and qualifies for one or more CXs, the proponent may proceed (assuming no REC is required). Section 5 provides detailed guidance on determining when and how to use a CX, preparing a REC, and using the ARNG's Environmental Checklist (see [Appendix K](#)).

If it is found that the proposed action is not categorically excluded, an initial determination should be made as to the likely significance of effects that could be expected as a result of implementing the action. (See the discussion on the meaning of "significance" and examples of significance criteria in Section 4.11.2.) For those actions where no significant effects are expected, an EA should be prepared to inform the decision makers and reviewers of the likely environmental consequences of implementing the action. If potentially significant effects could occur but can be adequately mitigated to less-than-significant levels, preparation of a mitigated EA/FNSI might be appropriate; otherwise, an EIS should be prepared.

When a proponent is uncertain whether an action would result in significant effects or believes



that significant effects are unlikely, an EA should be prepared to first determine what environmental effects would likely occur as a result of implementing the action. If it becomes clear while preparing the EA that significant effects that cannot be mitigated would occur, work on the EA can be stopped and an EIS begun. To help the proponent in making this determination, 32 CFR Part 651 provides a list of actions that generally require an EA or an EIS.

Before beginning preparation of an EA or EIS, it is also important to check to see whether the action has already been adequately addressed in another EA or EIS prepared by the ARNG or another agency. If it has, a REC that cites the existing document may be prepared pursuant to 32 CFR 651.12(a)(2). When deciding whether an action is addressed adequately by an existing NEPA analysis, the scope of the proposed action, previous activities at the proposed site, changes in regulatory requirements, or new technical information should be considered. Thus, an existing EA or EIS might no longer be adequate if significant changes have occurred in the affected environment, in the nature or consequences of reasonable alternatives considered since the original EA or EIS was completed, or in the environmental laws and regulations affecting the proposed action.

Any increases in the scope of actions already analyzed should also be considered before citing an existing NEPA document in a REC. For example, if the use of 50 tanks in an ARNG training exercise was analyzed in a previous EA and the proposed action calls for using 100 tanks, it might be appropriate to evaluate the possibility of additional effects in a new or supplemental document. If after reviewing an older EA/EIS it is determined that the proposed action description would not change and there would be little or no change to the environmental effects, consideration may be given to using the original document without preparing a supplement.

When only certain portions of a prior EA or EIS remain valid (e.g., affected environment descriptions and impact analysis results for certain resources), the valid portions of the analysis that are applicable to a new or modified proposal might still be suitable for incorporation by reference into the new NEPA analysis. This approach might help to simplify conducting new data collection and analysis efforts and also help to cut down on the bulk of the new document (see also 40 CFR 1502.21).

## 4.2 Developing a Management Plan for NEPA Analysis

Once the need for preparation of an EA or EIS has been determined, planning for analysis and document preparation usually begins with the development of some form of a process management plan. A management plan can serve as a guide for the entire EA or EIS process by establishing the responsibilities, methodologies, schedules, and procedures to guide the effort. As a coordination tool, the plan also helps to build team support with other offices and agencies involved in the effort. The suggested content of a management plan is outlined below. Regardless of whether a formal, written plan is developed, acquiring the information outlined is essential for successfully completing an EA or EIS and for avoiding later challenges that could result in project delays.

**Organizations, roles, and responsibilities.** In many instances, the efficiency of the NEPA process and effectiveness of the documentation to identify potential environmental impacts rests largely on the shoulders of the proponent's NEPA project manager. This person should be selected based on training, experience, and organizational ability. In addition, the designated project manager should be someone who has time to carry out the responsibilities. When project environmental documentation is to be prepared through the use of contractor assistance, the project manager should also have training and experience in contracting matters.

The project manager should identify the name, address, and phone numbers for each organization's point(s) of contact, and the roles of all organizations involved in the effort should be clearly defined. This would include describing their responsibilities in supporting the environmental analysis and document reviews, and identifying signatory authorities for document approval. In some cases, creating a formal charter is useful in establishing a meaningful and well-defined partnership between the lead agency and other supporting and cooperating agencies.

When working with other agencies, it is particularly important early on for the proponent to clearly identify and obtain concurrence on the following: the responsible landowner; the format to be used during document development; and who will fund the NEPA effort, act as public spokesperson, be the decision maker, and have signatory authority on the FNSI or ROD. The state ARNG must coordinate with NGB-ARE whenever cooperating agencies are involved.

**Funding.** The Status Tool for Environmental Programs (STEP) is the primary tool for validating and tracking individual EAs and EISs from each of the 54 states and territories. The data maintained in this tool are used for reporting, managing, and budgeting functions.

The STEP is used by the Environmental Office of each state. The STEP is also used by NGB-ARE program managers, branch chiefs, and division leadership. NEPA projects are assigned to program managers for validation based on law/regulation and program area categories. An automated project catalog of standardized NEPA projects is embedded in the STEP that assists states with NEPA project development.

The STEP is an essential tool for planning ARNG NEPA analyses. Validated NEPA project submissions in STEP are distributed to non-environmental NEPA proponents for planning and execution. The NEPA funding guidance for validating requirements through STEP can assist proponents and NEPA practitioners with documenting their NEPA requirements and timing their analyses. For detailed information on NEPA funding and the STEP, please consult NGB-ARE's Environmental Program Guidance.

**Cost estimating.** Cost estimating for the preparation of NEPA documents relies on the informed good judgment, experience, and expertise of ARNG personnel. When obtaining contractor services for the preparation of NEPA documents, many considerations must be taken into account. While there is no single formula for determining how much a particular EA or EIS should cost, the following factors ought to be considered:

- Level of documentation (EA or EIS) and associated level of effort to accomplish all tasks in a timely manner,
- Availability of data and potential need for ancillary studies to support data gathering or analysis,
- Complexity of subject matter,
- Presence of issues that potentially require special expertise,
- Extent of contractor involvement in various aspects supporting document preparation such as preparation of media announcements, preparing for scoping meeting(s), arranging for and moderating public meeting(s) on a draft or final document, and responding to comments, and
- Number of document iterations and reviews (internal and external) required to reach a final document.

NGB-ARE has developed a cost estimating tool for NEPA projects. This tool may be used to illuminate those matters which are related to costs in NEPA projects. The cost estimating tool is provided at [Appendix R](#).

**Task description and schedule.** A work breakdown structure (or comparable management tool) should be developed. A milestone schedule, keyed to task descriptions, should display, as a minimum, time periods for data collection, agency consultation, preparation of draft and final documents, document reviews, target dates for publishing public notices, and the timing of other public involvement activities.

**Analysis methodologies.** This section of the management plan should present a preliminary listing of the environmental issues and other topics to be examined and a brief description of the methodologies to be employed in the analysis. If the use of specialized analytical tools (e.g., air quality, noise, or socioeconomic models) is anticipated, those tools or methodologies should be explained.

**Public involvement.** All public involvement, either planned or anticipated (for EAs and EISs), should be discussed. This would include details on formal scoping requirements and public meetings (primarily for EISs), the management and coordination of public comments, and the handling of any news media inquiries received. NGB guidance calls for a Public Affairs Plan to be prepared for all ARNG EISs (see Section II(6)(g)(4) of the *Public Affairs Guidance on National Guard Bureau Environmental Programs* [[Appendix S](#) in this handbook]).

**Description of the proposed action and alternatives.** One of the most critical components of the management plan is a description of the proposed action and alternatives (DOPAA), which represents much of the front-end portion of any EA or EIS. The DOPAA contains a statement of the purpose of and need for the proposed action (see Section 4.5). It also describes the proposed action and associated activities, including alternatives to the proposed action, to the extent that they are understood at this early stage of the process (see Sections 4.6 and 4.7, respectively). Not only will the DOPAA ultimately facilitate development and preparation of the EA or EIS, but it will also help in early coordination with other ARNG offices and outside agencies (federal, state, and local) and, in the case of an EIS, will provide a basis for formal scoping. A clear statement in the DOPAA of the “decision(s) to be made” on the proposed action can provide a further check on what the proposed action is and what it is expected to accomplish. Because the initial DOPAA is almost certain to change before preparation of the first draft of the EA or EIS, consideration should be given to preparing it in draft or outline form and circulating it to selected reviewers to obtain their buy-in and to avoid unnecessary revisions to the document later on. In developing the DOPAA, note that it should not assume a life of its own, but should be designed for easy integration into the NEPA document.

**Management plan appendices.** Other information that should be contained in the management plan includes an outline of the EA or EIS to be prepared, a brief description of existing technical and environmental documentation on the project and the project location (with known or suspected relevance to the effort), and a listing of any major unresolved issues pertinent either to the DOPAA or to the analysis and document preparation effort.

**Compilation responsibility.** A management plan such as this is normally the responsibility of the proponent; however, plans are often prepared by the organization or contractor tasked to prepare the NEPA document, with considerable participation and oversight by the proponent. Development of the plan might also require input and assistance from the Environmental Program Manager, the state Public Affairs Officer, the NGB-ARE, and/or the NGB Public Affairs Office.

**Other matters for consideration.** In addition to those issues to be addressed in the management plan, other issues that must be considered in the early planning for an EA or EIS include the following:

- Personnel to accomplish the analysis and document preparation (in-house staff or contract support).
- Availability of the analysis and documentation team members and reviewers (consideration for participants being on temporary duty, vacation, and holidays).
- Time frames dictated by the proposed action, the NEPA process, or data/model analysis requirements.
- Budgetary constraints and requirements.

To help the proponent and preparers of NEPA documents avoid common mistakes made during the NEPA process, a number of typical deficiencies in EAs and EISs, and other lessons learned in preparing NEPA analysis and documentation, are presented in [Appendix T](#).

### 4.3 Obtaining Analysis and Documentation Support

Environmental analysis and documentation can be prepared by any organization or team with the expertise to address all requirements adequately. Analysis should never be conducted by a single person without input and consultation from appropriately knowledgeable persons from relevant scientific and technical disciplines. NEPA specifically requires that environmental analysis be conducted using an interdisciplinary approach that ensures integration of both the natural and social sciences. Proponents often do not have the in-house expertise to adequately perform the required analysis and prepare the NEPA document. However, the Environmental Program Manager and the NGB-ARE usually do have the relevant expertise or access to it.

The proponent's staff might also need assistance from the appropriate Environmental Office when proposing to take an action that is categorically excluded or when adopting an existing EA or EIS. In all cases, a representative of the proponent should assist in preparing a REC if one is required. In some instances, the proponent's staff might prepare an uncomplicated EA if the organization's Environmental Office provides information on the existing environmental and cultural resources, and points of contact from whom the proponent can get help in evaluating potential effects. In other cases, the Environmental Office might be tasked to perform the necessary analyses and write the EA. In those cases, the proponent must provide a description of the proposed project, consider alternatives, and address appropriate mitigation measures. EISs and complex EAs, often prepared with contractor support, should involve both the proponent and the supporting Environmental Office staff in preparing scopes of work, reviewing documents, and participating in the public involvement process.

A comparison between preparing NEPA documents in house and using outside contractor support is provided in Table 4-1. When using contractor support to conduct the analysis and prepare the NEPA documents, it is important to provide the contractor with a clear statement of work that spells out specific milestones and deliverable requirements. A sample statement of work for contractor support is provided in [Appendix U](#). It demonstrates many of the basic elements required for entering into a contractual relationship for the preparation of NEPA documents; it does not include material that would apply only to specific or individual cases. The content of the statement of work must be evaluated to ensure that the needs of the NGB are adequately addressed prior to committing resources to NEPA documentation. Other areas to be considered and issues to be addressed in the statement of work may include the following:

- The contractor's responsibility for involvement in public meetings, if required.
- The number of document iterations to be prepared (including a "camera-ready" copy and additional "hard" copies) between initial draft and final deliverables.

- The number of copies required for staffing the document at the state level, at other agencies, and at the NGB.
- How public comments and resolution of comments will be addressed in the final version of the document (if comments are received).

**TABLE 4-1. COMPARISON BETWEEN IN-HOUSE PREPARATION AND USE OF CONTRACTOR SUPPORT**

| Task   | In House | Contractor Support |
|--|----------|--------------------|
| <b>COST:</b>   |          |                    |
| Funding for the document                                     | +        | -                  |
| State Environmental Office personal efforts (time and focus) | -        | +                  |
| <b>EXPERTISE:</b>  |          |                    |
| Technical expertise in preparing documents                   | (?)      | +                  |
| Basic science expertise                                      | (?)      | +                  |
| <b>CONTROL:</b>  |          |                    |
| Content  | +        | (?)                |
| Content of responses to requested staffing comments          | (?)      | -                  |
| <b>TIME:</b>   |          |                    |
| Reprinting of document                                       | -        | +                  |
| Making changes based on staffing comments                    | (?)      | (?)                |
| Physical preparation and writing of the document             | (?)      | +                  |
| <b>QUALITY:</b>  |          |                    |
| Final document appearance                                    | (?)      | +                  |
| Level of detail contained in the document                    | (?)      | (?)                |
| Research thoroughness  | (?)      | (?)                |
| <b>CREDIBILITY/OBJECTIVITY</b>                               |          |                    |
|  | -        | +                  |

Explanation: “+” = advantage, “-” = disadvantage, “(?)” = personnel-dependent.

#### 4.4 Allowing Time for Preparation

The proponent must begin on time to finish on time. It is the proponent’s responsibility to allocate sufficient time for the NEPA process. Failure to anticipate NEPA’s procedural requirements and time lines can result in delays that adversely affect ARNG missions or fiscal resources.

Differences in the nature of proposed actions, their complexity, and the availability of data often influence the amount of time required to complete analysis and documentation. The NEPA statute, CEQ regulations, and 32 CFR Part 651 impose certain mandatory steps and minimum review periods for specified aspects of the NEPA process that will affect all proposed actions. For instance, a DEIS must be made available for public comment for not less than 45 days. As a practical matter, 10 months or more is often needed to prepare an EA, and 24 months or more to prepare an EIS. Where NEPA documentation is prepared by contractors, additional time might be required for completion of contract solicitation, award, and administration. For military construction projects, NEPA must be completed to proceed beyond preliminary design.

Preparation and review of documents directly affect processing time lines. Depending on the level of analysis and documentation chosen for a proposed action, there might be preliminary draft, draft, preliminary final, and final versions of the document. Multiple document iterations

and intermediate reviews can lengthen the time line. Additional time must be allocated when there are numerous reviews by internal or external offices and agencies (e.g., other DoD offices, Bureau of Land Management, U.S. Fish and Wildlife Service, and U.S. Forest Service). Proponents must also allocate sufficient additional time when they choose to circulate the draft EA (see Section 6.2 for additional information on circulation of draft EAs).

Sections 6 and 7 address in detail the steps required for preparation of an EA and EIS, respectively. Proponents should give consideration to the amount of time required to meet each of the identified steps and plan accordingly.

#### **4.5 Identifying the Purpose of and Need for an Action**

Associated with the earliest steps in preparing NEPA documentation is the requirement to specifically describe the purpose of and need for the proposed action. This step is a basic requirement of CEQ and ARNG regulations. It is the first opportunity in the NEPA process for informing interested parties why the ARNG is proposing to undertake an action and what objectives the action is intended to satisfy. It also can serve as a “reality check” for cases in which a proponent might not have clearly described the action proposed. In general, for a given proposed action, the purpose and need statement should provide answers to the questions: Why there? Why then? For what objective?

In some cases, a proposed action may be defined by higher headquarters or an outside entity. An example of this is equipment modernization or force structure changes within the ARNG that are directed by HQDA. In such cases, the statement of purpose and need should make reference to the directed nature of the proposed action as well as the underlying mission-related requirements for the action.

The statement of the “purpose” should refer to the action, not to the document and not to the preferred alternative. Thus, the statement “The purpose of the proposed action is to provide adequate facilities for the maintenance of armored combat vehicles” would be correct, whereas statements such as “The purpose of the action is to construct and operate a tank maintenance facility at Site A” or “The purpose is to comply with NEPA” would be inaccurate or misleading. The “need” statement for a proposed action generally reflects the proponent’s underlying mission goals and the objectives to be achieved by the statutory authority under which the ARNG or other lead agency is proposing to act. Expressing the need for a proposed action in a statement such as “to maintain armored vehicles for training ARNG personnel in order for the United States to ensure the military readiness of its ground forces” would be adequate. A need statement such as “tanks require constant maintenance and repairs” would be inappropriate.

The statement of the ARNG’s underlying purpose of and need for an action is critical to identifying the range of reasonable alternatives to be considered in the analysis. If the purpose and need are defined too broadly, the number of alternatives that might require analysis would be virtually limitless. On the other hand, it is inappropriate in most situations to define the purpose and need so narrowly that only the preferred alternative would be analyzed. The preferred course of action usually represents only one means of meeting the purpose of and need for an action. For example, if the purpose of a proposed action (e.g., modify airfield landing and departure patterns) is to sustain aviation training mission requirements at a given installation despite changes in land use patterns off post, and the need is to comply with noise regulations and respond to complaints of excess noise from the local community, reasonable alternatives to the proposed action might include construction of noise barriers, relocation of homeowners affected by excess noise, noise proofing of affected homes, and changes to airfield hours of operation.

The relocation of aviation operations to another installation would not, however, support the underlying purpose and need. An example of a proper need statement, in an appropriate case, would be “The ARNG requires a new facility of XYZ capacity to meet the requirements for such facilities, as specified in NGB PAM 415-12 (Army National Guard Facilities Allowances).”

Understanding the relationship between the purpose and need statement and the alternative actions proposed is of great importance because only those alternatives that truly support the ARNG’s purpose and need for action are to be analyzed in a NEPA document.

#### 4.6 Defining the Proposed Action

Following identification of the purpose of and need for the action, the proponent must describe the details of the proposed action. The description of the proposed action is the foundation for the entire environmental analysis process. It can be either a broad characterization of the goals or objectives that would be achieved by implementing one of several alternatives, or it can be presented as a detailed, stand-alone, preferred course of action. In either case, objectivity must be maintained both in the description of the proposed action and throughout the analysis so that reasonable alternative courses of action can be developed and equally considered.

The proposed action must be carefully and clearly defined because a poorly defined proposed action might lead to inadequate or inappropriate impact identification and analysis, and possible legal challenge. It is important that all activities associated with the proposed action be identified and described in sufficient detail to permit a meaningful analysis of the potential environmental consequences. Defining the action too narrowly (e.g., underestimating the number of individual events or troop participants in planned training exercises) could result in constant modifications to the document. If the action is defined too broadly (e.g., not providing sufficiently detailed information to describe where a new facility is to be located), the specifics of the action might be misunderstood or the analysis might not indicate the real effects that could occur. Either case is a disservice to document reviewers, the decision maker, and the public.

The description of the proposed action should answer the following questions. Depending on the approach used to characterize the proposed action, some of these questions might be fully answered only by describing the alternatives to implementing the proposed action (see Section 4.7).

- **Who** is proposing to undertake the action and which agencies have authority over it and responsibility for it?
- **What** is the ARNG’s decision to be made and what activities are associated with the proposed action?
- **When** would the proposed action occur and what would its duration be?
- **Where** would the proposed action occur?
- **How** would the action take place and could it be broken down into components or a series of phases?

The proposed action should also contain the following elements, as appropriate and relevant to understanding the potential environmental effects:

- **Project Timing and Progression.** Information that identifies project milestones, the frequency and duration of activities, and any aspects of the proposed action that could result in effects that vary over time (e.g., time of day or season of the year) should be included.

- **Construction Activities.** Information on the number of construction workers involved and the type of equipment used; site clearing and grading requirements; use of temporary access roads, staging areas, and borrow sites; and any other activities that would be necessary to support construction should be described. This information is also relevant to the modification of existing facilities and infrastructure.
- **Operational Activities.** Information on the project and related support operations, such as facilities, equipment, and materials to be used; numbers of personnel involved; any testing, training, and maintenance activities; utility demands; and related transportation requirements, should be included.
- **Permits.** All necessary permits should be identified in the description of the proposed action.

The description of the proposed action in an EA or EIS should be straightforward and concise, but sufficiently detailed to form the basis for the analysis that will follow.

It is important that the description of the proposed action include all “connected actions” (if the action is dependent on or part of one or more other actions) and that it acknowledge any “similar actions” (if the proposed action is similar to existing activities or recent or pending actions). Understanding similar actions is particularly useful when determining the potential for the proposed action to produce cumulative effects (see Sections 4.11.1 and 8. 20).

In general, for both construction and operational activities, resulting waste streams and emissions (including rate and duration) should be identified, along with how they will be treated and/or disposed of. Maps, sketches, and facility layouts should be used as necessary to fully explain the details of the proposed action. In addition, standard construction practices and ARNG-required procedures and mitigation measures, if already planned as part of the proposed action, should be described, along with other measures that will likely be required if the action is to proceed (e.g., scheduling activities so as not to affect the nesting season for a migratory endangered bird species).

#### 4.7 Determining Alternatives

Alternatives represent the various ways the ARNG can fulfill the purpose and need that would be met by implementing a proposed action. Typically, a statement of a proposed action should be a totally objective proposal that reflects only one of several possible means to an end. After the proponent has prepared a detailed description of the proposed action, all reasonable alternatives (in terms of actions and/or locations) should be explored and considered. The proposed action may be, but does not necessarily have to be, the proponent’s preferred alternative when the decision is made. Alternatives identified and selected as appropriate for analysis must be addressed throughout the document. CEQ regulations (40 CFR 1502.14) recognize three types of alternatives:

- *No Action Alternative.* In accordance with CEQ and Army regulations, analysis of the “no action” alternative is required in all ARNG EAs and EISs throughout the documents. The no action alternative provides a baseline against which the effects of a proposed action and all other alternatives are compared. Depending on the nature of the proposed action, there are three possible interpretations of “no action.” The first pertains to a proposal or plan to update or change ongoing activities. In such a case, “no action” would be to not change the ongoing activity (to maintain the status quo). A second type of situation involves proposals for new projects. “No action” would mean that the proposed activity would not take place. A third possible situation occurs when certain



ongoing actions at a site are to be discontinued (e.g., expiration of a lease, elimination of weapon system testing) prior to when a proposed action is to be implemented. This situation requires the “no action” alternative to take into account those changes in actions and the affected environment expected to result from discontinuing activities.

- *Other Reasonable Courses of Action.* CEQ regulations require a proponent to consider all reasonable alternatives that would fulfill its purpose and need for a proposed action. Reasonable alternatives include those which are practical or feasible from a technical and economic standpoint, support the underlying purpose of and need for the proposed action, and are ready for decision. The application of selection or screening criteria (e.g., budget constraints, time constraints, and specific training criteria) can sometimes help in narrowing the range of reasonable alternatives. Where such criteria are applied, they should be described in the NEPA document. An alternative may be considered reasonable even if it is outside the legal jurisdiction of the ARNG. A potential conflict with local, state, or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. For some ARNG proposals, a very large number of reasonable alternatives might exist. In these situations, the NEPA analysis need evaluate only alternatives representative of the full range of reasonable alternatives (see CEQ *Forty Most Asked Questions*, Number 1 [[Appendix D](#) in this handbook]). Proponents are cautioned not to develop bogus alternatives simply to increase the number or range of alternatives.
- *Mitigation Measures Not Included in the Proposed Action.* Identified mitigation measures not already included in the proposed action provide opportunities for alternative means of implementing a proposed action (e.g., constructing noise barriers to lower noise levels even further below legal standards). These “add-on” mitigation measures must be analyzed for their potential environmental effects and may be treated as separate alternatives in the environmental analysis.

If alternatives that could appear obvious or have been identified by the public are determined to be unreasonable by the proponent and are to be eliminated from detailed study in the NEPA analysis, a brief discussion of the reasons for their elimination must be included in the document. Comparing alternatives against selection or screening criteria is recommended in this case.

Proponents must develop specific, rather than general, screening criteria. The following four-step process is recommended.

- First, identify what a reasonable person might consider to be reasonable alternatives. For example, construction of a 125,000 square-foot physical fitness facility would likely be excessive to the requirements of a weekend training site.
- Second, develop screening criteria for feasibility. That is, take into consideration matters such as mission requirements, costs, and technical qualifications. For example, in siting a vehicle maintenance facility, potential locations would have to be large enough, reasonably close (within walking distance) of troop functions such as a dining facility and troop barracks, and amenable to construction (i.e., no steep slopes).
- Third, examine the screening criteria in reference to the purpose of and need for the proposed action. Screening criteria that are not logically connected to the purpose and need should be eliminated.
- Fourth, screen alternatives. If an alternative is determined to be unreasonable or not

feasible, explain the basis for its rejection. If an alternative is determined to be reasonable and feasible, then it is to be evaluated in detail in the NEAP document.

Historically, the greatest potential cause for delay in the NEPA process is failing to adequately describe the proposed action and to appropriately address reasonable alternatives. Circulation of the DOPAA early in the process to all offices and organizations involved in the effort is critical to ensuring that all reasonable alternatives are identified and accurately defined. For EISs and complex EAs, the DOPAA is circulated within NGB for review. Identification of the full range of reasonable alternatives is a particularly important part of the scoping process. A decision maker cannot select an alternative that is not evaluated in an EA or EIS, and failure to consider alternatives that are reasonable can affect the credibility of an otherwise adequate NEPA analysis.

#### **4.8 The Scoping Process**

Scoping is an early and open process for actively and constructively bringing outside agencies (federal, state, and local), organizations, and the public into the NEPA process; determining the scope of issues to be addressed; and identifying the major issues related to a proposed action. CEQ regulations and 32 CFR Part 651 require use of the scoping process when preparing an EIS. Use of a formal or informal scoping process is optional when preparing an EA, but in many cases it has proven beneficial, particularly in conducting coordination and consultation meetings with regulatory and natural resources agencies. As a minimum, some form of ARNG internal scoping should be used for EAs to ensure that the elements of the DOPAA are accurate and complete, and that any environmental issue or controversy associated with the action is identified.

Scoping during the early stages of the NEPA process provides focus to the analysis of potential environmental effects. Scoping sessions with individual agencies, federally recognized Indian tribes, and/or the public help proponents to identify a wide variety of important matters affecting the NEPA process, including community concerns, regulatory and natural resources agency concerns, information related to impact significance, environmental justice issues, the geographic extent of the affected area, the range of actions (connected, cumulative, or similar) and alternatives, the range of resulting effects (direct, indirect, and cumulative), permit and consultation requirements, possible mitigation strategies, and appropriate levels and sequence of environmental reviews.

32 CFR Part 651 provides guidance and specifies requirements for the scoping process. Specific guidance on scoping and public involvement from the NGB is provided in [Appendix S](#). In addition, [Appendix E](#) and [Appendix F](#) contain scoping guidance developed by the CEQ.

#### **4.9 Identifying Issues for Analysis**

Issues to be considered in NEPA analyses are derived from an understanding of those environmental resources and resource components that would affect and would be affected by the proposed action or an alternative if it was implemented. Such issues are based on the interrelationship between the proposed activities, the affected area, the resulting effects, receptors of the effects, criteria and regulatory standards against which effects are measured, and time. Issues can be characterized by their extent of geographic distribution, the duration of time over which the issues are likely to be of interest, and the level of interest or controversy they generate. Once identified, the issues can be grouped and categorized (e.g., common resources, common geography, linked to the same action, or linked to cause-effect relationships) for purposes of providing focus and direction to the scope of analysis and NEPA documentation. This approach is particularly useful in determining which resources and resource parameters should be

addressed in the Affected Environment and Environmental Consequences sections of an EA or an EIS (see Sections 6.5 and 7.7, respectively).

Issues can be identified by a variety of methods, including surveys and questionnaires, coordinated discussions with outside participants (e.g., natural resources agencies, local officials, and special interest groups), research of existing technical documents and journals, and review of published and electronic news media. The scoping process, previously described, provides an effective forum for issue identification. Issues can also be identified from cause-and-effect relationships. Figure 4-1 schematically captures the cause-and-effect relationship for a hypothetical road/trail construction project, in which a variety of both direct and indirect effects flow from a single action or cause. It should be noted that the effects chain presented in this figure does not address the full range of environmental and socioeconomic categories for this or any other project.

The eventual resolution of issues is often achieved through the development of mitigation measures where significant effects or serious controversy is anticipated. Agreements on approaches for handling issues should be reached early (e.g., during scoping) through coordination and consultation with key ARNG and NGB participants, technical support staff and contractors, environmental experts in other agencies, and the affected public.

#### 4.10 Describing the Affected Environment

Once the environmental issues have been identified, an Affected Environment description (also referred to as the environmental baseline) can be prepared for the area(s) that could be affected by the ARNG's proposed action and alternative actions. CEQ regulations (40 CFR 1502.15) require that Affected Environment descriptions presented for each resource area be succinct and no longer than is necessary to understand the resulting effects. The data and information presented should be commensurate with the importance of the effects, with less important material summarized, consolidated, or simply referenced. A good rule of thumb is that any information presented in the Affected Environment section of an EA or EIS should be directly related to the Environmental Consequences section.

Based on the extent and duration of anticipated effects caused by an action, the description of each relevant resource area should be defined according to some geographic boundary or "affected area" and the general time frame within which effects are likely to occur. Each resource area presented in the Affected Environment description should have its own distinct affected area, which can be explained in text or delineated on a map. However, an option for describing several of the more common resources (e.g., land use, soils, and vegetation) is to use one study area boundary (e.g., the installation or other property boundary, or a designated circle around the project site) that encompasses the potential effects for all of them. This approach can help to simplify the process of delineating individual affected areas, particularly in the early stages of the analysis when the definition of the proposed action might still be changing. It can also provide a common frame of reference for discussion and for the presentation of data on maps or other visual aids used in the NEPA document. Some resources, such as socioeconomics<sup>15</sup> and air quality, typically have affected areas much larger (e.g., a metropolitan area or regional

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<sup>15</sup> Another term often used exclusively in describing the "affected area" for *socioeconomics* is "region of influence," or ROI (see Section 8.17 of this handbook).

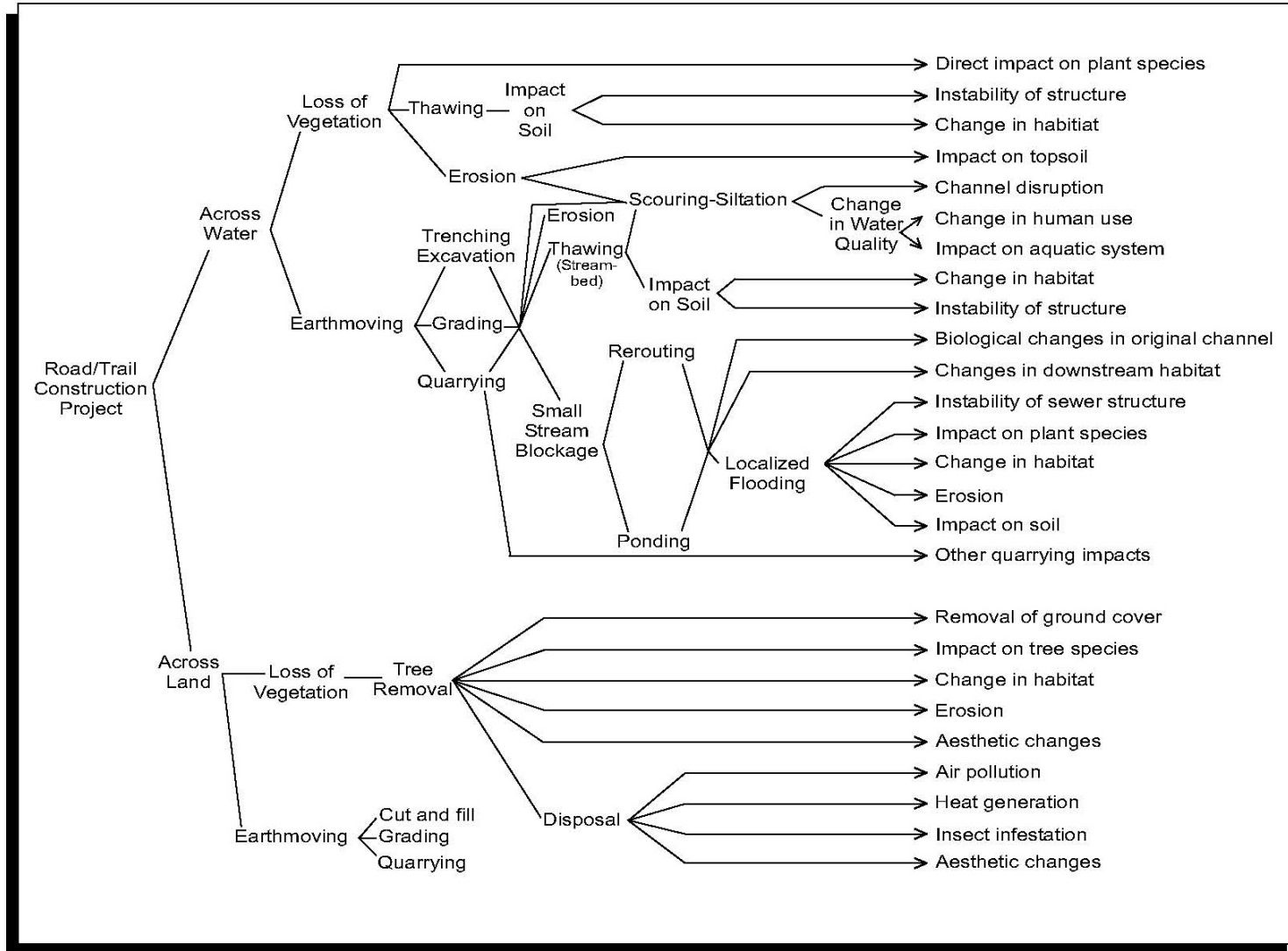


Figure 4-1. Cause-Effect Relationships for a Road/Trail Construction Project

airshed) than those for other resources because of the factors used in measuring effects on them. The geographic scope of potential cumulative effects on various resources can also require much larger areas of study.

When describing the Affected Environment, it is recommended that the most current data available, or other data that closely represent current conditions, be used. If existing data do not accurately represent current conditions, new data might need to be obtained through field surveys or by other means. (In cases of incomplete or unavailable data, refer to 40 CFR 1502.22.) Depending on the time frame of a given action, the Affected Environment description for some resources might require projections of future conditions to more accurately determine long-term effects or effects not expected to occur for several years. This is particularly true for programmatic and life-cycle NEPA studies and typically applies to future land use, socioeconomic, infrastructure, and transportation conditions. As described in Sections 1.6.4, 1.6.5, and 1.6.7, tiered and/or supplemental NEPA studies for such actions are usually required to account for changing phases of the action and/or changes in the Affected Environment.

All too often, NEPA documents are completed using insufficient information for evaluating effects on environmental baseline conditions. In some cases, expensive and time-consuming field data collection is necessary, but the specific project for which the data are needed has insufficient funds and/or time for data collection and analysis efforts. In other cases, data might be available but not in a form that can be easily integrated with other information or analysis techniques. To help prevent such problems from occurring, early planning is necessary to determine resource issues and associated baseline data requirements. Much of the existing baseline data can usually be obtained through coordination with the Environmental Program Manager, other state ARNG offices, the NGB-ARE, and various outside agencies.

Some Army and ARNG installations have developed or are developing extensive environmental databases, usually in the form of automated geographic information systems (GIS), to define existing baseline conditions at those locations. In addition to providing information used in NEPA analyses, such tools can also be used to generate “environmental constraints maps” to help master planners, trainers, and other proponents in siting and scheduling their proposed actions.

GIS can be used to do preliminary planning for any projects that require NEPA documentation. GIS is particularly useful in developing alternative locations for a proposed project. NEPA documentation must include maps produced using GIS. The maps must meet current professional or industry standards for GIS. The maps must at a minimum include an overview map of the proposed project location (installation-wide map with the project area noted [1:24,000]). A more detailed map (1:2400) dedicated to each alternative project location must also be developed. Maps must include the following (when available): installation boundary, roads, vegetation, buildings, contour lines, aerial photography, flora and fauna, and any affected resources such as natural and cultural resources, wetlands, threatened and endangered species, and noise contours (when appropriate). A copy of all GIS data used in the NEPA document must be included on the CD-ROM in shapefile format with the required metadata. NEPA documents submitted to NGB-ARE that contain poor-quality maps or incomplete data on CD-ROMs will be returned to the initiating ARNG.

NGB’s cartographic standards for GIS products are discussed at Sections 6.3 and 7.5.

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## 4.11 Determination of Effects

### 4.11.1 Types of Effects

The CEQ regulations (40 CFR 1508.18) direct that environmental effects resulting from major federal actions be analyzed for three types of effects—direct, indirect, and cumulative. Both EAs and EISs must include analysis for all three types, which are described below. (Note: The CEQ regulations use the terms effects and impacts synonymously and interchangeably.)

**Direct effects.** A direct effect is caused by the action and occurs at the same time and place (40 CFR 1508.8). Direct effects are typically the most obvious to ascertain. Their analysis is usually more objective, and they are the simplest to assess. An example of a direct effect is the loss of vegetative habitat from construction of a new road.

**Indirect effects.** An indirect effect is caused by the action but occurs later in time or farther removed in distance, although it is still reasonably foreseeable (40 CFR 1508.8). Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water resources and on ecosystems. For example, in the case of sediment runoff from a construction site, the resulting deterioration of water quality downstream represents an indirect adverse effect. Indirect effects are not as apparent as direct effects, and their evaluation may depend on subjective rather than objective factors.

**Cumulative effects.** A cumulative effect produces an “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impact analysis captures the effects that result from the action in combination with the effects of other actions taken during the duration of the proposed action in the same geographic area. Because of extensive outside influences, cumulative effects are the most difficult to analyze, and the analysis is frequently more subjective than objective. For further discussion on addressing cumulative effects, see Section 8.20.

When identifying direct, indirect, and cumulative effects, consideration also must be given to whether they represent short-term or long-term effects. Short-term effects are often those associated with the initial implementation of an action, such as those which might result from initiation of a construction project. Long-term effects are generally those which would occur over the operational life of the project.

### 4.11.2 Significance of Effects

The CEQ regulations specify that in determining the significance of effects, consideration must be given to both “context” and “intensity” (40 CFR 1508.27). Context refers to the significance of an effect to society as a whole (human and national), to an affected region, to affected interests, or to just the locality. Intensity refers to the magnitude or severity of the effect, whether it is beneficial or adverse. The significance of potential direct, indirect, and cumulative effects must be determined through a systematic evaluation of the action, alternatives, and mitigation measures in terms of their effects on each individual environmental resource component (e.g., ecosystems, water resources, and air quality). Evaluation of significance is typically based on an assumption that the full effect of the predicted condition would occur all at once. In reality, the projected conditions likely would be less intense than the maximum and also would be likely to happen incrementally rather than all at once. Thus, actual effects might well be less severe than those

predicted and described in the NEPA analysis.

Sections 6.5 and 7.7 provide detailed descriptions of resource areas typically included in ARNG NEPA analyses for both EAs and EISs, respectively. It is important to note that only those resources and resource parameters that present issues for analysis (see Section 4.9) need be discussed. Examples of significance criteria for these resource areas are as follows:

- *Land use.* If an alternative would conflict with adopted plans and goals of the community or if it would result in a substantial alteration of the present or planned land use of an area, it could have a significant direct effect. If an alternative would result in substantial new development or prevent such development elsewhere, it could have a significant indirect effect. In addition, an alternative could significantly affect visual resources if it resulted in abrupt changes to the complexity of the landscape and skyline (in terms of vegetation, topography, or structures) when viewed from points readily accessible by the public.
- *Air quality.* An alternative could have a significant air quality effect if it would result in substantially higher air pollutant emissions or cause air quality standards to be exceeded.
- *Noise.* An alternative could have a significant noise effect if it would generate new sources of substantial noise, increase the intensity or duration of noise levels to sensitive receptors, or result in exposure of more people to high levels of noise.
- *Geology and Soils.* If an alternative would result in an increased geologic hazard or a change in the availability of a geologic resource, it could have a significant effect. Such geologic and soil hazards would include, but not be limited to, seismic vibration, land subsidence, and slope instability.
- *Water resources.* If an alternative would result in a reduction in the quantity or quality of water resources for existing or potential future uses, it could have a significant effect. Based on existing water rights, a significant effect would occur if the demand exceeded the capacity of the potable water system. An alternative also could have a significant effect on water resources if it would cause substantial flooding or erosion, if it would subject people or property to flooding or erosion, or if it would adversely affect a significant water body, such as a stream or lake.
- *Biological resources.* The effect of an alternative on biological resources and ecosystems could be significant if it would disrupt or remove any endangered or threatened species or its habitat, its migration corridors, or its breeding areas. The loss of a substantial number of individuals of any plant or animal species (sensitive or non-sensitive species) that could affect the abundance or diversity of that species beyond normal variability could also be considered significant. The measurable degradation of sensitive habitats, particularly wetlands, could also be significant.
- *Cultural resources.* An alternative could have a significant effect on cultural resources if it would result in unauthorized artifact collecting or vandalism of identified important archeological sites; if it would modify or demolish a historic building or environmental setting; or if it would promote neglect, resulting in resource deterioration or destruction, audio or visual intrusion, or decreased access to traditional federally-recognized Native American resources. Impact assessment for cultural resources focuses on properties that are listed in or considered eligible for the National Register of Historic Places or are National Historic Landmarks, as well as resources that are considered sensitive by federally-recognized Native American groups.

- *Socioeconomics.* If an alternative would substantially alter the location and distribution of the population within the geographic “region of influence,” cause the population to exceed historical growth rates, or substantially affect the local housing market and vacancy rates, the effect would be significant. Significant effects could occur if an alternative caused disproportionate risks to children that resulted from environmental health risks or safety risks. In addition, an alternative could have a significant effect if it would create a need for new or increased fire or police protection, or medical services, beyond the current capability of the local community, or would decrease public service capacities so as to jeopardize public safety. It is important to note that, per CEQ regulations (40 CFR 1508.14), social or economic effects are not intended by themselves to require preparation of an EIS. Only when social or economic effects are interrelated with natural or physical environmental effects will all of these effects be analyzed as part of the NEPA process.
- *Environmental justice.* Significant effects could occur if an alternative would disproportionately affect minority or low-income populations.
- *Infrastructure.* An alternative could have a significant effect on infrastructure if it would increase demand over capacity, requiring a substantial system expansion, or if it would result in substantial system deterioration over the current condition. For instance, an alternative could have a significant effect on traffic if it would increase the volume of traffic beyond the existing road capacity, cause parking availability to fall below minimum local standards, or require new or substantially improved roadways or traffic control systems.
- *Hazardous and toxic materials and wastes.* An alternative could have a significant effect if it would result in a substantial increase in the generation of hazardous substances, increase the exposure of persons to hazardous or toxic substances, increase the presence of hazardous or toxic materials in the environment, or place substantial restrictions on property use due to hazardous waste, materials, or site remediation.

Other factors that should be considered when evaluating significance are listed below:

- *Relevant legal requirements.* Legal requirements should be considered in determining significance. Such criteria might appear in local, state, or federal statutes, regulations, or court decisions. Actions that are likely to result in violation of regulatory standards are usually considered to have significant effects.
- *Knowledge of applicable court cases.* Findings in court cases involving NEPA can often provide guidance in understanding the types of effects likely to be considered significant. However, a single court case might not be an up-to-date, definitive statement of the law. Legal counsel at the state ARNG or NGB level should be consulted, as necessary.
- *Uncertainty and controversy.* The degree to which the effects of the action on the human environment are likely to be highly uncertain or controversial should be considered.
- *Other considerations.* Specific unique characteristics of the action might influence the determination of significance. The level of significance might need to be determined by using the advice and judgment of environmental office personnel, natural or cultural resource agency staff, contractors, and others, as well as by using established guidelines that are generally accepted by experts in a given discipline.

### 4.11.3 Describing Effects

In describing potential effects that might result from the implementation of a proposed action, the



following guidelines should be considered:

- Quantify effects as much as possible using appropriate units of measure (e.g., acres of habitat lost and tons of sediment entering a stream). If an effect is obviously negligible (e.g., the effects of barracks construction on the ozone layer), it should be ignored unless a specific public comment demands a response.
- When only impact trends can be indicated (e.g., low, moderate, high, etc.), provide careful explanation and interpretation of qualifiers (e.g., numerical range or list of possible site conditions that would represent each qualifier used).
- Although determining the significance of effects can, in many cases, be subjective, it can be semi-quantified in such terms as the number of people affected, the proportion of resources degraded, the rate at which conditions will become worse, key linkages to other more quantifiable resources at risk, and the level or extent of irreversibility of or recoverability from an impact. Determining significance is not, however, subjective in cases where an established regulatory threshold is broken; such cases are usually presumed to be significant.
- Be cautious in using the word *significant* or *significantly*. If such words are used, explain them in terms of context and intensity. In an EIS, use of *significant* or *significantly* is a proper indication for disclosing significant effects (the main purpose for preparing an EIS). In an EA, however, use of *significant* or *significantly* for even a single resource, and even when not discussing adverse effects, can create a perception, in a legal context, that the EA should have been an EIS. For similar reasons of perception, the term *effect* rather than *impact* is generally preferable for use in an EA. *Significant*, *significantly*, and *impact* may, however, be appropriately used in the FNSI.
- Address environmental effects or controversy in proportion to their potential significance. That is, focus the analysis and discussion on those issues and associated effects identified through scoping as being most relevant to the proposed action and of greatest concern to the public.
- Identify and explain where there are instances of incomplete or unavailable data, or where confidence levels are extremely low. Give an honest and realistic appraisal of the effects on all resources. The CEQ regulations (40 CFR 1502.22) provide further guidance on this issue.
- Do not use regional, national, or global comparisons of effects to trivialize the significance of a local effect. On the other hand, do not use local significance to give undue weight to trivial matters.
- Conduct impact analyses to discriminate among individual alternatives. Do not present a single maximum potential effects estimate that obscures differences between alternatives.
- Avoid describing effects that are severe without also describing the likelihood (probability or level of risk) of their occurrence.

#### **4.12 Administrative Record**

The Administrative Record is the entirety of the information and data relied on to prepare the EA or EIS. The record includes all data, information, and analysis either generated by other sources or obtained from other sources used to support the analysis and documentation. It is essentially the agency's file as it relates to the action, and it can become the backup data used in court proceedings to validate the NEPA process and support the agency's decision.

The proponent is responsible for compiling the Administrative Record throughout the preparation of the NEPA document. In the event the decision on the proposed action or the process leading to the decision is challenged, time allowed for assembly and delivery of the Administrative Record might be short. Government counsel, representing the interests of the United States, will require speedy delivery of the Administrative Record for their review and evaluation (and possible redaction of privileged materials) before making the record available to plaintiffs. Timely response by the proponent, as the initial source of the Administrative Record, is essential.

The proponent or, at the proponent's behest the preparer, should organize the data and information composing the record as a current, accessible file, indexed by topic, to the extent practicable. A complete Administrative Record should include project-related information within the possession of the proponent and/or lead agency (and any contractor). It should also identify any other reference materials used in preparing the document but available only from outside sources (e.g., copyrighted documents at public libraries). Communications of all types (e.g., memoranda, internal notes, telephone conversation records, letters, electronic mail, and minutes of meetings) are typically included, along with public outreach materials, such as newsletters, newspaper advertisements (include affidavits of publication), and other public notices. Data sources that should be part of the Administrative Record include maps (e.g., wetlands, endangered species ranges, habitat, surface water, geology, topography, and land use), drawings (e.g., "as-builts" for roadways and for drainage, water, sewerage, and electrical systems), studies, reports, documents, appraisals, special data compilations, modeling results, correspondence from subject matter experts, or other types of written information that were relied on during the environmental analysis and decision-making process. All references cited in the NEPA document should be traceable to the Administrative Record.

A comprehensive Administrative Record is essential to successfully defending the proponent's position in litigation. When a plaintiff files a complaint, the Department of Justice immediately enters the picture, without the benefit of knowing all the history and background concerning the proposed action. The first few weeks of litigation are crucial, and no resource better postures the government's attorneys than the Administrative Record. The Administrative Record may be developed and maintained by a contractor during preparation of the NEPA documentation. After the decision is rendered, it is to be kept by the proponent (not a contractor).

[Appendix V](#) is guidance on compiling the Administrative Record provided by the Department of Justice to NGB and other federal agencies. Proponents, whether preparing an EA or EIS, should be familiar with the contents of the guidance and must be prepared to respond when circumstances so dictate.

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## **5.0 CATEGORICAL EXCLUSIONS AND RECORDS OF ENVIRONMENTAL CONSIDERATION**

### **5.1 Categorical Exclusions**

A Categorical Exclusion, or CX, is a category of actions adopted by a federal agency that do not individually or cumulatively have a significant effect on the human environment and do not require an EA or an EIS. A CX is intended to reduce delays in initiating and completing certain actions and to minimize the amount of paperwork associated with those actions. Determining when a CX might apply to a proposal is part of the decision-making process associated with actions that might affect the environment.

In accordance with CEQ regulations (40 CFR 1507.3 and 1508.4), every federal agency may adopt a list of CXs. Each agency is responsible for determining what types of its actions should be categorically excluded and for developing specific regulations regarding the use of CXs. Any proposed changes or modifications to the list of exclusions must be submitted to ODEP. If additional CXs are approved, the Army publishes them in the *Federal Register*. Categorical Exclusions from another federal agency may be applied to only those ARNG actions to which the other agency's NEPA implementing regulations apply and only when the other agency is making the decision on the proposed action.

The steps involved in determining the availability of CXs to ARNG proposed actions are described in the following sections.

#### **5.1.1 Screening Criteria for Categorical Exclusions**

The first step in determining whether a CX might be applicable for a proposed action is to review the CX screening criteria listed at 32 CFR 651.29. All CX screening criteria must be met for the proposed action to be categorically excluded. If any criterion is not satisfied, the action requires an EA or an EIS to assess potential effects. Under 32 CFR 651, the ARNG proponent must satisfy the following three conditions:

- That the action has not been segmented. Segmentation occurs when an action is broken down into small parts in order to avoid the appearance of significance of the total action.
- That no exceptional circumstances exist.
- One or more CXs compass the proposed action.

#### **5.1.2 Exceptional Circumstances**

With regard to the second criterion for determining use of a CX, exceptional circumstances include the following:

- Reasonable likelihood of significant effects on public health, safety, or the environment.
- Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).
- Imposition of uncertain or unique environmental risks.
- Greater scope or size than is normal for this category of action.
- Reportable releases of hazardous or toxic substances as specified in 40 CFR Part 302, Designation, Reportable Quantities, and Notification.

- Releases of petroleum, oils, and lubricants except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.
- When a review of an action that might otherwise qualify for a Record of Non-applicability (RONA) reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.
- Reasonable likelihood of violating any federal, state, or local law or requirements imposed for the protection of the environment.
- Unresolved effect on environmentally sensitive resources (see below).
- Involving effects on the quality of the environment that are likely to be highly controversial.
- Involving effects on the environment that are highly uncertain, involving unique or unknown risks, or are scientifically controversial.
- Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have future significant effects.
- Potential for degradation of already poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural conditions.
- Introduction/employment of unproven technology.

Environmentally sensitive resources include:

- Proposed federally listed, threatened, or endangered species or their designated critical habitats.
- Properties listed or eligible for listing on the National Register of Historic Places.
- Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.
- Cultural resources as defined in Army regulations.

The following are some examples of proposed actions within the ARNG that are associated with exceptional circumstances. The situations described, if implemented, could easily attract intense public scrutiny of the National Guard's activities, cause suspension of training activities, and possibly bring litigation upon the unit, state, and NGB. These examples reinforce the need for an interdisciplinary approach when conducting NEPA analyses for proposed ARNG actions.

- Construction of an armory on a hazardous waste dump site, previously used by a smelter and battery recycling company.
- Construction of an armory on a cemetery, where the ARNG project plans call for the relocation of human remains.
- Clear cutting 8-inch secondary growth trees from around an airfield and calling it routine maintenance.

- Building a rifle range next to an existing church and library.
- Restationing a helicopter battalion to a new airfield at which ARNG helicopters have never operated.
- Using CXs for separate but related actions.

### 5.1.3 Categorically Excluded Actions

Assuming that a proposed action has not been segmented and there are no exceptional circumstances, the final step in determining whether an action can be categorically excluded is to review the list of CXs presented in Appendix B of 32 CFR Part 651 and determine whether the proposed action properly falls into one or more CX categories. Proponents should also consider the sensitivity of the project and identify, to the extent possible, current and existing surrounding conditions as well as potential areas of controversy. These may include facility footprint, size, number of troops, and type of facility. Based on this review, a CX may be used to exclude a proposed action from further environmental analysis and documentation. If no CX is clearly applicable to the action, an EA or EIS *must* be prepared to assess potential effects. 32 CFR Part 651 also specifies when use of a CX must be supported by a Record of Environmental Consideration, or REC (see Section 5.2).

The Army's list of categorically excluded actions appears in Appendix B of 32 CFR Part 651 (provided as [Appendix C](#) of this Handbook).

### 5.1.4 Avoiding Misuse of CXs

Two CXs commonly used by the ARNG are (c)(1) for construction and (g)(1) for repair and maintenance activities. As discussed below, proponents must exercise care when using either of these CXs.

**(c)(1).** This CX provides for construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. Broadly read, this CX indicates that when construction is proposed an EA or EIS must be prepared only when there will be more than five cumulative acres of new surface disturbance. In relying on this CX, proponents should review carefully the matter of the amount of new surface disturbance and should consider the potential applicability of the exceptional circumstance concerning "greater scope or size than is normal for this category of action."

**(g)(1).** This CX provides for routine repairs and maintenance of buildings, airfields, grounds, equipment, and other facilities. In considering the use of this CX, it is important to note that actions may not be segmented to use a CX for one or more parts (segments) of a larger, connected action (see also Section 1.6.8, Segmenting and Sequencing). Note also that a CX also does not relieve the proponent from compliance with other environmental statutes related to the proposed action, such as the requirement for permits under the Clean Air Act or Clean Water Act, or coordination/consultation with the State Historic Preservation Officer and U.S. Fish and Wildlife Service.

## 5.2 Record of Environmental Consideration

A REC is a signed statement that must be submitted with project documentation to show that the environment has been considered in planning for a particular action for which no separate EA or EIS is prepared. The use of certain CXs requires preparation of a REC (see Appendix B of 32

CFR Part 651). A REC is intended to reduce costs and paperwork while providing a mechanism to ensure the consideration of potential environmental effects. The REC must conclude that the action (1) is exempt from NEPA, (2) is already covered in an existing EA or EIS and determined not to be environmentally significant, or (3) qualifies for a CX.

The REC must describe the proposed action, state the time frame for the action, identify the proponent, and explain why further environmental analysis and documentation are not required. RECs may have attachments, such as graphics or maps, to describe the action adequately and assist reviewers in understanding the action and its lack of potential for environmental effects.

Once a REC is complete, the installation keeps the documentation on file for a reasonable time following completion of the proposed action and mitigation measures (if any), which can take up to several years (e.g., multiyear training events and out-year construction projects). The following elements should appear in a REC:

- Title: (project/action)
- Description of Proposed Action: (including existing environmental setting)
- Anticipated start date and/or duration of Proposed Action:
- A determination that the action:
  - a. Is adequately covered in the existing EA (insert title/date)
  - b. Is adequately covered in the existing EIS (insert title/date)
  - c. After reviewing the Categorical Exclusions and the screening criteria listed in 32 CFR 651.29, it is determined that this action qualifies for Categorical Exclusion \_\_\_\_.
  - d. Is exempt from NEPA requirements under the provision of: (cite superseding law)\_\_\_\_\_
- Signature (and date) of  
 Proponent  
 Environmental Program Manager (or NEPA Program Manager)

For actions involving the use of non-ARNG real property, the proponent shall attach to the REC a copy of the real estate instrument (lease, written license, or permit) signed by the land owner that authorizes such use. When a REC is prepared to reflect that no further environmental analysis is required because the proposed action was adequately evaluated in a prior EA or EIS, a copy of the prior study's FNSI or ROD is to be attached to the REC. For cases that are forwarded to NGB for approval, a signed copy of the FNSI or ROD tiered from a prior analysis will be included in the submittal.

The ARNG has developed an Environmental Checklist (see [Appendix K](#)) to assist proponents, environmental staff, and others involved in planning and reviewing ARNG actions to determine the appropriate level of environmental documentation that a proposed action will require. Checklists are prepared by proponents, with input and assistance from other organizational staff elements. States are encouraged to use an Environmental Checklist for reviewing all proposed actions, even where use of a CX not requiring preparation of a REC is contemplated.

Checklists prepared for candidate CX actions should be used in conjunction with, not as a substitute for, review of screening criteria and extraordinary circumstances described earlier.

The RECs submitted to NGB-ARE must be supported by the ARNG Environmental Checklist. The only exception to this requirement is for force structure reorganizations that involve unit redesignations with no changes in a unit's location, mission, or training and facility requirements. The RECs and Environmental Checklists most frequently submitted to NGB relate to the CXs involving proposed construction projects, force structure reorganizations, and IRT projects.<sup>16</sup> Those for other proposed actions that are of a federal nature and are covered under one or more of the CXs described in 32 CFR Part 651 should be maintained in the state files. Copies of completed Environmental Checklists that conclude that the proposed action will require preparation of an EA or EIS should also be forwarded to the NGB as a means of initiating support for its participation in the NEPA process.

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<sup>16</sup> Documentation for proposed construction projects should be routed through the NGB Installations Division (ARI) and then to NGB-ARE. For proposed changes in Force structure, documentation should be routed to the NGB Force Integration Division (ARF) and then to NGB-ARE. RECs and Environmental Checklists pertaining to IRT projects are to be submitted to NGB-ARO, which routes the documentation to NGB-ARE for staffing review.



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## 6.0 ENVIRONMENTAL ASSESSMENT PREPARATION AND CONTENT

### 6.1 Introduction

This section is intended to guide ARNG proponents and document preparers through the EA process by establishing a greater level of consistency in the preparation of ARNG EAs. It focuses on preparing an EA and provides detailed information needed to develop this type of document.

The EA format the ARNG uses is based on the CEQ regulations and guidance contained in 32 CFR Part 651. The CEQ regulations provide for a considerable degree of agency flexibility in the EA analysis and documentation process. Although flexibility has allowed the ARNG to prepare or customize NEPA documents based on particular circumstances, over the years it has also resulted in the use of a variety of formats. ARNG participants in the NEPA process have indicated that a more structured, standardized format would greatly facilitate document preparation, training of new personnel, and, particularly, document review and approval.

Many of the same environmental resource areas and methodological approaches that apply to the analysis and documentation for an EIS also apply to an EA. A principal difference, however, is that the level of detail incorporated into an EA typically will be less than that of an EIS, particularly in cases where no significant effects are expected. An EA should provide only information and analysis sufficient to determine whether an action has no significant environmental effects or whether a more detailed analysis is required (40 CFR 1508.9). Although much of the data used in conducting the analysis for an EA might not be incorporated directly into the document, the information should still be included as part of the EA's administrative record (see Section 6.10) to show that appropriate resource issues were considered and the potential for significant environmental effects evaluated.

### 6.2 Time Line for an EA

Depending on the complexity of the proposed action, completing the EA process can take 10 to 12 months. ARNG policy is to establish a schedule that will ensure completion of the document in a timely and cost-effective manner. A schedule based on an approximate 10-month time frame is provided in Table 6-1 as an example of how the process is organized. This schedule assumes that the action is not controversial and does not have national interest. The "ideal timeline" shown in Table 6-1 assumes no unusual issues or difficulties will be encountered with respect to the views of another agency or the public, threatened and endangered species, cultural resources, wetlands, real estate transactions, or other factors that can extend the timeline. The milestone events indicated must occur regardless of the schedule. Actions proposed by HQDA or other organizations outside the ARNG could require review cycles and coordination times other than those shown. In addition, other factors can cause a NEPA document schedule to change dramatically, including slippage in review times, lack of an available baseline, and changes in elements of the DOPAA.

The draft EA package prepared by the state ARNG will be forwarded to the NGB for NGB staffing. The comments will be evaluated and consolidated and the package returned to the state ARNG in approximately 45 days. The state ARNG will incorporate appropriate comments into the document prior to release for public comment for 30 days. In its discretion, a state may elect not to circulate the draft EA. Proponents may omit circulation of draft EAs for proposed actions that are unlikely to generate public interest, pertain to matters that are predominantly routine and non-controversial, or for other reasons do not require the extraordinary dual review (at both draft and final stages). Elimination of the draft comment period for EAs requires NGB approval. A

sample public review waiver request is presented in [Appendix BB](#). Advice in this area should be sought from the NGB early in the EA process.

**TABLE 6-1. SAMPLE TIME LINE FOR AN ENVIRONMENTAL ASSESSMENT**

| Milestone   | Calendar Days from Project Initiation |
|---|---------------------------------------|
| Complete project coordination with NGB  | 0                                     |
| Hold kickoff meeting  | 10                                    |
| Complete draft description of proposed action and alternatives  | 25                                    |
| Complete initial coordination/consultation with appropriate outside agencies (i.e., federal, state, local, and tribal)    | 40                                    |
| Complete internal draft EA/begin staffing within state ARNG   | 60                                    |
| Complete staffing of internal draft EA within state ARNG  | 70                                    |
| Complete preliminary draft EA/begin staffing within NGB   | 75                                    |
| Complete staffing/approval of preliminary draft EA within NGB   | 120                                   |
| Publish and distribute draft EA/begin public comment period (optional)  | 135                                   |
| End 30-day public comment period (optional)   | 165                                   |
| Complete internal final EA and preliminary draft FNSI (if applicable) and begin staffing within state ARNG (as necessary) | 185                                   |
| Complete staffing of internal final EA and preliminary draft FNSI within state ARNG                                       | 195                                   |
| Complete draft final EA and draft FNSI/begin staffing within NGB (as necessary)   | 200                                   |
| Complete staffing/approval of draft final EA and draft FNSI within NGB  | 245                                   |
| Publish and distribute final EA and draft FNSI/begin public review period   | 260                                   |
| End 30-day public review period   | 290                                   |
| Sign final FNSI   | 291                                   |
| Initiate action   | 291                                   |

Notification of a 30-day public comment process will be initiated by means of a display advertisement and legal notice published in at least one local newspaper of general circulation. Public notification for the final EA and draft FNSI will be conducted using the same procedures as for the draft EA (when the proponent has elected to circulate the draft EA for public comment). No action, other than planning on the proposal, may be taken for a minimum of 30 days following publication of the draft FNSI. If the draft FNSI is not contested within the 30-day public review period, either through legal action or substantive negative comments, the final FNSI may be approved and the proposal may be initiated. Under circumstances specified in 32 CFR 651.21 and 651.14(b)(2)(iii), the 30-day public review period can be reduced, with NGB approval, to no less than 15 days. [Appendix BB](#) contains a template to request reduction of the review period.

### 6.3 Document Development

**Basic components.** To develop an EA successfully, the proponent must have a basic understanding of the major components of the document. 32 CFR 651.34 states that EAs should be 1 to 25 pages in length. Within that framework, 32 CFR Part 651.34 identifies the major components of an EA as:

- Signature (Review and Approval) page.

- Purpose of and need for the action.
- Description of the proposed action.
- Alternatives considered.
- Affected environment.
- Environmental consequences.
- Conclusions regarding the effects of the proposed action.
- Listing of preparers, and agencies and persons consulted.
- References.

The basic components recommended for an ARNG EA are outlined in Section 6.5.

**Focus.** The EA should be well focused in each of its major components or sections. Writing style should be such that the document attains clarity and brevity but is still legally sufficient. ARNG preparers should use the following guidelines:

- Develop and follow an outline.
- Write clearly, concisely, and accurately.
- Provide only relevant information.
- Be consistent across all sections of the document.
- Use a checklist.<sup>17</sup>

Preparers should be careful not to “mix” discussions across subject areas inadvertently, unnecessarily increasing the length of the document and obscuring the line of thought for the analysis. Each section should be pure in its presentation of the subject matter. For instance, the section describing the proposed action should not include a discussion of alternatives to the proposed action. Similarly, the section describing the affected environment should focus only on baseline data (existing conditions) and should not include statements regarding potential impacts or findings. The environmental consequences section should analyze potential effects and should not include any supporting baseline data, which are reserved for the description of the affected environment.<sup>18</sup> These “crossovers” of technical sections in an EA are confusing to reviewers and decision makers and can require time-consuming and costly revisions.

EAs do not need to be detailed and lengthy if the effects are not likely to be significant. The information they contain should be presented as clearly and concisely as possible. When appropriate, existing documentation describing all or portions of the affected environment or other information applicable to describing the analysis results (e.g., technical research papers) may be incorporated by reference to help to cut down on the bulk of the EA (see also 40 CFR 1502.21). Because the audience is often not technically versed in all subject areas, the documents should be written in plain language. In addition, appropriate figures and graphics that support the

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<sup>17</sup> The ARNG uses a standard checklist to ensure that all components of an EA have been addressed in the document. A copy of this checklist is presented as [Appendix K](#) in this handbook.

<sup>18</sup> This Handbook presents an alternative format for EAs in which the “affected environment” and “environmental consequences” sections are combined into a single section, with environmental resources and conditions described in separate subsections. See Section 6.6.

text and can be easily interpreted by the public should be provided. Appendices should be used to support the main components of the EA, as appropriate. Whenever possible, technical editors should review the document to ensure accuracy, consistency, and readability.

**Cartographic standards.** The NGB has set minimum cartographic standards for map products created with geographic information systems (GIS) technology. The standards apply to all GIS users (defined as anyone who produces map products using GIS technology). Proponents whose NEPA documents use maps for graphic display are to comply with the cartographic standards. The standards apply to five categories of GIS products: draft products for GIS users, draft products for customer review, products for internal use only, products for public display, and products for official documents and Powerpoint slideshows. The cartographic standards are shown in [Appendix X](#).

**Recycled paper.** Consistent with 32 CFR 651.18, ARNG EAs will be prepared on recycled paper. The recycled paper symbol should be presented on the inside of the document cover. Draft and final EAs should be printed double-sided to conserve paper.

#### **6.4 Procedures for Supplemental EAs**

Procedures for preparing, circulating, and filing a supplemental EA are the same as those required for the original document, with the exception that any scoping conducted for the original EA need not be repeated. (See Section 1.6.5 for information on the application of supplemental documents.) Also, when preparing a supplemental EA, it is important to use those portions of the original document (through direct incorporation or incorporation by reference, rather than attaching the original document) that are still applicable and have not changed significantly. The preparer of the supplemental EA can then focus any new data collection, analysis, and documentation efforts on the proposed actions, resources, and resource issues that have changed. Maximizing use of existing information simplifies the overall EA effort and helps to reduce the size of the document without degrading the adequacy of the analysis or agency/public review (40 CFR 1502.21).

#### **6.5 Content of an EA**

A detailed outline for an ARNG EA is provided in the boxed text that follows. It is recommended that this format be used as a model in developing ARNG EAs. It is an interpretation, not a reinvention, of how Army and CEQ NEPA regulations are to be implemented. There might be situations where this format is not fully suited to addressing a particular ARNG action (e.g., where unique technical program, public involvement, or decision-making requirements exist), in which case some variation in format is appropriate.

Preparers should consult other sections of this handbook for detailed guidance on the application of NEPA to specific types of actions and on the treatment of certain “high-visibility” topics and resource areas. The information presented in this section is not intended to be all-inclusive. Ultimately, it is the proponent’s responsibility to identify, analyze, and document all relevant issues and effects associated with the proposed action and alternatives.

## Format and Content of an ARNG EA

**Cover.** The document cover should contain the name of the project, the month and year of the document (updated as each version is prepared), and the ARNG logo. It is helpful to use different colors for the covers of different versions of the EA (e.g., gray for preliminary draft, beige for draft, and green for final). The cover should be of a heavier paper stock than the text pages.

**Inside of Cover.** The inside of the document cover should provide an outline of the document's major sections; refer to [Appendix Y](#) for an example. This item is not required but is recommended for longer, more complex EAs as a quick reference to sections for the reader.

**Signature Page.** This is usually the first page of the document. It presents the title of the EA and lists the name, title, office, and signature (on final documents only) of key person who reviewed and approved the document. In some cases, it might also identify the proponent and document preparer separately. The signature page is completed by the state ARNG prior to submission of the final EA and draft FNSI to NGB-ARE. Examples of EA signature pages are provided in [Appendix Z](#). At a minimum, the signature will be signed by the Environmental Program Manager and the proponent. The signature page may also provide other important information, including a list of cooperating agencies (if any), points of contact, and an abstract that describes the proposed action and alternatives and identifies the issues and resources analyzed in the document. An example of this alternative format is provided in [Appendix Z](#).

**Table of Contents.** The Table of Contents for an EA should provide the section number and exact title of each document section, along with its corresponding page number. The List of Appendices, List of Tables, and List of Figures should be identified as separate sections in the Table of Contents. Anything in the document that precedes the Table of Contents should not be included.

**Acronyms and Abbreviations.** A list of the acronyms and abbreviations used throughout the EA should be provided.

### Section 1.0: Purpose of and Need for the Proposed Action

**1.1 Introduction.** This section briefly identifies the proposed action, names the responsible agency(ies) involved, and presents a history of events leading up to the proposed action. It also identifies the regulations implementing NEPA under which the document has been prepared.

**1.2 Purpose and Need.** This section provides a clear statement that enables the reader to understand why the proposed action is needed. Specific requirements for developing the purpose and need statement are discussed in Section 4.5 of this Handbook.

**1.3 Scope of the Document.** This section provides a brief overview of the actions, alternatives, and sites analyzed in the EA. It also identifies the resources that were evaluated. It is also useful to include here, or as a separate section, a statement that identifies what decision is to be made regarding the proposal.

**Section 2.0: Description of the Proposed Action.** This section provides a description of the proposed action. It should include such details as location considerations, numbers of personnel involved, and facility requirements. No program cost information should be included. Note that

alternatives to the proposed action must be described in Section 3.0 of the EA (Alternatives Considered), not in this section. The information presented in this section of the EA drives the identification of relevant issues and conditions arising from the activities that make up the proposed action, thus generating the effects that must be identified and evaluated. Information must be accurate, concise (to the point), comprehensive, and sufficiently detailed to permit a complete and objective analysis. For specific discussions on defining the proposed action, see Section 4.6.

### **Section 3.0: Alternatives Considered**

**3.1 Alternatives Development (Screening Criteria).** This section describes how the alternative actions and/or alternative sites were identified, including the application of selection or screening criteria<sup>19</sup>; identifies the reasonable alternatives that were considered for further evaluation, including the “no action” alternative; and explains reasons for rejecting alternatives (if any) found to be unreasonable. Possible situations where an alternative might not be considered reasonable include, but are not limited to, the following: outside the scope; irrelevant to the decision; not supported by scientific evidence; limited in extent, duration, and intensity; not feasible; or not affordable. Further information on identifying and describing alternatives is provided in Section 4.7 of this handbook.

**3.2 Alternatives to the Proposed Action.** In this section, each alternative to the proposed action should be identified and described under separate subsection numbers (Sections 3.2.1, 3.2.2, 3.2.3, and so forth, depending on the number of alternatives to be analyzed).

In cases where the proposed action described in Section 2.0 itself represents a fully developed alternative (typically the preferred alternative), the type of information presented in Section 3.2 for each alternative action should be similar in detail. If the information describing the proposed action in Section 2.0 is to serve as a general foundation from which there are more than one alternative means for its implementation (e.g., alternative locations at which to construct and operate a new facility), the alternative descriptions presented here should build on that earlier information in providing more specific, unique details on how and where each alternative action would be implemented. For further information on this approach and on describing alternatives, see Sections 4.6 and 4.7.

**3.3 No Action Alternative.** This section describes the status quo or ongoing actions at a particular location(s). This alternative should be described in sufficient detail so that its scope is clear and its potential effects can be identified and compared to those of the other alternatives. Section 4.7 provides further information on interpreting this alternative.

### **Section 4.0: Affected Environment**

The Affected Environment section of an EA contains a description of the current environmental conditions of the area(s) that would be affected if the proposed action (or alternative) was implemented. It represents the “as is” or “before the action” conditions (sometimes referred to as “baseline conditions”) at the installation or other locations. Only environmental resources and resource parameters that could be affected by the action or are of public concern should be

<sup>19</sup> The screening criteria for developing alternatives may include time constraints, specific training criteria, budget constraints, and others. Alternatives selected as a result of using screening criteria must be evaluated in detail.

included in the Affected Environment description and analyzed under Environmental Consequences (Section 5.0 of this EA outline). In addition, the level of detail to be applied to each particular resource area should be commensurate with the level of importance of and concern for that resource and the issues it presents. If any resource was excluded from discussion altogether, an explanation for why it was excluded (e.g., it was not affected by the proposed action or alternatives, or it is covered by prior NEPA reviews) should be provided in the introduction to this section. See 40 CFR 1501.7(a)(3) for further discussion on this topic.

**4.1 Location Description.** The purpose of this section is to provide a general overview of the affected installation's (or other site's) environmental setting. The types of information that should be briefly described are as follows:

- Geographic setting of the affected area
- Ongoing mission(s) and primary activities on the installation or on other affected property
- General landscape of the area
- General climatic conditions

**4.2 Land Use.** The following landscape and land use conditions should be described, as appropriate:

- Land use/land cover within the installation or on other affected property
- Aesthetics and visual resources (overall character of the landscape, including any unique natural and man-made features; location of public lands, federally protected areas, and other visually sensitive areas; and local plans and policies regulating visual resources)
- Building function and general architecture
- Relevant location of local communities
- Land use management plans (e.g., local government comprehensive plans and state coastal zone management plans)
- Local zoning
- Property ownership, leasing, and other property agreements
- Local/regional development plans/programs that may contribute to cumulative effects
- Real Property Development Plans

**4.3 Air Quality.** The following air quality factors in the project area should be described, as appropriate:

- Ambient air quality conditions
- Existing air emission sources
- Air pollution source permits
- Federal and state air pollution control regulations and standards
- Criteria for attainment/nonattainment areas
- Sensitive receptors on and off the installation



- Compliance with Federal and State Implementation Plans
- Basis of air conformity analysis or Record of Non-Applicability (RONA)
- Local or regional meteorological conditions, as they relate to pollutant dispersion (e.g., wind speed, wind direction, and mixing height)

**4.4 Noise.** Information in this section should describe the following, as appropriate:

- Stationary noise sources (e.g., airfield operations, ordnance demolition, firing ranges, maintenance facilities, and construction)
- Mobile noise sources (e.g., vehicular traffic and aircraft)
- Sensitive receptors on and off the installation
- Noise monitoring results
- Federal, state, and local noise standards
- Land use compatibility
- Environmental Noise Management Plan

**4.5 Geology and Soils.** Information in this section should describe the following, as appropriate:

- Topographic conditions
- Geologic bedrock types and any unique concerns (e.g., subsidence)
- Seismic conditions and fault features
- Soil types and any unique concerns (e.g., potential for erosion)
- Prime and unique farmland
- Mining resources and mineral rights

**4.6 Water Resources.** This section should describe the following for surface water and groundwater conditions, as appropriate:

- Hydrology
- Quality
- Point and nonpoint sources of pollution
- Floodplain areas for 100- and 500-year floods
- Water resource districts and other water rights

**4.7 Biological Resources.** This section should include appropriate information on local fauna, flora, and habitats, including the following:

- Species commonly found on the installation or on other affected property
- Occurrence of sensitive species (federally or state listed threatened, endangered, or candidate species; and rare or unique species) on or in the vicinity of the installation or other affected property
- Aquatic and terrestrial ecosystem types (e.g., forests, wetlands, and fields) found on the installation, or on other affected property, and their regional importance (if any)

- Special habitat areas (e.g., areas used by nesting or overwintering species)
- Vegetation and wildlife management plans and practices (e.g., INRMP)
- Coordination with the appropriate state office for environmental resources and U.S. Fish and Wildlife Service

**4.8 Cultural Resources.** This section should provide a brief discussion of the area's prehistory and a summary of the status of the cultural resources inventory for the project area, including the following:

- Sites, buildings, and other structures of historical significance, including significant prehistoric sites and those from the Cold War era
- Resources eligible for listing on the National Register of Historic Places
- Archeological resources
- Paleontological resources
- Coordination with the State Historic Preservation Officer and Tribal Historic Preservation Officer
- Programmatic agreements with the state
- Evidence of compliance with the DoD Annotated American Indian and Alaska Native Policy
- Integrated Cultural Resources Management Plan
- Inadvertent discovery response (the State's standard operating procedures in its ICRMP are to be followed)

**4.9 Socioeconomics.** To describe baseline sociological and economic conditions, the following elements should be discussed, as appropriate:

- Demographics
- Regional employment and economic activity
- Installation salaries and local expenditures
- Housing
- Schools
- Medical facilities
- Shops and services
- Recreation facilities
- Public and occupational health and safety
- Protection of children

**4.10 Environmental Justice.** Information in this section should describe the following for areas near the installation:

- Geographic distribution of minority populations
- Geographic distribution of low-income populations by poverty status

- Consumption patterns of populations that principally rely on fish and/or wildlife for subsistence

**4.11 Infrastructure.** This section describes both utilities and transportation elements associated with the affected location. Specific utilities that normally should be described, including both supply capacities and available capacities, are as follows:

- Potable water supply
- Wastewater treatment
- Solid waste disposal, including use of landfills and/or incinerators
- Energy sources, including electrical power, natural gas, fuel oil, coal, and/or steam generation

Applicable transportation information that normally should be described includes the following:

- Roadways and traffic on and off the installation
- Rail access and service to the installation or other affected property
- Air operations at the installation, or on other affected property, and associated airspace use

**4.12 Hazardous and Toxic Materials/Wastes.** Information in this section should describe the following, as appropriate:

- Storage and handling areas
- Waste disposal methods and sites
- Installation Restoration Program
- Materials and wastes present, including asbestos, radon, lead paint, polychlorinated biphenyls (PCBs), and radioisotopes
- Ordnance use and disposal
- Aboveground and underground storage tanks
- Pollution prevention programs and plans

## **Section 5.0: Environmental Consequences**

This section forms the scientific and analytic basis for the comparison of alternatives. It identifies the direct, indirect, and cumulative effects of the proposed action and alternatives (presented in Sections 2.0 and 3.0 of this EA outline) on each of the resource areas previously described in the Affected Environment section. Both beneficial and adverse effects are to be described. If no effects are identified for a particular resource area, that fact should be mentioned. When describing direct and indirect effects, it is not necessary to separate one from the other. Cumulative effects, however, are best broken out in a separate discussion covering all of the applicable resources, near the end of the Environmental Consequences section. Further guidance on identifying and describing potential effects is provided throughout Section 8 of this Handbook.

Along with describing the effects, measures planned to mitigate adverse effects (e.g., management of military vehicular traffic to prevent accelerated erosion, maintenance of

abandoned facilities, and fencing around unexploded ordnance areas) and the likely results of their implementation should be discussed in the same section that describes the adverse effects. Agency consultation results that were instrumental in resolving impact and mitigation issues (e.g., in preserving endangered species habitat or historic sites) should be discussed and referenced. Further discussions on identifying mitigation measures and monitoring their effectiveness are presented in Appendix C of 32 CFR Part 651. In addition, any federal permits, licenses, and other entitlements that would be necessary to implement the proposal should be identified where applicable.

The basic organization for most of Section 5.0 is presented in the following sample outline for land use and air quality resources. Each resource section from the Affected Environment (cultural resources, noise, water resources, etc.) should be numbered separately, and the resource sequence should correspond to the sequence used in the Affected Environment section of the EA. Under each resource, separate subsections are used to present effects discussions for the proposed action and each individual alternative, including the no action alternative, described in Sections 2.0 and 3.0 of this EA outline. When evaluating the no action alternative, it is important to remember that adverse effects sometimes do occur under this alternative.

## **5.1 Land Use**

5.1.1 Effects of the Proposed Action

5.1.2 Effects of Alternative(s) to the Proposed Action<sup>20</sup>

5.1.3 Effects of the No Action Alternative

## **5.2 Air Quality**

5.2.1 Effects of the Proposed Action

5.2.2 Effects of Alternative(s) to the Proposed Action

5.2.3 Effects of the No Action Alternative

**5.3 through 5.12.** For each of the remaining resources to be addressed, use the same format as above.

**5.13 Mitigation Measures.** This section should present and compare, in summary form, the mitigation plans for the preferred alternative and the reasonable alternatives evaluated in this section. Mitigation measures can include such actions as managing military vehicular traffic to prevent accelerated erosion, maintaining abandoned facilities, and installing fencing around unexploded ordnance areas. Further discussions on identifying mitigation measures and monitoring their effectiveness are presented in Appendix C of 32 CFR Part 651.

**5.14 Cumulative Effects.** This section discusses the relevant cumulative effects on those resources affected by the proposed action and alternatives. Refer to Sections 4.11.1 and 8.20 for

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<sup>20</sup> When multiple alternatives are considered, each one should be analyzed and discussed in a separate subsection under each resource area.

further discussions on cumulative effects.

## **Section 6.0: Comparison of Alternatives and Conclusions**

**6.1 Comparison of the Environmental Consequences of the Alternatives.** The purpose of this section is to compare and contrast the environmental effects of the alternatives. To help in this comparison, this section should contain a summary matrix that shows the overall effects for each of the alternatives. Two different example formats for matrices are presented in [Appendix AA](#). If the first format shown in [Appendix AA](#) is used, the information should be as quantifiable as possible. If the second format is used, in which levels of effects are represented using qualifiers in the form of symbols, it is important that such qualifiers be carefully explained and interpreted on the matrix or in the text of this section. NGB-ARE strongly recommends the use of graphics to show comparisons among alternatives because the technique enhances the reader's comprehension of the material being presented.

**6.2 Conclusions.** The Conclusions section should provide a clear, substantive statement regarding the insignificance (or significance) of the effects identified for each of the alternatives analyzed in Section 5.0.

**Section 7.0: References.** The References section should provide bibliographical information for sources cited in the text of the EA. Draft documents should be cited only if the documents have attained relatively high review or approval within the issuing organization. Normally, only those references which are reasonably obtainable by the public are to be cited.

**Section 8.0: Glossary.** This section may provide a list of definitions for technical terms used in the EA. Inclusion of a glossary in ARNG EAs is normally not required. When appropriate, a glossary may be included to explain any unusual or abstract terms.

**Section 9.0: List of Preparers.** The format for listing the preparers is explained in 32 CFR Part 651. The preparers selected should be diverse enough to ensure a multidisciplinary approach to the environmental and socioeconomic analysis.

**Section 10.0: Agencies and Individuals Consulted.** This section should list the names and agencies or organizations, if any, of individuals who were contacted for data and information used in support of the analysis and preparation of the EA, whether or not a response was received. Normally, only individuals external to the ARNG and NGB are listed here.

**Appendices.** Use appendices to support the content and conclusions contained in the main body of the EA, when necessary. Types of appendices usually included in an EA are as follows:

- Supporting technical data and methodological approaches (e.g., air emissions monitoring data, archeological survey results, and unique socioeconomic modeling applications)
- Official communications to and from outside agencies (e.g., U.S. Fish and Wildlife Service, State Historic Preservation Officer, Tribal Historic Preservation Officer, Native American tribes) that pertain to environmentally sensitive resources, cultural resources, and related issues. (See examples of ARNG coordination letters sent to outside agencies in [Appendix J](#).)

- Public comments and responses (for use in the final EA only; refer to Section 6.7 for guidance on this topic)
- Newspaper public notice affidavits (for use in the final EA only; used to show proof of notices on availability of the draft EA)

**6.6 Alternative Formats for an EA**

In addition to the standard EA format presented in Section 6.5 (referred to as Format 1), an alternative format is available for use in ARNG EAs. This second format (referred to as Format 2) combines the description of the affected environment and the analysis of environmental consequences into one section. Traditionally, these discussions have been separated into Sections 4.0 (Affected Environment) and 5.0 (Environmental Consequences), as under Format 1. Although these two particular sections are combined in Format 2, the overall content of the EA is the same.

Table 6-2 provides a sample outline for Section 4.0 using Format 2. This outline shows how the affected environment and environmental consequences for a given resource area are presented together, with the description of the existing conditions followed immediately by an analysis of potential effects. As discussed in Section 6.3, the contents of these two subject areas should not be mixed. Format 2 is particularly useful when applied to EAs that are exceptionally long or address multiple locations. ARNG proponents should consider the applicability of Format 2 when determining the best approach for organizing their EAs.

As discussed in Section 3.7, environmental management plans should be integrated with the NEPA process. Instead of completing the management plan and its NEPA analysis as separate documents, effective integration can be accomplished using a document format that combines the management plan and the NEPA document into a single report. An example of such a document format is presented in [Appendix M](#) for an INRMP EA. The resultant “planning assessment” includes a comprehensive description, analysis, and evaluation of all environmental components at a given location.

**TABLE 6-2. SAMPLE OUTLINE USING FORMAT 2**

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- 4.0 Environmental Conditions and Consequences
  - 4.1 Location Description
  - 4.2 Land Use
    - 4.2.1 Affected Environment
    - 4.2.2 Environmental Consequences
      - 4.2.2.1 Effects of the Proposed Action
      - 4.2.2.2 Effects of Alternative(s) to the Proposed Action
      - 4.2.2.3 Effects of the No Action Alternative
  - 4.3 Air Quality
    - 4.3.1 Affected Environment
    - 4.3.2 Environmental Consequences
      - 4.3.2.1 Effects of the Proposed Action
      - 4.3.2.2 Effects of Alternative(s) to the Proposed Action
      - 4.3.2.3 Effects of the No Action Alternative
  - 4.4 Etc.

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## 6.7 Responding to Comments

The proponent may make draft EAs available locally for a 30-day public comment period. Public comments in the form of letters, faxes, and so forth, that are received must be presented in an appendix to the final EA. Replies should make reference to the portions of the EA that address the issue, particularly if a change to the document has occurred as a result of the comment. A person who submitted a comment should be able to track the receipt and disposition of the comment. Other pertinent information provided by the public should also be incorporated into the final document, as appropriate. Responses to comments are to be recorded on an errata sheet and, in appropriate cases, changes made to the text of the EA.

As part of the NEPA process management plan discussed in Section 4.2, or as part of a separate public affairs plan if one is prepared early in the EA process, the development of procedures for handling comments received and for developing responses to the comments later on is recommended. When a large volume of comments are received, they should be logged into a database and a separate file created for master copies. Comments can then be easily screened for substantive points raised.

Some comment letters might identify a single issue; others might contain a long list of reviewers' concerns. As appropriate, individual points should be catalogued and cross-referenced so none are overlooked. If many comment letters and documents making the same points are received, it might be useful to consolidate duplicates and closely related comments to simplify the number of responses that must be developed. This approach helps to facilitate responding to a recurring comment once instead of repeating the response multiple times. A benefit of following this process is that it helps to ensure that responses given are consistent. It is also especially useful when responding to similar comments contained in "form letters."

Responses should be written openly, clearly, candidly, and with respect for the person commenting. All comments must receive a response. Substantive comments received are generally staffed with the proponent, the Environmental Program Manager, and the state Public Affairs Officer, as necessary, for the development of responses. (Refer to 40 CFR 1503.4 for further information on responding to public comments.)

Substantive comments are those that address either the adequacy of the environmental analysis or the merits of the alternatives or both. CEQ Regulations, 40 CFR 1503.3(a). Comments may be disregarded for good cause. Reasons for possibly disregarding comments include their being not relevant to the adequacy of the analysis or alternatives or their being illegible, unsigned, obscene, or out of time (i.e., late). "Form letter" comments urging the same point may be treated as a single comment. Disregarded comments should be marked as such and retained by the proponent as part of the administrative record.

## 6.8 Finding of No Significant Impact

The FNSI is a separate, brief document (usually no longer than two pages) that presents the reasons why the proposed action would not significantly affect the human environment. It documents the decision that an EIS is not required. A sample format for a draft and final FNSI is presented in [Appendix G](#). The draft FNSI is to contain the following:

- Name of the action



- Brief description of the proposed action or preferred alternative, including any other alternatives considered<sup>21</sup>
- Brief discussion of likely environmental effects
- Reasoning behind the determination of no significant effects (including information on mitigation measures, if applicable; see also Section 6.9)
- Deadline and point of contact for receipt of comments or requests for further information

If the analysis in the EA concludes that no mitigation measures are necessary for a proposed ARNG action, then the corresponding FNSI should contain the following statement: “No mitigation measures will be necessary to reduce any adverse environmental impacts to below significant levels.”

Under Army and NGB policy, the public must be given at least 30 days to review and comment on the final EA and draft FNSI before issuing the final FNSI and initiating the proposed action. Notification for the public review period is usually initiated by means of a display advertisement or legal notice published in at least one local newspaper of general circulation.

When the proposed action is one of national concern, is unprecedented, or normally requires an EIS, both the final EA and draft FNSI must be made available for a minimum 30-day public review period prior to making a final decision, and public notification must include a news release to publicize the availability of the document. If the action is of national significance, HQDA must make a simultaneous announcement that includes publication in the *Federal Register*. 32 CFR 651.35 provides that draft FNSIs that have national interest should be submitted, along with a Questions and Answers package, through command channels to the Assistant Secretary of the Army (Installations and Environment) for approval and subsequent publication in the *Federal Register*. As previously discussed, 32 CFR 651.14 allows the normal 30-day public review period to be reduced to a minimum of 15 days in cases where (1) waiting until the end of the 30-day period would jeopardize the project; (2) the additional comment period provides no public benefit; and (3) the proposed action is not one of national concern, is not unprecedented, and does not normally require an EIS. Reducing the 30-day period requires NGB approval. A sample request is presented in [Appendix BB](#).

Unless comments received during the public review period convince the decision maker that further analysis and documentation are required, the final FNSI may be signed and the proposed action may be initiated. If a FNSI cannot be supported by the analysis, the proponent may choose to modify or terminate the proposal or proceed to an EIS. If the proponent chooses to proceed to an EIS, the Environmental Program Manager should contact the NGB-ARE for further guidance.

## 6.9 Mitigated EA/FNSI

A “mitigated EA/FNSI” may be produced when, during preparation of an EA, the proponent begins to suspect that the action might cause significant environmental effects. If the proponent can show that the potential effects can be reduced to less-than-significant levels through the addition of appropriate mitigation measures, the EA/FNSI may be completed and no EIS need be prepared. Preparing a mitigated EA/FNSI typically requires less time and money than preparing an EIS. For a mitigated EA/FNSI to be considered legally adequate, however, the EA must show

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<sup>21</sup> The preferred alternative selected in the FNSI can be the proponent’s original proposed action, one of the alternative actions, or a mix of the alternatives analyzed in the EA.

that a thorough analysis of environmental consequences was conducted, that the mitigation measures on which the EA/FNSI is based are specific and project-related, and that the measures will reduce the projected effects to less-than-significant levels. For a proponent to demonstrate convincingly that it is fully committed to implementing such mitigation measures with its proposal, the measures should be incorporated as part of the proposed action (or preferred alternative) description in the early sections of the EA. The measures should also be referred to or described in the accompanying FNSI. If the mitigation measures to which a proponent committed in an EA are eventually not funded, the results presented in the EA might no longer be valid. The proposal and the significance of its potential effects must then be reevaluated under NEPA. (Further discussion on mitigation measures and commitments to mitigation are provided in Section 8.21.)

Mitigated EAs/FNSIs are often challenged because of the perception that appropriate public participation is being avoided if an EIS is not prepared. Appropriate public participation in the review of the draft EA can help to ensure that all relevant issues have been addressed and that potential effects have been thoroughly evaluated for significance.

If an agency cannot convincingly show in an EA that mitigation measures would reduce the effects to less-than-significant levels, the agency should prepare an EIS.

#### **6.10 Administrative Record**

The Administrative Record is a collection of all written information obtained during the preparation of the EA and documents the sources used to reach decisions. It includes, but is not limited to, written data, reports, communications (e.g., correspondence, records of telephone conversation), modeling results, maps, and illustrations. The Administrative Record should be compiled in conjunction with the EA and retained by the proponent and/or lead agency for a reasonable time following completion of the proposed action and all mitigation measures, which can take up to several years (e.g., multiyear training events and out-year construction projects). In most cases, the state ARNG maintains the Administrative Record. Further discussion on developing an Administrative Record is provided in Section 4.12.

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## **7.0 ENVIRONMENTAL IMPACT STATEMENT PREPARATION AND CONTENT**

### **7.1 Introduction**

The preparation and content of an EIS, to a certain extent, are similar to those of an EA. As stated in Section 6.0, many of the same environmental resource areas and methodological approaches that apply to the analysis and documentation for an EIS also apply to EAs. Much of the guidance applicable to an EA is repeated here for the convenience of users preparing EISs. This section is intended to guide ARNG proponents and document preparers through the EIS process by establishing a greater level of consistency in the preparation of ARNG EISs. It provides the detailed information needed to develop this type of analysis and document.

The EIS format the ARNG uses is based on the CEQ regulations and guidance contained in Appendix E to 32 CFR Part 651. The CEQ regulations provide for a considerable degree of agency flexibility in the EIS analysis and documentation process. Although flexibility has allowed the ARNG to prepare or customize NEPA documents based on particular circumstances, over the years it has also resulted in the use of a variety of formats. ARNG participants in the NEPA process have indicated that a more structured, standardized format would greatly facilitate document preparation, training of new personnel, and, particularly, document review and approval.

### **7.2 EIS versus EA**

Although most ARNG proposed actions requiring detailed NEPA analysis result in the preparation of EAs, certain proposals require the ARNG to prepare an EIS. The EIS process is generally more formal and vigorous than that for an EA. The EIS process also entails more formal and extensive public participation. Table 7-1 lists major differences between EAs and EISs prepared by the ARNG.

### **7.3 Time Line for an EIS**

Depending on the complexity of the proposed action, the time required to complete and process an EIS is sometimes 24 months or more. ARNG policy is for proponents to establish a schedule that will ensure that the analysis is completed in a timely, cost-effective manner and results in a document that is legally sufficient. A schedule for an approximate 24-month time frame is provided in Table 7-2 as an example of how the EIS process is organized. The milestone events indicated must occur regardless of the schedule. Several factors can cause a NEPA analysis schedule to change dramatically, including slippage in review times, additional review cycles, lack of available baseline data, and changes in elements of the DOPAA. Moreover, completion of an EIS can be delayed in cases where initial analysis and documentation are inadequate, lack proper internal staffing, do not properly develop the proposed action or alternatives, or fail to identify interested stakeholders, or where coordination with other concerned federal agencies has not occurred.

Publication of the NOI (see Section 7.4) in the *Federal Register* initiates the public scoping period, which is typically 30 to 90 days in length. During the scoping period, a scoping meeting(s), to which agencies and the general public are invited to learn more about the ARNG's proposal and to express their views on the process and on issues to be addressed, should be held.

**TABLE 7-1. MAJOR DIFFERENCES BETWEEN AN EA AND AN EIS**

| EA   | EIS  |
|--|--|
| Process usually begins independently without formal public notification.   | Process officially begins with an NOI published in the <i>Federal Register</i> .   |
| Public Affairs Plan is not required.   | Public Affairs Plan is required.   |
| Public scoping is not required.  | Public scoping is required and typically includes holding a public scoping meeting(s).                                   |
| Public notices are typically published only in local newspapers.   | NOAs are published in the <i>Federal Register</i> in addition to public notices in local newspapers.                     |
| A 30-day public comment period is provided for draft EA (if proponent elects to circulate draft EA); public meetings are not required. | A 45-day (minimum) public comment period for DEISs is required and typically includes a public meeting(s) or hearing(s). |
| Usually does not require HQDA review and approval.   | Requires HQDA review and approval.   |
| EAs are not required to be submitted to EPA.   | Both DEISs and FEISs must be submitted to EPA for review and filing.   |
| Generally less detailed, less complex, and, therefore, less time-consuming.  | Generally more detailed, more complex, and more comprehensive; involves a more time-consuming process.                   |
| Process concludes with a 30-day public review period for the final EA and draft FNSI, or with the publication of an NOI.               | Process concludes with a ROD following a 30-day (minimum) public review period for the FEIS.                             |

The preliminary DEIS and draft FEIS must be sent to HQDA for review and comment before their approval for release to the public. Approximately 30 to 40 days is needed for each of these HQDA reviews.

The DEIS must be made available for no less than a 45-day public comment period, during which time at least one public meeting should be held. Close coordination between the state Public Affairs Officer and the NGB Public Affairs Office is required before setting up such meetings, and completion of the NGB's level 6 or 10 training course in risk communication is recommended for all meeting participants. The public comment period does not officially begin until EPA publishes its notice for the DEIS in the *Federal Register*.<sup>22</sup> Simultaneously, NGB publishes a detailed NOA on the DEIS and comment period in the *Federal Register*. The state ARNG, in coordination with the NGB, will publish similar notices in local newspapers. A sample NOA for an EIS is presented in [Appendix I](#).

With the release of the FEIS, a 30-day (minimum) public review period is required before the ROD is signed and released to the public. Implementation of the action may begin immediately following signed approval of the ROD.

<sup>22</sup> Each week, EPA publishes a notice in the *Federal Register* that lists the EISs received during the preceding week.

TABLE 7-2. SAMPLE TIME LINE FOR AN EIS

| Milestone  | Calendar Days from Project Initiation |
|--|---------------------------------------|
| Complete project coordination with NGB/initiate project  | 0                                     |
| Hold kickoff meeting   | 20                                    |
| Complete public affairs plan   | 45                                    |
| Complete draft description of proposed action and alternatives   | 75                                    |
| Publish NOI in <i>Federal Register</i> /begin public scoping period  | 120                                   |
| Hold public scoping meeting(s)   | 140                                   |
| Complete initial coordination/consultation with appropriate outside agencies (federal, state, local, and tribal) | 150                                   |
| End public scoping period  | 180                                   |
| Complete internal DEIS/begin staffing within state ARNG and NGB  | 240                                   |
| Complete staffing of internal DEIS within state ARNG and NGB   | 285                                   |
| Complete preliminary DEIS/begin staffing within HQDA   | 330                                   |
| Complete staffing/approval of preliminary DEIS within HQDA   | 390                                   |
| Conduct Congressional drop   | 420                                   |
| Publish and distribute DEIS to EPA and public  | 430                                   |
| Publish EPA notice and NOA for DEIS in <i>Federal Register</i> /begin public comment period                      | 430                                   |
| Hold public meeting(s)   | 460                                   |
| End 45-day public comment period   | 495                                   |
| Complete internal FEIS/begin staffing within state ARNG and NGB  | 535                                   |
| Complete staffing of internal FEIS within state ARNG and NGB   | 580                                   |
| Complete draft FEIS/begin staffing within HQDA   | 580                                   |
| Complete staffing/approval of draft FEIS within HQDA   | 640                                   |
| Conduct Congressional drop   | 670                                   |
| Publish and distribute FEIS to EPA and public  | 710                                   |
| Publish EPA notice and NOA for FEIS in <i>Federal Register</i> /begin public review period                       | 710                                   |
| End 30-day public review period  | 740                                   |
| Sign ROD/initiate action/issue public notices  | 740                                   |

#### 7.4 Notice of Intent

An NOI is prepared after the decision to prepare an EIS has been made and the proposed action and the alternatives to be considered have been reasonably well defined. The NOI is published in the *Federal Register* to formally announce the preparation of an EIS on a proposed action, and to solicit comments from the public as part of scoping. The required contents of an NOI specified in the CEQ regulations (40 CFR 1508.22) are as follows:

- A brief description of the proposed action and alternatives. The purpose and need statement should also be included.
- A brief description of the ARNG's scoping process, including the time, date, and location of any scoping meeting(s) planned, as well as an address to which comments may be mailed and/or sent electronically.

- The name and address of the point of contact within the ARNG or NGB who can address questions on the proposal and the EIS process. (It is recommended that a phone number for the point of contact also be included.)

The NOI should also include information on the availability of project-related documents or supporting information on the proposal that the public can view. Such documents can be placed in a community library or other easily accessible government office, preferably one that is open beyond normal work hours.

Some readers of an NOI might not be familiar with the proposed action or the project location. It is therefore prudent to include sufficient background information in the NOI to help readers to understand what the proposal is about and why it is needed. Giving readers sufficient information minimizes confusion and helps to generate more meaningful comments. Depending on the extent of non-English-speaking persons in the affected community, making appropriate translations of the NOI available to the general public might also be prudent. A sample NOI is provided in [Appendix H](#).

If for some reason work on an EIS stops or is postponed indefinitely, a cancellation notice must be published in the *Federal Register*. The cancellation notice refers to the original NOI and gives the rationale for ceasing work.

## 7.5 Document Development

**Basic components.** To develop an EIS successfully, the proponent must have a basic understanding of the major components of the document. 32 CFR 651.40(b) states that an EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following:

- Cover sheet.
- Summary.
- Table of contents.
- Purpose of and need for the action.
- Alternatives considered, including proposed action and no-action alternative.
- Affected environment (baseline conditions) that may be impacted.
- Environmental and socioeconomic consequences.
- List of preparers.
- Distribution list.
- Index.
- Appendices (as appropriate).

The basic components of an example ARNG EIS are outlined in Section 7.7.

**Focus.** The EIS should be well focused in each of its major components or sections. Writing style should be such that the document attains clarity, brevity, and legal sufficiency. ARNG preparers should adhere to the following guidelines:

- Develop and follow an outline.

- Write clearly, concisely, and accurately.
- Provide only relevant information.
- Be consistent across all sections of the document.

Preparers should be careful not to mix discussions of different subject areas inadvertently, unnecessarily increasing the length of the document and obscuring the line of thought for the analysis. Each section should be “pure” in its presentation of the subject matter. For instance, the section describing the proposed action should not include a discussion of alternatives to the proposed action. Similarly, the section describing the affected environment should focus only on baseline data (existing conditions) and should not include statements regarding potential impacts or findings. The Environmental Consequences section should analyze potential effects and should not include any supporting baseline data, which are reserved for the description of the affected environment. These “crossovers” of technical sections within an EIS are confusing to reviewers and decision makers and can require time-consuming, costly revisions.

EISs should be presented as clearly and concisely as possible. When appropriate, existing documentation describing all or portions of the affected environment or other information applicable to describing the analysis results (e.g., technical research papers) can be incorporated by reference to help to cut down on the bulk of the EIS (see also 40 CFR 1502.21). Because the audience is often not technically versed in all subject areas, the documents should be written in plain language. In addition, appropriate figures and graphics that support the text and can be easily interpreted by the public should be provided. Appendices should be included to support the main components of the EIS, as appropriate. Whenever possible, technical editors should review the document to ensure accuracy, consistency, and readability.

**Cartographic standards.** The NGB has set minimum cartographic standards for map products created with geographic information systems (GIS) technology. The standards apply to all GIS users (defined as anyone who produces map products using GIS technology). Proponents whose NEPA documents use maps for graphic display are to comply with the cartographic standards. The standards apply to five categories of GIS products: draft products for GIS users, draft products for customer review, products for internal use only, products for public display, and products for official documents and Powerpoint slideshows. The cartographic standards are shown in [Appendix X](#).

**Recycled paper.** Consistent with 32 CFR 651.18, ARNG EISs will be prepared on recycled paper. The recycled paper symbol should be presented on the inside of the document cover. In terms of document length, the text of an FEIS should not exceed 150 pages, although proposals of unusual scope or complexity might require up to 300 pages (40 CFR 1502.7). Both DEISs and FEISs should be printed double-sided to conserve paper.

## 7.6 Procedures for Supplemental EISs

Procedures for preparing, circulating, and filing a supplemental EIS (refer to Section 1.6.5 for information on the application of supplemental documents) are the same as those required for the original document, with the exception that scoping for an EIS might not need to be repeated (40 CFR 1502.9(c)(4)). Also, when preparing a supplemental EIS, it is important to use those portions of the original document (through direct incorporation or incorporation by reference, rather than attaching the original document) that are still applicable and have not changed significantly. The preparer of the supplemental EIS can then focus any new data collection, analysis, and documentation efforts on the proposed actions, resources, and resource issues that



have changed. Maximizing use of existing information simplifies the overall EIS effort and helps to reduce the size of the document without degrading the adequacy of the analysis or agency/public review.

## **7.7 Content of an EIS**

A detailed outline for an ARNG EIS is provided in the following boxed text. It is recommended that this format be used as a model in developing ARNG EISs. It is an interpretation, not a reinvention, of how Army and CEQ NEPA regulations are to be implemented. This format includes a slight enhancement of the regulations in that it uses separate sections to describe the proposed action and the alternatives rather than combining the two. This separation allows for more focus in describing the proposed action, thereby providing sufficient detail to ensure understanding and make the description more useful to both preparers and reviewers of the document. There might be situations where this format is not fully suited to addressing a particular ARNG action (e.g., where unique technical program, public involvement, or decision-making requirements exist), in which case some variation in format is appropriate.

For most sections of an EIS, the content is generally the same as that in an EA (see Section 6.5). The major difference between the two documents is that an EIS is more comprehensive and contains a greater level of detail than is provided by an EA. Preparers should consult other sections of this handbook for detailed guidance on the application of NEPA to specific types of actions and on the treatment of certain “high-visibility” topics and resource areas. The information presented in this section is not intended to be all-inclusive. Ultimately, it is the proponent’s responsibility to identify, analyze, and document all relevant issues and effects associated with the proposed action and alternatives.

## Format and Content of an ARNG EIS

**Cover.** The document cover should contain the name of the project, the month and year of the document (updated as each version is prepared), and the ARNG logo. It is helpful to use different colors for the covers of different versions of the EIS (e.g., gray for preliminary draft, beige for draft, and green for final). The cover should be of a heavier paper stock than the text pages.

**Inside of Cover.** The inside of the document cover should provide an outline of the document's major sections; refer to [Appendix CC](#) for an example. This item is not required but is recommended as a quick reference to sections for the reader.

**Signature Page.** This is usually the first page of the document. It presents the title of the EIS and lists the name, title, office, and signature (on final documents only) of each key person responsible for reviewing and approving the document; it may also identify the proponent and document preparer separately. It also provides other important information, including a list of cooperating agencies (if any), points of contact, and an abstract that describes the proposed action and alternatives and identifies the issues and resources analyzed in the document. It is also useful to provide information on the availability of the document and any formal comment or review periods (see 40 CFR 1502.11). A sample EIS signature page is provided as [Appendix DD](#).

**Summary.** The Summary should highlight the major conclusions of the environmental analysis and identify unresolved or controversial issues. The Summary should outline any mitigation measures required to initiate the action. New data should not be mentioned in the Summary; only data and key findings covered in the EIS should be summarized. The Summary should be succinct (usually no more than 15 pages in length) and typically contains the following sections:

- *Introduction.* A brief overview of the proposed action, the locations proposed for the action, a history of events leading up to the proposed action, and the general scope of the EIS is provided.
- *Purpose and Need.* The purpose of and need for the proposed action are described.
- *Proposed Action.* Key components of the proposed action are highlighted, including both construction and operational phases, if applicable.
- *Alternatives.* Each of the alternatives analyzed is briefly described. In addition, the preferred alternative (if any) should be presented with a brief description of why that course of action is preferred.
- *Environmental Consequences.* A summary of the key findings of the environmental analysis presented in the EIS, including any controversial issues, is provided. The main effects of each alternative analyzed should be described (e.g., effects on socioeconomics, air quality, infrastructure, etc.). This section should also compare and contrast the effects of the various alternatives. To help in this comparison, it should contain a summary matrix that compares the overall effects for each of the alternatives. Two different example formats of matrices are presented in [Appendix AA](#). When the first format is used, the information should be as quantifiable as possible. If the second matrix, in which impact levels are represented using qualifiers in the form of symbols, is used, it is very important that such qualifiers be carefully explained and interpreted on the matrix or in the text of this section.

The pages of the Summary should be numbered S-1, S-2, and so forth. Depending on the overall

length of the EIS, the Summary may be published as a separate document for distribution to reviewers who do not require the entire EIS. When bound separately, it should have a formal cover, similar to that of the EIS, and should also include a copy of the signature page.

**Table of Contents.** The Table of Contents for an EIS should provide the section number and title of each document section, along with its corresponding page number. The List of Appendices, List of Tables, and List of Figures should be identified as separate sections in the Table of Contents. Anything in the document that precedes the Table of Contents (e.g., Summary) should not be included.

## **Section 1.0: Purpose of and Need for the Proposed Action**

**1.1 Introduction.** This section briefly identifies the proposed action and the responsible agency(ies) involved, and provides a history of events leading up to the proposed action. It also identifies the regulations implementing NEPA under which the document has been prepared.

**1.2 Purpose and Need.** This section provides a clear statement that enables the reader to understand why the specific proposal is needed. Specific requirements in developing the purpose and need statement are discussed in Section 4.5. It is also useful to include here, or as a separate section, a statement that identifies what decision(s) is to be made regarding the proposal.

**1.3 Scope of the Document.** This section provides a brief overview of the actions, alternatives, and sites analyzed in the EIS, along with identifying the resources evaluated.

**1.4 Public Participation.** For the DEIS, this section should identify the public involvement activities that have occurred (scoping period, meetings, newsletters, and so forth) and are planned (e.g., review and comment on the DEIS, followed by release of the FEIS). It should also summarize the key issues identified during scoping. For the FEIS, a summary of all of the public involvement that has occurred should be included. In addition, this section briefly summarizes the issues identified from comments received on the DEIS.

**1.5 Related National Environmental Policy Act Reviews.** This section should identify any existing or in-process NEPA documents related to the proposal or location analyzed in the EIS and should briefly summarize how they are related to the proposed action.

## **Section 2.0: Description of the Proposed Action**

This section provides a description of the proposed action. It should include such details as location considerations, numbers of personnel involved, and facility requirements. No program cost information should be included. Note that alternatives to the proposed action must be described in Section 3.0 of the EIS (Alternatives Considered), not in this section.

The information presented in this section of the EIS drives the identification of relevant issues and conditions arising from the activities that make up the proposed action, thus generating the effects that must be identified and evaluated. Information must be accurate, concise, comprehensive, and sufficiently detailed to permit a complete and objective analysis. For specific discussions on defining the proposed action, see Section 4.6.

## Section 3.0: Alternatives Considered

**3.1 Alternatives to the Proposed Action.** This section describes how the alternative actions and/or alternative sites were identified, including the application of selection or screening criteria,<sup>23</sup> and lists the reasonable alternatives that were considered for further evaluation, including the “no action” alternative. In this section, each alternative to the proposed action, including the preferred alternative (if known), should be identified and described under separate subsection numbers (Sections 3.1.1, 3.1.2, 3.1.3, and so forth, depending on the number of alternatives to be analyzed). The preferred alternative must be identified in the FEIS unless another law prohibits the expression of such a preference (40 CFR 1502.14(e)).

In cases where the proposed action described in Section 2.0 itself represents a fully developed alternative (typically the preferred alternative), the type of information presented in Section 3.1 for each alternative action should be similar in detail. If the information describing the proposed action in Section 2.0 is to serve as a general foundation from which there are more than one alternative means for its implementation (e.g., alternative locations at which to construct and operate a new facility), the alternative descriptions presented here should build on that earlier information in providing more specific, unique details on how and where each alternative action would be implemented. For further information on this approach and on describing alternatives, see Sections 4.6 and 4.7.

**3.2 No Action Alternative.** This section describes the status quo or ongoing actions at a particular location(s). This alternative should be described in sufficient detail so that its scope is clear and its potential effects can be identified and compared to those of the other alternatives.

**3.3 Alternatives Eliminated From Further Consideration.** This section provides a brief description of alternatives that were eliminated from further analysis (if any) and explains why they were found to be unreasonable. To help explain this decision, a summary table comparing all the alternatives against each of the selection criteria should be included, particularly when a number of criteria were applied. Possible situations where an alternative might not be considered reasonable include, but are not limited to, the following: outside the scope; irrelevant to the decision; not supported by scientific evidence; limited in extent, duration, and intensity; not feasible; or not affordable.

## Section 4.0: Affected Environment

The Affected Environment section of an EIS contains a description of the current environmental conditions of the area(s) that would be affected if the proposed action (or alternative) was implemented. It represents the “as is” or “before the action” conditions (sometimes referred to as “baseline conditions”) at the installation or other locations. Only those environmental resources and resource parameters that could be affected by the action or are of public concern should be included in the Affected Environment description and analyzed under Environmental Consequences (Section 5.0 of this EIS outline). In addition, the level of detail to be applied to each particular resource area should be commensurate with the level of importance of and concern for that resource and the issues it presents. If a particular resource was excluded from

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<sup>23</sup> The screening criteria for developing alternatives may include time constraints, specific training criteria, budget constraints, and others. Alternatives selected as a result of using screening criteria must be evaluated in detail.

discussion altogether, an explanation for why it was excluded (e.g., it was not affected by the proposed action or alternatives or it is covered by prior NEPA reviews) should be provided in the introduction to this section. (See 40 CFR 1501.7(a)(3) for further discussion on this topic.)

**4.1 Location Description.** The purpose of this section is to provide a general overview of the affected installation's (or other site's) environmental setting. The types of information that should be briefly described are as follows:

- Geographic setting of the affected area
- Ongoing mission(s) and primary activities on the installation or on other affected property
- General landscape of the area
- General climatic conditions

**4.2 Land Use.** The following landscape and land use conditions should be described, as appropriate:

- Land use/land cover within the installation or on other affected property
- Aesthetics and visual resources (overall character of the landscape, including any unique natural and man-made features; location of public lands, federally protected areas, and other visually sensitive areas; and local plans and policies regulating visual resources)
- Building function and general architecture
- Relevant location of local communities
- Land use management plans (e.g., local government comprehensive plans and state coastal zone management plans)
- Local zoning
- Property ownership, leasing, and other property agreements
- Local/regional development plans/programs that may contribute to cumulative effects
- Real Property Development Plan

**4.3 Air Quality.** The following air quality factors in the project area should be described, as appropriate:

- Ambient air quality conditions
- Existing air emission sources
- Air pollution source permits
- Federal and state air pollution control regulations and standards
- Criteria for attainment/nonattainment areas
- Sensitive receptors on and off the installation
- Compliance with Federal and State Implementation Plans
- Basis of air conformity analysis Record of Non-Applicability (RONA)

- Local or regional meteorological conditions, as they relate to pollutant dispersion (e.g., wind speed, wind direction, and mixing height)

**4.4 Noise.** Information in this section should describe the following, as appropriate:

- Stationary noise sources (e.g., airfield operations, ordnance demolition, firing ranges, maintenance facilities, and construction)
- Mobile noise sources (e.g., vehicular traffic and aircraft)
- Sensitive receptors on and off the installation
- Noise monitoring results
- Federal, state, and local noise standards
- Land use compatibility
- Environmental Noise Management Plan

**4.5 Geology and Soils.** Information in this section should describe the following, as appropriate:

- Topographic conditions
- Geologic bedrock types and any unique concerns (e.g., subsidence)
- Seismic conditions and fault features
- Soil types and any unique concerns (e.g., potential for erosion)
- Prime and unique farmland
- Mining resources and mineral rights

**4.6 Water Resources.** This section should describe the following for surface water and groundwater conditions, as appropriate:

- Hydrology
- Quality
- Point and nonpoint sources of pollution
- Floodplain areas for 100- and 500-year floods
- Water resource districts and other water rights

**4.7 Biological Resources.** This section should include appropriate information on local fauna, flora, and habitats, including the following:

- Species commonly found on the installation or on other affected property
- Occurrence of sensitive species (federally or state listed threatened, endangered, or candidate species; and rare or unique species) on or in the vicinity of the installation or other affected property
- Aquatic and terrestrial ecosystem types (e.g., forests, wetlands, and fields) found on the installation, or on other affected property, and their regional importance (if any)
- Special habitat areas (e.g., used by nesting or overwintering species)
- Vegetation and wildlife management plans and practices (e.g., INRMP)

- Coordination with the appropriate state office for environmental resources and U.S. Fish and Wildlife Service.

**4.8 Cultural Resources.** This section should provide a brief discussion of the area's prehistory and a summary of the status of the cultural resources inventory for the project area, including the following:

- Sites, buildings, and other structures of historic significance, including prehistoric sites and those from the Cold War era
- Resources eligible for listing on the National Register of Historic Places
- Archeological resources
- Paleontological resources
- Coordination with the State Historic Preservation Officer
- Programmatic agreements with the state
- Evidence of compliance with the DoD Annotated Policy Document for DoD American Indian and Alaska Native Policy
- Integrated Cultural Resources Management Plan

**4.9 Socioeconomics.** To describe baseline sociological and economic conditions, the following elements should be discussed, as appropriate:

- Demographics
- Regional employment and economic activity
- Installation salaries and local expenditures
- Housing
- Schools
- Medical facilities
- Shops and services
- Recreation facilities
- Public and occupational health and safety
- Protection of children

**4.10 Environmental Justice.** Information in this section should describe the following for areas near the installation:

- Geographic distribution of minority populations
- Geographic distribution of low-income populations by poverty status
- Consumption patterns of populations that principally rely on fish and/or wildlife for subsistence

**4.11 Infrastructure.** This section describes both utilities and transportation elements associated with the affected location. Specific utilities that normally should be described, including both supply capacities and available capacities, are as follows:

- Potable water supply
- Wastewater treatment
- Solid waste disposal, including use of landfills and/or incinerators
- Energy sources, including electrical power, natural gas, fuel oil, coal, and/or steam generation

Applicable transportation information that normally should be described includes the following:

- Roadways and traffic on and off the installation
- Rail access and service to the installation or other affected property
- Air operations at the installation, or on other affected property, and associated airspace use

**4.12 Hazardous and Toxic Materials/Wastes.** Information in this section should describe the following, as appropriate:

- Storage and handling areas
- Waste disposal methods and sites
- Installation Restoration Program
- Materials and wastes present, including asbestos, radon, lead paint, polychlorinated biphenyls (PCBs), and radioisotopes
- Ordnance use and disposal
- Aboveground and underground storage tanks
- Pollution prevention programs and plans

### **Section 5.0: Environmental Consequences**

This section forms the scientific and analytic basis for the comparison of alternatives. It identifies the direct, indirect, and cumulative effects of the proposed action and alternatives (presented in Sections 2.0 and 3.0 of this EIS outline) on each of the resource areas previously described in the Affected Environment section. Both beneficial and adverse effects are to be described. If no effects are identified for a particular resource area, that fact should be mentioned. When describing direct and indirect effects, it is not necessary to separate one from the other. Cumulative effects, however, are best broken out in a separate discussion covering all of the applicable resources, near the end of the Environmental Consequences section.

Along with describing the beneficial and adverse effects, measures proposed to mitigate adverse effects (e.g., management of military vehicular traffic to prevent accelerated erosion, maintenance of abandoned facilities, and fencing around unexploded ordnance areas) and the likely results of their implementation should be discussed (40 CFR 1502.16(h)) in the same section that describes the adverse effects. Agency consultation results that were instrumental in resolving impact and mitigation issues (e.g., in preserving endangered species habitat or historic sites) should be discussed and referenced. Regarding energy resources and other natural and depletable resources, discussions on any conservation measures to be applied to the proposal should be included (40 CFR 1502.16(e) and (f)). In addition, any federal permits, licenses, and other entitlements that would be necessary to implement the proposal must be identified where applicable (40 CFR



1502.25(b)). If there is uncertainty on whether a federal permit, license, or other entitlement is necessary, the EIS should so indicate.

The basic organization for most of Section 5.0 is presented in the following sample outline for land use and air quality resources. Each resource section from the Affected Environment section (cultural resources, noise, water resources, and so forth) should be numbered separately, and the resource sequence should correspond to the sequence used in the Affected Environment section. Under each resource, separate subsections should be used to present impact discussions for the proposed action and each individual alternative, including the no action alternative, described in Sections 2.0 and 3.0 of this EIS outline. When evaluating the no action alternative, it is important to remember that impacts can and sometimes do occur under this alternative.

## **5.1 Land Use**

5.1.1 Effects of the Proposed Action

5.1.2 Effects of Alternative(s) to the Proposed Action

5.1.3 Effects of the No Action Alternative

## **5.2 Air Quality**

5.2.1 Effects of the Proposed Action

5.2.2 Effects of Alternative(s) to the Proposed Action

5.2.3 Effects of the No Action Alternative

**5.3 through 5.12.** For each of the remaining resources to be addressed, use the same format as above.

**5.13 Cumulative Effects.** This section discusses the relevant cumulative effects on those resources affected by the proposed action and alternatives. Refer to Sections 4.11.1 and 8.20 for further discussions on cumulative effects.

**5.14 Comparison of the Environmental Consequences of the Alternatives.** This section compares and contrasts the effects of the various alternatives analyzed. To help in this comparison, this section should contain a summary matrix that compares the overall effects for all of the alternatives. Two different example formats of matrices are presented in [Appendix AA](#). When the first format is used, the information should be as quantifiable as possible. If the second format, in which impact levels are represented using qualifiers in the form of symbols, is used, it is important that such qualifiers be carefully explained and interpreted on the matrix or in the text of this section.

**5.15 Unavoidable Adverse Effects.** For the resources analyzed, this section briefly summarizes the adverse or significant effects (if any) expected to occur with implementation of the proposal (40 CFR 1502.16). Refer to Section 4.11.2 for a discussion of significance of effects.

**5.16 Relationship Between Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity.** The purpose of this section is to identify what

might be gained or lost over the long term because of short-term uses of land and other resources (40 CFR 1502.16). For example, the demolition and immediate replacement of an older building that has poor insulation and is contaminated with asbestos-containing materials and lead paint would, in the short term, cause added air emissions and noise, potential soil erosion, and the temporary displacement of personnel. In the long term, however, operation of the new building would result in improved facility utilization, lower heating and cooling requirements (and thus reduced air emissions from the installation's power plant), and a reduction in potential human health effects. Conversely, vegetation removal and surface grading for a new firing range could, in the long term, result in the permanent loss of sensitive species local to that area.

**5.17 Irreversible and Irretrievable Commitment of Resources.** This section of the EIS identifies those effects where there would be a permanent loss of resources (e.g., burning of fossil fuels) and where resources would be indefinitely foregone (that is, the resources would remain but would be inaccessible or could not be used, such as when timber productivity within a proposed right-of-way is lost to road construction) (40 CFR 1502.16).

**Section 6.0: References.** The References section should provide bibliographic information for sources cited in the text of the EIS. Draft documents should be cited only if the documents have attained relatively high review or approval within the issuing organization. Normally, only those references which are reasonably obtainable by the public should be included.

**Section 7.0: Index.** The index should provide the location, by section and page number, of terms frequently used in the EIS. The index must reflect the final pagination of the printed EIS.

**Section 8.0: Glossary.** This section, which is optional, provides a list of definitions for technical terms used in the EIS.

**Section 9.0: List of Preparers.** The format for listing preparers of the EIS is explained in 32 CFR Part 651. The preparers selected should be diverse enough to ensure a multidisciplinary approach to the environmental and socioeconomic analysis.

**Section 10.0: Agencies and Individuals Consulted.** This section should list the names and agencies or organizations (if any) of individuals who were contacted for data and information used in support of the analysis and preparation of the EIS, regardless of whether a response was received. Normally, only individuals external to the ARNG, NGB, and HQDA are listed here.

**Section 11.0: Distribution List.** This section should include the name, organization (if any), and address of each person who is to receive a copy of the DEIS or FEIS. For the DEIS, a distribution list can be developed based on agencies, officials, and special interest groups that typically receive NEPA documents relative to their geographic area or particular interests, as well as requests obtained during the scoping process. The Environmental Program Manager, the state Public Affairs Officer, and NGB should be able to assist the proponent in developing this list. The FEIS list typically consists of the same agencies, officials, and special interest groups that received the DEIS, along with the individuals who commented on the DEIS and/or requested a copy of the FEIS.

**Appendices.** Use appendices to support the content and conclusions contained in the main body of the EIS, when necessary. Types of appendices usually included in an EIS are:

- Supporting technical data and methodological approaches (e.g., air emissions monitoring data, archeological survey results, and unique socioeconomic modeling applications)
- Official communications to and from outside agencies (e.g., U.S. Fish and Wildlife Service and State Historic Preservation Office) that pertain to environmentally sensitive resources and related issues. Examples of ARNG coordination letters sent to outside agencies are provided in [Appendix J](#).
- Public comments and responses. Note that if this appendix becomes too large, it may be made a separate volume of the FEIS.

**Acronyms and Abbreviations.** A list of the acronyms and abbreviations used throughout the EIS should be provided. For the readers' convenience, it should be included as an 11- by 17-inch foldout page at the back of the document. In cases where the EIS is reasonably short, an alternative would be to place this section immediately after the Table of Contents using standard letter-size paper.

## 7.8 Responding to Comments

DEISs must be made available for a 45-day (minimum) public comment period. Public comments received, in the form of letters, faxes, and so forth, must be presented in an appendix to the FEIS, along with responses to those comments. Replies should make reference to those portions of the EIS that address the issue, particularly if the document has been changed as a result of the comment. A person who submitted a comment should be able to track the receipt and disposition of the comment. Other pertinent information provided by the public should also be incorporated into the final document, as appropriate.

It is recommended that the development of procedures for handling comments received and for developing responses to the comments be made a part of the NEPA process management plan or described within a separate public affairs plan (see Section 4.2). When a large volume of comments are received, they should be logged into a database and a separate file created for master copies. Comments can then be easily screened for substantive points raised.

Some comment letters might identify a single issue; others might contain a long list of reviewers' concerns. As appropriate, individual points should be catalogued and cross-referenced so none are overlooked. If many comment letters and documents making the same points are received, it might be useful to consolidate duplicates and closely related comments to simplify the number of responses that must be developed. This helps to facilitate responding to a recurring comment once instead of repeating the response multiple times. A benefit of following this process is that it helps to ensure that responses given are consistent. It is also especially useful when responding to similar comments contained in "form letters."

Responses should be written openly, clearly, candidly, and with respect for the commentor. All comments must receive a response. Substantive comments received are generally staffed with the proponent, the Environmental Program Manager, the state Public Affairs Officer, and the NGB, as necessary, for the development of responses.

Substantive comments are those that address either the adequacy of the environmental analysis or the merits of the alternatives or both. CEQ Regulations, 40 CFR 1503.3(a). Comments may be disregarded for good cause. Reasons for possibly disregarding comments include their being not relevant to the adequacy of the analysis or alternatives or their being illegible, unsigned, obscene, or out of time (i.e., late). "Form letter" comments urging the same point may be treated as a single comment. Disregarded comments should be marked as such and retained by the proponent as part of the administrative record.

## 7.9 Review of EISs by the U.S. Environmental Protection Agency

As described in Section 2.3.1, all DEISs and FEISs must be filed with EPA. Under Section 309 of the Clean Air Act (42 U.S.C. 7609), EPA is responsible for reviewing and commenting on EISs, and for notifying proponents and lead agencies of any deficiencies.

The intent of Section 309 is to give EPA an independent agency review role otherwise absent under NEPA, and to ensure that federal agencies preparing documentation under NEPA have the benefit of a review by a federal agency whose primary mission is the protection of the environment. It also directs EPA to comment in writing and to make its comments available for public review.

Section 309 further directs the EPA Administrator to refer "any such legislation, action, or

regulation” to CEQ if it is found to be “unsatisfactory from the standpoint of public health or welfare or environmental quality....” It also provides authority for EPA to independently determine that an action proposed by a federal agency is a major federal action that would significantly affect the environment even if the proponent or lead agency has determined otherwise.

EPA’s review is primarily concerned with identifying and recommending mitigative measures for the significant environmental effects associated with the proposal. The “adequacy” of the information and analysis contained in the documentation is reviewed as needed to support this objective. The adequacy of a document is based on a wide variety of issues, including impact predictions, mitigation measures to be applied, the selection of alternatives analyzed, and consistency with environmental protection processes.

It is EPA’s policy to review and comment in writing on all DEISs officially filed with the agency, to provide a rating of the DEIS, and to meet with the proponent and/or lead agency to resolve significant issues.

The purpose of the rating system for DEISs is to summarize the level of EPA’s overall concern with the proposal and to define the associated follow-up that will be conducted with the proponent and/or lead agency. It is an alphanumeric system that rates both the environmental acceptability of the proposed action and the adequacy of the NEPA document. In general, the rating is based on the preferred alternative, if identified; otherwise, individual alternatives are rated. EPA’s categories for rating the environmental impact of the action are as follows:

- *LO (Lack of Objections)*. The review has not identified any potential environmental impacts requiring substantive changes to the proposal.
- *EC (Environmental Concerns)*. The review has identified environmental impacts that should be avoided to fully protect the environment. Corrective measures may require changes to the proposal or application of mitigation measures.
- *EO (Environmental Objections)*. The review has identified significant environmental impacts that should be avoided to adequately protect the environment. Corrective measures may require substantial changes to the proposal or consideration of some other project alternative.
- *EU (Environmentally Unsatisfactory)*. The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the action must not proceed as proposed.

EPA’s categories for rating the adequacy of DEISs are as follows:

- *“1” (Adequate)*. The DEIS adequately sets forth the environmental impact(s) of the preferred alternative, if identified, and those of the alternatives reasonably available to the project or action.
- *“2” (Insufficient Information)*. The DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided to fully protect the environment; or the EPA reviewer has identified new, reasonably available alternatives within the spectrum of alternatives analyzed in the DEIS that could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the FEIS.
- *“3” (Inadequate)*. The DEIS does not adequately assess the potentially significant environmental impacts of the proposal; or the EPA reviewer has identified new,

reasonably available alternatives outside the spectrum of alternatives analyzed in the DEIS that should be analyzed to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review in a supplemental or revised DEIS.

EPA’s rating of a DEIS will consist of one of the category combinations shown in Table 7-3, which also indicates the level of follow-up that EPA should take based on the level of concern identified in its comment letter. When a follow-up phone call or meeting with EPA is required, its purpose is (1) to describe the specific EPA concerns and discuss ways to resolve them, (2) to ensure that the EPA review has correctly interpreted the proposal and supporting information, and (3) to discuss any ongoing proponent/lead agency actions that might resolve the EPA concerns. EPA’s comment letter itself and the assigned rating are not subject to negotiation and will not be changed on the basis of the phone call or meeting unless errors in EPA’s understanding of the issues are discovered.

**TABLE 7-3. EPA RATING CATEGORIES AND FOLLOW-UP REQUIREMENTS**

| <b>Rating Categories</b> | <b>Follow-Up on DEIS Comment Letter</b> |
|--------------------------|---|
| LO                       | None                                    |
| EC-1, EC-2               | Phone Call with Proponent/Lead Agency   |
| EO-1, EO-2               | Meeting with Proponent/Lead Agency      |
| EO-3, EU-1, EU-2, EU-3   | Meeting with Proponent/Lead Agency      |

### 7.10 Record of Decision

The ROD is the final step in the EIS process. It is a concise public document that identifies the alternatives considered by the ARNG in reaching its decision. It summarizes the major issues and considerations, documents the decision, and identifies necessary steps (mitigation measures) to lessen the effects on the environment. No sooner than 30 days following publication of the NOA for the FEIS in the *Federal Register*, final approval and signature of the ROD may occur. The ROD is then made available to the public through appropriate public notice, such as publication of the ROD, or NOA of the ROD, in the *Federal Register* and in local newspapers, and direct mailings of the ROD to interested parties (see CEQ *Forty Most Asked Questions*, Number 34a, in [Appendix D](#) in this handbook. Implementation of the preferred action may begin immediately following approval signature of the ROD. Section 9.2.8 provides guidance on processing a ROD.

The ROD will contain the following:

- A statement of the decision.
- Identification of all alternatives considered, specifying the “preferred” alternative(s) as well as the “environmentally preferred” alternative(s). (See CEQ *Forty Most Asked Questions*, Number 6, in [Appendix D](#) of this handbook for further discussions on this topic.)
- Discussion of all factors, including any environmental, economic, and technical factors, that the ARNG considered in making a decision.
- Rationale for choosing the preferred alternative.

- A description of mitigation measures to be implemented, a summary of any monitoring and enforcement program to be adopted, and an explanation of why certain mitigation measures were not adopted (if any) when such mitigation measures would have avoided or minimized environmental harm.<sup>24</sup>

It is important to note that the preferred alternative selected in the ROD may be the proponent's original proposed action, one of the alternative actions, or a mix of the alternatives analyzed in the EIS. Public comment on the ROD is not required; however, it is the NGB's policy to receive and respond to public concerns regarding ARNG actions. (See Section II(6)(m)(2) of the *Public Affairs Guidance on National Guard Bureau Environmental Programs*, presented as [Appendix S](#) in this handbook.) A sample ROD is presented in [Appendix EE](#).

### **7.11 Administrative Record**

The Administrative Record is the collection of all written information obtained during the preparation of the EIS, and it documents the sources used to reach decisions. It includes, but is not limited to, written data, reports, communications (e.g., correspondence, records of telephone conversations, and the like), modeling results, maps, and illustrations. The Administrative Record should be compiled in conjunction with the EIS and retained by the proponent and/or lead agency for a reasonable time following completion of the proposed action and all mitigation measures, which can take up to several years (e.g., multiyear training events and out-year construction projects). In most cases, the state ARNG maintains the Administrative Record. Further discussion on developing an Administrative Record is provided in Section 4.12.

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<sup>24</sup> If the proponent commits to mitigative measures in the ROD, they must be implemented. If the proponent fails to commit resources to ensure mitigation is accomplished, the description of expected impacts is inaccurate and the decision to proceed with the project was made without adequate information. For further discussion of mitigation commitments, see Section 8.21 of this handbook.

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## 8.0 RESOURCES AND ANALYSES

### 8.1 Introduction

This section addresses 18 discrete specific resource areas and conditions often encountered by proponents in their analyses of ARNG proposals. Information is given on the nature of each resource, how to describe it, and what matters to consider in evaluating the potential for, or severity of, effects.

The section also addresses three areas that are not resource-specific but rely on similar analytic approaches or directly affect the analyses themselves—cumulative effects, mitigation commitments, and consultation.

32 CFR Part 651 notes that EAs should not exceed 25 pages in length and EISs should not exceed 150 pages in length. To meet these objectives, in treating each resource area proponents are urged to focus their baseline descriptions and analyses on only those matters that are relevant to their proposed actions.

- Resource areas and conditions that patently would not be affected by a proposed action should be identified and, based on brief explanation of their irrelevance, dismissed.
- In an EA there should be sufficient data and analysis of relevant resource areas and conditions to establish whether a proposal would result in significant effects.
- Discussion of significant impacts in an EIS should be sufficiently founded on data and analyses to enable the decision maker and the public to understand fully the import of proceeding with the proposal.

### 8.2 Aesthetics and Visual Resources

Aesthetic and visual resources refer to the natural and man-made features of the installation or project site landscape and include cultural resources and historic landmarks, landforms of particular beauty or significance, water surfaces, and vegetation. Together, these features form the overall impression that a viewer receives of an area or its landscape character.

The value of the affected setting is highly dependent on existing land use. An area that is primarily used for recreational and tourist activities is likely to be more visually sensitive than an area used for industrial purposes. Construction of housing in a setting used primarily for hiking and picnicking is far more likely to elicit adverse reaction than construction of housing in an urban area. Accordingly, a project could have very different impacts on aesthetic and visual resources depending on where it would be conducted. Visual resources and impacts should be described and assessed in the context of both the surrounding physical environment and current human activities.

Aesthetic and visual resources are assessed to help determine whether proposed actions would be compatible with the affected setting or would noticeably contrast with it. The importance of visual resources to an affected population is highly variable and strongly influenced by social considerations, including the current land use of the affected setting. Both the description of the affected environment and assessment of the consequences should be performed as objectively as possible, although visual and aesthetic resource impact analyses are by nature subjective.



ARNG actions can affect the aesthetic value of the proposal's project site and surrounding area, particularly if facilities or structures are constructed where none existed before. Specifically, an ARNG action could alter building densities and lead to modifications in roads and other infrastructure. These actions could result in potential changes in the local landscape. Physical changes to the affected setting should be consistent with current land uses and congruent with existing comprehensive plans that establish policies, directives, or regulations pertaining to visual resources.

Baseline information on visual resources can be collected by a variety of methods. Field surveys and photographs are good methods to determine the overall visual character of the area. Views should be taken from both inside and outside the project area. Areas visible from primary and secondary roads should be noted, with particular attention to any features that could be considered unique for the area.

State and local planning and parks departments should be contacted for adopted regulations and policies pertaining to aesthetics and visual resources.

**Statutory and regulatory setting.** Viewsheds are regulated by federal, state, and local land use and zoning codes. For example, local jurisdictions may independently designate scenic highways that are of local importance. Federal laws governing this resource are listed below.

- National Wild and Scenic Rivers Act
- National Trails Systems Act
- Federal Land Policy and Management Act (FLPMA) of 1976

**Describing existing conditions.** This section should describe factors that contribute to the visual characteristics of the project site and surrounding area. The ROI for this resource is defined by the proposed project's viewshed (the area from which the site is visible and the areas visible from the site). The location and nature of the surrounding built and natural area determine the ROI. Factors used in determining the ROI can include views from primary and secondary highways; lakes, streams, and coastal areas; hills or mountain areas; vegetation cover; and types of residential or industrial areas surrounding the site.

The description of the ROI's visual resources should encompass such features as architectural styles of existing buildings, extent and characterization of undeveloped and historic areas, and an overview of the landscape characteristics. The section should also describe important views from the project site, particularly for housing and recreation areas. Any federal, state, or local plans and policies that address the protection or importance of visual resources applicable to the area should be noted.

Information in this section should describe, as appropriate:

- *Landscape character.* Provide an overview of the visual characteristics of the project site and adjacent areas. These would include such features as lakes, streams, coastal areas, hills, mountains, vegetation, types of buildings/facilities, architectural styles, open and undeveloped areas, and important viewsheds.
- *Unique natural and man-made features of the landscape.* These would include unique features and well-known landmarks (e.g., waterfalls, unusual rock outcrops, monuments, and historic buildings).

- *Sensitive areas.* Identify the location of public lands, federally protected areas, and other visually sensitive areas.
- *Plans and policies.* Include local and regional plans and policies regulating visual resources.

When controversy or major concerns exist over particular aesthetic and visual resources, including photographs or maps showing the exact location of significant sites or viewsheds provides a better means of understanding the problem. A topographic map or cross section can also be useful in showing how a visual site can be seen from other areas, even far away.

**Documenting effects of the proposed action and alternatives.** Impacts on visual resources might include the following:

- **Unsightly structures.** Large or unusual structures, building materials, or colors can determine whether a structure is “unsightly.” This determination is very subjective, but unsightliness can be better judged by making comparisons to adopted architectural guidelines and policies established by the installation or local community.
- **Changing views of landscapes, landmarks, and other aesthetically important sites.** The effects of new construction that blocks or alters important viewpoints should be described.
- **Significant alterations to the landscape.** Drastic changes to the landscape or skyline could occur if large development projects are initiated, if wooded areas are removed, or if extensive demolition of existing buildings occurs. In the case of demolition, the landscape could be beneficially affected if scenic views are uncovered. Another example is that some large overhead lights can create light pollution, changing the viewshed in the evening hours.

Significant visual impacts might result from projects that would

- Involve structures or land alterations visually incompatible with or obtrusive to the existing visual setting and landscape.
- Noticeably increase visual contrast and reduce the scenic quality rating from any high-sensitivity foreground or middle ground viewpoint.
- Block or disrupt existing views or reduce public opportunities to view scenic resources.
- Conflict with existing regulations and policies governing aesthetics and visual resources.

Mitigation measures can include the following:

- Use building designs, construction materials and colors, and landscaping that blend with existing structures and surroundings.
- Design structures to comply with installation policies or other local regulations regarding architectural requirements.
- Implement lighting systems and designs that minimize light pollution at night.
- Minimize the removal of trees and other vegetation, and replace vegetation in areas disturbed during construction.
- Create building setbacks, install tree lines, or create elevated earthen walls to form buffers separating visually conflicting areas.

### 8.3 Airspace

The Federal Aviation Administration (FAA) manages all airspace within the United States and the U.S. territories. Airspace is defined in vertical and horizontal dimensions and also by time. The FAA recognizes the military's need to conduct certain flight operations and training within airspace that is separated from that used by commercial and general aviation. Airspace is a finite resource and must be managed to achieve equitable allocation among commercial, general aviation, and military needs.

The FAA has established various airspace designations to protect aircraft while operating near and between airports and while operating within airspace identified for defense-related purposes. Flight rules and air traffic control procedures govern safe operations within each type of designated airspace. Most military operations are conducted within designated airspace and follow specific procedures to maximize flight safety for both military and civil aircraft.

Controlled airspace is a generic term for the different types of airspace (Classes A, B, C, D, E, and G airspace) and defined dimensions within which air traffic control service is provided to instrument flight rules flights and visual flight rules flights in accordance with the airspace classification. The classifications of airspace are as follows:

- *Class A airspace.* This airspace occurs from 18,000 feet above mean sea level (MSL) to 60,000 feet above MSL. All operations within this airspace are in accordance with regulations pertaining to instrument flight rules (IFR) flights. This airspace is dominated by commercial aircraft using jet routes between 18,000 and 45,000 feet above MSL.
- *Class B airspace.* This airspace occurs from the surface to 14,500 feet above MSL around the Nation's busiest airports. Before operating in Class B airspace, pilots must contact controlling authorities and receive clearance to enter the airspace. Aircraft operating within Class B airspace must be equipped with specialized electronics that allow air traffic controllers to accurately track the speed, altitude, and position of the aircraft.
- *Class C airspace.* This airspace occurs from the surface to 4,000 feet above the airport elevation (charted in MSL) surrounding those airports that have an operational control tower, are serviced by a radar approach control, and meet specified levels of IFR operations or passenger enplanements. Aircraft operating within Class C airspace must be equipped with a two-way radio and an operable radar beacon transponder with automatic altitude reporting equipment. Aircraft may not operate below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class C airspace area at an indicated airspeed of more than 200 knots (230 miles per hour).
- *Class D airspace.* This airspace occurs from the surface to 2,500 feet above the airport elevation (charted in MSL) surrounding those airports that have a control tower. Class D airspace encompasses a 5-statute mile radius from the airport. Unless authorized otherwise by Air Traffic Control (ATC), aircraft must be equipped with a two-way radio. Aircraft may not operate below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class D airspace area at an indicated airspeed of more than 200 knots (230 miles per hour).
- *Class E airspace.* This airspace is any controlled airspace not designated as Class A, B, C, or D airspace. It includes designated federal airways, portions of the jet route system, and area low routes. Federal airways have a width of 4 statute miles on either side of the airway centerline and occur between the altitudes of 700 feet above ground level (AGL)

and 18,000 feet above MSL, but they may have a floor located at ground level at airfields without a tower. No specific equipment is required to operate within Class E airspace.

- *Class G airspace.* Class G airspace (uncontrolled) is that portion of the airspace that has not been designated as Class A, B, C, D, or E airspace. ATC does not have authority over operations within uncontrolled airspace. Primary users of Glass G airspace are visual flight rules (VFR) general aviation aircraft.
- *Special use airspace.* Special use airspace enables activities that must be confined because of their nature or require limitations on aircraft that are not a part of those activities. Prohibited and Restricted Areas are regulatory special use airspace. They are established in Federal Aviation Regulation (FAR) Part 73 through the rule-making process of the Administrative Procedures Act (Title 5 U.S.C. §§ 551-702). Warning Areas, Military Operations Areas (MOAs), Alert Areas, and Controlled Firing Areas are nonregulatory special use airspace. That is, the FAA may designate these types of special use airspace without resorting to the procedures demanded of the Administrative Procedures Act.

Analysis of airspace management and use involves considering many factors, including the types, locations, and frequencies of aerial operations; the presence or absence of already designated (controlled) airspace; and the amount of air traffic using or transiting through a given area. Proposed actions that are consistent with controlled airspace designations should typically be found not to present impacts on safety. Proposals for actions potentially inconsistent with airspace designations or that may pose a threat to the safety of other aircraft or persons or property require careful consideration, which often involves coordination with FAA officials. Where safety is a concern, the proponent should consult with the military representative at the FAA's regional field office.

Specific aviation and airspace management procedures and policies to be used by the Army are provided in AR 95-2, *Air Traffic Control, Airspace, Airfields, Flight Activities, and Navigational Aids*. The *Memorandum of Understanding Between the Federal Aviation Administration and the Department of Defense Concerning Special Use Airspace Actions (October 2005)* provides guidelines for compliance with NEPA and CEQ regulations without unnecessary duplication of effort by the FAA and DoD. This document, which appears as Appendix 7 to FAA Order 7400.2, Chapter 32, may be obtained at the FAA's Web site at [http://www.faa.gov/programs/en/impact/impactheaders/nepa/environmental\\_review\\_of\\_special\\_use\\_airspace\\_actions.pdf](http://www.faa.gov/programs/en/impact/impactheaders/nepa/environmental_review_of_special_use_airspace_actions.pdf).

## 8.4 Air Quality

In planning projects and activities, installations must consider effects on air quality both on- and off-post. Two independent legal requirements govern consideration of air quality effects: (1) NEPA and (2) the general conformity provision of Clean Air Act (CAA) Section 176(c), including EPA's implementing regulation, the General Conformity Rule. Depending on the action and the project locale's attainment status with respect to the National Ambient Air Quality Standards (NAAQS), an installation might have to complete a separate conformity analysis in addition to the NEPA analysis. Applicability of the two requirements must be considered separately. Exemption from one requirement does not automatically exempt the action from the other requirement, nor does fulfillment of one requirement constitute fulfillment of the other. Although installations should integrate compliance efforts to save time and resources, the two requirements are very different, necessitating separate analyses and documentation.

**Current laws and regulations.** The Clean Air Act Amendments of 1990 (CAAA-90) provide a comprehensive national program with the goal of reducing the levels of pollutants in the ambient air. The DoD strategy for air quality compliance includes prevention, control, and abatement of air pollution from stationary and mobile sources. The CAAA-90 provide the framework for the majority of air quality regulations and guidelines with which Army and ARNG installations must comply. The CAAA-90 are implemented by detailed federal, state, and local regulations.

ARNG responsibilities under the Clean Air Act depend on the circumstances prevailing at each installation. The various obligations may include the following:

- Obtaining necessary permits.
- Maintaining emissions within permitted levels.
- Complying with State Implementation Plan requirements.
- Ensuring that all CFC technicians attend EPA-certified training courses.
- Ensuring that all CFC recovery/recycling equipment is certified to EPA standards and venting prohibitions are maintained.
- Managing facilities with asbestos-containing material (ACM) and conducting ACM removals in conformance with the air toxics program requirements.
- Complying with applicable federal controls on mobile sources and their fuel.
- Developing risk management plans where required.
- Maintaining all required records and documentation.
- Managing facility construction and modification.

#### 8.4.1 Air Quality Considerations under NEPA

NEPA requires broad consideration of the direct and indirect effects of a proposed action. The analysis of air quality under NEPA should include an investigation of the following aspects of the proposed action and alternatives.

**Affected environment.** This section should include a description of air quality conditions present at the installation or other affected property. This description should include the attainment status of the installation, or other affected property, for all criteria pollutants and the air quality district in which the facility is located (go to: <http://www.epa.gov/air/data/index.html>). Air pollution sources that have permits should also be identified. In addition, any available information relative to the general air quality of the area should be included (i.e., ambient monitoring results).

**Environmental consequences.** This section should discuss all long- and short-term changes to local air quality that could reasonably be expected to occur as a result of implementing a proposed action or alternatives. Some examples of possible environmental consequences are the following:

- Changes in the type or amount of air emissions due to changes in the operation of current air pollution sources or the addition of sources.
- Changes in air emissions due to construction activities (vehicular emissions and fugitive dust).
- Changes in local/regional ambient air quality due to changes in emissions.

- Potential exposure to asbestos during building demolition/renovation (if asbestos has not been removed before demolition/renovation).
- Changes in public opinion (favorable or adverse) due to projected changes in air quality, especially for incinerator projects.
- Effects on compliance status due to construction or modification of air emission sources.
- Effects on the timely attainment or maintenance of the NAAQS or any air quality standard or milestone contained in the State Implementation Plan (SIP) or Federal Implementation Plan (FIP).
- Downwind effects, particularly any that might disproportionately affect low-income or minority populations.

**Consideration of fugitive dust.** Construction activities can generate fugitive dust, which is regulated by the Clean Air Act (CAA) as particulate matter (PM) under NAAQS regulations. NEPA analyses should take into consideration the levels of fugitive dust that might be generated by an action and determine whether such levels would exceed limits in nonattainment areas or result in other potential adverse effects. If significant amounts of fugitive dust could be generated, measures such as the application of best management practices and other operational controls should be implemented with the action.

**Significance criteria.** The environmental consequences described above should be compared to all applicable federal, state, and local regulations. These regulations provide an indication of the significance of various air quality parameters. Examples of significance criteria include the following:

- Source-specific emission limits
- Permitting and licensing requirements
- NAAQS
- State or local ambient air quality standards
- *De minimis* emissions levels outlined in the General Conformity Rule
- SIPs/FIPs
- Exposure of sensitive populations to pollutants
- Any other applicable regulations or standards

**Mitigation.** Strategies to reduce effects on air quality should be explored if significant adverse effects are anticipated. The following are possible mitigation techniques:

- During construction activities, application of dust suppressants or use of operational controls to prevent excess fugitive emissions.
- Acquisition of emission offsets.
- Use of air pollution control equipment.
- Transportation control programs.

#### 8.4.2 General Conformity Rule Requirements

The General Conformity Rule (40 CFR Part 51, Subpart W) requires federal agencies to prepare written Conformity Determinations for federal actions in or affecting NAAQS nonattainment

areas or maintenance areas (former nonattainment areas that have been redesignated as attainment areas based on NAAQS compliance). The requirements of the General Conformity Rule generally do not apply to actions in or affecting NAAQS attainment areas.

For actions that occur in nonattainment or maintenance areas, a written Conformity Determination is required except when the action is covered under the Transportation Conformity Rule or is specifically exempted under EPA's General Conformity Rule, which identifies several applicability exemptions (e.g., the total increase in emissions is *de minimis*). Current Army (and ARNG) guidance should be consulted to determine proper analysis, documentation, and signature authority requirements for exempt actions, including actions that result in emissions below *de minimis* levels. In those cases where an ARNG action is exempted from the General Conformity Rule, such as the routine maintenance and repair of roads and trails where an increase in emissions is clearly *de minimis*, the proponent should prepare a Record of Non-Applicability (RONA). Preparation of a RONA is required by Army policy. [Appendix FF](#) provides two suggested formats to be used in preparing a RONA. The RONA documents the ARNG's decision not to prepare a written Conformity Determination for an action and is signed by the proponent and the Environmental Program Manager. If a Conformity Determination is required, it must be based on a detailed air quality analysis. A determination is required for only the action that is approved, not for all alternative actions analyzed under NEPA. Specific guidance detailing conformity requirements and policies is provided in the *U.S. Army Technical Guide for Compliance with the General Conformity Rule* (see [Appendix GG](#)).

Although the procedural requirements of the General Conformity Rule are not applicable to ARNG actions in or affecting NAAQS attainment areas, conformity with the SIP or FIP in these areas must still be ensured through NEPA analysis and documentation.

### 8.4.3 Integration of Conformity and NEPA

Both NEPA and the General Conformity Rule provide for public participation in the development and review of air pollution impact documentation. With appropriate planning, the installation can structure the public participation elements of both processes to allow for simultaneous review and comment on the relevant documents. Although integration in this manner will not be appropriate in all circumstances, the NEPA documentation should summarize the findings and conclusions contained in the Conformity Determination document prepared for the action. Two other potential areas for integration of the two processes are the selection of emission reduction measures and the analysis of effects. Specific requirements for integrating conformity with NEPA are included in the Army's conformity guidance document, provided in [Appendix GG](#) in this manual.

### 8.4.4 Separation of NEPA and Conformity

The different legal requirements of NEPA and the General Conformity Rule dictate that the installation conduct separate processes that result in separate documents. The analysis necessary to satisfy the requirements of the General Conformity Rule differs from traditional NEPA analysis in several ways. For example, a written conformity analysis is required for only the preferred alternative, not for all alternatives under NEPA, and is limited to the criteria pollutants for which the area is in nonattainment. In addition, even when the installation believes that a proposed action could be categorically excluded under NEPA, conformity review may still be required. The ARNG must maintain thorough administrative records for each process to substantiate the separate administrative decisions and conclusions.

## 8.5 Biological Resources

The concepts of ecosystems and biological resources are central to NEPA. Section 102(2)(H) of NEPA requires that analyses conducted will consider “ecological information” in planning and development.

A description of biological resources provides the essential baseline conditions against which impacts of the proposed action and alternatives are evaluated. The description should emphasize those biological resources which are expected to be affected by the action under consideration or that have particular significance on a local, regional, or national level. Issues specifically addressed under the topic of biological resources include vegetation, fish and wildlife, sensitive species, sensitive habitats, and wetlands. Direct and indirect impacts that result in the temporary loss of native vegetation, populations or species of fish and wildlife, sensitive species, and sensitive habitats must be considered for any action involving disturbance in naturally vegetated areas. Because of the unique ecological and regulatory issues associated with wetlands, this particular resource topic is discussed separately under Section 8.19 in this manual.

**Statutory and regulatory setting.** The following statutes impose specific regulatory requirements pertaining to the treatment of biological resources on federal property. Federal statutes and Executive Orders relevant to environmental impact analysis are described in [Appendices GG](#) through [MM](#), respectively.

- AR 200-3, *Natural Resources—Land, Forest and Wildlife Management*
- Endangered Species Act (ESA)
- Migratory Bird Treaty Act
- Fish and Wildlife Coordination Act of 1980
- Bald and Golden Eagle Protection Act
- Magnuson-Stevens Fisheries Management and Conservation Act
- Marine Mammal Protection Act

### 8.5.1 Compliance and Documentation Steps

Section 7 of the ESA requires federal agencies to coordinate with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS)(also known as NOAA Fisheries) to ensure that any proposed action that the agency authorizes, funds, or carries out is not likely to result in adverse impacts on threatened or endangered species or critical habitats. NMFS has jurisdiction over marine fish, anadromous fish, sea turtles, and marine mammals. Consultation, conference, and biological assessment procedures under Section 7 should be integrated with NEPA procedures to the maximum extent feasible. Simultaneous compliance with NEPA and ESA procedures minimizes duplication of effort and avoids delay. Installations may combine ESA and NEPA documentation (such as the biological assessment and environmental assessment) to reduce paperwork as long as the requirements of both statutes are met. Generally, an installation should determine the effect of a proposed action on listed species or critical habitat in accordance with ESA Section 7 before completing the NEPA analysis. Avoiding consultation with either or both of the Services to accelerate the NEPA process is counterproductive and is not an acceptable ARNG practice. The following subsections discuss appropriate procedures for achieving compliance with respect to matters under the cognizance of the Services. Germane regulations are published at 50 CFR Part 402.



**Informal consultation.** Informal consultation typically begins with a written inquiry to the Service about the presence or absence of listed and/or proposed species or critical habitat in the proposed project area.

- Within 30 days of receipt of the notification of or request for a species list, the Service will either concur with or revise the list provided or advise the ARNG of any listed, proposed, or candidate species or designated or proposed critical habitat present in the area of the proposed action. Candidate species are those being considered for listing as threatened or endangered but not yet protected under the ESA..
- If the Service advises that listed species or critical habitat are not likely to be present, the consultation requirement is met, and the Service will notify the ARNG of this in writing. No further consultation is required.
- If a listed species or critical habitat might be present, the Service will provide the Army with information or references regarding the species or habitat. The Service may recommend that additional studies or surveys be conducted to make a more precise determination.
- If the Service advises that listed species or critical habitat might be present, the Army will be required to conduct a biological assessment. A biological assessment is optional if only proposed species or proposed critical habitat is involved. However, if both listed and proposed species or habitat are present, a biological assessment is required and must address both proposed and listed species or habitat.

**Biological assessment.** The purpose of the biological assessment is to help make the determination of whether the proposed action is “likely to adversely affect” listed species and critical habitat. Procedures for conducting a biological assessment are as follows:

- The contents of the assessment are discretionary, but they generally include results of on-site inspections determining the presence of listed or proposed species; an analysis of the likely effects of the action on the species or habitat based on biological studies, review of the literature, and the views of species experts; and a description of cumulative effects reasonably certain to occur within the action area that are likely to affect the species.
- If preparation of a biological assessment is not begun within 90 days of receipt of a concurrence or list of species from the Service, the Army must verify with the Service that the list is still accurate.
- If a biological assessment was prepared for a previous action that was identical or very similar to the proposed action, the Army may incorporate the previous biological assessment by reference in a written certification.
- If conducting a biological assessment will require a taking of a listed species, a permit must be obtained.
- A biological assessment must be completed within 180 days of receipt of a species list or concurrence with a species list from the Service. The biological assessment is submitted to the Service, and a written response of concurrence (or nonconcurrence) will be issued within 30 days.
- The Service may suggest modifications to the action to avoid the likelihood of adverse effects.
- If the Service determines that the proposed action is not likely to adversely affect listed species or critical habitat, no further action is required.

- If the Service determines that the action is likely to adversely affect listed species or critical habitat, a formal consultation is required.
- The ARNG should obtain a determination from the Service in writing regardless of the decision and should include the determination in the final NEPA document.

**Formal consultation.** Formal consultation is required if the ARNG determines that a proposed action is likely to affect listed species or critical habitat. Formal consultation is not required if, as the result of preparation of a biological assessment or as a result of informal consultation the Service determines that the proposed action is not likely to adversely affect listed species or critical habitat. Initiate a formal consultation with a written request submitted to the Service. The request should include

- A description of the proposed action.
- A description of the specific area that might be affected by the proposed action.
- A description of any listed species or critical habitat that might be affected by the proposed action.
- A description of the manner in which the action might affect the listed species or critical habitat, and an analysis of cumulative effects.
- Relevant reports, including EISs, EAs, or biological assessments. The information submitted should be the best scientific and commercial data available.
- Any other relevant information on the proposed action, the listed species, or critical habitat.
- Formal consultation concludes within 90 days after its initiation unless extended by mutual agreement between the ARNG and the Service.

**Biological opinion.** The Service will issue to and discuss with the ARNG its biological opinion as to whether the proposed action, together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

- In the case of a “jeopardy” opinion, the Service will suggest reasonable and prudent alternatives, if any, to the proposed action.
- If the Service concludes that the proposed action and any resultant cumulative effects on listed species will not violate the ESA, the Service will specify the incidental take of listed species allowable and suggest reasonable and prudent measures, if any, that the ARNG can take to minimize incidental takings of listed species as a result of the proposed action.
- The ARNG should notify the Service of its final decision on the proposed action if a jeopardy opinion is received.
- If the ARNG determines that it cannot comply with the ESA after consultation with the Service, it may apply for an exemption.

Formal consultation should be reinitiated if:

- The amount of taking specified by the Service is exceeded.
- New information reveals effects of the identified action that were not previously considered.

- The identified action is modified in a way that could cause an effect to a listed species or critical habitat not previously considered.
- A new species is listed or critical habitat designated that may be affected by the identified action.

It is strongly recommended that the Section 7 process be completed and the results incorporated into the final NEPA document before release of a FNSI or ROD.

### 8.5.2 Content and Organization of Analysis

The types of information that should be used to describe vegetation; fish and wildlife species; endangered, threatened, and rare species; and sensitive habitats in the affected environment section of an impacts analysis are discussed below.

**Vegetation.** The following information should be included to adequately describe the species composition and distribution of vegetation in the vicinity of the project site:

- Principal habitat types occurring on the installation, including the approximate size (in acres) of each.
- The location of each habitat type on the installation, particularly within the project area, depicted graphically.
- Regional significance, if any, of those habitat types.
- Floral surveys conducted on the installation, especially within the project area, and the dates of those surveys.
- Native plant species documented at and around the project site.
- Exotic/ornamental plant species documented at and around the project site, including all noxious weeds.
- Ongoing vegetation management programs.

For all plant species mentioned in the environmental assessment, the common name should be written first, followed by the botanical name in parentheses. If there are numerous (more than about 15) plant species to report in this section, it is most effective to present the list in a table and include it as an appendix. In the body of the text, however, listing only the dominant plant species or those with particular relevance, such as noxious weeds that have the potential to spread as a result of the proposed action, is appropriate. The plant list appendix should be referenced.

**Fish and wildlife.** The fish and wildlife portion of the biological resources section should include detailed information about fish and wildlife species documented in the vicinity of the project site. If surveys have not been conducted, a list of species known to occur in the region—and thus potentially occurring on the installation—should be provided. Included in the description of fish and wildlife resources should be both game and nongame species and invertebrate species, if known. For all fish and wildlife species mentioned in the document, both scientific and common names should be included. Similar to listing plant species, fish and wildlife species should be listed in paragraph form or, if the number of species is too numerous to include as a paragraph, listed in a table and included as an appendix. Information to include in the description of fish and wildlife resources is as follows:

- Nongame species of mammals, birds, reptiles, amphibians, and fish known to occur, or potentially occurring, in the vicinity of the project site.

- Game species of mammals, birds, and fish in the vicinity.
- Resident status of bird species on the installation (e.g., which birds are known to nest in the vicinity, which over-winter there, which species are neotropical migrants).
- Invertebrate species known or potentially occurring in the vicinity.
- Wildlife management areas, preserves, or refuges.
- Wildlife management programs.

**Endangered, threatened, and rare species.** Endangered, threatened, and rare species warrant special treatment in a NEPA document, due in part to the large size of many installations and the historic protection of wildlife habitats afforded by the military to endangered species habitats. Though only federally listed species are protected under the ESA, the ARNG is increasingly addressing the protection of state-listed species on military installations as a matter of responsible stewardship and as a requirement under the state laws to which the ARNG is subject. To that end, it is appropriate and beneficial to confer with state fish and wildlife agencies during the NEPA process.

As previously mentioned, Section 7 consultation with the USFWS and appropriate state agencies is strongly recommended during the NEPA process. Consultation with these agencies not only will provide current information on federal and state-listed species occurring on the installation, and thus potentially affected by the proposed action, but also can lead to a discussion of alternative courses of action in a “might affect” situation. Inquiry letters and agency response letters should be included as an appendix to the environmental impact analysis document.

The affected environment section for endangered, threatened, and rare species should clearly and accurately present the following information:

- A current list of all federal and state-listed endangered, threatened, and rare species present within the project site, indicating specifically whether nesting or other breeding activity is occurring. Include source(s) of information.
- A current list of all federal and state-listed endangered, threatened, and rare species occurring in the region (potentially occurring in the project area). Include source(s) of information.
- The up-to-date rarity status (e.g., federally endangered, federal species of concern, state threatened) of each species, including both federal and state statuses if applicable. For rare species, the global status (e.g., G1, G2, G2/G3) should also be mentioned. Global rarity ranks have been defined by The Nature Conservancy.
- Information on the habitat preferences of each sensitive species.
- A description of conservation programs conducted for each species.
- Locations, as shown on a generalized map, of each species on the installation.<sup>25</sup>

Lists of sensitive species (using both common and scientific names) and their rarity status should be provided in tabular form. Other information to include in the table(s) is a general description

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<sup>25</sup> When depicting locations of these species, it is important to show or describe them only in relation to the proposed project site. Including precise latitude and longitude coordinates is not appropriate in a NEPA document and could result in increased disturbance to a vulnerable species. The most important aspect of showing species locations is their proximity to the site of the proposed action.

of the species' preferred habitat, including all host species, and a brief description of its abundance on the installation.

**Sensitive habitats.** Sensitive habitats include areas with some conservation value. The conservation value can be recognized either by the federal government, because of the presence of an endangered or threatened species or the natural area's designation as critical habitat, or by a state agency, because of the presence of state-listed species or its significance as a regionally threatened ecosystem. For example, a high-quality remnant of tallgrass prairie in Illinois—a threatened ecosystem in the midwestern United States and designated “significant natural area” under the Illinois Natural Areas Preservation Act—would be treated as sensitive habitat in a NEPA document.

Informal Section 7 consultation is also recommended when faced with a potential impact on sensitive habitat. Initiating a dialogue between the ARNG and appropriate agencies early in the NEPA process can facilitate discussion of alternative courses of action in a “might affect” situation.

The following information should be included to describe sensitive habitats on an installation:

- The presence and location of any critical habitat.
- The presence and location of ecosystems or microhabitats of local, regional, or national significance, including the reasoning for such designation.
- Characterization of the unique or significant biological or physical features of the sensitive habitats.
- Mention of dominant plant species.
- Biodiversity ranks for the habitats, if known.
- Any state regulations applicable to the conservation of the sensitive habitats.
- Management programs conducted by the installation to protect sensitive habitats.

### 8.5.3 Documenting Predicting Consequences

**Analysis.** Evaluating potential impacts on biological resources involves two aspects—assessing impacts on resources affected by the proposed action and identifying the circumstances and environmental conditions under which the impacts would be significant. Because of the lack of quantitative models applicable to this process, much of the assessment is qualitative in nature and relies primarily on the expertise and judgment of the assessor(s). Arguably, the element most critical to the analysis, however, is the dialogue between the ARNG and federal and state consultation agencies. The agencies provide information on sensitive species and habitats located on the installation or in the vicinity of the project site and can inform the ARNG, early in the NEPA process, as to whether the proposed action is consistent with the requirements of the ESA.

For each alternative, the environmental consequences section for biological resources should relate the following information:

- The vegetation, fish and wildlife, sensitive species, and sensitive habitats that would be permanently lost as a result of the proposed action.
- The biological resources that would be temporarily lost, and when and how those resources would be restored.

- Disturbances to biological resources, terrestrial wildlife species in particular, that would occur during and/or following implementation of the proposed action.
- The outcome of the informal consultation process between the Army and USFWS/NMFS.
- The outcome of the informal consultation process between the Army and state natural resource agencies.
- Mitigation measures to offset the loss of vulnerable biological resources, including how and when those measures would be accomplished.

**Description of effects.** The following are typical impacts on specific biological resources from ARNG activities.

- *Vegetation.* The clearing of a naturally vegetated area to construct new facilities, resulting in the loss of native plants, is the most apparent direct adverse impact on this resource area. Other direct effects could include the spread of invasive plant species into disturbed areas, the loss of native plant productivity, and increased habitat fragmentation. An indirect effect to consider is the degradation of aquatic ecosystems caused by contaminated runoff and increased sedimentation associated with ground-clearing, construction activities, and a variety of field training activities. The impact evaluations not only should consider the local significance of the vegetation loss, but also should frame the loss in a wider regional and national context when appropriate.
- *Fish and Wildlife.* Direct adverse impacts on fish and wildlife resources can be described in terms of reduced carrying capacities for a particular habitat type, diminished habitat quality, specific numbers of acres of habitat converted to other land uses, or actual number of animals eliminated from the area as a result of implementing the proposed action. Recreational impacts associated with the reduced fish and wildlife resources should also be described (e.g., reduced hunter days, decreased opportunity for bird watching and other nonconsumptive uses). In some cases, a direct beneficial impact to consider would be the conversion of a demolished facilities site to open space, thus providing additional habitat for wildlife species. Indirect impacts on fish and wildlife may result from increased noise and human activity associated with the proposed action (e.g., a construction project). These indirect effects may be short-term, occurring only during limited times, or they may be long-term, occurring from an increased human presence in the project area.
- *Sensitive Species.* Potential adverse effects on sensitive species could include the loss of habitat (a direct effect) or disturbance to breeding activity (indirect effect). Other disturbances from noise and an increased human presence may result in the displacement of species from the project area or entire installation. These effects may be long- or short-term. Results of agency consultation should be included in the discussion of impacts.
- *Sensitive Habitat.* Potential adverse effects include the loss of or disturbance to sensitive habitat. Examples of disturbances to these habitats include the trampling of sensitive plant species, alteration of successional stages, disruption of ecological processes, and removal of potential nest sites for sensitive species. Results of agency consultation should be included in the discussion of impacts.

Actions may trigger an EIS requirement if they would result in a direct or indirect significant impact on a federally listed species or loss of critical or sensitive habitat. In the case of an adverse effect, the requirement can often be avoided by mitigation proposals to alter the location

or timing of the project. However, the mitigation proposals must be suggested or approved by the USFWS or NMFS and/or appropriate state agency.

The following are examples of avoidance and minimization measures for impacts on vegetation and fish and wildlife:

- Maintaining large blocks of native vegetation by clustering facilities where feasible.
- Landscaping with native, low-maintenance vegetation.
- Limiting the use of herbicides to control noxious weeds.
- Maintaining blocks of habitat and known wildlife travel corridors where feasible.
- Timing construction activities to occur outside the breeding season of sensitive wildlife species.
- Maintaining an 800-foot buffer around bald eagle nest sites.

**Data sources.** The environmental management offices at installations typically are the best sources for site-specific biological information. These offices can often provide land use plans, recent EAs and EISs prepared for projects on the installation, environmental baseline surveys, results of biological studies conducted on the installation, floral and forest inventories, wildlife inventories, integrated natural resources management plans, endangered species management plans, game species management plans, landscape plans, and other natural resources planning materials containing information on baseline biological conditions.

The ITAM program supports the myriad natural/biological resource management requirements on Army and ARNG training lands. An important aspect of the program is the Range and Training Land Assessment (RTLTA) component, which serves as a good source of characterization data. RTLTA reports provide a description of the status and trends of training land conditions, as well as an assessment of the likely or potential causes of impacts. On many installations, the ITAM program and the environmental management office have the infrastructure and the biological resources entered into a geographic information system (GIS) database. GIS is capable of providing a wide variety of quantitative analysis, as well as producing spatial graphics that can be used to identify the existing or potential conflicts that various actions would have with biological resources.

If site-specific biological resources information is not available from the installation, the next best source for regional data is state natural resources agencies. These agencies often maintain a database of vegetation community types, wildlife species, and rare plants and animals present within their jurisdiction. The Natural Heritage Program is an especially good source of these data. Other organizations, such as The Nature Conservancy (regional offices) and local or state-based conservation organizations, also might be able to provide regional biological information.

Specific data sources and the information available from them include the following: satellite imagery (vegetation cover, location of surface water resources); aerial photography (impacted areas, vegetation community types and cover); U.S. Geological Survey (USGS) topographic maps (slope, aspect, roads, boundaries); U.S. Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS) Standard Plant List (national list of official plant names); USFWS (list of endangered, threatened, and candidate species; wetlands mapping), state natural resource agencies (state-listed endangered, threatened, and rare species; significant natural areas/habitat types), The Nature Conservancy (threatened, endangered, and rare species; habitats of regional and/or global significance), ITAM Support Center at the U.S. Army Construction

Engineering Research Laboratory (vegetation, wildlife, land use), and the U.S. Army Environmental Center (land use issues, natural resources technical policy and guidance).

## 8.6 Cultural Resources

### 8.6.1 Background

NEPA requires consideration of “important historic, cultural, and natural aspects of our national heritage” but provides no specific definition of these terms. Statutory and regulatory requirements, however, give highly relevant guidance on their meanings. Drawing on the various authorities, cultural resources for NEPA analyses should be considered to include

- Historic properties, as defined in the National Historic Preservation Act (NHPA).
- Cultural items, as defined in the Native American Graves Protection and Repatriation Act (NAGPRA).
- Archeological resources, as defined in the Archeological Resources Protection Act (ARPA).
- Historic and paleontological resources, as defined by the Antiquities Act.
- Sites that are scientifically significant, as defined by the Archeological and Historic Data Preservation Act (AHPA).
- Sacred sites, as defined in Executive Order 13007 (to which access is provided under the American Indian Religious Freedom Act (AIRFA)).
- Collections, as defined in 36 CFR Part 79 (*Curation of Federally-Owned and Administered Collections*).

### 8.6.2 Current Laws and Regulations

NEPA is but one authority for considering a project’s effects on cultural resources. A number of federal laws define and set requirements for the identification and treatment of cultural resources. At a minimum, the following laws, regulations, and other requirements must be taken into consideration when determining the effects of a project on cultural resources. Note that compliance with NEPA alone does not satisfy the applicable requirements of these laws, nor does compliance with these laws preclude the need to comply with NEPA.

**National Environmental Policy Act (NEPA).** The proponents of ARNG actions will ensure that cultural resources are fully considered when preparing NEPA analysis and documentation. NEPA documents will include a comprehensive assessment of the impacts of proposed ARNG actions or activities on cultural resources. However, compliance with NEPA for a specific action does not relieve the ARNG of the independent compliance procedures associated with applicable cultural resources requirements. Information and findings obtained through compliance with cultural resources statutes, regulations, Executive Orders, and Presidential memoranda should be integrated into the concurrent NEPA compliance process and associated documents.

NEPA analyses must consider the effects of proposed federal actions on cultural resources and the effects on American Indians, Native Hawaiians, Alaska Natives, and other ethnic and social communities to which the cultural resources might have importance. The information needed to make such impact assessments can be acquired from information developed as a result of compliance with cultural resources statutes, regulations, and Executive Orders.

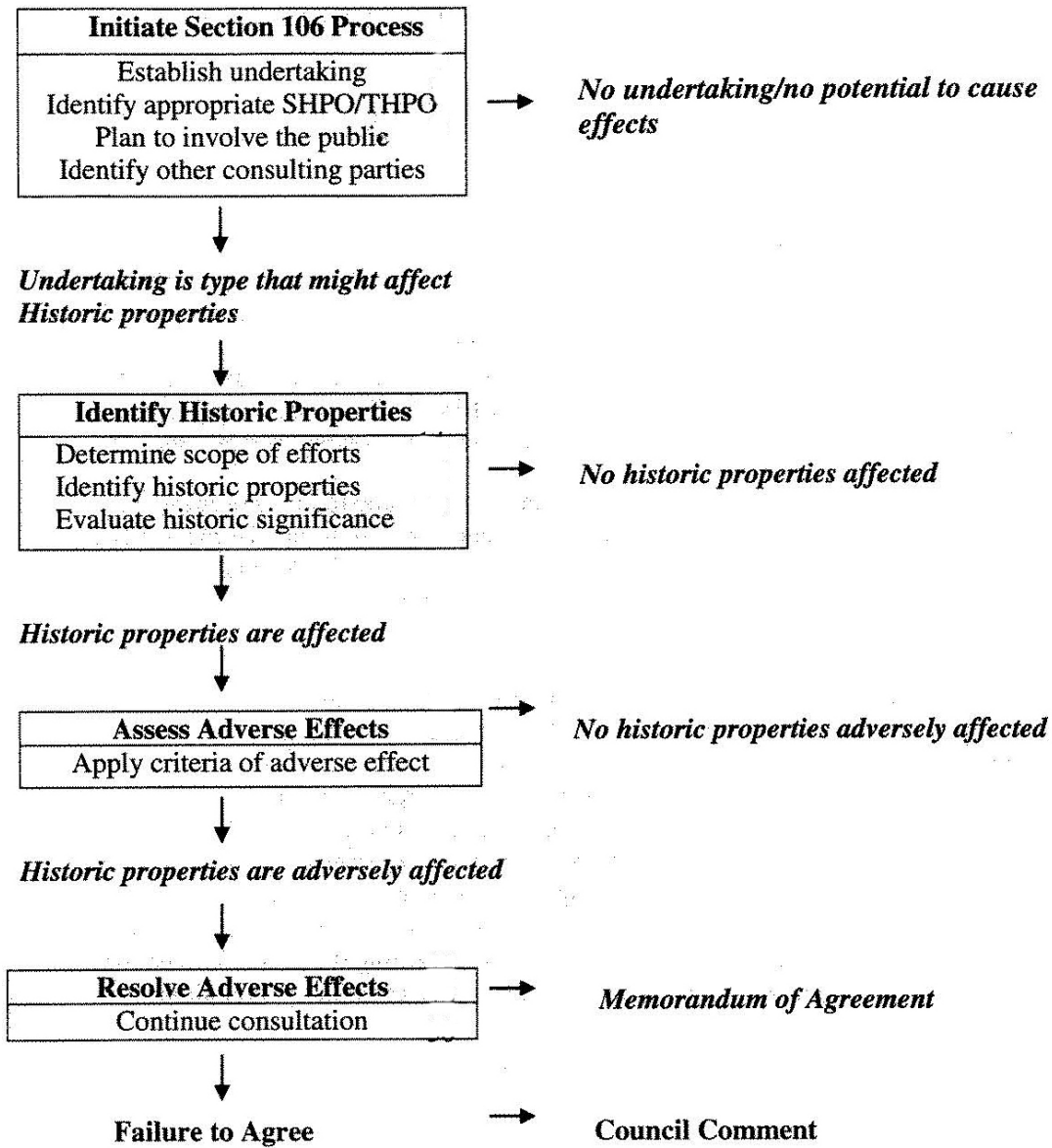


**National Historic Preservation Act of 1966, as amended (NHPA).** The NHPA establishes the federal government's policy to provide leadership in the preservation of historic properties and to administer federally owned or controlled historic properties in a spirit of stewardship. The ARNG must administer, manage, and treat historic properties in accordance with the NHPA. The installation commander must also identify, evaluate, and nominate historic properties for listing in the National Register of Historic Places.

The installation commander must identify, evaluate, and take into account the effects of all "undertakings" on historic properties in accordance with the procedures set forth in 36 CFR Part 800 and Section 106 of the NHPA. "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval. The installation commander is responsible for seeking the comments of the Advisory Council on Historic Preservation (ACHP) on undertakings that affect historic properties. The State Historic Preservation Officer (SHPO) participates significantly in the Section 106 compliance process by providing input on efforts to identify, evaluate, and consider effects on historic properties. If an undertaking might affect properties that have religious and cultural significance to a federally recognized Indian tribe, the tribe must be afforded the opportunity to participate as interested persons during the consultation process outlined at 36 CFR Part 800. Failure to take the effects of an undertaking on historic properties into account in accordance with NHPA Section 106 and 36 CFR Part 800 can result in formal notification from the ACHP to the Secretary of the Army of foreclosure of the ACHP's opportunity to comment on the undertaking pursuant to the NHPA. A finding of foreclosure by the ACHP means that the ARNG has not complied with Section 106 and is vulnerable to litigation from an outside party. An overview of the basic steps of Section 106 review is presented in Figure 8-1.

Section 110 of the NHPA imposes specific responsibilities on federal agencies regarding historic preservation. The affirmative preservation responsibilities in Section 110 must be balanced in a manner consistent with the mission and include, but are not limited to, the following: establishing a historic preservation program that includes the identification, evaluation, and nomination of historic properties to the National Register of Historic Places in consultation with the ACHP, SHPO, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate; using available historic properties to the maximum extent feasible prior to acquiring, constructing, or leasing new buildings; mitigating through documentation of historic properties that will be altered or destroyed as a result of a proposed ARNG action; and ensuring that significant historic features are appropriately preserved in transferring ARNG historic properties.

**American Indian Religious Freedom Act of 1978 (AIRFA) and Executive Order 13007 (Indian Sacred Sites).** AIRFA applies First Amendment guarantees of religious freedom to Native Americans. In accordance with AIRFA and Executive Order 13007, ARNG commanders must develop and implement procedures to protect and preserve the American Indian, Eskimo, Aleut, and Native Hawaiian right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to sacred sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites on all DoD lands.



<http://www.achp.gov/regsflow.html>

Figure 8-1.  
The Basic Steps Of Section 106 Review

The ARNG must consult with tribes and Native Hawaiians to identify sacred sites that are necessary to the exercise of traditional religions and provide access to ARNG installations, or other property used by the ARNG, for the practice of traditional religions, rights, and ceremonies. Installation commanders must maintain the confidentiality of sacred site locations.

Commanders must avoid adversely affecting the physical integrity of sacred sites and establish procedures to ensure reasonable notice is provided to federally recognized Indian tribes and Native Hawaiian organizations when proposed actions or land management policies and practices might restrict future access to or ceremonial use of sacred sites or adversely affect the physical integrity of such sites.

ARNG protection of cultural resources affiliated with Native Americans, Native Hawaiians, and Alaska Natives includes adherence to additional federal and DoD policies concerning recognition of Indian tribal governments. The U.S. Constitution distinguishes between the federal government, state governments, and tribal nations. The relationship between the federal and tribal governments has evolved through treaty, Supreme Court rulings, and federal legislation. Tribal governments maintain sovereignty over a range of issues, including cultural resources. Since 1968 the trend in federal policy has been to increase tribal sovereignty and self-determination. Accordingly, protection of cultural resources operates within the policy of the federal government to respect the sovereign nation status of Indian tribal governments.

**Native American Graves Protection and Repatriation Act (NAGPRA).** The intent of NAGPRA is to identify proper ownership and to ensure the rightful disposition of cultural items that are currently in federal possession or control. NAGPRA mandates that installation commanders summarize, inventory, and repatriate cultural items in the possession or control of the installation to lineal descendants or to culturally affiliated federally recognized Indian tribes or Native Hawaiian organizations. NAGPRA also requires that certain procedures be followed when there is an intentional excavation or inadvertent discovery of cultural items on federally owned lands. (Note: if Native American remains are found on state owned property, then State Human Remains Law applies.) ARNG commanders must ensure compliance with NAGPRA (25 U.S.C. 3002) and its implementing regulation (43 CFR Part 10).

**Antiquities Act of 1906, Archeological Resources Protection Act of 1979 (ARPA), and Archeological and Historic Data Preservation Act of 1974 (AHPA).** The Antiquities Act of 1906 and ARPA prohibit the excavation, collection, removal, and disturbance of archeological resources (as defined by ARPA) and objects of antiquity (as referenced in the Antiquities Act) on federally owned ARNG property without a permit issued by the USACE District Real Estate Office or the approval of the installation commander. Violation of ARPA may result in the assessment of civil or criminal penalties and forfeiture of vehicles and equipment used in connection with commission of the violation.

The AHPA specifically provides for the survey and recovery of scientifically significant data that might be irreparably lost as a result of any alteration of the terrain from a federal construction project or federally licensed project, activity, or program. Installation paleontological resource management requirements will be integrated into Installation Cultural Resource Management Plans and will establish and include installation policy for limitation of collection and removal of paleontological resources. Known paleontological resources must also be addressed in any NEPA documentation prepared for actions that might affect or cause irreparable loss or destruction of such resources.

**36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections.**

The ARNG must ensure that federally owned and controlled archeological collections and associated records, as defined in 36 CFR 79.4(a), are processed, maintained, and curated in accordance with the requirements of 36 CFR Part 79. However, NAGPRA cultural items and human remains in the ARNG's possession and control must be disposed of in a manner consistent with the requirements of NAGPRA and 43 CFR Part 10.

**Presidential Memorandum for Heads of Executive Departments and Agencies on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994).** This memorandum requires that consultation between the ARNG and federally recognized Indian tribes occur on a government-to-government basis. ARNG personnel must treat designated representatives of federally recognized Indian tribal governments as representatives of a sovereign government. Consultation with federally recognized Indian tribes on a government-to-government basis occurs formally and directly between installation commanders and heads of federally recognized tribal governments. Installation and tribal staff-to-staff communications do not constitute formal government-to-government consultation but are normally necessary prerequisites to formal consultation.

Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*) became effective on January 5, 2001, and supersedes Executive Order 13084. The new Executive Order establishes a policy that federal agencies will respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and Indian tribal governments. To this end, federal agencies are to consult with tribal officials as to the need for federal standards and any alternatives that would limit the scope of federal standards or otherwise preserve the prerogatives and authority of Indian tribes. The Executive Order specifically cites the Presidential Memorandum of April 29, 1994, which further obligates federal agencies to "assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities."

Specific policies, procedures, and responsibilities of the ARNG in meeting cultural resources compliance and management requirements are contained in AR 200-4 and in DA PAM 200-4. In August 2005, the NGB-ARE published an ICRMP template manual entitled *Instructional Manual for Completion of Integrated Cultural Resources Management Plans* (August 2005). The template can be used when updating or rewriting installation ICRMPs. It contains all of the standardized language for ICRMP chapters, and will streamline the preparation and review processes. The manual works hand-in-hand with MS Access Database developed by NGB-ARE for ICRMP preparation.

**8.6.3 Incorporating Cultural Resources into the NEPA Process**

The key to the successful balance of mission requirements and cultural resources compliance responsibilities is early planning, coordination, and effective management to prevent conflicts between the mission and the managed resources.

ARNG personnel at all levels must ensure that mission requirements are carried out in harmony with the statutory and regulatory requirements concerning cultural resources. Failure to fulfill these requirements could result in halting or delaying ongoing or proposed mission-essential projects, training, and testing actions, and could strain financial and staff resources. Proponents of ARNG actions should coordinate with the Cultural Resources Manager or other local experts

early in the planning stage of projects and activities to identify potential cultural resources compliance requirements.

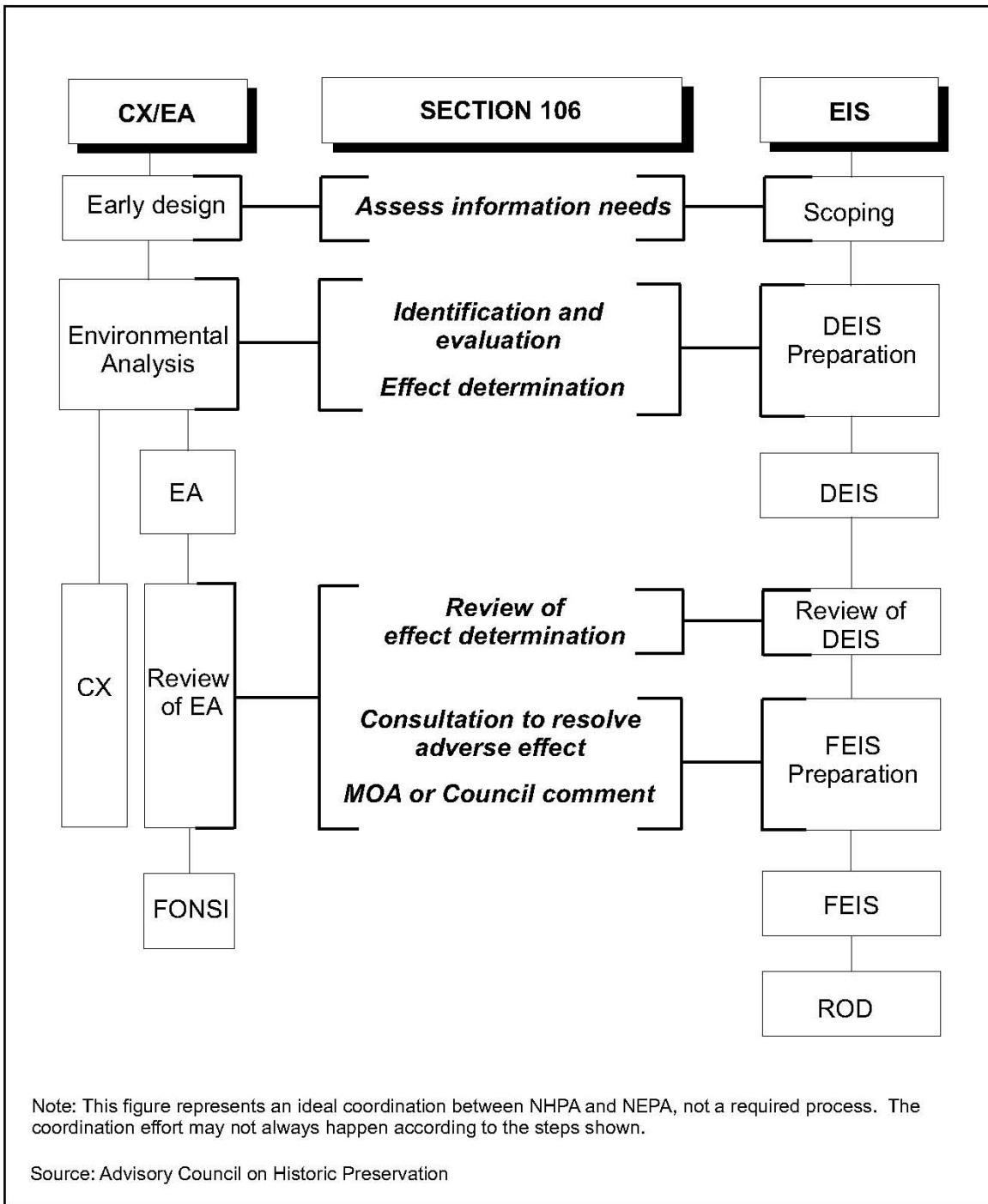
**NHPA Section 106 process and NEPA.** Compliance with the NHPA Section 106 process (as well as NEPA evaluation) is accomplished by first identifying and determining the National Register eligibility of historic properties located within an undertaking's area of potential effects (APE). Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertakings. Effects of the undertaking on historic properties are evaluated using the criteria provided in 36 CFR 800.9(a). The direct and indirect effects of federal undertakings are adverse effects if they result in loss, alteration, or destruction of properties on or determined eligible for listing on the National Register. Transfer, lease, or sale of historic properties without adequate preservation restrictions or mitigation measures is also considered to be an adverse effect. When an undertaking will have an adverse effect on historic properties, the ARNG must consult with the appropriate SHPO, interested parties, and the ACHP, as appropriate, to avoid, eliminate, reduce, or mitigate the adverse effect. The results of these consultations must be taken into consideration as part of the process for the NEPA document.

Under the extreme circumstances of a major natural disaster or an imminent threat to the national security, a waiver of federal agency responsibilities under Section 110 of the NHPA may be obtained (36 CFR Part 78). However, a waiver of responsibilities under Section 110 does not affect an agency's Section 106 responsibility to consult with the ACHP for comments regarding the effects of the emergency activities on properties included in or eligible for the National Register of Historic Places. (Note: in the case of natural disaster, the SHPO has seven days to comment instead of 30 days.)

When considering whether a project will have an adverse effect on traditional cultural properties, efforts must be made to identify and consult with appropriate Indian tribes or Native Hawaiian organizations that have historical ties to the project area. For NEPA projects, it is recommended that consultations for traditional cultural properties be handled at the same time as the NHPA Section 106 consultation. This approach is recommended for several reasons. First, many of the cultural resources identified during the historic properties inventory required by the NHPA are of specific interest to Native American and Hawaiian groups. Second, ACHP regulations call for consultation with traditional tribal cultural leaders as part of the NHPA Section 106 process. Additionally, NAGPRA established Indian tribe and Native Hawaiian organization ownership of their respective human remains and items of cultural patrimony, and it requires consultation with these groups to determine appropriate disposition of such items.

The APE for cultural resource evaluations is the geographic area that could experience any possible effects of an undertaking, either direct or indirect. The APE for an ARNG facility would include not only the land within the installation boundary but also outside areas that might be directly or indirectly affected by the proposed action or alternatives. A common-sense approach must be taken in identifying the APE. The direct and indirect effects must be readily identifiable and actually caused by the undertaking. The APE for NEPA purposes might not be the same as that defined for the NHPA; therefore, care must be taken to identify the meaning and context of the term when using it in various documents.

Section 106 compliance requirements should be integrated into NEPA analyses (see Figure 8-2). Optimally, all surveys or studies and determinations should be completed and the results included



**Figure 8-2.**  
**Coordinating Section 106 and NEPA Reviews**

in the NEPA document. In those instances where it is not possible to complete the Section 106 process within the time frame scheduled for NEPA documentation preparation, all current information concerning the status of completed and ongoing historic property inventory studies and Section 106 consultations should be included in the NEPA document. The NEPA document should also note that the Section 106 consultation process will be completed before the proposed action is initiated.

There are, therefore, two options for integrating the NHPA into the NEPA process: (1) complete the cultural resource inventory and assessment work, determine mitigation measures, and coordinate decisions prior to the final NEPA document or (2) initiate and complete as much of the process as is possible and stipulate in the NEPA document the steps that will be taken to comply with the outstanding requirements of NHPA and what steps would be taken to protect, avoid, or mitigate for the loss of any NRHP-eligible properties that are found to be located within the APE.

*Option 1: Completion of Requirements Prior to Final NEPA Analysis.* Under Option 1, the EA/EIS must contain the following:

- A description of the APE for cultural resources.
- Summary of information from completed historic properties inventory.
- Summary of information from completed National Register eligibility evaluations.
- Documentation of consultation with the SHPO, THPO, Indian tribes or Native Hawaiian organizations, interested parties (as appropriate), and the ACHP.
- Determination of effect under NHPA Section 106 and determination of impact significance under NEPA.
- A list of identified concerns related to historic properties.
- Documentation on any decision regarding resolution of adverse effects and comment by the ACHP. (If the ARNG makes a commitment to mitigation, the agreement document [i.e., MOA] should be attached to the EA or EIS as an appendix to provide documentation of consultation and agreement between interested parties and to evidence the legal obligation of the ARNG.)
- A description of the specific mitigation measures, if applicable, to be taken to reduce or avoid the selected action's adverse effects on historic properties.

*Option 2: Delayed Completion of Requirements.* Under Option 2, the EA/EIS must contain the following:

- A description of the APE for cultural resources.
- An evaluation of the existing historic properties inventory data and identification of information gaps in light of the ability of the data to meet compliance requirements for the proposed action.
- A list of references and personnel consulted to make the determination of study needs.
- Documentation of consultation with the SHPO, THPO, Indian tribes or Native Hawaiian organizations, interested parties (as appropriate), and the ACHP. Include as an appendix any MOA reached by the ARNG with other parties.
- Discussion of possible determination of effect under NHPA Section 106 and determination of impact significance under NEPA.

- A list of identified concerns related to historic properties.
- A statement in the ROD or FNSI that funds will not be expended until the Section 106 consultations are complete and that specific measures will be taken, as appropriate, to reduce, avoid, or mitigate for any adverse effects the proposed action might have on historic properties.

Under Option 2, requirements to complete historic property inventory actions and Section 106 consultations will continue after completion of the NEPA document. Care should be taken to determine that all actions that must be taken to comply with Section 106 are completed before conducting project activities that might affect historic properties (e.g., earthmoving or building modification).

#### 8.6.4 Describing the Affected Environment for Cultural Resources.

To set the stage for an adequate analysis of the subject matter, the Affected Environment section of an EA or EIS should present at least the following types of information in the order given. When appropriate, these data may be summarized in chart or tabular form.

**First.** Present a brief history of the study area. Much of this information can be gathered from an installation Integrated Cultural Resources Management Plan or other previous cultural resources studies if they exist. Include, at a minimum, information concerning prehistory, civilian history (prior to military acquisition), and military history.

**Second.** Include reference to previous cultural resource inventories, investigations, standard operating procedures, agreements, and historic preservation plans. Appropriate reference or discussion in this section should include the following:

- Archeological surveys and investigations.
- Building, structure, and landscape inventories and investigations.
- Record of past NHPA compliance activities, including Programmatic Agreements, Memoranda of Agreement, and compliance letters from the SHPO.
- Integrated Cultural Resource Management Plans.
- Standard Operating Procedures.

**Third.** Identify all listed National Historic Landmarks or National Register sites, buildings, properties, and districts (including those eligible for listing), and give their general locations. When feasible (and not considered detrimental to site protection and preservation), the locations of these properties should be displayed on maps.<sup>26</sup>

**Fourth.** If applicable, list and give locations of National Historic Landmarks or National Register listed or eligible properties located off ARNG property that might be affected physically, visually, or audibly by proposed ARNG activities. When feasible (and not considered detrimental to site protection and preservation), the locations of these properties should be displayed on maps.

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<sup>26</sup> Section 304 of the NHPA requires that information about the location, character, or ownership of a historic property be withheld from public disclosure when the installation commander determines that disclosure might cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.



**Fifth.** State whether the buildings, structures, or lands to be affected by proposed ARNG actions have been evaluated for significance under the National Register criteria. Identify any historic property that would be affected by proposed ARNG actions. If previous inventory surveys have determined that the areas that could be affected by the ARNG activities have no historic properties, append the SHPO correspondence that concurs with the recommendations of such surveys.

**Sixth.** Describe and state the findings of any cultural resource investigations undertaken for proposed ARNG actions.

**Seventh.** If additional cultural resource investigations will be necessary before the ARNG action can proceed, the scope of these actions should be identified. Identify any MOAs/PAs that require additional cultural resource investigations, surveys, evaluations, or mitigation actions. Include copies of these agreements as appendices to the NEPA document.

### 8.6.5 Describing the Environmental Consequences for Cultural Resources

The Environmental Consequences section of the NEPA document should present at least the following types of information in the order given. The content and recommendations contained in the cultural resource portion of the Environmental Consequences section will be determined, in part, by whether it was possible to complete the Section 106 process (previously described in this section) before finalization of the NEPA document.

**First.** State whether any archeological sites or historic structures that are on or potentially eligible for the National Register would be affected by the ARNG action.

**Second.** If historic properties are located within the APE, determine the potential effects of the project on these properties using the criteria provided in 36 CFR 800.9(a). Effects might include, but are not limited to, the following:

- Destruction of historic buildings, structures, or landscapes.
- Construction in historic districts.
- Repair or alteration of historic buildings and structures.
- Construction in areas with archeological sites.
- Transfer of ownership to nonfederal entities.
- Decreased maintenance resulting in deterioration of historic buildings and structures.
- Change of mission training in range areas that could result in damage to surface or buried archeological sites.

**Third.** Determinations of effect for proposed ARNG actions should be made in consultation with the State ARNG cultural resources manager and the SHPO. For consultation purposes, the potential for ARNG actions to affect cultural resources should be defined as either “no effect,” “no adverse effect,” or “adverse effect.”

DA and DOD regulations and policy require consultation with Native Americans during the NEPA analysis process. In order to comply with these requirements, states must ensure that every federally recognized tribe with a cultural affiliation with the proposed action is invited to consult. Consultation can be initiated using any established protocol agreed to between the state

and the tribes (MOU, etc.). In the absence of any established protocol, states will ensure that tribes are included through use of the following consultation process.

- Initial NEPA consultation through a certified letter, signed by the Adjutant General or Chief of Staff, which presents the proposed action. This should occur prior to initiation of the draft document.
- Transmittal of a certified cover letter inviting consultation along with the draft NEPA document (draft EIS or, if the proponent elects to circulate the draft EA, the draft EA). Publication of the Notice of Availability in at least one local paper of general circulation.
- Transmittal of a certified cover letter and final NEPA document. Publication of the Notice of Availability in at least one local paper of general circulation.
- Copies of all communications and distribution lists as required along with any responses from the tribe should appear in the final NEPA document. When the proponent uses a form letter to notify multiple potentially affected tribes, one copy of the letter and a list of the tribes who received it is sufficient. The only time all tribal letters are needed is when there is unique content between them.
- Prepare and include in an appendix a Memorandum for Record that shows the dates that letters were sent out and the dates any responses were received.

Those states that have an established protocol for consultation, and those that have initiated consultation in the manner listed above, will make a determination as to whether consultation is required for each project being analyzed by NEPA.

If a state ARNG determines that consultation is not required, then cite the relevant policies and provide the rationale for the decision in the NEPA document. For example:

“The [STATE] ARNG has considered the *Annotated DOD Policy on American Indians and Alaska Natives* (dated 27 October 1999), EO 13175, and guidance in DA PAM 200-4 Appendix F. The [STATE] ARNG concludes that the action is of a type that would not affect Native American concerns because [PROVDE REASON(S)]”

If a state ARNG determines that consultation is required and has conducted such consultation, then cite the relevant policies and provide the rationale for the decision in the NEPA document. For example:

“The [STATE] ARNG has considered the *Annotated DOD Policy on American Indians and Alaska Natives* (dated 27 October 1999), EO 13175, AR 200-4 and guidance in DA PAM 200-4 Appendix F. The following tribes have been identified as having potential concerns: [LIST OF POTENTIALLY INTERESTED TRIBES]. This list is based on recent tribal consultations on the Integrated Cultural Resources Management Plan dated [DATE OF LAST ICRMP] and other recent communications regarding the present actions. In addition, the following tribes have indicated that the project location is outside their area of interest: [LIST OF TRIBES THAT ARE NOT CONSIDERED INTERESTED]. Consultation followed established protocols based on MOU’s [IF ANY, OR WHATEVER OTHER PROTOCOL; CITE WITH DATE]. Consultations with the remaining tribes followed the default protocols provided in the NGB-ARE Policy Memo dated \_\_\_\_\_.”

**Fourth.** Describe the actions or mitigation measures that were completed or will be necessary to bring the facility into compliance with the NHPA. Cultural resource studies undertaken as a consequence of proposed ARNG actions might include, but are not limited to, the following:

- Historic overviews to provide contexts for statements of significance.
- Archeological surveys.
- Archeological site excavations to determine National Register eligibility.
- Archeological mitigation excavations for National Register-eligible sites (final data recovery).
- Building, structure, and landscape inventories.
- Building, structure, and landscape recordation (Historic American Buildings Survey [HABS] and Historic American Engineering Record [HAER] recordings and drawings; see Volume 48, page 44731, of the *Federal Register*, published on 29 September 1983).
- Cold War property inventories.
- Selection of curation facilities for installation artifact and record collections.

## 8.7 Environmental Justice

The concept of environmental justice is based on the premise that no segment of the population should bear a disproportionate share of adverse human health or environmental effects. Historically, low-income and minority communities have in some cases been disproportionately affected by negative environmental effects, receiving few of the benefits of economic growth and development while absorbing much of the societal cost.

To address environmental justice concerns, in February 1994 the President issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations* (see [Appendix HH](#) of this manual), requiring each federal agency to “make the achievement of environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health and environmental effects on minority and low-income populations.” The Executive Order and an accompanying Presidential memorandum direct federal agencies to identify and analyze the potential effects of proposed actions in accordance with health and environmental laws. Public involvement and data collection efforts are also addressed to ensure that such efforts specifically consider the potential for effects from environmental hazards on minority and low-income communities.

In March 1995 DoD issued the *Department of Defense Strategy on Environmental Justice*, which describes a strategy to meet the intent of the Executive Order, minimize any adverse effects on human health and the environment of minority and low-income populations, and carry out the defense mission. Included in the document is an implementation plan that describes specific steps DoD will take to execute this strategy. A key point made in the plan is that DoD will use NEPA as the primary mechanism to implement the provisions of the Executive Order. DoD considers the plan to be a living document to allow for change as new opportunities and initiatives are identified. A copy of DoD’s strategy document is provided as [Appendix II](#) in this manual.

Environmental justice issues must be considered and addressed in the NEPA process during the identification and analysis of the potential environmental and socioeconomic effects of the proposed action and alternatives. Preparers should be sensitive to considerations of

environmental justice throughout preparation of an EA or EIS. It is especially appropriate for this issue to be included in public scoping because during this early step in the NEPA process, minority and low-income populations can be identified, their participation facilitated, and their concerns determined.

Public involvement meets two requirements of the Executive Order: (1) it aids in identifying minority and low-income groups, and (2) it provides the means for these groups to participate in federal decision making that might affect them. When describing actions taken to involve the public (scoping meetings, workshops, public meetings, media advertisements, and so forth) in the early sections of a NEPA document, specific actions taken to address environmental justice issues should be described and documented as well. A statement such as the following can document efforts made during the public involvement phase to reach minority and low-income groups.

Persons and organizations known or thought to have a potential interest, including minority, low-income, disadvantaged, and Native American groups, were identified, informed, and given the opportunity to participate in the decision-making process.

To help ensure effective participation of environmental justice stakeholders, DoD developed a detailed checklist for agencies to use as part of their overall public participation efforts. A copy of this checklist is provided as [Appendix JJ](#) in this manual.

**Affected environment.** Environmental justice conditions should be addressed in the Affected Environment section of the NEPA document. For areas potentially affected by ARNG actions, this would include identifying the geographic distribution of minority populations, the geographic distribution of low-income populations by poverty status, and consumption patterns of populations that principally rely on fish and wildlife for subsistence. An appropriate introductory statement could be:

On February 11, 1994, President Clinton issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*. The purpose of the order is to avoid the disproportionate placement of adverse environmental, economic, social, or health effects from federal actions and policies on minority and low-income populations. The first step in analyzing this issue is to identify minority and low-income populations that might be affected by implementation of the proposed action or alternatives. Demographic information on ethnicity, race, and economic status is provided in this section as the baseline against which potential effects can be identified and analyzed.

**Environmental consequences.** In the Environmental Consequences section of the NEPA document, effects of the proposed action and alternatives on minority and/or low-income populations in the ROI, and any appropriate mitigation, should be analyzed and documented. In conducting this analysis, it is particularly important to determine whether the ARNG's activities would have a disproportionate effect on minority or low-income populations. Examples of such effects could include increased health risks from air emissions, increased noise levels from aircraft, a reduction in employment opportunities, and adverse effects on fish and wildlife used for subsistence by local groups.

## 8.8 Floodplains

A floodplain is a highly variable area on one or both sides of a stream channel that is inundated by floodwater at some interval, from frequent to rare. Floodplains are an important part of any stream system and serve many natural functions, including

- Spreading out and slowing floodwaters and reducing their erosive force.
- Recharging aquifers.
- Filtering sediments out of floodwaters and providing soils for riparian vegetation, which in turn provides habitat for wildlife.

Placing structures, buildings, or debris in a floodplain or installing structures designed to protect property from floodwater (e.g., dikes, levees, retaining walls, and riprap) disturbs the natural floodplain. Impacts resulting from these disturbances include

- Increasing the size and frequency of floods.
- Decreasing the ability of the floodplain to disperse stream energy during floods, which increases peak flows and the likelihood of stream bank and bed erosion.
- Decreasing vegetation cover and wildlife habitat.
- Decreasing recharge of aquifers, which can reduce groundwater volume and affect stream baseflow.

Floodplain boundaries are most often defined and expressed in terms of frequency of inundation, that is, the 100-year and 500-year flood. The 100-year floodplain, for example, is the land inundated by the instantaneous magnitude of flow that can be expected once in 100 years based on historical records.

Many flood-prone areas partition the 100-year floodplain into two zones—the floodway and the flood fringe. The flood fringe is the outermost portion of the 100-year floodplain and consequently resides at the highest elevation. The floodway is the lower, interior zone and represents the portion of the floodplain that theoretically could convey all the 100-year floodwater with only a 1-foot rise of water level above the height of the outermost boundary of flood fringe. The importance of this distinction is that buildings in the flood fringe zone are eligible for federally subsidized flood insurance, whereas buildings in the floodway are not.

Activities can directly affect a floodplain if they occur within the floodplain boundaries. Activities occurring outside the floodplain boundaries can also affect the floodplain if they significantly disturb the timing and extent of runoff and the amount of sediment load carried by runoff. A region of influence (ROI) or boundaries for analysis of effects on floodplains typically include the sites under consideration for each alternative that reside in the 100-year floodplain, plus any activity on adjacent land in the watershed that would significantly increase surface runoff and sedimentation. Professional judgment is necessary to estimate the extent of adjacent lands that must be considered.

**Statutory and regulatory setting.** Executive Order 11988 (*Floodplain Management*) directs federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains. State and local jurisdictions regulate impacts on the floodplain. In most instances, new construction is discouraged within the 100-year floodplain. Permits that allow structures in the floodplain typically require base floor levels to be higher than the elevation of the 100-year floodplain boundary.

Executive Order 11988 requires each federal agency to determine whether a proposed action will involve construction in a floodplain and to consider alternatives to avoid adverse effects and incompatible development. If the preferred alternative requires siting a project in a floodplain, the action must be designed or modified to minimize harm. The Executive Order requires that the public be informed of the action. For ARNG actions, this is accomplished through the public involvement provisions of NEPA, which satisfy the public review process requirements of the Executive Order. In all actions involving floodplains, proponents must ensure that their NEPA documentation specifically cites the Executive Order.

**Describing existing conditions.** The affected environment section for floodplains should accomplish the following objectives:

- It should state whether a floodplain(s) is present in the ROI for each alternative and indicate the source(s) of this information
- If a floodplain is present, the boundaries of the 100-year flood should be graphically depicted along with the source reference.
- The 100-year floodplain should be described to the extent possible using available information along with state and local regulations governing what may occur within the floodplain. This characterization may also include descriptions of the 500-year floodplain, the floodway, and flood fringe zones.

Information for flood hazard areas, including defined boundaries for 100-year floods, is found on Floodplain delineation maps produced by FEMA. If available information indicates that a floodplain is present in the ROI, a map depicting the 100-year floodplain is essential. Ideally, the map would have a 2-foot contour interval and include both the floodway and flood fringe zones. If local regulations designate zones based on the 500-year flood, this boundary should also appear on the map.

**Documenting effects of the proposed action and alternatives.** Assessing potential impacts on floodplains from any action requires careful consideration of a broad spectrum of possible effects and relies heavily on the specialized expertise and judgment of the assessor. The general goal is to minimize disturbance of the floodplain. The analysis should focus on the presence or absence of floodplain encroachment by the activity. General effects of having structures in the floodplain include

- Increasing the size and frequency of floods.
- Decreasing the ability of the floodplain to disperse stream energy during floods, which increases peak flows and the likelihood of stream bank and bed erosion.
- Decreasing vegetation cover and wildlife habitat.
- Decreasing recharge of aquifers, which can reduce groundwater volume and affect stream baseflow.

Actions that result in the alteration of floodwaters within an area, including those that cause excessive runoff leading to local flooding, could result in a significant impact. Mitigation measures might include avoiding construction within designated floodplains and controlling storm water runoff.

## 8.9 Geology and Soils

The geologic resources of an area comprise all soils and bedrock materials. Environmental aspects to be considered include stratigraphy, topography, soils and sediments, engineering properties of the materials, seismic hazards, slope stability, earthworks, mineral resources, unique landforms, and geological conditions that might limit development, influence contaminant distribution and migration, or influence ground water resources.

Soil refers to the upper layer of unconsolidated material on the surface of the earth that is capable of supporting plant life. For mapping purposes, soils are typically described as series, associations, or complexes. Soil series represent the lowest category of the U.S. system of soil taxonomy. Soil series are commonly used to name the dominant or codominant soils represented on detailed soil maps, and they provide the most readily available detailed characterization of a soil. Soil associations and complexes consist of two or more kinds of component soils or soils and miscellaneous areas plus allowable inclusions. Components of soil associations are large enough to be delineated individually at a scale of 1:24,000, and soil complexes consist of components that are too small to be individually delineated at that scale. Soil surveys present a systematic examination, description, classification, and mapping of soils in an area. Soil surveys are classified according to the kind and intensity of field examination. The National Cooperative Soil Survey is responsible for developing and implementing standards for describing, classifying, mapping, writing, and publishing information about the soils of a specific area and for presenting this information in soil surveys. The term “prime farmland” refers to soils having characteristics that make them especially valuable for agriculture. Prime farmland, as an environmental resource relevant to NEPA analyses, is addressed separately in Section 8.15.

Many types of ARNG proposals have the potential to affect and be affected by the geologic environment and soil conditions. Major potential geologic constraints to a project include seismic activity, weak geologic structure, topography, and soil conditions. Geology has the greatest influence on design and structural engineering of new facilities. The underlying bedrock might provide an excellent foundation, or it might present enormous difficulties if excavation is desired. If the area has been mined for mineral resources or if there are caves, sinkholes, or other karstic features, the risk of ground subsidence must be determined. Project costs can vary considerably between structures that are constructed on poured footings and those which require construction on pilings due to poor surface or subsurface conditions. Topography may make construction costs prohibitive because of uneven terrain or steep slopes. If an area is seismically active, site-specific studies to establish seismic risk at new building locations would be required before construction, and the buildings would be required to meet Seismic Zone building codes for that area.

A project’s potential impacts on the geologic environment include loss of or damage to mineral resources; erosion of disturbed soils; loss of or damage to paleontologic resources; loss of or damage to agricultural resources (for instance, refer to the separate discussion of prime farmland in Section 8.15); and changes to microtopography through the leveling and grading of the surface for the construction of new buildings.

Any new construction will disturb soils through ground-breaking excavation, removal of vegetation, and leveling and grading of the surface. The exposed soil would be exposed to erosion that could lead to deposition of sediment in nearby water bodies if proper management measures are not implemented. If topsoil is removed, the ground should be covered or stabilized with vegetation to prevent wind and water erosion. The soil must be replaced as the top ground cover; otherwise, there will be no material to support vegetation, creating a barren surface and the

potential for severe erosion.

Certain soils have characteristics that could make them unsuitable for construction. A high acidic level can lead to corrosion of underground pipes and storage tanks. Soils exhibiting high plasticity may also be unsuitable for supporting structures such as buildings, parking lots, and roads because of their high shrink/swell potential.

The construction of new buildings, roads, and parking lots also increases the amount of impervious surface in the vicinity of the project site. The effect may be an increase in storm water runoff, resulting in erosion and associated sedimentation. Increased sediment loads in runoff can affect the water quality of nearby water bodies.

**Statutory and regulatory setting.** Applicable Army and other federal regulations for geologic and soil resources are listed below. Federal statutes and Executive Orders are described in [Appendices GG](#) through [MM](#) of this manual.

- AR 200-3, *Natural Resources—Land, Forest and Wildlife Management*
- Farmland Protection Policy Act (FPPA) of 1981
- Soil Conservation and Domestic Allotment Act
- Executive Order 11207 (*Coordination of Federal Programs Affecting Agricultural and Rural Area Development*)

Other applicable laws and regulations may include the following:

- Building codes that set the minimum standards that vary with the type of structure, its size, shape, and intended use
- Federal and state laws protecting mineral rights
- State and local laws regarding protection of geologic resources (considered on a case-by-case basis)
- Applicable state storm water management and erosion regulations
- Federal and state laws protecting wetlands (hydric soils)

**Describing existing conditions.** The affected environment section should accomplish the following objectives:

- *Geology.* The section should describe the topography of the site as well as the surrounding area, creating an image of the surface relief. The preparer should address the physiographic province the installation is in, as well as the elevation, slope, and major landforms on the installation itself.

Discuss the surficial and general geology of the ROI. Include the name, age, thickness, and slope of the layers composing the underlying structure in order of oldest to youngest, if the information is available. Describe the engineering/structural properties of the material, pointing out any weaknesses such as the presence of karstic features. If there are petroleum or mineral resources present, determine if they have ever been extracted or if there are plans to do so in the future. It is possible that development may not be economically feasible at this time, but it might become feasible in the future.

Describe the location of faults within the ROI, if any. List the Earthquake Hazard Zone



rating for the area, the date of the last recorded earthquake, the frequency and magnitude of the earthquakes (if any), and building code standards. It is important to bring out any possibility of harm to human life should an earthquake occur.

The characterization of the geology of the area should bring out any features that might affect the establishment of new housing or the expansion of existing housing relevant to the RCI project.

- *Soils.* The section should state all of the soil mapping units that occur on the installation with a description of the soil, its limitations, and the slope. It is recommended that the mapping units be presented in a table and a map showing their locations if the list of soils is extensive or they have characteristics that would limit proposed uses. This will provide a good general characterization of soil conditions on the site and is a useful tool in determining use and management. If a table is included, it should present the soil series name, map unit number, texture/parent material, drainage class, hydric soil classification, limitations of the soil (including the USDA's Land Use Classification System rating), and the landscape position.

Any limitations of the soil that would affect the RCI project should be discussed. These include but are not limited to erosion hazards, poor drainage conditions, hydric soil classification, shrink/swell characteristics, steep or severe slopes, and shallow to rock conditions.

If a soil is classified as hydric, there is a high probability that jurisdictional wetlands occur on the site. The presence of hydric soils is one of the three criteria (hydric soils, hydrophytic vegetation, and wetland hydrology) used to determine the presence of U.S. Army Corps of Engineers (USACE) jurisdictional wetlands. Refer to Section 8.19 for further information on wetlands.

The section should state whether any of the mapped soil units are prime farmland soils. If so, they may be protected under the FPPA (refer to Section 8.15).

If available information is so lacking that the soil characteristics cannot be described, it is recommended that an on-site investigation to determine site-specific characteristics take place.

**Documenting effects of the proposed action and alternatives.** Assessing the proposed project's potential impacts on geology and soils and the impacts of geology and soils on the proposed project requires consideration of a broad spectrum of possible effects and relies on the accuracy of the data and specificity relative to the project site. Having detailed, site-specific geologic and soil information for a construction project is not only recommended, but may be required by state or local regulation.

Several standard sources should be consulted as an initial step in characterizing geologic and soil conditions on a site. These include the following:

- *Topographic maps.* The most widely used scale is the 7.5-minute quadrangles at 1:24,000, but other scales are available. Topographic maps make it possible to identify and measure the steepness of slope of mountains, hills, or dunes, as well as to identify other features such as water bodies, woodlands, and existing structures. Maps are available from the USGS.

- *USGS geologic maps and generalized cross sections.* Geologic maps and cross sections depict surface geology, underlying strata (by name and age), and depth to bedrock. These maps are also available from the USGS.
- *State geological survey maps and publications.* The geologic survey agency of each state is a source for maps and publications on geologic conditions in the state. A list of maps and publications available to order can usually be obtained by calling the Division of Mineral Resources.
- *Aerial photographs.* Some installations have been mapped using aerial photo-interpretation. These maps are often available as a GIS layer from the installation's environmental directorate. Aerial photographs, as well as mapping tools developed from their interpretation, often provide a good source for characterization of topography, geologic features, potential problem areas, and existing structures on a site.
- *Seismic activity information.* To obtain information on the Earthquake Hazard Zone rating for the ROI, as well as the Seismic Zone rating for building codes, contact the state geologist at the state Geological Survey or the state Division of Mineral Resources. Other sources are the USGS and the Federal Emergency Management Agency (FEMA).
- *Petroleum or mineral resources.* USGS geologic maps may indicate the presence of mineral deposits. The state Division of Mineral Resources or base personnel should be consulted to determine if the resources were or are being mined, or if there are plans for future exploitation.
- *Soil surveys.* The USDA NRCS has published soil surveys for most of the counties in the United States. If a soil survey is not available, soil characterizations may be obtainable through the local NRCS, the Soil Water Conservation District (SWCD), the local cooperative extension office, or possibly the Environmental Division for the installation.
- *Hydric soils list.* Lists of hydric soils are also available from the NRCS and should be requested when obtaining the soil survey book. Compare the lists to the soils mapped for the project site. Hydric soils are an indicator that wetlands may be present.
- *Soil boring surveys.* These surveys may have been done by the installation for a previous study. They may provide information on the soil characteristics on the site, as well as the underlying strata, and may provide the depth to bedrock.

Most of the sources of geologic and soils information listed above give a generalization of site conditions due to scale and mapping techniques. Because of this, these resources may not provide the site-specific information necessary for projects involving construction. A geotechnical evaluation of site-specific conditions and a soil characterization should be conducted prior to implementation of the project. Depending on the proposed project, this information may be necessary prior to completion of the EA.

Preparers should also consult with natural resource management or environmental division staff at the installation. They may already have the necessary maps, photographs, and copies of previous studies done at the site that may provide needed information. Previous studies include environmental assessments, environmental impact statements, remedial investigation/feasibility studies, and cultural resource surveys. Verify this information whenever possible with NRCS soil surveys and USGS and state geological survey sources.

For each alternative, the environmental consequences section for geology and soils should accomplish the following objectives:

- Indicate areas where subsurface geology is not suitable for a foundation for buildings, parking lots, and other structures due to possible subsidence, seismic activity, or high shrink/swell potential.
- If the area is seismically active, indicate the Seismic Zone building code rating that would need to be met to reduce the potential for harm to human life.
- Indicate areas where soils would be disturbed, especially areas with severe erosion potential, and what management measures would be applied to control or reduce erosion.

Effects can be divided into two types—effects of the project on the geology of the site, and effects of the geology of the site on the project. Effects of the proposed project on geology and soils could include the following:

- *Erosion.* Any construction activity that alters the microtopography through gradation, leveling, and excavation leaves the soil exposed and subject to wind and water erosion by removing vegetative cover. An increase in suspended dust due to trucks and other construction vehicles driving over the exposed ground surface also can be expected.
- *Sediment deposition.* Soil disturbance can contribute to sedimentation in adjacent water bodies through erosion and dust suspension. Sedimentation can smother vegetation, alter the flow of water, and ultimately decrease water quality.
- *Increase in impervious surfaces.* Construction of new buildings and the parking lots and roads that service them increases the acreage of impervious surfaces. This leads to increased storm water runoff and may affect water quality.
- *Loss of mineral resources.* Building of new housing units over mineral deposits would result in the loss of access to those resources, and therefore a possible economic loss to the ROI.

Effects of geology and soils on the proposed project could include:

- *Subsidence.* Ground subsidence due to caves, sinkholes, and other karstic features or underground mines could result in severe structural damage.
- *Seismic activity.* Earthquake activity could result in structural damage and harm to human life.
- *Shrink/Swell.* Soils with a high shrink/swell potential could result in damage to the foundation of buildings, as well as to roads and parking lots.

If a proposed project were to be built in an area where the geologic or soil conditions exhibit such severe engineering limitations that significant adverse impacts to structural integrity could arise, the situation could potentially lead to the preparation of an EIS. Such limitations could include the presence of soils with a high shrink/swell potential and the potential for ground subsidence. Avoidance and mitigation measures for issues related to geology and soils include development and implementation of a sediment and erosion control plan for the project site. Under such a plan, regular maintenance would ensure continued proper functioning of best management practices (BMPs) selected for the site. In appropriate cases, a storm water management plan for the project site may be developed and implemented. Again, regular maintenance pursuant to the plan would ensure continued proper functioning of BMPs selected in support of use of the site. Examples of BMPs for project sites include silt fences to retain sediment on the site and prevent deposition in nearby water bodies; straw mulches, hay bales, and temporary vegetative cover to help prevent erosion; and a water truck to control suspended dust.

## 8.10 Hazardous Materials and Wastes and Toxic Substances

The terms “hazardous materials,” “hazardous wastes,” and “toxic substances” include those substances meeting specific criteria in federal statutes and regulations. Based on regulatory definitions, substances are hazardous materials prior to and during their use. After their use and when they are no longer needed, hazardous materials may become hazardous wastes. These substances have hazardous physical and chemical properties (e.g., ignitability, corrosivity, reactivity) and/or have high toxicity.

Types of materials and substances covered under this topic include PCBs, solvents, and pesticides. Other issues often addressed are Installation Restoration Program (IRP) and related actions, and aboveground and underground storage tanks (ASTs and USTs, respectively). In addition to hazardous and toxic substances, ARNG environmental analyses generally includes other “special hazards” in this discussion to address issues related to ACM, lead-based paint (LBP), and radon.

ARNG projects often extend to construction, demolition, support activities, and facility maintenance. These activities may involve the use of hazardous materials and/or generate hazardous wastes. A wide range of activities associated with the construction, maintenance, and management of facilities may use hazardous materials, generate hazardous waste, or release toxic substances. The potential impacts to the environment as a result of these actions may be direct or indirect, depending upon the source of the material, the extent of use or contamination, or the methods used to remedy hazardous materials in or near a project site. For example, contamination levels found at existing sites may affect future land use; contamination at new facility sites may prevent construction. Existing or newly discovered contamination may require remediation that could affect routine maintenance of existing facilities or the construction of new facilities. Soil contamination, groundwater contamination, or the uptake of contaminants of concern by vegetation may directly affect biological resources. Hazardous materials, hazardous wastes, and toxic substances require their safe handling, disposal in an acceptable manner, and minimization of risks to personnel.

**Statutory and regulatory setting.** Numerous statutory and regulatory authorities address hazardous materials, hazardous wastes, and toxic substances. Federal statutes and Executive Orders are described in [Appendices GG](#) through [MM](#) of this manual. The principal statutes and Army regulations are listed below. Prior to undertaking activities potentially affecting hazardous materials and toxic substances and associated hazardous wastes, ARNG personnel should consult the full text versions of applicable regulations.

- AR 200-1, *Environmental Protection and Enhancement*
- AR 420-49, *Utility Services*
- AR 200-5, *Pest Management*
- Resource Conservation and Recovery Act (RCRA)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Toxic Substances Control Act (TSCA)
- Community Environmental Response Facilitation Act (CERFA)
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
- Federal Facilities Compliance Act (FFCA)
- Hazardous Materials Transportation Act

- Pollution Prevention Act of 1990 (PPA)
- Executive Order 12088, *Federal Compliance with Pollution Control Standards*
- Executive Order 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*

The following provides highlights of and information on specific matters concerning hazardous materials, hazardous wastes, and toxic substances issues that may arise in ARNG NEPA practice.

- *Treatment, storage, and disposal of wastes.* Regulations applicable to storage of hazardous and toxic materials and treatment and disposal of hazardous and toxic wastes are designed to protect human health and the environment. Three federal laws primarily influence the Army's hazardous and toxic materials and waste management and have led to numerous regulatory compliance requirements: RCRA, which pertains to solid and hazardous waste; CERCLA, which pertains to spills and abandoned waste sites; and the TSCA, which pertains to use, storage, and disposal of hazardous chemicals. Many regulatory functions have been turned over to state agencies operating under state laws that are as stringent as or more stringent than federal laws.

The PPA established a hierarchy of actions or ordered set of preferences for addressing wastes. Under the PPA's precepts, pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be the last resort and should be conducted in an environmentally safe manner.

The PPA represents a major departure from most other environmental legislation. It recognizes the fundamental difference between source reduction (avoiding the creation of wastes that are difficult or costly to manage) and waste management and pollution control (having to deal with a regulatory system designed to handle problem waste).

The Army's proactive adherence to the precepts of the PPA gives rise to several benefits. These include reduced risk of exposure to potentially harmful contaminants, pollutants, and hazardous substances; reduced disposal costs; reduced liability for noncompliance with regulatory provisions; and reduced risk to health and safety. Additional information on pollution prevention is in guidance issued by the CEQ. See [Appendix KK](#).

- *Underground storage tanks (USTs).* Army policy provides for the removal, repair, or replacement of damaged, leaking, or improperly functioning USTs or associated pollution prevention devices. USTs must include monitoring devices for leak detection and be fitted with cathodic protection, catch basins, and overflow warning devices. The Army developed the TANKMAN system to provide installations with an on-line or real-time management tool that provides data on USTs. The use of TANKMAN software standardizes data reporting requirements into an Army-wide master database.
- *Pesticides.* FIFRA requires the registration of pesticides to ensure that, when used according to label directions, they will not present unreasonable risks to human health or the environment. Other federal regulations governing pesticide use and management include 29 CFR Part 1910, *OSHA Safety and Health Standards*; 40 CFR Section 1, SubSection E, *Pesticide Programs*; 40 CFR Part 165, *Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticide Containers*; and 40 CFR Part 171, *Certification of Pesticide Applicators*. Each

state has its own set of regulations governing pesticide use, which is adhered to on Army installations. DoD sets forth pesticide management policy in DoD Directive 4150.7, *Pest Management Program*, and DoD 4160.21-M, *Defense Utilization and Disposal Manual*, Section 9, Hazardous Property Management. Army policy is provided in AR 200-1, *Environmental Protection and Enhancement*, and AR 200-5, *Pest Management*.

Preventive actions are key to pest management at Army installations. Under Army directives, Preventive Medicine officials conduct a proactive program that includes surveying pest populations and reporting the results to the facilities engineer, conducting an installation pesticide monitoring program, obtaining timely identification of pests and information on the susceptibility of pests to pesticides, establishing health and personnel safety criteria for pesticide operations, and providing pest management certification training.

- *Lead-based paint (LBP)*. Federal, state, and local regulations, both procedural and substantive, govern the management of LBP, LBP additives, and LBP hazards. Army policy is to manage LBP in place unless it presents an imminent health threat as determined by the installation medical officer or unless operational, economic, or regulatory requirements dictate its removal.

Army policy also imposes requirements to reduce the release of lead, lead dust, or LBP into the environment from deteriorating paint surfaces, building maintenance, or other sources on Army installations or on Army-controlled property.

Army wastes contaminated with LBP are disposed of properly. Wastes are characterized to determine whether they are classifiable under applicable regulations as hazardous, special, or solid.

The DoD and EPA have developed *Lead-Based Paint Guidelines for Disposal of Department of Defense Residential Real Property - A Field Guide*, Interim Final, December 1999, for achieving consistency in the application of lead-based paint requirements during the return of DoD excess infrastructure to productive use. (Go to: <https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/Cleanup/LeadPaintFieldGuide.pdf>). The procedures in the guide are used primarily to address the requirements of Title X, the Residential Lead-Based Paint Hazard Reduction Act, a portion of the Housing and Community Development Act of 1992. It also includes implementing regulations under TSCA Section 403 and HUD Section 1012/1013. This guide addresses housing built before 1960, and between 1960 and 1978, child-occupied facilities, and other target housing. The Army is actively complying with this new field guide.

- *Asbestos*. During demolition, maintenance, repair, remediation, or renewal of buildings, asbestos can be released into the air. Asbestos is a friable material; that is, crumbling or breakage of asbestos-containing materials can release asbestos fibers into the air. Asbestos fibers can be released from various building materials, such as pipe and boiler wrap and other insulating materials and acoustic ceiling tiles. National Emissions Standards for Hazardous Air Pollutants (NESHAPs) regulate the demolition and renewal of buildings with asbestos-containing material. EPA and the states have policies that address leaving asbestos in place and thus not disturbing the material if its removal and disturbance would pose a health threat.
- *PCBs*. The disposal of PCB compounds is regulated under TSCA, which bans the manufacture and distribution of PCBs except for PCBs used in enclosed systems. By

definition, PCB equipment is that which contains 500 parts per million (ppm) PCBs or more, PCB-contaminated equipment is that which contains PCB concentrations greater than 50 ppm but less than 500 ppm, and PCB items are those that contain PCB concentrations of 5 to 49 ppm. The EPA regulates the removal and disposal of all sources of PCBs containing 50 ppm or more; the regulations are more stringent for PCB equipment than for PCB-contaminated equipment.

- *Radon.* The effects of exposure to radon are uncertain, primarily because it is difficult to isolate the effects on human beings of exposures to particular sources of radiation. It is now widely accepted that effects of radiation can occur at any dose, no matter how small—a theory called the linear, no-threshold hypothesis. According to this theory, there is no level of exposure below which no effect occurs. If the theory is correct, all exposure to radiation presents some health risk. The risk of lung cancer caused by exposure to radon through its inhalation is currently a topic of concern.

The Army has implemented a Radon Reduction Program to determine and control the levels of radon exposure of military personnel and their dependents. The Army has completed testing of most of its facilities as part of this program.

Army policy provides for ongoing radon management efforts. In accordance with AR 200-1, the Army maintains and updates records of completed radon assessments and includes radon testing results with real property and housing data to notify tenants and transferees of elevated radon levels. Army policy provides that indoor radon levels in newly constructed units and units converted to housing or continuously occupied structures (such as hospitals) located in high-radon-level areas are to be tested prior to occupancy. Where elevated levels of radon are encountered, Army facilities managers are to adhere to generally accepted abatement measures.

**Describing existing conditions.** The description of hazardous materials includes all areas potentially subject to release of hazardous materials or wastes from each ARNG-related activity, including the storage, handling, and disposal of such materials. The number and locations of such areas vary according to specifics of the proposed action. In the case of previously spilled or released contaminants, the size of the area to be described would be influenced by the physical and chemical characteristics of the materials in question (e.g., volatility and solubility), the source of the materials (e.g., UST/AST, transformers, asbestos tile flooring), and the paths by which materials released might expose populations (e.g., inhalation, dermal exposure, drinking water, ingestion). It would also be influenced by site-specific factors, including wind direction and intensity, precipitation levels, surface drainage, permeability of soils, and depth to groundwater. Such factors can greatly influence the transport and dispersion of contaminants. Hazardous materials and wastes should be discussed as follows:

- *Hazardous materials and toxic substances.* Discussion of this topic should include the use of hazardous materials in ARNG facilities during routine maintenance and operations. It should identify potentially hazardous materials intrinsic to operations of each facility. These may include solvents and cleaning supplies, pesticides and herbicides, paints, preservatives, pipe solder, certain roofing tars, and exterior ASTs or USTs used for heating. Hazardous materials used in ancillary or other support facilities should also be discussed, including pesticides, motor fuels and lubricants, solvents, and other chemicals. Other pertinent information may include hazardous materials used and stored in adjacent facilities, spill contingency plans currently in place, and the status and schedule for UST renovation and removal.

- *Hazardous waste.* Discussion should address the presence of hazardous waste at and in the vicinity of the ARNG project area. This would include the location and condition of contaminated sites, the status of IRP studies and any National Priorities List sites, ongoing or future remediation and monitoring activities, and a description of RCRA permitted facilities and other hazardous waste collection/storage sites. In addition, some mention should be included as to how or where such materials are disposed of.

This section does not require detailed discussion of IRP activities if there is no demonstrated direct or indirect effect on existing or planned ARNG facilities or activities. If the IRP program or investigations discovered no actionable conditions on or near existing or planned ARNG facilities, a statement (and citation) supporting this should be included. Alternatively, if a site undergoing remediation is located within or adjacent to an ARNG facility, the studies and analyses leading to the remediation (and any subsequent monitoring) should be discussed in detail.

Depending upon the actions contained within the proposed action and alternatives, hazardous wastes (in addition to solid wastes) may be generated by demolition or renovation of facilities or other structures. This section should present a discussion of hazardous materials thought to be present in the facilities, which under certain circumstances might become hazardous wastes. These may include asbestos flooring tiles, asbestos siding, PCB-containing electric transformers, or LBP. The discussion should include a description of the likely physical locations of hazardous materials within the structures and an estimate of the amount of material present.

**Documenting effects of the proposed action and alternatives.** The potential for effects resulting from the presence or management of hazardous and toxic substances within or near an ARNG project area should be addressed. Analysis should be based upon and supported by the data and discussions contained in the affected environment section. At a minimum, this section should address the following:

- Describe how current and planned IRP efforts might be affected by the proposed action and alternatives, including schedule changes and impacts on current remediation.
- Identify additional contaminated sites on the installation.
- Identify any impacts on USTs or ASTs providing support to family housing and support facilities.
- Show anticipated volumes of hazardous wastes generated pre- and post-action.
- Show anticipated volumes of hazardous wastes for disposal pre- and post-action.
- Discuss the potential impacts from intrinsic hazardous materials in housing units.
- Discuss potential sources of toxic or hazardous substances, pathways to human receptors, and resultant risks to human populations resulting from continued habitation or from demolition of family housing and support facilities.
- Identify any beneficial effects resulting from the proposed action and alternatives, including pollution prevention efforts, waste reduction, human health hazard reduction, or toxic substance stabilization.
- Identify any permits, coordination, or other regulatory requirements likely to result from the proposed action and alternatives.

The description of effects should discuss the potential direct or indirect impacts on the baseline environment that was described in the affected environment section for hazardous materials,



hazardous waste, and toxic substances. The appropriate level of impact analysis for an EA is to base it on existing data and information. In some instances, analysis of hazardous materials and wastes and toxic substances may require additional field surveys or testing.

Discussion of the proposed action should focus on how the baseline at existing contaminated sites directly or indirectly affecting ARNG facilities or activities might be altered by the proposed action. In addition, text must describe any new potential hazardous waste generation or contamination arising from specific activities within the proposed action. This discussion should also describe any likely impacts on the pattern of use of hazardous materials or the addition of new hazardous materials resulting from operational changes inherent in the proposed action. Should the proposed action and alternatives require the removal of USTs or ASTs, the removal must be in compliance with the installation's UST plan, and the potential impacts of removal and disposal must be discussed. Any activity resulting from the proposed action that results in the generation of hazardous waste must be described. Whenever possible, the impacts should be quantified. As an example, assume that the proposed action involves the demolition of facilities and, therefore, may generate some asbestos- or LBP-contaminated waste. The analysis should present the estimated volume of generated waste (if survey data exist to support such estimates), discuss how the material would be handled during demolition and transportation, and present potential mitigation resources, where appropriate.

One method to determine significance of impacts is the use of, or reference to, standards and criteria. All materials and chemicals currently recognized as presenting real or potential risks to human health and safety have levels or concentrations which, when exceeded, present some risk. Some constituent concentrations, when exceeded, violate federal or state standards or criteria, irrespective of risk. Any impact resulting from the proposed action and alternatives that results in increases to the constituent concentration from levels below to levels above the standards, criteria, or risk thresholds may be considered a significant impact. Actions could also result in significant effects if they result in substantial increases in the generation of hazardous wastes or place substantial restrictions on property use due to hazardous waste, materials, or site remediation.

Many methods are available to mitigate impacts related to hazardous materials, hazardous waste, and toxic substances. In appropriate cases, these include

- Incorporation of waste minimization and pollution prevention processes into design of new ARNG facilities.
- Levying a requirement that construction contractors prepare and implement pollution prevention plans.
- Use of emergency response and cleanup measures to respond to environmental contamination in the event of an accidental release, including implementation of spill contingency plans.
- Installation of control devices where required to control releases of refrigerants or solvents to the air.
- Storage of certain hazardous materials in areas with secondary containment to contain potential leaks.
- Minimizing usage of hazardous materials to the extent practicable by equivalent product substitution.
- Treatment or recycling of hazardous wastes onsite, wherever feasible and allowed by regulations.

- Transport of hazardous wastes to approved off-site recycling, treatment, and disposal facilities.

### 8.11 Health and Safety

A healthy and safe environment is one in which there is no or an optimally reduced potential for death, serious bodily injury or illness, or property damage. Health and safety addresses matters such as workers' health and safety during demolition activities and facility construction and public safety during demolition and construction activities and during subsequent operation of facilities.

The health and safety of on-site military and civilian workers are safeguarded by numerous DoD and Army regulations designed to comply with standards issued by the Occupational Safety and Health Administration (OSHA) and the EPA. These standards specify the amount and type of training required for industrial workers, the use of protective equipment and clothing, engineering controls, and maximum exposure limits for workplace stressors.

The Assistant Secretary of the Army for Installations and Environment has overall responsibility for the Army's Human Health and Safety programs. Two Army regulations govern these programs:

- AR 385-10, *Army Safety Program*, prescribes Department of the Army policy, responsibilities, and procedures to protect and preserve Army personnel and property against accidental loss. It provides for public safety incident to Army operations and activities and safe and healthful workplaces, procedures, and equipment. This regulation assures statutory and regulatory compliance with the Occupational Safety and Health Act of 1970 as implemented by Executive Order 12196. This regulation applies to the active Army, the Army National Guard, the Army Reserve, and Army civilian employees. During mobilization, Sections and policies contained in this regulation may be modified by the proponent.
- Army Regulation 40-5, *Preventive Medicine*, is a consolidation of several regulations that cover the Army's preventive medicine program. It establishes the practical measures for the preservation and promotion of health and the prevention of disease and injury. This regulation implements Executive Order 12196 and DoD Instructions 6050.5, 6055.1, 6055.5, and 6055.12. This regulation applies to all facilities controlled by the Army and to all elements of the Army. This includes military personnel on active duty, Army Reserve or National Guard personnel on active duty or in drill status, Military Academy cadets, Army Reserve Officer Training Corps cadets when engaged in directed training activities, foreign national military personnel assigned to Army components, and civilian personnel and nonappropriated fund employees who are employed by the Army on a worldwide basis.

Various stressors in the environment can adversely affect human health and safety. Identification and control or elimination of these stressors can reduce risks to health and safety to acceptable levels.

- *Physical stressors.* Physical hazards in the environment can cause disability, disease, or death. These stressors encompass a wide range of factors, such as dust, humidity, temperature, noise, and radiation. Impacts of physical stressors can also be highly dependent on season and climate. Dust can cause a fibrosis when deposited in the lungs. Some dust, such as cement dust, can be a nuisance but not directly disease-causing. Dust is associated with any activities that disturb the soil, such as industrial operations and

demolition or construction of facilities. Acceptable levels of temperature, humidity, and glare are important to efficient task performance, prevention of fatigue, and general comfort. Length of exposure to extremes of temperature and humidity is critical. Mechanical vibration and noise can cause hearing loss and produce psychological and physical disturbances. Radiation includes alpha, beta, and gamma (X) rays; ultraviolet radiation; infrared microwaves; and laser radiation. Prolonged exposure to radiation can induce skin burns, elevate temperature, and cause death.

- *Behavioral stressors.* Behavioral stressors include the effects of military activities on (1) psychological characteristics as emotion, motivation, the learning process, and general behavior and (2) psychological needs such as freedom, space, privacy, and societal acceptance. Behavioral stressors can cause mental effects ranging from direct physical damage to the brain tissue to temporary irritability. Specific agents that have been related in some way to the degradation of mental health include exposure to certain levels of lead, mercury, carbon monoxide, and some insecticides; excessive noise; inadequate housing and privacy; inadequate light and ventilation; and the lack of recreation, mental stimulation, and physical contact.
- *Psychological stressors.* Some chemical and physical elements and situations can cause mental tension and strain. These psychological stressors are closely related to behavioral stressors. Psychological stressors can be physical in nature, such as traffic congestion, excessive noise, air pollution, or inadequate working and living facilities. They can also be emotional in nature, such as the effects of discrimination or sexual harassment. Stress is important from a health and safety viewpoint because it directly affects the quality of a person's mental and physical health, adversely affects task performance, and greatly increases the likelihood of accidents.
- *Chemical stressors.* Several chemical substances have the potential to produce undesired or toxic health effects. Some chemicals act locally and some act systemically (requiring absorption into the blood stream). Locally acting toxicants, whether transmitted via the air or via direct contact, are often corrosive in nature and can adversely affect the skin, eyes, respiratory tract, or gastrointestinal tract. Depending on the chemical, systemically acting chemicals can enter the body in various ways, such as through the lungs, skin, or gastrointestinal tract. Chemical stressors can also be transmitted by air ; by ground water or surface water used for drinking, irrigation, or recreation; or by direct contact.
- *Endocrine disrupters.* A relatively new but increasingly important health concern is "endocrine disrupters" (EDs). EDs are generally caused by synthetic chemicals (e.g., pesticides), which, when absorbed into the body, can cause hormonal disruption. Disruption of the endocrine system can occur in various ways. For example, some chemicals may mimic a natural hormone, "fooling" the body into over-responding to the hormone. Other chemicals may block the effects of a hormone in parts of the body that are sensitive to it. Still others may directly stimulate or inhibit the endocrine system, leading to overproduction or underproduction of hormones. The EPA is investing significant resources in researching which chemicals may be involved, the patterns of exposure, the mechanisms of action in humans and wildlife, and the best means for testing to predict or screen for these effects. The EPA has also banned a number of the more environmentally persistent chemicals that have raised concerns about hormonal effects (PCBs, DDT, chlordane, aldrin/dieldrin, kepone, endrin, heptachlor, toxaphene, and 2,4,5-T), and is working with the international community to limit production and use of these chemicals worldwide. Limiting the presence of endocrine disrupters should, therefore, be included in planning for facilities, systems, and equipment associated with the transforming force.

Safety and accident hazards can often be identified and reduced or eliminated. Necessary elements for an accident-prone situation or environment include the presence of the hazard itself together with the exposed (and possibly susceptible) population. The degree of exposure depends primarily on the proximity of the hazard to the population. Activities that can be hazardous include transportation, maintenance and repair activities, and the creation of highly noisy environs. Construction hazards can be considered from the standpoint of both design criteria and the hazards associated with the construction process. The proper operation, maintenance, and repair of vehicles and equipment carry important safety implications. Any facility or area of human use with a potential explosion or other rapid oxidation process creates unsafe environs for nearby populations. Extremely noisy environs can also mask verbal or mechanical warning signals, such as sirens, bells, or horns.

The substantive content of description and evaluation of health and safety issues in NEPA analysis varies widely. When appropriate, proponents should consider the types of stressors listed above and their relationship (presence or absence) to the proposed action. Significant impacts would arise when unacceptable risks to health or safety occur as a result of implementing a proposal. In almost all cases, effective forms of mitigation would be required.

***Bird/Wildlife Aircraft Strike Hazard (BASH) Program.*** Another aspect of health and safety that arises in the specific context of the military pertains to hazards presented by birds and wildlife to aircraft and their crews. The Army possesses significant fixed and rotary wing aircraft resources, along with associated ground facilities to support these resources. Birds and other wildlife in close proximity to airfields present a particular hazard to aircraft during the high vulnerability periods of take-off and landing. The focus of the BASH program is to prevent wildlife-related aircraft mishaps and reduce the potential for wildlife hazards to aircraft operations. Accomplishing this goal requires knowledgeable natural resources management on and adjacent to installation airfields.

All installations with airfields and/or significant aircraft resources should draft and maintain an installation specific BASH Plan. An installation's BASH Plan is not to conflict with the provisions of AR 95-2, *Air Traffic Control, Airspace, Airfields, Flight Activities, and Navigational Aids* ([http://www.apd.army.mil/pdf/files/r95\\_2.pdf](http://www.apd.army.mil/pdf/files/r95_2.pdf)) or AR 385-95, *Army Aviation Accident Prevention* ([http://www.apd.army.mil/pdf/files/r385\\_95.pdf](http://www.apd.army.mil/pdf/files/r385_95.pdf)). Installations should also have a Bird/Wildlife Hazard Working Group (BHWG). In addition, INRMPs must support the installation's BASH Plan. Further guidance on components and development of an Installation BASH Plan is available from the following sources:

- Birdstrike Committee USA (<http://www.birdstrike.org>)
- U. S. Air Force BASH Team (<http://afsafety.af.mil/afsc/Bash/home.html>)
- FAA Wildlife Mitigation ([http://wildlife-mitigation.tc.faa.gov/public\\_htm/index.html](http://wildlife-mitigation.tc.faa.gov/public_htm/index.html))

In preparing the NEPA document, the description of existing conditions may include the history of bird/wildlife strikes, date, type of aircraft, altitude, and similar data. Existing issues with bird population or wildlife populations near an airfield or area used by aircraft should be described. The analysis of effects may then address matters within the proposed action that give rise to concern over bird and wildlife hazards, such as any proposed changes in installation landfills (on or offsite), proposed storm water ponds, changes in landscape management that could create a bird/wildlife attractant, natural resource management, wetlands management, aircraft activities (numbers and types of operations, types of aircraft, etc.), airfield or runway changes or additions, or any other activity that could create a BASH problem. All aspects of installation natural resources management must be reviewed for potential wildlife hazards to aircraft operations. The

land adjacent to aircraft operations areas must be managed to minimize attractions to wildlife. Surveillance of the land surrounding the airfield and coordination with adjacent landowners to reduce strike hazards are recommended.

## 8.12 Infrastructure

Infrastructure consists of the physical systems and structures that enable a population in a specified area to function. The extent to which an area is characterized as developed urban or undeveloped rests in large part on the types and extent of infrastructure serving the area. The availability of infrastructure and its capacity to support growth are generally regarded as essential to economic growth of an area. Although there is no national consensus as to what constitutes infrastructure, the following reflect the principal elements most often associated with the term.

- *Water systems.* Water systems provide water for potable use, industrial applications (including fire suppression), and agricultural irrigation. Concerns related to water systems typically pertain to availability and quality of water supplies, treatment processes, distribution, and consumption rates.
- *Wastewater systems.* Wastewater treatment systems may treat sanitary sewer, industrial, or both kinds of wastes. Most systems are publicly owned treatment works (POTW). For regulatory purposes, there is a subcategory of federally owned treatment works (FOTW). Wastewater treatment systems consist of a system of collection piping from waste sources that conveys wastes to a central treatment site. As a very general rule, treatment works are identified as primary (mechanical treatment only), secondary (mechanical and biological treatment), or tertiary (mechanical and biological or chemical treatment). Wastewater treatment plants operate under National Pollutant Discharge Elimination System (NPDES) permits issued by the EPA or the states pursuant to the Clean Water Act. Concerns regarding wastewater systems typically pertain to the age of the system (either its collection system and infiltration/inflow problems or the treatment plant itself), the capacity of a treatment plant (usually expressed in millions of gallons per day), and a treatment plant's record of violations or NPDES permit effluent exceedances.
- *Storm water systems.* Storm water systems convey precipitation away from developed sites to appropriate receiving surface waters. For various reasons, storm water systems may employ a variety of devices to slow the movement of water. For instance, a large, sudden flow could scour a streambed and harm biological resources in that habitat. Storm water systems provide the benefit of reducing amounts of sediments and other contaminants that would otherwise flow directly into surface waters. Failure to appropriately size storm water systems to hold or delay conveyance of the largest predicted precipitation event often leads to downstream flooding and the environmental and economic damages associated with flooding. As a general rule, a higher density of development, such as that found in the cantonment areas of Army installations, requires a greater degree of storm water management because of the higher proportion of impervious surfaces in such developed areas.
- *Solid waste management.* Solid waste management is primarily concerned with the availability of landfills to support a population's residential, commercial, and industrial needs. Alternative means of waste disposal may involve waste-to-energy programs or incineration. In some localities, landfills are designed specifically for and limited to disposal of construction and demolition debris. Recycling programs for various waste categories (e.g., glass, metal, and paper) reduce reliance on landfills for disposal.

- *Energy.* Types of energy include electrical power, natural gas, fuel oil, and steam. ARNG installations use all of these forms of energy. Concerns regarding energy can extend to selection of type, conservation measures, availability, costs, or consumption rates.
- *Traffic and circulation.* Smooth flow of traffic and the adequacy of road networks to move people efficiently contribute materially to the quality of the human environment. Activities can cause or adversely affect traffic congestion or can occur in locations with an inadequate or only marginally adequate supporting road network. Effects of activities are often expressed in terms of projected change in automobile traffic conditions. One of the more prevalent approaches for representing such changes is described in the Transportation Research Board's *Highway Capacity Manual* (1985). This approach classifies traffic conditions using a measure known as Level of Service (LOS). In general, LOS is represented as a scale from "A" to "F." Traffic conditions associated with the letter grades on this scale are as follows: LOS A represents free flow in traffic operations, LOS B represents reasonably free flow, LOS C represents stable, LOS D represents borderline unstable, LOS E represents extremely unstable, and LOS F represents breakdown in traffic operations. Assignment of LOS ratings to segments of roadways or intersections is based on observation and studies assessing traffic count. A second prevalent approach for describing traffic is the average daily traffic (ADT). ADT is usually expressed as a numeric value that describes the average number of vehicles passing a fixed point over a 24-hour period. This measure is particularly useful when there are changes due to activities using a particular roadway or intersection. Data for ADT and LOS are not always available to describe conditions at or near the location where activities occur.
- *Transportation systems.* Transportation systems are organized means of moving people and commodities. Principal transportation systems include commercial air carriers, maritime shipping, railroads, bus services, and trucking. Movement of people by privately owned vehicles on a local or regional scale is addressed under traffic and circulation. In many instances, the location and availability of transportation system hubs, terminals, routes, and operational adjuncts (e.g., controlled airspace near an airfield) can affect or be affected by activities.
- *Communications systems.* These consist primarily of radio and telecommunications systems.

ARNG-proposed actions range from initiatives that might require support from infrastructure elements to proposals for creation of infrastructure. When relevant to a proposed action, the proponent should identify the elements of infrastructure that would be affected. Such elements then should be described in detail, especially with regard to their age, condition, capacity, permit requirements, and relevant operational considerations. Descriptions of infrastructure should be confined to those at the project site or those that would affect, or be affected by, the proposed action.

Analyses of impacts to infrastructure most often are reduced to a question of capacity: Is the infrastructure capable of supporting the proposed action? If it is adequate, there generally will be no impacts. Where infrastructure is inadequate, the proponent may initially find a significant impact. In this case, further inquiry may be appropriate, such as concerning the possible necessity of new capital investment. In other cases, a proponent may establish that effects to infrastructure may be temporary. This often happens where a proposal will involve a surge of personnel or traffic within a limited geographic area, imposing abnormal strain on infrastructure elements. In many instances, these types of surge issues can be adequately addressed in planning,

which mitigates the impacts of the proposal.

### 8.13 Land Use

Land use refers to human use of the land for economic production; for residential, religious, recreational, or other purposes; and for natural resource protection. Land uses are regulated by management plans, policies, zoning ordinances, and regulations that determine the types of uses allowable. These schema also serve to protect specially designated or environmentally sensitive uses.

Land use is often interconnected with most, if not all, the other resource areas considered in a NEPA document. Its analysis is important because land use can cause or be affected by impacts on air, water, geology, soil, noise, flora and fauna, transportation, or socioeconomics. The assessment of potential effects on land use, therefore, should be as comprehensive as the particular characteristics of the project warrant.

Under AR 210-20, *Master Planning for Army Installations*, land use planning is based on providing facilities that support an overall quality environment for military forces (trained personnel, equipment, and supplies) needed to maintain national security. In contrast with the wide variety of land use and zoning classifications typically used by local jurisdictions, Army planning relies on 12 land use classifications: airfields, maintenance, industrial, supply/storage, administration, training/ranges, unaccompanied personnel housing, family housing, community facilities, medical, outdoor recreation, and open space.

Related to land use is the issue of property ownership. Depending on the use, location, and ownership of a particular land parcel, that parcel could be subject to regulation by federal, state, or local government entities, or any combination of entities. Leasing of property, easements, and other property agreements may also limit or control how land can be used.

ARNG actions sometimes have the potential to change the land use of a site, particularly if facilities are constructed in an area where facilities did not previously exist or if new types of activities are introduced to an area. Such changes in land use can raise a number of issues and concerns, such as whether facilities or activities will be compatible with adjoining land uses on and off an installation. Specific concerns include noise and visual intrusion, exposure to health and safety hazards, increased traffic congestion, changes in property values, community cohesiveness, and protection of environmentally sensitive areas.

On-post land use and real property information can usually be obtained from installation environmental, planning, and real property staff. Off-post land use information is typically available from local and regional planning agencies and departments. Specific sources include the following:

- *Real Property Development Plan.* The installation's Real Property Development Plan describes existing conditions on the installation and future development projects. The plan is updated every several years, and it allows the Commander to prioritize installation development projects.
- *Integrated management plans.* A number of ARNG installations have developed integrated management plans for natural resources, cultural resources, and training areas. These plans are often useful for identifying specified areas requiring the kinds of protections afforded through land use controls.

- *Geographic information systems (GIS)*. Some ARNG installations and local planning agencies have developed GIS spatial databases for a variety of planning and analysis purposes. In some cases, these databases may have land use/land cover data layers created specifically for land use management planning.
- *Site investigations*. A visit to the project site is invaluable and highly recommended. A walk or drive around the property and adjacent areas provides an easy means of visually collecting data on land use, land cover, and other resource topics.
- *Land use and zoning maps*. Land use and zoning maps identify property parcels according to their land use and/or zoning. These maps are essential for determining inconsistencies between a proposed project and existing or future land uses of surrounding properties.
- *Topographic maps*. Depending on their production date, U.S. Geological Survey (USGS) 7.5-minute topographic maps can offer valuable information on land use, land cover, and delineation of public lands.
- *Aerial photographs*. Aerial photographs serve as an excellent tool for identifying land use and land cover, particularly over large areas. They can usually be obtained from local aerial photographic businesses, the local planning department, and other local and state agencies.
- *City/county comprehensive plan*. A city or county comprehensive plan, or general plan, is a long-term development plan for the area. It typically describes land use, transportation, socioeconomic, and other factors relevant to the area's future development and economic growth. Zoning maps, land use maps, and other graphics are an essential part of the plan. They can usually be obtained from the local planning department.
- *Future land use plans or programs*. On post, this information can also be obtained through interviews with environmental, planning, range management, and public works staff. Off post, such information usually comes from city, county, or regional planning and transportation departments and local chambers of commerce.

**Statutory and regulatory setting.** Land uses are regulated by all levels of government through zoning restrictions; conditional use permits; and a variety of federal, state, regional, and local policies. Laws and regulations governing land use are often highly site-specific. Outside property used by the ARNG, the most immediate general-purpose governmental jurisdiction (e.g., city or county) is most likely to control land uses. In some instances, a particular project may be located within one or more special use areas where additional land use restrictions may apply, such as coastal zone management areas or floodplains.

Under the doctrine of federal supremacy, the federal government, including the Army and the ARNG, is not subject to state or local land use or zoning regulations unless specifically consented to by Congress. The federal government does take land use and zoning policies into consideration and cooperates with state and local agencies to avoid conflicts when possible. The federal government will not, however, formally apply for conditional use permits or similar land use approvals for actions related to local zoning ordinances and land use plans. On the other hand, the federal government is subject to federal and state regulations controlling environmental impacts and the management of federal lands. Specific Army and other federal laws and regulations that may apply to ARNG actions are listed below. Federal statutes and Executive Orders are described in [Appendices GG](#) through [MM](#) of this manual.

- AR 210-20, *Master Planning for Army Installations*



- AR 405-80, *Management of Title and Granting Use of Real Property*
- AR 405-90, *Disposal of Real Estate*
- Federal Land Policy and Management Act (FLPMA) of 1976
- Executive Order 12372, *Intergovernmental Review of Federal Programs*.

**Describing existing conditions.** The affected environment section of the proponent's NEPA document should provide a description of the types of land use and land cover found within and around the project area. It should also indicate property ownership and associated land use agreements (if any) within this same area.

The region of influence for land use is primarily based on the size and extent of the ARNG proposal. It will normally consist of the immediate project area (i.e., buildings, facilities, and land parcels directly affected by the action, including any construction or other activities that are temporary in nature), and those areas within the immediate vicinity of the project area that could be influenced by or cause influence to the ARNG action. Because of the potential for secondary or indirect land use effects to occur on or off post, some consideration may need to be given to describing an even broader area, depending on the scope of the ARNG proposal. This is particularly true when determining the potential for cumulative effects from other development plans and programs in the region.

The discussion of land use should first give an overview of the project site and installation in terms of geographic location, the general landscape of the region, and basic climatic conditions (i.e., ranges in temperature, annual precipitation, and general wind conditions). Any location or site maps presented earlier in the NEPA document, usually in Section 2.0 (proposed action), should also be referred to here.

The description of land use conditions will usually include information on existing land use at the installation (or project area), existing land use within adjacent off-post areas, and any future land development plans or programs in the area. For each of these subtopics, the following information should be described, as appropriate:

- *Installation land use.* This section should describe the current on-post land use(s) within and adjacent to the project area using the 12 standard land use categories defined in AR 210-20. Any areas with special use designations, such as aircraft accident potential zones or areas of unexploded ordnance (UXO) contamination should also be identified. Relevant information on number of buildings, building or facility functions, general architecture, and total square footage may be described. Any lease agreements, easements, or rights-of-way also should be included when relevant.
- *Surrounding land use.* This section primarily describes off-post land use areas that are part of or adjacent to the project area and within the land use region of influence. The description should include any pertinent zoning restrictions that may apply. This section may also provide a general description of regional land uses and should give the relative location and distance from surrounding communities and any key landmarks (e.g., national parks and monuments). If any major water bodies (navigable waters, harbor areas, etc.) exist in the vicinity of the installation, their relative location and use also may need to be described.
- *Future development.* This section should identify any long-range development plans and programs that are proposed to occur on post and within the region. Such plans may include other development projects that have been announced, Army force restructuring

actions, business parks, and any other large construction projects. Of particular importance are those development plans or programs that could cause direct or indirect impacts that are similar in nature and overlapping in time and place with those impacts caused by the ARNG proposal. This particular information is vital in determining cumulative effects associated with the ARNG.

**Documenting effects of the proposed action and alternatives.** Determining potential impacts on land use requires an assessment of the current land use within the region of influence compared to proposed changes in land use. The proposed land use must also be compared to approved uses that are specified in the Real Property Development Plan, other pertinent installation environmental management plans (e.g., Integrated Natural Resources Management Plan), and, if applicable, state and local land use plans and policies (e.g., county or city comprehensive plans and local zoning ordinances).<sup>27</sup> The objective is to identify whether there are any incompatibilities or inconsistencies with existing land uses or with adopted land use plans and policies.

To help in determining land use impacts, preparers of the NEPA document should work with installation environmental, planning, and real property staff, along with other Army and ARNG offices and directorates as necessary. When it is expected that land use impacts might occur off post, coordination and consultation with local or regional planning agencies and officials are strongly recommended, particularly when there exists potential for public opposition.

Many ARNG proposals have the potential to result in changes to existing and future land uses through their creating new facilities, increasing or decreasing facilities densities, placing use restrictions on property through leasing and easements, taking actions leading to induced growth in the local community, and causing changes in local road networks and other infrastructure. These changes in land use must be described in the consequences section and evaluated to determine the extent of change and resulting impacts. Any incompatibilities with neighboring land uses or inconsistencies with ARNG or other government land use plans and policies must be identified and explained.

The significance of impacts is based on whether the proposed action conflicts with established land uses in the area, disrupts or divides established land use configurations, represents a substantial change in existing land uses, or is inconsistent with adopted land use plans. Because these concerns can be somewhat subjective, document preparers need to exercise best professional judgment on how much of a change in land use would constitute a potential for a significant impact.

Mitigation measures for changes in land use might include moving a proposed action to a different location to avoid conflicts with adjacent land uses, obtaining a land use plan change where the proposed action is inconsistent with existing land use or zoning maps, and creating open space or other physical buffers at the periphery to reduce perceived conflicts.

#### **8.14 Noise**

The Army's Environmental Noise Management Program, contained in Section 7 of AR 200-1, implements federal law concerning environmental noise generated by Army and ARNG activities. The goals of the ENMP are to protect the health and welfare of people on and off post

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<sup>27</sup> For determining inconsistencies with coastal zone management programs, refer to Section 5.1.2 of this manual.

affected by Army- and ARNG-produced noise and to reduce community annoyance from environmental noise. The program seeks to achieve compliance with applicable noise regulations in a manner consistent with an installation's mission.

The ENMP requires each installation to implement environmental noise policies to identify and control noise effects. Among these policies is the requirement to make noise predictions for long-range planning purposes. A listing of current noise policies is provided in Section 7-2 of AR 200-1.

Control of noise at an installation is important for many good reasons. Among them, one that continues to arise more often concerns encroachment. Since the establishment of many installations and training sites decades ago, development in the private sector has moved closer and closer to ARNG boundaries. That is, installations and training sites that once were considered remote now are often virtually surrounded by residential and commercial development. As installations and training sites operate and produce noise, complaints from nearby neighbors can affect the abilities of the ARNG to operate and train. In preparing NEPA analyses of proposed actions, it is important to quantify noise levels (when data are available) and to describe the noise environment in qualitative terms.

Noise is generally defined as unwanted sound. It can be any sound that is undesirable because it interferes with communications or other human activities, is intense enough to damage hearing, or is otherwise annoying. In general, the military noise environment consists of three types of noise: transportation noise from aircraft and vehicle activities, high-amplitude noise from armor and artillery firing and demolition operations, and noise from firing at small arms ranges.

Noise may be intermittent or continuous, steady or impulsive. Human response to noise is extremely diverse and varies according to the type of noise source, the sensitivity and expectations of the receptor, the time of day, and the distance between the source and the receptor. The decibel (dB) is the accepted unit of measurement for noise level. The A-scale decibel (dBA) is an adjusted dB that corresponds to the range of normal human hearing.

**Describing noise levels.** The day-night level (DNL) is the primary descriptor for noise. The DNL is the time-weighted energy average sound level, over a 24-hour period, with a 10-decibel (dB) penalty added to the nighttime levels (between 2200 and 0700 hours). This nighttime adjustment accounts for the increased sensitivity to nighttime noise levels. The DNL is an accepted unit for quantifying human annoyance to general environmental noise and is used to evaluate noise levels at noise-sensitive receptor locations. The annual average DNL is used to assess noise levels for all activities.

Noise from transportation sources such as vehicles and aircraft, and from continuous sources such as generators, is assessed using the A-weighted DNL (ADNL). The ADNL significantly reduces the measured pressure level for low-frequency sounds while slightly increasing the measured pressure level for some high-frequency sounds. Impulse noise resulting from armor, artillery, and demolition activities is assessed in terms of the C-weighted DNL (CDNL). The CDNL is often used to characterize high-energy blast noise and other low-frequency sounds capable of inducing vibrations in buildings or other structures. The C-weighted scale does not significantly reduce the measured pressure level for low-frequency components of a sound. Noise from small arms ranges is currently assessed using the peak unweighted sound level. This approach will continue until other standards are approved.

**Noise zones.** As part of the Statewide Operational Noise Management Plan (SONMP), noise

maps are prepared. The maps delineate up to three different noise zones, which are based on the expected percentage of the population that would be highly annoyed by environmental noise.<sup>28</sup> These noise zones are usually determined through mathematical modeling and computer simulations. The associated noise levels for each zone are shown in Table 8-1.

**TABLE 8-1. NOISE LEVELS**

| Noise Zone | Population Highly Annoyed | Transportation Noise (ADNL) | Impulsive Noise (CDNL) | Small Arms Noise (unweighted) |
|------------|---------------------------|-----------------------------|------------------------|-------------------------------|
| Zone I     | <15%                      | <65 dBA                     | <62 dBC                | <87 dBP                       |
| Zone II    | 15% - 39%                 | 65 - 75 dBA                 | 62 - 70 dBC            | 87 - 104 dBP                  |
| Zone III   | >39%                      | >75 dBA                     | >70 dBC                | >104 dBP                      |

Explanation: dBA = decibels, A-weighted  
 dBC = decibels, C-weighted  
 dBP = decibels, unweighted

In general, noise-sensitive land uses, such as housing, schools, and medical facilities, are compatible with the noise environment in Zone I, normally incompatible in Zone II, and incompatible in Zone III.

**Supplemental noise assessment.** Cases can occur where there is an increased public perception of noise and an adverse community reaction to increased noise even though a noise assessment for an existing situation or proposed action indicates land use compatibility. Compatibility determinations, therefore, should be supplemented by a description of the projected noise increase and potential public reaction in the following cases:

- Where the noise environment is determined by a few infrequent noises at very high levels (e.g., blasts with C-weighted sound exposure levels in excess of 110 dB)
- If single-event noise levels from the proposed action are greater than the existing levels by 10 dB or more
- In areas where the ADNL is between 60 and 65 dB and a proposed action is projected to increase the DNL by 3 dB or more
- In areas where the ADNL is above 65 dB and the proposed action is projected to increase the DNL by 1.5 dB or more.

Examples of ARNG projects where supplemental noise assessments might be needed include establishing or expanding an existing, firing range, airfield, industrial operation, or maneuver area.

**Related programs and issues.** Consideration must be given to the potential for environmental noise to adversely affect wildlife, particularly threatened and endangered species, and domestic animals. Although there are no standards to address effects on animals, such noise effects will be studied on an as-needed basis as part of the ARNG’s ENMP and natural resource programs,

<sup>28</sup> Note that a 3-dB increase in noise level doubles its perceived loudness.

including assessments to comply with the Endangered Species Act (ESA) and AR 200-3.

Vibration is an element of impulsive noise that can cause annoyance and structural damage. It must be assessed with on-site monitoring on an as-needed basis (e.g., in response to damage complaints and when there is potential for damage to historic structures).

Clear Zones and Accident Potential Zones (APZ) at Army Aviation Support Facilities represent additional components to be considered with respect to land use compatibility. Air Installation Compatible Use Zones (AICUZ) identify noise levels specifically associated with aircraft operations. Although Clear Zones and APZ are based on areas having statistically higher potential for aircraft accidents, they also represent areas that typically are subjected to higher levels of aircraft noise. Such areas should remain undeveloped for safety purposes.

### 8.15 Prime or Unique Farmland

The Farmland Protection Policy Act (FPPA) of 1981 (7 USC 4201 et seq) protects prime or unique farmlands. As defined in the Act, prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops such as, citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional farmland of statewide or local importance is land identified by state or local agencies for agricultural use, but not of national significance.

The purpose of the FPPA is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to ensure that federal programs are administered in a manner that, to the extent practicable, is compatible with state, local government, and private programs and policies to protect farmland. Prime farmland does not include land already in or committed to urban development or water storage. Farmland already in urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as “urbanized area” on the Census Bureau map, or as urban area mapped with a tint overprint on the USGS topographical maps, or as “urban built-up” on the USDA Important Farmland maps.

The FPPA provides that none of its provisions or other requirements shall apply to “the acquisition or use of farmland for national defense purposes during a national emergency.” As ARNG proposed actions typically do not occur in times of national emergency as declared by the president, they must comply with the provisions of the FPPA. ARNG actions that would convert farmland (as defined by the FPPA and its implementing regulations) to nonfarmable conditions must complete the Farmland Conversion Impact Rating Form (Form AD-1006) to determine whether the site is farmland subject to the act. A copy of the form is provided in [Appendix LL](#) of this manual.

**Describing existing conditions.** The analysis should state whether any of the mapped soil units are prime farmland. If they are, they may be protected under the FPPA. For many analyses, particular inquiry is needed to determine prime farmland classification. In some instances, a soil series designated as a prime farmland soil will be present at the project site but, because of previous land disturbances or facilities development, the soil is no longer viable for agricultural production.

Standard sources available to inform preparers of the status of soils relative to the FPPA and its

provisions include:

- *Soil surveys.* The Natural Resources Conservation Service (within the USDA) publishes soil surveys for most counties. If a soil survey is not available, soil characterizations may be obtainable through the local Water Resources and Soil Conservation Office, the local cooperative extension office, or possibly the Environmental Division for the installation.
- *Prime farmland list.* A list of prime farmland soils also is available from the Natural Resources Conservation Service and should be requested when obtaining the soil survey book. Compare the lists to the soils mapped on the installation.

**Documenting effects of the proposed action and alternatives.** If no prime farmland would be affected by the proposed action, a statement to such effect should be provided in the NEPA analysis. Otherwise, analysis should indicate what areas of the project site could experience a temporary or permanent loss of prime farmland, whether completion of a Farmland Conversion Impact Rating would be necessary, and, if the farmland was to be restored, when and how it would be done.

Where prime farmland areas would be affected by the proposed action or alternatives, the proponent should identify the acreage and location on a map. If the Farmland Conversion Impact Rating form ([Appendix LL](#) in this manual) is completed, it should be included in the NEPA document as an appendix. If no prime farmland is affected, then make this statement in the NEPA document.

If the proposed action would result in an extensive loss of prime farmland acreage relative to the total amount of prime farmland in the region, a significant impact may result. Avoidance of development on prime farmland represents the best mitigation approach. Further information on the FFPA is available at [http://water.usgs.gov/eap/env\\_guide/farmland.html#HDR6](http://water.usgs.gov/eap/env_guide/farmland.html#HDR6).

## 8.16 Protection of Children

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (April 21, 1997), recognizes a growing body of scientific knowledge that demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because (1) children's bodily systems are not fully developed, (2) children eat, drink, and breathe more in proportion to their body weight, (3) their size and weight may diminish protection from standard safety features, and (4) their behavior patterns may make them more susceptible to accidents. Based on these factors, the President directed each federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children. The President also directed each federal agency to ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks. A copy of Executive Order 13045 is presented as [Appendix MM](#) in this manual.

Children are frequently present at ARNG installations as visitors (e.g., users of recreational facilities). On such occasions, the ARNG has taken and will continue to take precautions for their safety using a number of means, including fencing, limitations on access to certain areas, and provision of adult supervision. As part of the NEPA process, disproportionate risks to children that result from environmental health risks or safety risks must be considered and addressed during the identification and analysis of the potential environmental and socioeconomic effects of the proposed action and alternatives.

## 8.17 Socioeconomics

### 8.17.1 Background

The assessment of socioeconomic effects resulting from proposed ARNG operations, maintenance, and training activities at an installation or civilian facility can be one of the more controversial issues related to ARNG actions. The economic and social well-being of a local community can be dependent upon the activities of the installation, and disruptions to the status quo can become politically charged and emotion-laden. The objectives of the NEPA analyst assigned the task of analyzing and documenting the socioeconomic effects become twofold. First, an open and realistic assessment of the potential effects must be performed, evaluated, and documented. Second, this process should be communicated to the general public in a manner that removes or reduces the emotion and politics and focuses on actual effects and mitigation actions.

The requirement to assess socioeconomic effects in an EA or EIS has been a source of legal discussion since the passage of the NEPA. While NEPA is predominately oriented toward the biophysical environment, court decisions have supported the need for analysis of socioeconomic effects when they are accompanied by biophysical effects. In this regard, socioeconomic effects alone cannot “trigger” the need for an EIS. It is advisable, however, to assess, where appropriate, the socioeconomic effects as part of the NEPA process (EA or EIS) and to document this analysis on a par with evaluations in areas such as air and water quality and other natural resources.

**The Army’s Economic Impact Forecast System (EIFS).** Although the federal government uses a number of economic models to address different economic issues, the Army has developed on-line databases, a series of models, and other tools specifically designed to address regional economic effects and to measure the significance of these effects.

The Army, with the assistance of many academic and professional economists and regional scientists, developed the Economic Impact Forecast System (EIFS) to address the economic effects of proposed Army (and ARNG) actions in NEPA analyses and to measure their significance.<sup>29</sup> As a result of its designed applicability, and in the interest of uniformity, EIFS is recommended for use in ARNG NEPA analyses. The algorithms in EIFS are simple and easy to understand and have a firm, defensible basis in regional economic theory.

EIFS is implemented as an on-line system supported by the U.S. Army Construction Engineering Research Laboratory (USACERL) through the University of Illinois. The system is accessed through the Environmental Technical Information System (ETIS) and is available at all times to anyone with an approved login and password, through toll-free numbers, Telenet, and other commonly used communications. Login identifications are available through the DENIX Data Manager, USACERL, in Champaign, Illinois; phone (217) 373-6790 or fax (217) 373-7270.

The databases in EIFS are national in scope and cover the approximately 3,700 counties, parishes, and independent cities recognized as reporting units by the Department of Commerce. EIFS allows the user to “define” an economic region of influence by identifying the counties that are to be analyzed. Once the region of influence (ROI) is defined, the system aggregates the data, calculates “multipliers” and other variables used in the various models in EIFS, and prompts the user for input data.

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<sup>29</sup> C.E. Huppertz, K.M. Bloomquist, and J.M. Barbehenn, *EIFS 5.0: Economic Impact Forecast System User’s Reference Manual*, U.S. Army Construction Engineering Research Laboratory, Champaign, Illinois, 1994.

**Definition of the region of influence.** Of the many factors used in constructing an economic impact model and in performing an economic impact analysis, one of the most controversial is the definition of the geographic ROI. For those not accustomed to regional economic analysis, justifying a particular study area can become controversial. Careful thought and judgment should always be exercised when delineating ROIs.

Most regional and urban analysts performing socioeconomic impact analysis prefer to use a functional area concept for defining study regions.<sup>30</sup> Regions defined in this way explicitly consider the economic linkages and spatial dimensions between the residential population and the businesses in the geographic area. In other words, commuting and trading patterns are of prime concern.

An important note should be made of the relationship between the size of the study region and the subsequently estimated effects. A larger area usually implies larger populations, greater factor endowments, richer resource deposits, and more readily available productive supplies. All these attributes make for more integrated and more diverse economic structures that, in turn, lead to larger socioeconomic effects. On the other hand, larger regions also tend to dilute the significance of socioeconomic effects, which means that the relative significance of particular effects tends to become smaller as the region gets larger.

Beyond the general guidelines for defining regions, there are a few universally accepted “rules,” which are somewhat subjective. The definition of the affected region should include all of the ingredients of a self-sustaining region—local businesses, local government, and local population. The region should reflect the limits of the economic activity associated with the affected population. The following considerations should be included in the definition of an ROI:

- The residence patterns of the affected personnel determine where they are likely to spend their salaries. Records of home addresses of personnel can serve as a means to document this consideration.
- The availability of local shopping opportunities is also a factor in the ROI definition.
- The “journey-to-work” time for employees often dictates part of the regional definition. On average, a journey-to-work time of 1 hour is considered a maximum criterion (50 miles is a good rule of thumb); however, some regions in the country are characterized by longer travel times.
- Local customs and culture often dictate the boundaries of the ROI. Long versus short commuting patterns, willingness to approach the “inner city,” the sense of local community, and other factors often lead to seeming inconsistencies in the region definitions.

None of the above considerations can be used exclusively to define ROIs for all socioeconomic impact studies; all these considerations should enter into the ROI definition process. This often requires input from local personnel in addition to the analysis of secondary data sources (maps, data, etc.). The rationale used in selecting the ROI for a particular analysis should be included in the EA or EIS.

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<sup>30</sup> K.A. Fox and T.K. Kuman, The functional economic area: Delineation and implications for economic analysis and policy. In *Papers and Proceedings, Regional Science Association*, Vol. 15 (1965): 57-85.



**Socioeconomic setting.** Once the geographic area for a proposed ARNG activity has been defined, the socioeconomic setting should be evaluated. The purpose of describing the socioeconomic environment of the region in which the installation or other affected property is located is to provide an understanding of the socioeconomic forces that have shaped the area. In addition, the socioeconomic setting provides the “frame-of-reference” necessary to determine the significance of the estimated socioeconomic effects. It is important to know, for example, whether the region has experienced growth or decline in the recent past. In addition, this information is useful in determining the economic and demographic relationships within the region and in connecting the study area with the nation at large. Demographic and economic trends for the region also give a regional perspective to an impact analysis. If particular counties diverge significantly from the regional averages, it is important to show the individual differences. Comparative data are ordinarily presented for the ROI, for the state, and frequently for the nation as a whole.

Detailed population data are available generally for decennial census years, while more aggregate data are available for years between census years. Data for specific racial and ethnic groups (such as Native Americans and Hispanics) who may be affected by the proposed activities can also be shown. Employment and population data are often presented for past decennial censuses and for more recent annual observations to provide some descriptions of overall trends. The principal sources for these kinds of data are the U.S. Bureau of the Census (Census), the U.S. Bureau of Economic Analysis (BEA), and the U.S. Bureau of Labor Statistics (BLS). Due to consistency issues between EAs and EISs, these “standard” federal sources should be used for describing the socioeconomic setting rather than locally available data. These data are available in a convenient format and in an easily retrievable form within EIFS.

### 8.17.2 Conducting Socioeconomic Impact Analyses

After the ROI is defined and the socioeconomic setting has been described, EIFS aggregates the data, calculates “multipliers” and other variables used in the actual models, and is ready for user input data. From the EIFS menu, users select the model to be executed. Then the users are required to input those data elements that describe the ARNG operations — changes in expenditures for salaries and for local services and supplies (e.g., construction labor and materials). Once these data have been entered into the system and a model has been executed, projections of changes in the local economy are provided. These projections include the four indicator variables—potential changes in sales volume, employment, income, and population. These four indicator variables are used to measure and evaluate the significance of socioeconomic effects.

**EIFS impact models.** Economic models are an invaluable technique for conducting an important component of socioeconomic impact analysis. These tools are especially useful in determining the order and magnitude of the effects that a federal action will have on a local or regional economy. The suite of economic models can vary from the simple to the complex, each offering its interpretation of the effects of a project. As a rule, economic models are sets of mathematical equations that represent the interactions among the integral components of the regional economy. The relationships that are modeled are based on economic principles that have a long history of relative accuracy and use. Economic models can be used to compare the effects of a project using varying scenarios. EIFS currently contains five basic impact models:

- *Standard EIFS Forecast Model.* The Standard EIFS Forecast Model evaluates the socioeconomic effects due to the usual operation and maintenance activities at a military installation or civilian facility or due to a change in its mission.

- *Construction EIFS Forecast Model.* The Construction EIFS Forecast Model evaluates the socioeconomic effects due to a construction project. The construction project is assumed to be carried out by a construction firm, so that neither the civilian nor the military personnel on post are involved in the construction activity.
- *Training EIFS Forecast Model.* The Training EIFS Forecast Model evaluates the socioeconomic effects due to training activities at an installation.
- *Automated Input-Output Multiplier System.* The Automated Input-Output Multiplier System generates input-output multipliers for impact analysis situations that reflect the unique character of specific industrial sectors.
- *Small Area Assessment Model.* The Small Area Assessment Model assesses the disaggregated local area income and employment effects associated with military activities.

The basis of the EIFS analytical capabilities is the calculation of multipliers that are used to estimate the effects resulting from ARNG-related changes in local expenditures and/or employment. In calculating the multipliers, EIFS uses the economic base model approach, which relies on the ratio of total economic activity to “basic” economic activity. Basic, in this context, is defined as the production or employment engaged to supply goods and services outside the ROI or by federal activities (such as military installations and their employees). According to economic base theory, the ratio of total income to basic income is measurable and sufficiently stable so that future changes in economic activity can be forecast. This technique is especially appropriate for estimating “aggregate” effects, and it makes the economic base model ideal for NEPA analyses.

Different impact scenarios create uniquely different economic and social effects in the communities surrounding a military installation. The differences in these socioeconomic effects are primarily due to the differences in the expenditure patterns of procurement and consumption of locally produced goods and services.

**Data requirements.** The information required from EIFS users includes those data necessary to describe the ARNG activities. Specifically, users of EIFS must provide (1) number of civilians affected and their average annual salary, (2) number of military personnel affected and their average annual salary, (3) percentage of military personnel living on post (if applicable), and (4) total local procurement made by the affected ARNG activity. The salary data are necessary to describe the total salary inputs to the local region that are affected. Salary is defined as gross income (which is pay before deductions for income taxes, withholding, and social security tax, but does not include retirement and other benefits that are not received directly by the employee). The dollar value of local procurement is the total annual change in expenditures for two categories: (1) goods and services and (2) construction labor plus construction materials and supplies. Goods and services expenditures are used in the Standard and Training EIFS Forecast Models; construction expenditures are used in the Construction EIFS Forecast Model.

These data, necessary for the description of the proposed ARNG activity and for a full and proper socioeconomic impact analysis, should come from those sources who can identify (1) the distributions of military and civilian personnel grades in affected units and (2) local procurement made by the affected units. These data are usually available through personnel and procurement channels at the installation at which the units reside.

**Model results.** Once the necessary data are entered into EIFS, a projection of the changes in the local economy is provided. Changes in ARNG operations, maintenance, and training activities

can lead to changes in the demand for goods and services either from military and civilian personnel spending their incomes to support their families or from purchases to carry out activities on and off the installation. Changes in salaries and procurement are converted into an initial change in local sales (called direct project effects). In turn, direct project effects lead to further changes in local sales through a process of spending and re-spending (called indirect project effects). This process in total is called the “multiplier process” and is summarized in the form of an “impact multiplier.” The multiplier is interpreted as the total effect on the economy of the region resulting from a unit change in its basic sector; for example, a dollar increase in local expenditures due to expansion of a military installation.<sup>31</sup> Local economic and demographic changes (such as employment, income, and population) occur during the multiplier process. The EIFS model estimates and produces the following output: (1) change in total local business volume, (2) change in total local employment, (3) change in total local income, (4) change in total local population, and (5) Rational Threshold Values (RTV).

**Timing of proposed activities.** Many proposed military operation, maintenance, and training activities occur over extended periods, or their socioeconomic effects have unique temporal patterns that correspond to the various phases of the activities. That is, the indirect effects of such activities on local economies occur by different magnitudes over time, just as do the direct project effects. Thus, the socioeconomic effects should be estimated by evaluating the annual components of the effects of the proposed activities. For example, an installation proposing a 5-year plan must consider the changes in expenditures for salaries, and for local services and supplies (e.g., construction labor and materials), for the first through the fifth years of plan implementation.

**Significance of socioeconomic effects.** Once model projections are obtained, further use of EIFS tools, the RTV, and Forecast Significance of Impacts (FSI) profiles allows the user to evaluate the “significance” of the effects. These analytical tools review the historical trends for the defined region and develop measures of local historical fluctuations in sales volume, employment, income, and population. These evaluations identify the range of positive and negative changes within which a project can affect the local economy without creating a significant effect.

These techniques have two major strengths: (1) they are specific to the region under analysis, and (2) they are based on actual historical time series data for the defined region. The use of the EIFS impact models in combination with the RTV and/or FSI has proven very successful in addressing perceived socioeconomic effects.

If the socioeconomic impact analysis of the proposed activities indicates “significance,” the EIFS model results should be supplemented with a more detailed analysis. Although such instances are rare, the greater detail and accuracy will be valuable in further mitigation planning. With EIFS, a higher-level input-output model is available for use. Called the Automated Input-Output Multiplier System (AIMS), the model adheres to the EIFS philosophy in ease of use, but can provide sector-specific data for further analysis of significant effects resulting from ARNG activities. In addition, more detailed, geographically specific impact analysis might be required. EIFS also contains the Small Area Assessment Model (SAAM), which provides county-by-

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<sup>31</sup> EIFS estimates its multipliers using a “4-digit SIC location quotient” approach based on the concentration of industries within the region relative to the industrial concentrations for the Nation. (A.M. Isserman, The location quotient approach to estimating regional economic impact. In *Journal of American Institute of Planners*, January 1977, 33-41.)

county effects within the ROI.<sup>32</sup> This overall approach, referred to as the “two-tier” approach, depends on a simple, defensible model (Standard EIFS and the RTV) until such time that a significance threshold triggers a more detailed, resource-consumptive analysis of the socioeconomic effects (AIMS and SAAM).

It is rare that the significance threshold is actually crossed, and the documentation of this fact can usually lead to the dissipation of the issue. All data are locally specific and therefore applicable. Although the age of the data (dependent upon the Census source) can be criticized, the Census is the only uniform source available. The model itself is theoretically sound and has been reviewed on numerous occasions. In short, the model can be effectively used to define and document “significant/insignificant” effects.

## **8.18 Water Resources**

### **8.18.1 Surface Water**

The term “surface water resources” is a catchall used to describe various bodies of water residing or flowing in basins, channels, and other various natural and artificial landforms found on the earth’s surface. Rivers, streams, lakes, reservoirs, ponds, and estuaries are examples of surface waters. These resources have many beneficial uses including drinking water supply, primary contact recreation (e.g., swimming), and aquatic life support.

Associated with surface water bodies are their drainage basins, or watersheds. A drainage basin is the area of land that drains water to a common outlet along a channel. The boundary of a drainage basin is called the drainage divide. Contained within the drainage basin is a hierarchical network of channels whose size increases as water moves downstream from the upper to lower end of the drainage basin. The direction, form, and pattern of this drainage are determined by topography and geologic structure.

The interaction between ground water and surface water plays an important role in determining the amount of surface water flow or levels, especially during dry conditions. Streams that flow continuously in both wet and dry times are known as perennial streams. The baseflow of these streams is dependably supplied by a continual movement of groundwater into the channel. Intermittent streams, on the other hand, flow only at certain times of the year, usually during the wet season when water tables are high enough to discharge groundwater into the channel. A third category of streams is called ephemeral streams. They do not usually have a source of groundwater seepage and therefore flow only during or immediately after periods of precipitation.

The water quality of a surface water body is determined by natural and cultural inputs of sediment, nutrients, organic materials, pathogens, metals, and other substances. Two general categories are used to describe sources of pollution—point and nonpoint. Point sources enter water bodies at an identifiable site. Examples include municipal and industrial discharges and storm sewer outfalls. Nonpoint source pollutants are typically picked up off the land and carried into surface water bodies in a diffuse manner by runoff from rainfall or snowmelt. Construction and demolition sites can be a significant source of nonpoint pollution. Grading activities remove grass, rocks, pavement, and other protective ground covers, resulting in bare, exposed soil. Wind and water erode soil and sand particles and carry them to water bodies, where they settle to the

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<sup>32</sup> More geographically specific impact analysis is possible, but it requires greater participation from users to supply local area economic and demographic data.

bottom. Sedimentation builds up the streambed, increases turbidity, and covers up habitat important for fish spawning and aquatic insect life. In addition, demolition and construction activities often require the use of toxic or hazardous materials such as petroleum products, pesticides, herbicides, and sealants. If allowed to migrate to water bodies as nonpoint source pollution, these materials can lower water quality and harm plant and animal life.

Abating point source pollution usually involves modifying some internal process or activity that is generating the pollutants or treating effluent before it is discharged. Nonpoint pollution is more difficult to manage. It is closely tied to uncontrollable weather events and geographic conditions. Consequently, abatement of nonpoint source pollution generally focuses on land and runoff management practices.

Acceptable or unacceptable water quality in surface waters is usually judged using water quality standards established by states or other relevant jurisdictions. Most standards assign a beneficial use(s) to a water body (i.e., a water quality classification) and then set minimum numeric and narrative criteria needed to support that use(s).

Any action involving surface disturbance in the watershed (e.g., establishment of new facilities complexes, expansion of existing complexes, or installation of new utilities serving those complexes) may have direct impacts on the hydrology or water quality of surface water. Demolition and replacement of existing ARNG facilities, even when the developed area is not expanded, could also potentially result in temporary or permanent changes in surface water conditions.

A region of influence for surface waters would typically include the sites for construction of other activities for each alternative plus adjacent lands where surface waters could be influenced by drainage patterns and point and nonpoint pollution. Professional judgment is necessary to estimate the extent of adjacent lands that must be considered.

Several standard sources may be consulted for information on surface water resources, including:

- Installation-wide surface water inventories. Information about surface water resources can be obtained from installation maps, the Real Property Development Plan, aerial photography, and quadrangle sheets available through the USGS in digital raster format at the scale of 1:24,000 and 1:250,000.
- State water quality classifications. These are available from state water or environmental agencies.
- Water quality and hydrologic information. These are available from federal, state, and local sources.

**Statutory and regulatory setting.** The federal Clean Water Act of 1977 (33 U.S.C. 1251 et seq.) is the primary law regulating water pollution in surface waters. Other relevant laws and regulations are listed below.

- AR 200-1, *Environmental Protection and Enhancement*
- AR 420-49, *Utility Services*
- Safe Drinking Water Act (SDWA)
- Marine Protection, Research, and Sanctuaries Act
- Estuary Protection Act

**Describing existing conditions.** The affected environment section for surface water should accomplish the following objectives:

- State whether surface waters are present in the ROI for each alternative and indicate the sources(s) of information on which that decision is based.
- Graphically depict locations of surface waters and indicate the sources(s) of information used to prepare the graphic.
- Describe the types of surface water bodies and seasonal changes in water depths and flow rates to the extent possible using available information.
- Describe the drainage basins of the surface water bodies and runoff patterns within the drainage basins to the extent possible using the available information.
- Describe locations of existing sources of point and nonpoint pollution within the drainage basin to the extent possible using the available information.
- State water quality classification of surface water bodies, if appropriate.
- Summarize relevant water quality data to the extent possible using available sources when this information supports the impact analysis.
- State existing claims to water rights, if appropriate.

When surface waters are present in the region of influence, a figure depicting them should be developed. Labels should include the name of the water body and, if it is a stream or river, the direction of flow. Major drainage divides also should be included.

Description of surface water resources should include the following:

- *Water bodies.* The descriptions of lakes, ponds, and other bodies of standing water should normally include the area and depth of the water bodies. The description of a river or stream should include whether the stream is perennial, intermittent, or ephemeral; the direction of flow; and the name of the water body that receives its flow, if appropriate.
- *Drainage basin.* The drainage basin of streams should be described in terms of the direction and pattern of runoff and the main land uses found within the area that are sources of point and nonpoint pollution.
- *Beneficial uses and water classification.* Beneficial uses of the surface water resource should be discussed in terms of any state-designated water classification. If the beneficial use is for drinking water, major customers should be identified, along with daily average water usage, peak demands, and available capacities.
- *Water quality.* Relevant water quality data should be discussed and presented in a tabular format.

**Documenting effects of the proposed action and alternatives.** Assessing potential impacts on surface waters relies heavily on the specialized expertise and judgment of the assessor. Construction activities can produce many different kinds of nonpoint source pollutants that, if allowed to migrate into surface waters, can cause harmful consequences and lower water quality. Best management practices are used to prevent, or at least control, the pollution of runoff water that moves diffusely into surface water bodies.

The environmental consequences section for surface water resources should indicate how the

condition of those resources would be affected by the proposed action and, where appropriate, propose mitigation measures and explain how those measures could be accomplished.

Typical categories of water resource impacts from ARNG activities include:

- *Sedimentation.* Surface disturbances can lead to increased erosion and the movement of sediment to surface waters. Sedimentation builds up the streambed, increases turbidity, and covers up habitat important for fish spawning and aquatic insect life.
- *Water quality degradation.* Demolition and construction activities often require the use of toxic or hazardous materials such as petroleum products, pesticides, herbicides, and sealants. If allowed to migrate to water bodies as nonpoint source pollution, these materials can lower water quality and harm plant and animal life.
- *Flooding.* Surface disturbances can alter drainage patterns and render soils more impervious. These conditions can increase both the volume and intensity of runoff, which in turn increases flooding and causes erosion of stream channels and banks.

Violations of water quality standards are normally deemed significant impacts. In most cases, storm water management practices are used to mitigate the effects of construction sites (and other kinds of activities, as well) on surface water resources. While these practices vary in purpose and design, their general objectives include:

- Minimizing the amount of disturbed soil
- Preventing runoff from off-site areas from flowing across disturbed areas
- Slowing down the runoff flowing across the site
- Removing sediment from on-site runoff before it leaves the site.

Examples of practices used to meet these objectives include the installation of silt fencing, sediment basins, hay bales, and gradient terraces.

### 8.18.2 Groundwater

Groundwater occurs in an aquifer, a water-bearing bed, or a stratum of earth, gravel, or porous stone. All aquifers have interconnected openings or pores through which water can move, but some aquifers move water better than others. In general, the best aquifers are the coarse-grained, saturated portions of the unconsolidated granular sedimentary mantle. These unconsolidated sediments are commonly found at lower elevations close to streams and consist of stream alluvium, glacial outwash or till, wind-deposited sand, alluvial fans, and similar water- or wind-induced coarse-grained granular materials.

Coarser-grained consolidated rocks such as conglomerates and sandstones are also good aquifers. They are typically found below the unconsolidated granular sedimentary mantle. Their value as aquifers depends on the degree of cementation and fracturing to which they have been subjected. Some massive sedimentary rocks such as limestone, dolomite, and gypsum can also be good aquifers. These rocks are relatively soluble, and solution along fractures can form voids that range from a fraction of an inch to several hundred feet.

Aquifers can be unconfined or confined. An unconfined aquifer is one that does not have a confining layer overlying it. It is often referred to as a free or water table aquifer. Water infiltrating into surface soils percolates downward through air-filled interstices and joins the body of groundwater. The water table, or the upper surface of the groundwater body, is in direct

contact with the atmosphere through the open pores of the material above. Movement of the ground water is in direct response to gravity and is in balance with atmospheric pressure.

A confined, or artesian, aquifer has an overlying, confining layer of lower permeability than the aquifer. Therefore, it has only an indirect or distant connection to the atmosphere. Water in a confined aquifer is under pressure. When the aquifer is penetrated by an encased well, the water will rise above the bottom of the confining bed to an elevation at which it is in balance with the atmospheric pressure. If this elevation happens to be greater than that of the land surface at the well, water will flow freely (i.e., artesian well).

Recharge is the term used to describe surface water moving into bodies of groundwater. Discharge is used to describe groundwater flowing to the surface. Under natural conditions and over a long period of time, which includes both wet and dry cycles, recharge will equal discharge. Recharge sources include:

- *Deep percolation from precipitation.* An important source of recharge, it is influenced by vegetative cover, topography, and soil type, as well as the intensity and frequency of precipitation.
- *Seepage from streams and lakes.* Seepage occurs when the water table lies below the bottom. In general, the connection is strongest in streams with gravel beds in well-developed alluvial floodplains.
- *Underflow from another aquifer.* The amount of recharge by another aquifer depends on the head differential, the nature of the connection, and the hydraulic properties of the aquifers.
- *Artificial recharge.* This form of recharge can be planned (infiltration ponds and recharge wells) or unplanned (seepage from man-made canals, reservoirs, other water impounding and conveyance structures, irrigation, and septic system leach fields).

Discharge sources include:

- *Seepage to streams.* In certain reaches of streams during certain times groundwater may discharge into the channel and maintain baseflow.
- *Flow from seeps and springs.* Discharge occurs where the water table intersects the land surface or a confined aquifer outlets to the surface.
- *Evaporation and transpiration.* Groundwater may be lost to the atmosphere if the water table is near the surface.
- *Artificial discharge.* Wells and drains are designed to withdraw water from groundwater storage.

Recharge water that is contaminated by pollution can make groundwater unsuitable or unfit for use. Sources of groundwater pollution include leachate from failing septic systems, garbage dumps, and accidental spills. The distance that pollution moves in aquifers varies. Crevassed, fissured, and cavernous rocks and coarse clean gravel tend to carry pollutants farther than finer-grained aquifers. The filtering action and adsorption in these latter aquifers tend to capture and hold pollutants.

Any action involving surface disturbance, such as the establishment of new facilities, may have direct impacts on the hydrology or water quality of groundwater. A region of influence for groundwater would typically include construction sites or other activity locations for each



alternative, plus adjacent lands where recharge and discharge of groundwater occurs. Professional judgment is necessary to estimate the extent of adjacent lands that must be considered. As appropriate, legal counsel should be consulted concerning any groundwater ownership or appropriation issues.

Information on groundwater resources can be obtained from existing installation studies and maps that describe the extent and direction of groundwater flow, location of any wells, and water quality conditions of the aquifer. Water quality classifications of the groundwater can be obtained from the state water or environmental agencies.

**Statutory and regulatory setting.** The Safe Drinking Water Act (40 U.S.C. 100 et seq.) directs EPA to develop national drinking water regulations for public water systems and directs states to establish programs that protect areas around wellheads. The 1996 amendments establish a strong emphasis on source water protection and enhanced water system management.

**Describing existing conditions.** The affected environment section for ground water should accomplish the following objectives:

- State the depth and geologic conditions of the aquifer(s) to the extent possible using available information.
- Indicate the direction of groundwater flow, location of any wells, and water quality conditions to the extent possible using available information.
- Indicate if groundwater is used by the installation or adjacent communities for drinking water. If so, note the overall yield of the aquifer. (Specific capacity and usage information for water supply purposes should be included in the Infrastructure section.)
- Describe locations of existing sources of point and nonpoint pollution that could potentially contaminate ground water recharge areas.
- Indicate existing claims to water rights.

**Documenting effects of the proposed action and alternatives.** Assessing potential impacts to groundwater relies heavily on the specialized expertise and judgment of the assessor. Construction activities can produce many different kinds of nonpoint source pollutants that, if allowed to migrate into groundwater, can cause harmful consequences and lower water quality. Best management practices are designed to prevent, or at least control, the pollution of runoff water.

For each alternative, the environmental consequences section for water resources should accomplish two objectives. First, analysis should indicate how the condition of groundwater resources would be affected. Second, where appropriate, the analysis should propose mitigation measures and explain how those measures could be accomplished.

Typical categories of groundwater impacts from ARNG activities include

- *Ground water quality degradation.* Demolition and construction activities often require the use of toxic or hazardous materials such as petroleum products, pesticides, herbicides, and sealants. If allowed to migrate to groundwater, they can lower water quality.
- *Decreased aquifer recharge.* Surface disturbances can alter drainage patterns and render soils more impervious. These conditions can increase surface runoff at the expense of groundwater recharge. These conditions could lower the water table and alter discharge sites.

Violations of water quality standards are normally deemed significant impacts. In most cases, storm water management practices are used to mitigate the effects of construction sites (and other kinds of activities, as well) on surface water resources. While these practices vary in purpose and design, their general objectives include minimizing the amount of disturbed soil, preventing accidental spills of hazardous materials, and preventing runoff from groundwater recharge areas. Examples of practices used to meet these objectives include careful handling of hazardous materials, marking and specialized protection of groundwater recharge areas, and the installation of runoff devices and structures such as silt fencing, sediment basins, hay bales, and gradient terraces.

### 8.19 Wetlands

Wetlands are defined by EPA and USACE as areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Areas meeting this definition are delineated based on parameters of vegetation, soils, and hydrology. Wetlands are lands transitional between terrestrial and aquatic systems and are among the most biologically productive ecosystems in the world. These lands are of critical importance to the protection and maintenance of a large array of plants and animals, including a significant number of threatened and endangered species, by providing essential seasonal habitats. Wetlands also protect the quality of surface water by impeding the erosive forces of moving water and trapping waterborne sediment and associated pollutants, protecting regional water supplies by assisting the purification of surface water and groundwater resources, maintaining base flow to surface waters through the gradual release of stored floodwaters and groundwater, and providing a natural means of flood control and storm damage protection through the absorption and storage of water during high-runoff periods. Loss or degradation of wetlands can reduce groundwater recharge, cause increased flood levels and shoreline erosion, reduce primary productivity critical to aquatic food chains, affect water quality, and reduce habitat available to many species of terrestrial and aquatic biota. Wetlands are also valued for their aesthetic properties and often contribute to scientific and recreational opportunities.

Section 404 of the Clean Water Act (CWA) is widely accepted as the most significant federal program affecting the protection of wetlands. This program regulates both the discharge of dredged and fill material into waters of the United States and the conversion of wetlands to uplands for farming and forestry. The basic premise of the Section 404 program is that no discharge of dredged or fill material can be permitted if there is a practicable alternative that is less damaging to the aquatic environment or if the discharge would result in significant degradation to the Nation's waters and wetlands. Another federal mandate regulating wetlands is Executive Order 11990, *Protection of Wetlands*, which requires federal agencies not only to minimize the destruction of wetlands, but also to initiate action to enhance their natural values.

The CWA, through Section 401, provides means for states to control the degree of impact of discharges on state waters (including wetlands). The CWA requires that any applicant wishing to receive a federal license or permit to conduct an activity that might result in a discharge to navigable waters must obtain a Section 401 certification. Section 401 certification is granted by states, except in cases where states wish to waive the certification requirement. Although it is largely applied to chemical water quality of discharges, some states are integrating Section 401 into their overall water quality protection programs, which include protecting the physical and biological health of state waters.

It is ARNG policy to avoid adverse effects on aquatic resources and to offset those adverse

effects which are unavoidable. Additionally, the ARNG strives to achieve a goal of no net loss of values and functions of existing wetlands and to permit no overall net loss of wetlands on ARNG-controlled lands.

When assessing the effect of a proposed action on a site, the proponent should investigate for the presence of wetlands. The first step is to identify whether a wetland delineation was performed for the area in the past. If not, the proponent should inspect available background information on the area that might indicate the presence of wetlands, such as soil survey maps, aerial photographs, hydric soil lists, USGS topographical maps, and National Wetland Inventory maps. Maps alone are not reliable indicators of wetland presence because some wetlands might be too small to be recorded. Thus, a walkover of the site should be performed by someone capable of identifying the presence of wetlands.

If the presence of a wetland is suspected in the area and the wetland is likely to be affected by the proposed action, the proponent must have the wetland boundaries delineated before undertaking any action. Delineations can be performed by certified or otherwise qualified persons who must submit their results to USACE for approval. Wetland delineation uses three criteria to identify the outer limits of a wetland area: wetland hydrology, the presence of wetland soil (hydric soil), and the presence of wetland plants (hydrophytic plants). Under USACE requirements, a site must meet all three criteria to be classified as a wetland except (1) when atypical conditions exist (e.g., areas that have been sufficiently altered by recent human activities or natural events to preclude the presence of wetland indicators) and (2) in problem areas (e.g., where seasonal changes preclude development of one of the criteria).

**Statutory and regulatory setting.** Principal authoritative sources concerning wetlands include the following:

- AR 200-3, *Natural Resources—Land, Forest and Wildlife Management*
- Clean Water Act, Sections 401 and 404
- River and Harbors Act of 1899, Section 10
- Executive Order 11990 (*Protection of Wetlands*).

States and local jurisdictions also regulate impacts to wetlands. Michigan and New Jersey have assumed administration of Section 404 from the USACE. Other states (e.g., Maryland and Pennsylvania) have instituted separate wetland permit requirements that parallel Section 404. Certain states limit formal regulation to tidally influenced wetlands (e.g., Virginia and North Carolina) or to wetlands meeting specific size or value criteria (e.g., New York, Minnesota). Certain states use different criteria to delineate regulated wetlands (e.g., Massachusetts and Connecticut). Many states use the water quality certification process to limit development activity in wetlands even if state statutes do not directly address wetlands.

**Describing existing conditions.** The affected environment section for wetlands should accomplish the following objectives:

- It should state whether wetlands are present in the region of influence for each alternative and indicate the source(s) of information used to make that decision.
- If wetlands are present, it should graphically depict their location and indicate the source(s) of information used to prepare the graphic.

- Each wetland area should be classified using the classification system developed by the USFWS, and vegetation, soils, and hydrology should be characterized.
- The functions and values of each wetland should be evaluated to the extent possible using the available information.

Wetland areas should be depicted on maps and should be labeled with their FWS classification on the figure. The text should indicate the extent of each area in acres (to one or two decimal places, depending on the precision of the available information) or, for small wetlands, in square feet. Characterization of the vegetation, soils, and hydrology for wetlands should reflect the following considerations:

- *Vegetation.* The description should normally indicate the dominant species for each vegetational stratum (tree canopy, saplings and shrubs, herbaceous groundcover, and woody vines). The selection of dominant species should be subjective and rarely include more than two or three species per stratum. A dominance calculation procedure sometimes used for wetland delineations (FICWD, 1989) is not recommended for purposes of vegetation description. Visible adaptations of the vegetation to wetland conditions, such as abnormally shallow roots, should be noted. The principal sources of the information will usually be a site visit or, if available, a previous wetland delineation report.
- *Soils.* The description should normally state which soil series are mapped in the county soil survey and provide descriptive information from the survey text on those soil series. At a minimum, the drainage properties of each soil series should be noted. If a site visit is possible, the EA preparer should take at least one or two hand-augured soil borings in each soil mapping unit (to a depth of 18 to 24 inches, as would be typical for a wetland delineation) to verify information in the county soil survey. Field indicators of hydric soils (e.g., histic epipedon, gleying, manganese concretions) should be noted.
- *Hydrology.* At a minimum, the hydrology description should indicate the principal water sources contributing to each wetland occurrence (e.g., surface runoff, groundwater discharge, riverine overflow, tidal flow) and whether each wetland occurrence has a surface inlet or outlet. Relevant conditions of the watershed (area contributing surface runoff) for each wetland occurrence should be noted. If a site visit is conducted, hydrological conditions contributing to an area's wetland status (e.g., depth to water table, presence of watermarks) should be noted.

**Documenting effects of the proposed action and alternatives.** A wetland area subject to permanent loss from fill should be precisely quantified by conducting a field delineation, survey, and mapping of all potentially effected waters of the United States, including wetlands. A qualitative consideration of the other categories of wetland related impacts is usually sufficient. Analytical models are available to generate quantitative estimates of changes in wetland hydrology and changes in wetland function.

For each alternative, the environmental consequences section for wetlands should accomplish the following objectives:

- Indicate which wetland areas would be permanently lost
- Indicate which wetland areas would be temporarily lost, and when and how those areas would be restored
- Indicate how the condition and functional integrity of other wetlands could be affected

- Propose mitigation measures, how those measures could be accomplished, and how they could offset losses of wetland area and function
- Indicate what, if any, permits would be necessary for the potential wetland impacts.

Typical categories of wetland impacts from ARNG activities could include:

- *Filling.* Any grading or construction activity within areas identified as wetlands constitutes filling. Filling can either be permanent, as necessary to construct a road or houses in a wetland, or temporary, as to excavate and backfill a ditch to extend a buried utility across wetlands. The EA should indicate the area to be filled and show an overlay of the construction footprint on a map of existing wetlands in a figure.
- *Flooding.* Construction activities adjoining wetlands can raise water levels, stressing or killing vegetation and other biota and, in extreme cases, creating open waters. Most wetland tree and shrub species are tolerant of seasonal saturation but are easily injured by extended periods of even shallow inundation. Culverts for road crossings permitted under Section 404 can become blocked (or may be improperly sized) and create impoundments that flood wetlands. Enhanced storm water flows from new impervious surfaces can also flood wetlands following heavy rainfall.
- *Draining.* Direct ditching of wetland areas will not likely occur as part of any RCI activity. However, construction within areas adjoining wetlands can indirectly cause portions of wetlands to dry out. For example, grade changes may divert surface flow that formerly fed wetlands in isolated depressions. In some arid areas, increased demands on shallow aquifers to support new housing and associated landscaping can cause some spring-fed wetlands to dry out. These wetlands may be located at a considerable distance from the site of construction.
- *Sedimentation.* Any surface soil disturbance adjacent to wetlands can contribute sediment to the wetland. This sediment can smother herbaceous vegetation and sediment-dwelling fauna and alter the movement of water through the wetland. Small, isolated wetlands experiencing heavy sedimentation may become converted to uplands.
- *Water quality degradation.* Lawn maintenance in residential areas can contribute large quantities of fertilizer and pesticides to adjoining wetlands through runoff. Fertilizer from runoff can stimulate the growth of aggressive vegetation, and small insect larvae and other biota critical to the food chain can be killed by runoff-borne pesticides.
- *Increased noise and human activity.* The value of wetlands as wildlife habitat can be reduced by noise and other indirect effects of an increased human presence. Human activities in wetlands can trample vegetation and wildlife, compact soils, and resuspend sediments. Noise from automobiles, lawnmowers, and conversation can startle wildlife.

Note that of the categories of impacts listed above, only filling is directly subject to permitting requirements under federal law. However, all potential impacts on wetlands must be considered under NEPA, not just impacts requiring permits.

Net loss of wetland areas or functions as a result of implementation of an ARNG proposal may be deemed a significant impact. Because wetland area is more readily quantified than wetland function, and because the success of restored or created wetlands is uncertain, most mitigation proposals call for restoring or creating more wetland area than that lost. Mitigation measures for wetland impacts include the following:

- Use of detention basins, oil/water separators, and other storm water management structures to limit the effect of increased storm water on wetlands.

- Use of vegetated buffers, silt fences, straw mulches, and other erosion control practices during construction to prevent sedimentation of wetlands.
- Restoration of wetlands disturbed by the project. The long-term impact of temporary disturbances to wetlands can often be eliminated by restoring the wetlands to their original condition. For example, trenches to install buried utilities can be backfilled with the original soil layers and replanted with indigenous wetland vegetation.
- Restoration of other wetlands. Wetland conditions can be readily restored to many former wetlands by simple measures such as filling drainage ditches, plugging or removing tile drains, or breaching open water impoundment.
- Creation of other wetlands. Some non-wetland sites can be converted into wetlands by impounding surface runoff, diverting stream flow, excavating to the water table, or other methods. Careful selection of the site and method is critical to success and cost efficiency.
- Enhancement of other wetlands. Degraded wetlands can be enhanced through removal of invasive vegetation, supplementary planting of desirable vegetation, or installation of wildlife management features such as nesting boxes.
- Purchase and protection of other wetlands. This approach is sometimes viewed as an acceptable mitigation measure if the purchased wetlands are of exceptional value and in imminent danger of development, but otherwise it is not viewed as a strong mitigation measure because most wetlands are already protected under various regulations.
- Monetary compensation. Payments can be made to trustee agencies responsible for wetland management (such as the USFWS or state game agencies).

## 8.20 Cumulative Effects

NEPA requires analysis of the cumulative environmental effects of a proposed action and other actions not only at the project site but also in the region, recognizing that effects on traffic congestion, air quality, noise, biological resources, socioeconomic conditions, utility system capacities, and other resources might often be manifested only at that level.

Cumulative effects are the impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or entity (federal or nonfederal) or person undertakes such other actions (40 CFR 1508.7). Historically, there has been little specific guidance on how to treat cumulative effects analysis in the NEPA process. On June 24, 2005, the CEQ issued guidance on the consideration of past actions in cumulative effects analysis.<sup>33</sup> Prior to that, reacting to the current state of environmental science and requests from practitioners for better guidance, the CEQ prepared a handbook entitled *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997). Incorporating some of the concepts identified in CEQ's handbook, the following discussion focuses on some of the important issues and themes that relate to cumulative effects analysis.

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<sup>33</sup> *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis*, June 24, 2005, available at [http://ceq.eh.doe.gov/nepa/regs/Guidance\\_on\\_CE.pdf](http://ceq.eh.doe.gov/nepa/regs/Guidance_on_CE.pdf).

CEQ regulations on the scoping process (40 CFR 1508.25) make it clear that one function of scoping is to discover potential cumulative actions and effects. Connected and similar actions should be analyzed and recorded in the same document. The scoping process is one very important way to identify other prior, current, or planned actions on the installation and in the geographic area. Moreover, scoping for cumulative effects must include consideration of other federal and nonfederal actions that take place within the spatial and temporal boundaries identified.

The effects of individual minor disturbances and other changes to the environment by humans will accumulate when the frequency of disturbances is so high that the ecosystem has not fully rebounded before another stressful event is introduced. The spatial and temporal crowding of such disturbances can result in cumulative effects. Preparers of NEPA documents must obtain data on the status of significant environmental and socioeconomic resources with an understanding of not only how the proposed action might affect these resources directly or indirectly, but also what other remote disturbances might occur as a result of the proposed action.

Scoping provides information to decision makers and helps build public confidence. Both of these factors are critical to the defensibility of NEPA analyses generally, and cumulative effects analyses specifically. In addition to using their own expertise, preparers should seek input from others during the scoping process to determine the possible spatial and temporal scope of direct, indirect, and cumulative effects. Preparers can begin to identify cumulative effects issues by pursuing answers to the following general questions:

- Is the proposed action one of several similar past, present, or future actions with similar impacts in the same geographic area?
- In what way do the activities of others in the region have environmental effects similar to those of the proposed action?
- Will the proposed action, in combination with other planning activities, affect any natural resources, cultural resources, social or economic units, ecosystems, or pollutants of regional, national, or global public concern?
- Have any recent or ongoing NEPA analyses (or similar actions in the nation or any other actions in the region) identified important adverse or beneficial cumulative effects issues?
- Have effects been historically significant or controversial, such that the importance of a resource is defined by past loss, past gain, and investments to restore resources to adequate levels or conditions?

Preparers should also consider whether the proposed action potentially affects any of the following issues, which typically should be assessed in a cumulative manner:

- Public health and safety beyond the project site
- Air quality parameters of regional significance
- Waterborne pollutants in a regionally important water body or watershed
- Wastes that are candidates for disposition in regional, state, or federal disposal or storage facilities
- Wetlands
- Migratory populations or habitats of fish and wildlife
- Cultural resources

- Federal- and state-listed threatened and endangered species, or federally designated critical habitat.

Preparers are encouraged to pursue the assessment of cumulative effects on other resources as they may be identified for a proposed action. Methods of determining the scope of the affected environment and the type of impact analysis needed should begin to emerge during consideration of the questions and issues raised in this section.

Of the three general temporal frames of reference (past, present, and reasonably foreseeable future), determining what actions are reasonably foreseeable in the future tends to prove most difficult. One way to overcome the uncertainty related to future actions is to focus attention on resources and actions that are discussed in public planning documents; for example, by surveying state, regional, and local comprehensive plans related to urban and regional growth management and public works. These include regional resource management plans, ecosystem management plans, and land management planning documents. Preparers should solicit public input to help determine the appropriate scope for past, present, and reasonably foreseeable future effects.

Geographic scope will be determined by the types of issues and resources with which the proponent is concerned and by the areal extent of the proposed action. Table 8-2 contains a sample listing of possible geographic area boundaries and the affected resources to which they relate.

**TABLE 8-2. SAMPLE GEOGRAPHIC SCOPE**

| Affected Resource       | Geographic Area Boundary  |
|-------------------------|---|
| Air quality             | Metropolitan area, airshed, global atmosphere   |
| Water quality           | Stream, river basin, estuary, or parts thereof  |
| Vegetative resources    | Watershed, forest type, ecosystem   |
| Resident wildlife       | Habitat, ecosystem  |
| Migratory wildlife      | Breeding grounds, migration route, wintering areas, or total range of affected population units |
| Fishery resource        | Stream, river basin, estuary, or parts thereof; spawning area and migration route               |
| Cultural resources      | Boundaries of historic properties or districts, and historic or prehistoric cultural areas      |
| Land use                | Community, region, state, or county   |
| Coastal zone            | Region or state   |
| Recreation              | River, lake, geographic area, or land management unit   |
| Socioeconomic resources | Community, metropolitan area, state, or county  |

A goal of the scoping process should be to obtain a list of cumulative effects issues to be addressed, a time frame and geographic boundary assigned for each resource, and a list of other actions, if possible, that contribute to each cumulative effects issue.

**Describing existing conditions.** Scoping for cumulative effects, as with direct and indirect effects, provides a context and preliminary database from which the preparer can complete an appropriate description of the affected environment. The Affected Environment section of a



NEPA document should characterize the resources identified during scoping, including a summary of data relating the status and relative importance of significant natural, recreational, cultural, or economic resources. It should also integrate the resources described into an overall characterization or baseline depiction of the affected area and discuss this in relation to data that characterize past, present, or reasonably foreseeable future environmental, cultural, or economic stress factors and environmental and social trends.

In addition to baseline data, information on known cumulative effects in the project area should be included to provide a basis for subsequent analysis of the cumulative effects contribution of the proposed action and alternatives.

**Documenting effects of the proposed action and alternatives.** The analysis of cumulative effects should be viewed as an extension of the analysis performed to determine the significance of direct and indirect project-specific effects. In performing cumulative effects analysis, the following steps should be taken:

- Identify the environmentally important resources to be included in the analysis of the proposed action, reasonable alternatives to the proposed action, and the no action alternative.
- Identify the important cause-and-effect relationships between the alternatives and the environmentally important resources.
- Identify the spatial and temporal boundaries of each alternative scenario.
- Identify the relevant past, present, and reasonably foreseeable future actions in the region that could cumulatively affect each scenario.
- Determine the magnitude and significance of the cumulative effects.
- Determine the magnitude and significance of the cumulative effects upon implementation of mitigation and, as appropriate, develop a strategy to eliminate, avoid, or reduce cumulative effects.

Some of the methods, techniques, and tools (in broad, general categories) that can be employed to analyze cumulative effects include, but are not limited to, the following. Consult CEQ's *Considering Cumulative Effects under the National Environmental Policy Act* (January 1997) for further description of and guidance for using these methodologies.

- Information-gathering techniques such as surveys, interviews, and public meetings
- Checklists
- Network and system diagrams
- Trend analysis
- Map overlay techniques
- Tables
- Matrices
- Mathematical modeling and simulation
- Carrying capacity analysis
- Ecosystem analysis
- Synoptic landscape approach

- Economic effect models
- Social impact assessment
- Geographic information systems
- Remote sensing

Note that in some instances, use of these methods to address cumulative effects will require some adjustment to account for availability of data, the geographic and temporal scale of the analysis, and other uncertainties.

## 8.21 Mitigation Commitments

Mitigation measures are steps required for the specific purpose of reducing the significant environmental effects of implementing a proposed action or alternative. Only those mitigation measures that can be reasonably accomplished should be identified in environmental documentation (i.e., EA with FNSI, or EIS and ROD). Several mitigation approaches are listed below.

- *Avoidance.* This mitigation technique avoids effects altogether by not performing certain activities or by restricting where they may be performed.
- *Limitation of action.* This mitigation technique limits the degree or magnitude of an activity and, hence, its effects.
- *Restoration.* This technique restores or enhances existing environmental conditions. The effectiveness of and required commitment to such measures should be closely scrutinized.
- *Protection and maintenance.* This technique changes the design of the action to include engineered systems or management actions that preclude the emission of pollutants (i.e., erosion control devices, air pollution scrubbers, or oil/water separators). This technique is often a long-term, continuing procedure that can be expensive to install and maintain. As with restoration, this technique, without commitment, might not be completely effective.
- *Replacement/Compensation.* This technique attempts to replace or otherwise compensate for resources destroyed by the action. Replacement can be an expensive and controversial mitigation technique. Early commitment and timely budgeting are essential.
- *Adaptive management strategy.* This is a technique used by the Army and ARNG in which, during implementation, actions are modified as environmental conditions change to maintain effects within acceptable parameters. For example, this approach has been used for the Army's obscurant smoke training program, where meteorological conditions are monitored during training to determine whether changes in wind direction might cause smoke to enter endangered species habitat. If changing wind conditions were to potentially cause smoke to enter such habitat areas, modifications to the training activity would be immediately implemented to control the levels of effects.

Mitigation measures are to be distinguished from best management practices (BMPs). BMPs are practical, economical and effective management or control practices that reduce or prevent pollution or other adverse effects to resources. Usually BMPs are applied as a system of practices based on site-specific conditions rather than a single practice. State agencies usually require BMPs for land disturbing activities related to agriculture, forestry, and construction. In some

instances, BMPs are actions taken by a proponent as a matter of good engineering practice, such as using solar energy for minor, remote locations rather than stringing electrical lines across difficult terrain or biologically sensitive areas. In other instances, the use of BMPs may be required by regulation, such as storm water management regulations that impose specific BMPs for design and construction of facilities (e.g., retention basins). Finally, BMPs are matters that are widely practiced and implemented as a general rule rather than a specific response to an effect that is predicted to be adverse on a given environmental resource. In an appropriate case, the proponent may elect to identify BMPs that would accompany implementation of a proposed action.

Mitigation measures or programs must be clearly identified in a NEPA document for the decision maker to understand and approve. Such measures become ARNG commitments that must be funded and accomplished by the proponent (or another entity specifically tasked by the decision maker) within a reasonable and specified time frame. If the necessary mitigation measures will not be ready for a long period of time, this fact should be recognized in the NEPA document.

An EA can specify mitigation measures that, if implemented, would prevent significant effects that would otherwise require an EIS. In such cases, the measures should be clearly described in the EA as part of the proposed action (or preferred alternative), and also referred to or described in the FNSI. If mitigation adopted in the FNSI differs from mitigation identified in the EA, the FNSI should indicate the reasons for the variance.

For an EIS, additional mitigation measures not already incorporated into the Description of the Proposed Action and Alternatives can be discussed in the Environmental Consequences section, but for the measures to be enforceable, they must be clearly defined in the ROD as well. Mitigation measures are enforceable only if they are adopted as part of the decision, not merely discussed in the analysis.

Implementation of a mitigation plan is the responsibility of the proponent. The proponent is also responsible for monitoring mitigation measures for completion and effectiveness. The proponent must make available to the public, upon request, the status and results of mitigation measures associated with the proposed action or preferred alternative (40 CFR 1505.3). Failure to properly implement mitigation measures can lead to litigation, with resultant project delays. Appendix C to 32 CFR Part 651 provides specific guidance and procedures for implementing a mitigation monitoring program.

## **8.22 Consultation**

Agency consultation plays a pivotal role in the NEPA process. As sound analysis of the potential effects of a proposed action proceeds on an interdisciplinary approach, the expertise of agencies and parties external to the ARNG can be brought to bear through consultation. The results of consultation will illuminate and often directly affect the determination of significance of effects.

With respect to certain resources, such as protected species or cultural resources, consultation is required because another agency has, by law, jurisdiction over federal actions that may affect the resource. In other cases, consultation is advisable because of the special expertise another agency may be able to provide to a particular proposal. Examples of such consultation include issues pertaining to land use, air quality, or hazardous materials.

In undertaking their responsibilities under NEPA, proponents should understand two principles concerning agency consultation.

- *The ARNG makes the initial determination.* The proponent seeking the expertise of another agency must conduct a preliminary evaluation and arrive at an initial determination. This determination may be framed as “there would be no effects to such-and-such resource” or “such-and-such resource would not be affected and, thus, further consultation is not required.” This principle applies even where another agency is prevailed upon because of its subject matter expertise. Unless the other agency has agreed to act as a coordinating agency and to conduct the primary analysis of effects to a resource, it is incumbent upon the ARNG to provide the initial description and effects analysis concerning the resource.
- *Written evidence is required.* Depending on the type of resource and requirements of the agency being asked to exercise its jurisdiction or to lend its expertise, consultation may be informal or formal. Informal consultation may occur by telephone conversation or personal meetings with the external officials.<sup>34</sup> Formal consultation normally occurs via written correspondence, which often is supported by separate studies or data collections. In any event, all consultation must be reduced to writing (record of telephone conversation, meeting minutes, exchange of emails, or agency correspondence). Having the written record aids in establishing defensibility of the NEPA document. It also meets the requirements of creating the administrative record (the foundation for decisions ultimately to be made).

When contractors are engaged to prepare NEPA documents for ARNG proponents, the EPM retains responsibility and authority to conduct consultation with regulatory agencies.

The following discussions illustrate situations in which consultation is either required or highly appropriate and provide guidance on how to conduct such consultation.

**Airspace designation.** The Federal Aviation Administration is responsible for designating special-use airspace. ARNG proposals for establishment (or elimination) of Restricted Areas, Military Operations Areas, or Controlled Firing Areas must be submitted to the FAA for action. See AR 95-2, *Air Traffic Control, Airspace, Airfields, Flight Activities, and Navigational Aids*, for additional guidance in actions necessary to support special-use airspace proposals.

**Coastal zones.** The Coastal Zone Management Act (16 USC 1451, *et seq.*) establishes goals for, and a mechanism for states to control use and development of, their coastal zones. The act requires that the ARNG ensure that its activities, within or outside the coastal zone, that affect land use, water use, or natural resources of the coastal zone are consistent to the maximum extent practicable with the enforceable policies of the federally approved state management program. Compliance with the act is shown through the ARNG preparation of a “Coastal Consistency Determination” to the state, which must concur or nonconcur within 45 days. Where a state declines to concur in the ARNG consistency determination, consultation may be appropriate or required to identify project modifications or mitigation measures,

**Cultural resources.** Section 106 of the National Historic Preservation Act requires that the ARNG consult with appropriate state or tribal historic preservation officers and federally-

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<sup>34</sup> In the case of consultation under the Endangered Species Act, initial written consultation is considered informal. The U.S. Fish and Wildlife Service determines whether, and at what point, “formal” consultation begins. Moreover, that agency’s regulations provide that formal consultation must be with the consulting agency’s (ARNG’s) officials, rather than contractors or non-government personnel. Thus, contractors can be tasked to draft and submit informal consultation letters, but must defer to ARNG officials if and when formal consultation is needed.

recognized tribes prior to taking any action that may affect historic properties. These are defined as “Any district, building, structure, site, or object that is eligible for listing in the National Register of Historic Places because the property is significant at the national, state, or local level in American history, architecture, archeology, engineering, or culture.” Under the act, the ARNG is obligated to identify and evaluate any historic properties that may be affected by an undertaking, to determine the effect of the undertaking on such properties, and to develop alternatives and measures to avoid or mitigate adverse effects.

This type of consultation is routinely accomplished through written correspondence with the appropriate historic preservation agency. In most cases, the proponent sends a letter to the historic preservation agency describing the historic properties and the proposed action, and providing rationale why the action would not have an adverse effect. Where adverse effects are predicted, meetings are often required to resolve the options available to the proponent. When agreement is reached, the historic preservation agency will provide written concurrence, enabling the action to proceed.

**Essential fish habitat.** The Magnuson-Stevens Fishery Conservation and Management Act (1996) governs conservation and management of ocean fishing and established U.S. management authority over anadromous fish and fish in the exclusion economic zone or the Continental Shelf. The ARNG must consult with the Secretary of Commerce about all activities proposed, funded, authorized, or undertaken that may affect essential fish habitat, defined as “...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.”

Regulations issued by the National Marine Fisheries Service provide that the act

“...requires consultation for all actions that may adversely affect essential fish habitat, and it does not distinguish between actions in essential fish habitat and actions outside essential fish habitat. Any reasonable attempt to encourage the conservation of essential fish habitat must take into account actions that occur outside essential fish habitat, such as upstream or upslope activities that may have an adverse effect on essential fish habitat. Therefore, essential fish habitat consultation with the National Marine Fisheries Service is required by federal agencies undertaking, permitting, or funding activities that may adversely affect essential fish habitat, regardless of location.”

Activities identified by the National Marine Fisheries Service that may adversely affect essential fish habitat include actions such as agriculture, bank stabilization, beaver removal and habitat restoration, construction/urbanization, forestry, irrigation, wetland and floodplain alteration, woody debris removal, road building and maintenance, and habitat restoration projects.<sup>35</sup>

National Marine Fisheries Service regulations provide that the ARNG (or any other federal agency) is to notify the Service of an action that could adversely affect essential fish habitat. The ARNG must then inform the Service of its assessment of its proposed action’s possible effects to essential fish habitat. The Service will then provide recommendations to conserve essential fish

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<sup>35</sup> The areas to be safeguarded as essential fish habitat are determined by eight Regional Fishery Management Councils. ARNG activities within a reasonable distance of such nearshore areas are subject to the consultation requirement. It is not expected that the need for this type of consultation will often arise with respect to ARNG proposals.

habitat. Finally, the ARNG must indicate within 30 days whether the recommendations will be implemented.

**Floodplains.** Actions in or near floodplains may jeopardize the natural, beneficial attributes of this resource. Proponents may consult with the Federal Emergency Management Agency to identify the locations (elevations) of the 100-year and 500-year flood zones. This type of consultation typically is informal. Where state or local regulations impose permit requirements for activities in floodplains, additional consultation may be required in conjunction with the permit application process.

**Prime or unique farmland.** Through the Farmland Protection Policy Act, Congress seeks to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses. A proponent whose action would result in such conversion must execute Agriculture Department (AD) Form 1006 to determine potential adverse effects (direct and indirect) of activities on prime and unique farmland (as well as farmland of statewide and local importance). The form is designed in essentially two parts. The first part of AD Form 1006 requires data entry by the local office of the Natural Resources Conservation Service (formerly the Soil Conservation Service). The second part of the form requires data entry by the proponent. Depending on scores derived from the data, the proponent may find it desirable to develop additional alternatives to the proposal or mitigation measures to support the purposes of the legislation. Consultation meeting the requirements of the Farmland Protection Policy Act is achieved when the NRCS returns the executed AD Form 1006 to the proponent.

**Indian tribal interests.** Federal policy requires that agencies, including the ARNG, recognize tribal sovereignty and self-determination. In development of ARNG policies that have tribal implications, Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) directs the federal government to contact federally recognized Indian tribes and Alaska Native entities on a government-to-government basis. The Presidential Memorandum to the Heads of Executive Departments and Agencies (*Subject: Government-to-Government Relations with Native American Tribal Governments*), issued on April 29, 1994, requires the ARNG to assess the impact of federal government plans, projects, programs, and activities on tribal trust resources and ensure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

The Annotated Department of Defense American Indian and Alaska Native Policy (October 27, 1999) prescribes requirements for consultation in matters affecting Indian tribal interests. In applicable instances, the ARNG must initiate consultation with tribal governments whose interests would be affected by a proponent's proposal. The threshold determination of whether an action might affect such tribal interests rests with the proponent. If no Native American resources are present on the site of the proposed action, then the EA or EIS should state that the proposed action is in an area with no Native American resources. In this case, initiation of consultation would not be required. If significant resources are present but would not be affected by the proposed action, the NEPA document must provide sufficient explanation to establish that the resources would be unaffected. In both cases, formal consultation would not be required. If, however, significant resources are present and the proposed action would have a direct effect on them, formal consultation with all culturally affiliated federally recognized tribes must be conducted.

**Protected species.** Under the Endangered Species Act, the U.S. Fish and Wildlife Service issues regulations for the identification of endangered and threatened species and their habitat. The ARNG must *consult* with the USFWS when its proposal may affect a listed or proposed species

or critical habitat. The ARNG must *confer* with the USFWS when its proposal may jeopardize listed or proposed species or critical habitat. When the proponent's NEPA analysis shows that an action will directly or indirectly have significant impacts with respect to listed or proposed species or critical habitat, a biological assessment must be conducted, resulting in USFWS issuance of a biological opinion. The ARNG makes the initial determination whether its action may affect, may jeopardize, or may significantly affect a listed or proposed species or critical habitat.<sup>36</sup>

Where the proponent is not certain whether listed species or habitat occur in the area of the proposed action, initial correspondence with the USFWS may simply seek that agency's identification of species in the area. In this case, a subsequent draft or final NEPA document must be provided to the USFWS so that it may properly exercise its jurisdiction through review of the ARNG analysis. When this procedure is used, the distribution list in the EA or EIS must reflect that a copy of the document is being sent to the USFWS. Absent USFWS objection to the proponent's conclusion that the action would not affect listed or proposed species or critical habitat, the proponent may proceed.

Alternatively, where the proponent is confident in his knowledge of listed species and critical habitat in the area, the initial correspondence may describe the proposed action and provide the rationale for there being no, or minor, effects to the species or habitat. When this procedure is used, the USFWS will generally provide its concurrence, and the concurrence letter can be included in the EA or EIS. (Proponents must exercise caution: Identification of "minor effects" to protected species may lead to the USFWS' responding that the proposed action may jeopardize the species.)

**Wetlands.** Wetlands are protected by Section 404 of the Clean Water Act and Executive Order 11990, *Protection of Wetlands* (May 24, 1977). The act requires that dredge and fill activities affecting wetlands must be authorized by a permit issued by USACE. In ARNG proposals that may affect wetlands, the proponent should initiate consultation with the appropriate District Office of USACE to confirm the existence of the wetlands, to identify potential alternatives to the action, and to initiate the permit application process. Receipt of the permit is not required prior to completion of the NEPA process. Consultation should be initiated early, however, to enable adequate evaluation in the NEPA document.

**Wild and scenic rivers.** The purpose of the Wild and Scenic Rivers Act is to protect the free-flowing state of rivers that are listed in the National Wild and Scenic Rivers System. The act prohibits the ARNG from providing assistance (loan, grant, or license) for the construction of any water resources projects that would adversely affect wild and scenic rivers. "Water resources project" refers to any dam, water conduit, reservoir, powerhouse, transmission line, discharge to waters, or development project that would affect the designated river's free-flowing characteristics. For any such project, the ARNG must notify the appropriate agency (National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service, or Forest Service) at least 60 days in advance of the planned action. The administering agency will either consent to the proposal or deny it, based on whether or not the project would adversely affect the values for

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<sup>36</sup> In cases involving protected species under the Marine Mammal Protection Act (under the purview of the National Marine Fisheries Service), the proponent's threshold determination is whether the proposed action would be reasonably likely to result in a "take" of the protected species. "Take" includes killing, capturing, or harassing. In such cases, further consultation may be required to enable the proponent to obtain from the National Marine Fisheries Service a Letter of Authorization or a Harassment Permit.

which the river was designated. If consent is denied, the administering agency may recommend measures to eliminated adverse effects and the proponent may submit revised plans for consideration.

**Wilderness areas.** The Wilderness Act (16 USC 1131, *et seq.*) establishes a system of National Wilderness Areas and a policy for protecting and managing this system. Wilderness Areas are typically located within (and administered by) National Parks (National Park Service), National Wildlife Refuges (U.S. Fish and Wildlife Service), National Forests (Forest Service), or public lands (Bureau of Land Management). The act prohibits motorized equipment, structures, installations, roads, commercial enterprises, aircraft landings, and mechanical support in designated wilderness areas.

The ARNG must obtain the approval of the administering agency in order to proceed with a proposed action in a wilderness area. In some cases, a permit may be required. The ARNG must determine whether and how its proposed action would affect a designated area. To reach this determination, the proponent should weigh the proposed action against the prohibitions listed above. Informal consultation with the appropriate administering agency typically facilitates the initial determination. In some cases, a proponent may identify mitigation measures or qualify for and obtain an exemption from the prohibition.



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## 9.0 DOCUMENT REVIEW, PROCESSING, AND APPROVAL

For each NEPA analysis and documentation project it undertakes, the ARNG strives to attain a thorough review within a reasonable time period to assure legal sufficiency. This section identifies the steps associated with document review, processing, and approval for ARNG EAs and EISs. The steps assume that the proponent is the state ARNG (see Section 2.1.1 for further discussion on proponent identification).

### 9.1 Steps Involved for an Environmental Assessment

For an EA originating from the state ARNG, preparation and development of the document are generally conducted at the state level by the proponent (or through document preparation support to the proponent). Final reviews, approvals, and other guidance are provided by the NGB. The following steps, which begin with review of the initial internal draft document, are typical for processing an ARNG EA. Variations in complexity and issues associated with a particular EA, however, will sometimes require changes in these steps, the participants involved, and the roles of participants. It is, therefore, important for proponents to review these steps with the Environmental Program Manager and/or the NGB-ARE early in the EA development process to ensure proper planning and coordination and to allow for adequate review time.

#### 9.1.1 Review of the Internal Draft EA

Upon completion of the internal draft EA, the document is staffed with the appropriate state ARNG personnel (Staff Judge Advocate, Public Affairs Office, etc.), as directed by the Adjutant General, for review and comment. Use of the ARNG's EA checklist ([Appendix K](#)) during this review will help to ensure that all the components of an EA have been addressed in the document. In addition to the internal review of the EA, initial consultations with appropriate federal, state, and local agencies are to be completed at this early stage of the EA process.

The Environmental Program Manager (or, in some states, the NEPA Program Manager) is the designated point of contact for facilitating the EA process at the state ARNG level and coordinating with the NGB, as necessary. Once the internal review of the EA is complete, the state ARNG revises the document, incorporating comments, and produces the preliminary draft EA. At this time, the state proponent is also responsible for developing draft public notices and preparing press release information in coordination with the state Public Affairs Officer (see Section 9.1.2) when the decision is made whether to circulate the draft EA for public review.

#### 9.1.2 Review and Approval of the Preliminary Draft EA

A complete preliminary draft EA package is provided by the state ARNG to NGB-ARE for distribution and coordination within the NGB. The required contents of this package are listed below. If any items listed are not included in the EA package to NGB, review of the EA will be delayed.

- Two complete, printed copies of the preliminary draft EA, containing all figures, graphics, fold-outs, and appendices.
- The preliminary draft EA prepared in MS Word or Adobe portable document format (PDF), on a medium (preferably compact disk) that is read and write capable.
- Draft press release (see [Appendix NN](#) for an example) where the draft EA will be circulated for public review.

- Draft display advertisement (see [Appendix OO](#) for an example) where the draft EA will be circulated for public review.
- Draft legal notice, if required by the state (see [Appendix OO](#) for an example) where the draft EA will be circulated for public review.
- Signature page from the state ARNG staffing of the internal draft EA (see Section 9.1.1).
- Blank signature page.

A draft FNSI or Notice of Intent (NOI) is not to be included at this time, unless it is specifically required by the state and is clearly marked as a “draft.” The preliminary draft EA package is staffed with the appropriate NGB offices. During this review, the NGB Office of Chief Counsel provides a legal sufficiency review to ensure that all legal issues of the NEPA process have been addressed. Comments on the preliminary draft EA are consolidated by the NGB-ARE and are provided to the state ARNG in approximately 45 days. If necessary, an in-progress review (IPR) meeting can be held by the appropriate state ARNG and NGB reviewers to resolve outstanding issues and concerns. The state ARNG is then responsible for incorporating NGB comments into the document and for producing the draft EA. An errata sheet of the actions taken on each of the comments received from NGB staff is also to be prepared. This errata sheet will later be submitted to NGB as part of the draft final EA package (see Section 9.1.5).

In limited instances, NGB-ARE may request review of the description of proposed action and alternatives (DOPAA) prior to submission of the preliminary draft EA. In such cases, the state ARNG submits the DOPAA to NGB-ARE as a separate step prior to reviewing the draft of the entire document.

### 9.1.3 Public Review of the Draft EA

In their discretion, proponents may elect to circulate draft EAs for public review and comment. In deciding whether to circulate the draft EA, a proponent may consider relevant factors such as degree of interest in the local community concerning the proposed action and alternatives, as well as potential for significant impacts, setting precedent for future actions, public controversy, or cumulative effects. The decision whether to circulate the draft EA is entirely separate from, and unaffected by, making the final EA available for public review and comment mandated by 32 CFR Part 651.

When the proponent elects to circulate the draft EA, it will be made available for 30 days. Requests for exceptions to this requirement should be directed to the NGB-ARE early in the EA process. When the draft EA is distributed to the public, copies of the draft EA and important reference documents should also be made available for public review at a facility, near the affected installation, that is open beyond normal work hours (e.g., community library).

Initiation of the public comment period and notification to the public are accomplished through publication of the display advertisement and/or the legal notice, as required, in at least one local newspaper of general circulation. Examples of such notices are provided in [Appendix OO](#). The press release (refer to [Appendix NN](#)) should also be sent to local print and broadcast news media on or about the day on which the advertisement and legal notice are to be published. The local installation Public Affairs Officer is responsible for placing the notices with the local newspaper(s) and sending out the press release. This office is also the primary point of contact for any inquiries from the news media. The local installation Public Affairs Officer is also responsible for coordinating all public notices and other public and news media information with the NGB Public Affairs Office prior to their release.

As the proponent, the state ARNG is responsible for receiving comments resulting from the 30-day public comment period. When substantive public comments are received, they are generally staffed with the state proponent, the Environmental Program Manager, and the state Public Affairs Officer for the purpose of generating responses. The state ARNG is then responsible for incorporating the comments and responses into the draft EA and producing the internal final EA. If the EA concludes that there are no significant effects, a preliminary draft FNSI is also prepared at this time. If a FNSI cannot be supported, the state proponent may choose to modify or terminate the proposal or proceed to an EIS. If the state proponent chooses to proceed to an EIS, the Environmental Program Manager should contact the NGB-ARE for further guidance.

#### **9.1.4 Review of the Internal Final EA and Preliminary Draft FNSI**

Upon completion of the internal final EA, the EA and preliminary draft FNSI are staffed within the state ARNG for review and comment through a process similar to that used for the internal draft EA (see Section 9.1.1). All interested ARNG offices should be included in the review, to include the Staff Judge Advocate and Public Affairs Office. If no substantive public comments are received on the draft EA, the document can be re-identified as the draft final EA and sent (with the draft FNSI) to the NGB for final review and approval (see Section 9.1.5). The signature page will be signed by appropriate state ARNG personnel prior to submittal to NGB-ARE.

#### **9.1.5 Review and Approval of the Draft Final EA and Draft FNSI**

The state ARNG is responsible for submitting a draft final EA package to the NGB-ARE for final review and approval. This package consists of the following:

- An errata sheet summarizing changes made to the EA based on comments provided by NGB staff (see Section 9.1.2) and, where the draft EA has been circulated, public comments. ARNG organizations need to provide specific responses to NGB comments on draft EAs. This is done through providing page and section numbers showing where the State has addressed NGB comments. Such specificity helps to expedite NGB reviews of revised NEPA documents.
- Two complete, printed copies of the draft final EA, containing the signature page and all figures, graphics, fold-outs, and appendices.
- The draft final EA in MS Word or Adobe PDF, on a medium (preferably compact disk) that is read and write capable.
- The draft FNSI (electronic medium in MS Word); to be scanned into the final electronic copy by NGB-ARE after signature).

The NGB staffs the draft FNSI and revises it as necessary within 15 days. Following public review of the draft FNSI (see below), the final FNSI will be presented for signature to the Chief, Environmental Programs Division, who has been delegated authority to approve and execute EAs and FNSIs. Ultimately, the original signed FNSI is returned to the state ARNG, where it is to be maintained on file by the Environmental Program Manager. The signature page will also be executed at NGB-ARE and returned to the state for inclusion in the final EA prior to release for public review.

#### **9.1.6 Public Review of the Final EA and FNSI**

Notice of the availability of the final EA and draft FNSI, and their distribution to the public for a 30-day review period, are conducted by the state ARNG in the same manner as described in

Section 9.1.3. Requests for a review period of less than 30 days must be directed to the NGB-ARE. This effort also requires close coordination between the state Public Affairs Officer and the NGB Public Affairs Office.

As the proponent, the state ARNG may not take any action, other than planning the proposal, until the 30-day public review period has concluded and the final FNSI has been executed by the Chief, Environmental Programs Division at NGB. The proponent is not required to respond to public comments on the final EA and draft FNSI, but it is advisable to provide some form of response (via letter, phone call, or meeting) for substantive comments made. Depending on the public's reaction to the draft FNSI, it might be necessary to extend the review period or hold a public meeting(s). If the draft FNSI is contested, either through legal action or substantive negative comments, the state ARNG is responsible for contacting the NGB-ARE for further guidance.

At the completion of the 30-day review period, the state ARNG is to notify NGB-ARE of any comments received on the final EA and draft FNSI and provide a recommendation concerning execution of the final FNSI. Based on the comments received and state ARNG recommendation, NGB-ARE will prepare a staffing package for execution of the final FNSI by the Chief, Environmental Programs Division. Until they are notified that the final FNSI has been signed, proponents may not proceed with their proposed actions.

## 9.2 Steps Involved for an Environmental Impact Statement

Preparation and development of an ARNG EIS are generally conducted through a close collaboration between the state ARNG and the NGB. HQDA is then responsible for final review and approval of the document. The following steps are typical for processing an ARNG EIS. Variations in complexity and issues associated with a particular EIS, however, will sometimes require changes in these steps, the participants involved, and the roles of participants. It is, therefore, important for proponents to review these steps with the Environmental Program Manager and the NGB-ARE early in the EIS development process. This approach will ensure proper planning and coordination and will allow for adequate review time later on.

### 9.2.1 Project Notification and Scoping

**Notice of Intent (NOI).** As described in Section 7, the EIS process begins when an agency proponent determines that a proposed action might have a significant effect on the human environment and an NOI is published. The state proponent initially prepares an "NOI package" in coordination with the Environmental Program Manager, local installation and state Public Affairs Officer, NGB-ARE, and NGB Public Affairs Office. This package consists of the following:

- Draft NOI.
- Draft press release, also referred to as a Memorandum for Correspondents (MFC).
- Draft Information for Members of Congress (IMC).
- Draft Questions and Answer (Q&As).
- A compact disk containing the NOI, MFC, Qs&As, and IMC in MS Word or Adobe PDF.

Samples of documents to be included in the NOI package are shown in [Appendix PP](#).

Following NGB staffing and approval of the NOI package by the Deputy Director, ARNG, the NGB submits the NOI package to the Army Staff (ARSTAF) proponent at HQDA. The ARSTAF proponent is responsible for coordinating the NOI submission within HQDA. Upon receiving approval from the Deputy Assistant Secretary of the Army for Environmental, Safety, and Occupational Health (DASA (ESOH)), the Office of the Congressional Legislative Liaison (OCLL) delivers the IMC to appropriate congressional offices. The NGB is then responsible for having the NOI published in the *Federal Register*. Upon publication of the NOI, an announcement by the Office of the Chief of Public Affairs (OPA) is made through release of the MFC, with Qs&As, to the news media. At the same time, the local installation Public Affairs Officer, in coordination with the state Public Affairs Officer, communicates the NOI, including any planned scoping meetings, through display advertisements and/or legal notices in local newspapers, similar to public notices for EAs (see Section 9.1.3).

**Public scoping meetings.** The local installation Public Affairs Officer, in coordination with the state Public Affairs Officer and the NGB Public Affairs Office, is responsible for any follow-on public notifications (e.g., additional newspaper advertisements and local broadcast of public announcements) and arranging for facilities for scoping meetings if they are to be held. Scoping meetings are best held near the site of the proposed action in a public place like a school or town hall. Although the official scoping process does not begin until after the NOI has been published in the *Federal Register*, interagency planning and coordination may occur before NOI publication to ensure a substantive and reasonable proposal is prepared for presentation to the public during scoping meetings. Planning for and participation at scoping meetings typically involves the state proponent, Environmental Program Manager, local installation and state Public Affairs Officers, NGB-ARE, and NGB Public Affairs Office.

**Agency consultations.** As part of the scoping process, initial consultations with appropriate outside agencies (federal, state, and local) are to be completed early on. Depending on project issues and expectations for outside agency involvement, these consultations might need to occur before release of the NOI. The state proponent is responsible for coordinating all meetings and correspondence with outside agencies through the Environmental Program Manager and/or the NGB-ARE, as appropriate.

### 9.2.2 Review of the DOPAA and Internal DEIS

When the state ARNG prepares an EIS, the DOPAA is to be submitted to NGB-ARE for review as a separate step in the EIS process. NGB-ARE comments on the DOPAA will be provided to the state ARNG for incorporation prior to completion of the internal DEIS.

Upon completion of the internal DEIS, the document is staffed with the appropriate state ARNG and NGB personnel (Staff Judge Advocate, Public Affairs Office, etc.) for review and comment. During this review, the NGB Office of Chief Counsel provides a legal sufficiency review of the document to ensure that all legal issues of the NEPA process have been addressed. The Environmental Program Manager is the designated point of contact for facilitating the EIS process at the state ARNG level, and NGB-ARE is the point of contact at the NGB level. Once this review is complete, the state proponent revises the document, incorporating comments, and produces the preliminary DEIS.

### 9.2.3 Review and Approval of the Preliminary DEIS

Following NGB staffing and approval of the preliminary DEIS by the Deputy Director, ARNG, the NGB submits 15 printed copies of the document (provided by the state) to HQDA for staff

review. HQDA provides comments to the state proponent, via NGB-ARE, within 30 to 40 days. An IPR meeting may be held by appropriate state ARNG, NGB, and HQDA offices to resolve outstanding issues and concerns. The state proponent is then responsible for incorporating HQDA's comments and producing the DEIS.

#### 9.2.4 Public Comment on the DEIS

**Notice of Availability (NOA).** The state proponent initially prepares a Notice of Availability (NOA) package in coordination with the Environmental Program Manager, the state Public Affairs Officer, NGB-ARE, and the NGB Public Affairs Office. This package consists of the following:

- Draft NOA, including information on public meetings (see [Appendix I](#) for an example).
- Draft press release, also referred to as an MFC (see [Appendix NN](#) for an example).
- Draft IMC (see [Appendix PP](#) for an example).
- Draft Qs&As (see [Appendix PP](#) for an example).
- A compact disc containing the NOA, MFC, Qs&As, and IMC in MS Word or Adobe PDF.

Following approval by the Deputy Director, ARNG, NGB forwards the NOA package, including copies of the DEIS (HQDA will advise on the number of copies), to HQDA for staff reviews and concurrence. Following concurrence by DASA (ESOH), the NGB is responsible for providing five copies of the DEIS to the EPA Office of Federal Activities and for having the NOA published in the *Federal Register*.<sup>37</sup> Also at this time, the OCLL delivers the IMC to appropriate congressional offices. Upon publication of the NOA, the OPA makes an announcement through release of the MFC, with Q&As, to the news media. At the same time, the state Public Affairs Officer communicates the document's availability, including planned public meetings, through display advertisements and legal notices in local newspapers, similar to public notices for EAs (see Section 9.1.3). The state ARNG is also responsible for mailing the signed DEIS to all recipients identified in the Distribution List section of the document (see Section 7.7), on or just before the day EPA receives its copies from NGB. Copies of the DEIS and important reference documents should also be made available for public review at a facility, near the affected installation, that is open beyond normal work hours (e.g., community library). It is important that the public receive or have access to the DEIS on or before the date on which EPA's notice for the DEIS is published in the Federal Register because the 45-day comment period officially begins on that date.

**Public meetings.** The state Public Affairs Officer, in coordination with the NGB Public Affairs Office, is responsible for any follow-on public notifications (e.g., newspaper advertisements or local broadcast of public announcements) and arranging for facilities for public meetings if they are to be held. Public meetings are best held near the site of the proposed action in a public place like a school or town hall. Planning for and participation at public meetings typically involves the state proponent, Environmental Program Manager, state Public Affairs Officer, NGB-ARE, and NGB Public Affairs Office. Completion of the NGB's level 6 or 10 training course in risk communication is recommended for all meeting participants.

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<sup>37</sup> Publication of the NOA in the *Federal Register* by NGB should occur on or before the date on which EPA has its notice for the DEIS published in the *Federal Register*.

**Incorporating public comments.** As the proponent, the state ARNG is responsible for receiving comments resulting from the public comment period. When substantive public comments are received, they are generally staffed with the state proponent, Environmental Program Manager, state Public Affairs Officer, NGB-ARE, and NGB Public Affairs Office for the purpose of generating responses. The state proponent is then responsible for incorporating the comments and responses into the EIS and producing the internal FEIS.

### 9.2.5 Review of the Internal FEIS

Upon completion of the internal FEIS, the document is staffed within the state ARNG and NGB for review and comment through a process similar to that used for the internal DEIS (see Section 9.2.2). Once this review is complete, the state proponent revises the document, incorporating comments, and produces the draft FEIS.

### 9.2.6 Review and Approval of the Draft FEIS

Following approval of the draft FEIS by the Deputy Director, ARNG, the NGB forwards 15 printed copies of the document to HQDA for staff review. HQDA provides comments to the state proponent, via NGB-ARE, within 30 to 40 days. An IPR meeting may be held by appropriate state ARNG, NGB, and HQDA offices to resolve outstanding issues and concerns. The state proponent is then responsible for incorporating HQDA's comments and producing the FEIS.

### 9.2.7 Public Review of the FEIS

Processing of the FEIS and NOA package and distribution of the FEIS to the public are conducted in the same manner as described in Section 9.2.4 for the DEIS. In this case, however, the FEIS is made available to the public for a minimum 30-day public review period, with no public meetings. As the proponent, the state ARNG may not take any action, other than planning the proposal, until the 30-day public review period has concluded and the ROD has been approved and signed.

### 9.2.8 Approval and Release of the ROD

The state proponent initially prepares the ROD in coordination with the Environmental Program Manager, state Public Affairs Officer, NGB-ARE, and NGB Public Affairs Environment Office. The draft ROD is submitted for HQDA and NGB staffing following public distribution of the FEIS. An NOA package for the ROD is also prepared, similar to the package prepared for the DEIS and FEIS (Sections 9.2.4 and 9.2.7, respectively), and submitted along with the draft ROD for staffing.

NGB is responsible for submitting the ROD and NOA package to HQDA for concurrence. Upon completion of HQDA and NGB staffing, the Deputy Director, ARNG may then sign the ROD. Upon final approval and signature of the ROD, HQDA becomes responsible for delivering the IMC to appropriate congressional offices. HQDA Office of Public Affairs then makes an announcement regarding the approved ROD through release of the MFC, with Qs&As, to the news media. At the same time, the state Public Affairs Officer communicates the availability of the ROD through display advertisements and legal notices in local newspapers, similar to the public notices for EAs (see Section 9.1.3). The ROD is also mailed directly to interested parties identified during the EIS process. Although not required under CEQ and Army regulations, the NGB typically requests that HQDA submit the ROD, or NOA of the ROD, for publication in the *Federal Register*. Implementation of the preferred action may begin immediately following



signed approval of the ROD.

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## 10.0 REFERENCES

### Federal Statutes, Regulations, Executive Orders, and Memoranda

- American Indian Religious Freedom Act of 1978 (Public Law 95-341; 42 U.S.C. 1996)
- Antarctic Science, Tourism, and Conservation Act of 1996 (Public Law 104-227)
- Antiquities Act of 1906 (Public Law 59-209; 16 U.S.C. 431-433)
- Archeological and Historic Data Preservation Act of 1974 (Public Law 93-291; 16 U.S.C. 469-469c)
- Archeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470aa-470ll)
- Clean Air Act Amendments of 1990
- Clean Air Act of 1970 (42 U.S.C. 7401 et seq.; 40 CFR Parts 50-87)
- Clean Water Act of 1972 (33 U.S.C. 1251 et seq.)
- Comprehensive Environmental Response, Compensation, and Liability Act of 1989 (42 U.S.C. 9601)
- Emergency Planning and Community Right to Know Act of 1986 (40 CFR Parts 300, 370-373)
- Endangered Species Act of 1973 (Public Law 93-205; 16 U.S.C. 1531 et seq.)
- Engle Act of 1958 (Public Law 85-337)
- Federal Property and Administrative Services Act (40 U.S.C. 472)
- Military Construction Codification Act (10 U.S.C. 2801 et seq.)
- National Environmental Policy Act of 1969 (Public Law 91-190; 42 U.S.C. 4321 et seq.)
- National Historic Preservation Act of 1966 (Public Law 95-515; Public Law 102-575; 16 U.S.C. 470)
- Native American Graves Protection and Repatriation Act of 1990 (Public Law 101-601; 25 U.S.C. 3001-3013)
- Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109)
- Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.)
- Superfund Amendments and Reauthorization Act of 1986 (40 CFR Part 300)
- 1990 Defense Base Closure and Realignment Act (Public Law 101-510, as amended)
- Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties* (36 CFR Part 800)
- Bureau of Land Management Regulation, Land Withdrawals* (43 CFR Part 2300)
- Council on Environmental Quality Regulations Implementing the National Environmental Policy Act* (40 CFR Parts 1500-1508)
- Curation of Federally Owned and Administered Collections* (36 CFR Part 79)
- Environmental Protection Agency, *General Conformity Rule* (40 CFR Part 51, Subpart W)
- Federal Aviation Administration Regulation, *Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas; Airways; Routes; and Reporting Points* (14 CFR Part 71)

- Federal Aviation Administration Regulation, *Special Use Airspace* (14 CFR Part 73)
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- DoDD 6050.7, *Environmental Effects Abroad of Major Department of Defense Action* (March 31, 1979)
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- AR 5-18, *Army Stationing and Installation Plan*
- AR 70-1, *Army Acquisition Policy*
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- AR 200-2, *Environmental Effects of Army Actions* (see 32 CFR Part 651)
- AR 200-3, *Natural Resources—Land, Forest and Wildlife Management*
- AR 200-4, *Cultural Resources Management*
- AR 200-5, *Pest Management*
- AR 210-20, *Real Property Master Planning for Army Installations*
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***APPENDIX A***

***The National Environmental Policy Act of 1969***

## **The National Environmental Policy Act of 1969**

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, ' 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

### **PURPOSE**

Sec. 2 [42 USC ' 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

### **TITLE I**

#### **CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

Sec. 101 [42 USC ' 4331].

- (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.
- (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--
  - 1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - 2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
  - 3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - 4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever

possible, an environment which supports diversity, and variety of individual choice;

5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC ' 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

- (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;
- (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;
- (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
  - (i) the environmental impact of the proposed action,
  - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
  - (iii) alternatives to the proposed action,
  - (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
  - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

- (D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by



reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

- (E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
- (F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
- (G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
- (H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and
- (I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC ' 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC ' 4334].

Nothing in section 102 [42 USC ' 4332] or 103 [42 USC ' 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC ' 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

## **TITLE II COUNCIL ON ENVIRONMENTAL QUALITY**

Sec. 201 [42 USC ' 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC ' 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC ' 4343].

- (a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).
- (b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC ' 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC ' 4341] of this title;

2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC ' 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC ' 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC ' 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC ' 5315].

Sec. 207 [42 USC ' 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel

expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC ' 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC ' 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC ' 4372.

- (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.
- (b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.
- (c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.
- (d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --
  1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
  2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
  3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
  4. promoting the advancement of scientific knowledge of the effects of actions and technology on the

environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC ' 4373.

Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC ' 4374.

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC ' 4375.

- (a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --
  1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
  2. Federal interagency environmental projects (including task forces) in which the Office participates.
- (b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.
- (c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

***APPENDIX B***

***CEQ Regulations (40 CFR Parts 1500-1508)***

## CEQ Regulations (40 CFR Parts 1500-1508)

### PART 1500--PURPOSE, POLICY, AND MANDATE

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

#### Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

#### Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review

procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

#### Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

#### Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).



- (e) Following a clear format for environmental impact statements (Sec. 1502.10).
- (f) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).
- (g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to de-emphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).
- (h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).
- (i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4 and 1502.20).
- (j) Incorporating by reference (Sec. 1502.21).
- (k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).
- (l) Requiring comments to be as specific as possible (Sec. 1503.3).
- (m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).
- (n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).
- (o) Combining environmental documents with other documents (Sec. 1506.4).
- (p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).
- (q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

- (a) Integrating the NEPA process into early planning (Sec. 1501.2).
- (b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).
- (c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).
- (d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).
- (e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).
- (f) Preparing environmental impact statements early in the process (Sec. 1502.5).
- (g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).
- (h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).
- (i) Combining environmental documents with other documents (Sec. 1506.4).
- (j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).
- (k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.
- (l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government

shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

**PART 1501--NEPA AND AGENCY PLANNING**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977)).

Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

#### Sec. 1501.1 Purpose.

The purposes of this part include:

- (a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.
- (b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.
- (c) Providing for the swift and fair resolution of lead agency disputes.
- (d) Identifying at an early stage the significant environmental issues deserving of study and de-emphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.
- (e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

#### Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

- (a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment," as specified by Sec. 1507.2.
- (b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.
- (c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.
- (d) Provide for cases where actions are planned by private applicants or other non-Federal

entities before Federal involvement so that:

1. Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
2. The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
3. The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making.

Sec. 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

1. Normally requires an environmental impact statement, or
2. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

1. The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.
2. certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
  - (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or
  - (ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

- (a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:
  1. Proposes or is involved in the same action; or
  2. Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.
- (b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).
- (c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:
  1. Magnitude of agency's involvement.
  2. Project approval/disapproval authority.
  3. Expertise concerning the action's environmental effects.
  4. Duration of agency's involvement.
  5. Sequence of agency's involvement.
- (d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.
- (e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the

Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

1. A precise description of the nature and extent of the proposed action.
2. A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

#### Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
3. Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

1. Participate in the NEPA process at the earliest possible time.
2. Participate in the scoping process (described below in Sec. 1501.7).
3. Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
4. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
5. Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of

this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping. There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

1. Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.
2. Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.
3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
4. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
5. Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.
6. Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.
7. Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decision making schedule.

(b) As part of the scoping process the lead agency may:

1. Set page limits on environmental documents (Sec. 1502.7).
2. Set time limits (Sec. 1501.8).
3. Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.
4. Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

#### Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

1. Consider the following factors in determining time limits:

- (i) Potential for environmental harm.
- (ii) Size of the proposed action.
- (iii) State of the art of analytic techniques.
- (iv) Degree of public need for the proposed action, including the consequences of delay.
- (v) Number of persons and agencies affected.
- (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
- (vii) Degree to which the action is controversial.
- (viii) Other time limits imposed on the agency by law, regulations, or executive order.

2. Set overall time limits or limits for each constituent part of the NEPA process, which may include:

- (i) Decision on whether to prepare an environmental impact statement (if not already decided).
- (ii) Determination of the scope of the environmental impact statement.
- (iii) Preparation of the draft environmental impact statement.
- (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
- (v) Preparation of the final environmental impact statement.
- (vi) Review of any comments on the final environmental impact statement.
- (vii) Decision on the action based in part on the environmental impact statement.

3. Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.



(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

## **PART 1502--ENVIRONMENTAL IMPACT STATEMENT**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

### Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

### Sec. 1502.2 Implementation.

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

- (a) Environmental impact statements shall be analytic rather than encyclopedic.
- (b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
- (d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
- (e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decision maker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

#### Sec. 1502.3 Statutory requirements for statements.

As required by Sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).

For legislation and (Sec. 1508.17).

Other major Federal actions (Sec. 1508.18).

Significantly (Sec. 1508.27).

Affecting (Secs. 1508.3, 1508.8).

The quality of the human environment (Sec. 1508.14).

#### Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision making.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to 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 which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.
3. By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

#### Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

#### Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

#### Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

#### Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers and the public can readily understand them. Agencies should employ writers

of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

1. Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

2. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

3. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

4. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

- (a) Cover sheet.
- (b) Summary.
- (c) Table of contents.
- (d) Purpose of and need for action.
- (e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected environment.
- (g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
- (h) List of preparers.
- (i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
- (j) Index.
- (k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

- (a) A list of the responsible agencies including the lead agency and any cooperating agencies.
- (b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
- (c) The name, address, and telephone number of the person at the agency who can supply further information.
- (d) A designation of the statement as a draft, final, or draft or final supplement.
- (e) A one paragraph abstract of the statement.
- (f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. In this section agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the

alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

- (a) Direct effects and their significance (Sec. 1508.8).
- (b) Indirect effects and their significance (Sec. 1508.8).
- (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)
- (d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.
- (e) Energy requirements and conservation potential of various alternatives and mitigation measures.
- (f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- (g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- (h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

- (a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec.

1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material



may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

1. A statement that such information is incomplete or unavailable;
2. A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. A summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. The agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified

environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

**PART 1503--COMMENTING**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

1. Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.
2. Request the comments of:
  - (i) Appropriate State and local agencies which are authorized to develop and

enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

3. Request comments from the applicant, if any.

4. Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

#### Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

#### Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations

about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement

whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

**PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency

disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

#### Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

- (a) Possible violation of national environmental standards or policies.
- (b) Severity.
- (c) Geographical scope.
- (d) Duration.
- (e) Importance as precedents.
- (f) Availability of environmentally preferable alternatives.

#### Sec. 1504.3 Procedure for referrals and response.

- (a) A Federal agency making the referral to the Council shall:
  1. Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.
  2. Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.
  3. Identify any essential information that is lacking and request that it be made available at the earliest possible time.
  4. Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

1. A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.
2. A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:
  - (i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,
  - (ii) Identify any existing environmental requirements or policies which would be violated by the matter,
  - (iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,
  - (iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,
  - (v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and
  - (vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

1. Address fully the issues raised in the referral.
2. Be supported by evidence.
3. Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response. (f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

1. Conclude that the process of referral and response has successfully resolved the problem.
2. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
3. Hold public meetings or hearings to obtain additional views and information.
4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
5. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
6. Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).
7. When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

## **PART 1505--NEPA AND AGENCY DECISIONMAKING**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

- (a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).
- (b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.
- (c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.
- (d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.
- (e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

- (a) State what the decision was.
- (b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.
- (c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.



Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

- (a) Include appropriate conditions in grants, permits or other approvals.
- (b) Condition funding of actions on mitigation.
- (c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.
- (d) Upon request, make available to the public the results of relevant monitoring.

#### **PART 1506--OTHER REQUIREMENTS OF NEPA**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).  
Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

##### Sec. 1506.1 Limitations on actions during NEPA process.

- (a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:
  - 1. Have an adverse environmental impact; or
  - 2. Limit the choice of reasonable alternatives.
- (b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.
- (c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:
  - 1. Is justified independently of the program;
  - 2. Is itself accompanied by an adequate environmental impact statement;  
and
  - 3. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development

or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long lead time equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

1. Joint planning processes.
2. Joint environmental research and studies.
3. Joint public hearings (except where otherwise provided by statute).
4. Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed

action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

#### Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

#### Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any

person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

- (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
- (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
  - 1. In all cases the agency shall mail notice to those who have requested it on an individual action.
  - 2. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
  - 3. In the case of an action with effects primarily of local concern the notice may include:
    - (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).
    - (ii) Notice to Indian tribes when effects may occur on reservations.
    - (iii) Following the affected State's public notice procedures for comparable actions.
    - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
    - (v) Notice through other local media.
    - (vi) Notice to potentially interested community organizations including small business associations.
    - (vii) Publication in newsletters that may be expected to reach potentially interested persons.
    - (viii) Direct mailing to owners and occupants of nearby or affected property.
    - (ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

1. Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
2. A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

1. Research activities;
2. Meetings and conferences related to NEPA; and
3. Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A

legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

1. There need not be a scoping process.
2. The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

#### Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

#### Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this

notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

1. Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
2. Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

#### Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

**PART 1507--AGENCY COMPLIANCE**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.



(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

### Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

1. Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

2. Specific criteria for and identification of those typical classes of action:

- (i) Which normally do require environmental impact statements.

- (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be

included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

## **PART 1508--TERMINOLOGY AND INDEX**

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in

procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects"

(Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

2. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

- (a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

#### Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

#### Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

#### Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

1. No action alternative.
2. Other reasonable courses of actions.
3. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with



significant effects or represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

#### Sec. 1508.28 Tiering.

"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 (such as regional or basin wide program statements or ultimately site-specific statements) 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:

- (a) 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.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

***APPENDIX C***

***Environmental Analysis of Army Actions (32 CFR Part 651)***



# Federal Register

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**Friday,  
March 29, 2002**

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**Part II**

## **Department of Defense**

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**Department of the Army**

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**32 CFR Part 651  
Environmental Analysis of Army Actions;  
Final Rule**

**DEPARTMENT OF DEFENSE****Department of the Army****32 CFR Part 651****[Army Regulation 200–2]****Environmental Analysis of Army Actions****AGENCY:** Department of the Army, DoD.**ACTION:** Final rule.

**SUMMARY:** This final rule is a revision of policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations in the Code of Federal Regulations (CFR). These guidelines replace policy and procedures found in current Army Regulation 200–2, Environmental Effects of Army Actions. The revision is necessary to clarify and update the current regulation. Since the December 1988 update of this part, initiatives such as the National Performance Review (NPR) have streamlined the federal government through decentralization, reduction and simplification of regulations, and management of risk. This revised rule strives to meet the spirit of the NPR, and Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, 11 September 1993.

**EFFECTIVE DATE:** March 29, 2002.**ADDRESSES:** Army Environmental Policy Institute, 101 Marietta Street, Suite 3120, Atlanta, GA 30303–2716.**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Webster, Army Environmental Policy Institute at (404) 524–9364 x298.**SUPPLEMENTARY INFORMATION:****a. Background**

Proposed revisions to Army Regulation 200–2 (32 CFR part 651) were published in the **Federal Register**, Volume 65, No.174, Part II, pages 54347–54392, September 7, 2000 for public comment.

**b. Comments and Responses**

Two respondents submitted comments on the proposed rule. The first respondent was concerned that all Environmental Assessments (EAs) might not be made available for public participation and comment, or published in the **Federal Register**. It is Army policy that all EAs of national scope or interest be published in the **Federal Register**, and that all EAs and draft Findings of No Significant Impact (FNSIs) be made available through local publication and public notice. This part provides for such publication of a “draft

FNSI” for public comment, after which the FNSI is either finalized, the EA is modified, or the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) is published. This same respondent was concerned over the potential effects that Army application of Commercial Activities (OMB Cir. A–76) would have on the ability of Army leaders to “maintain sufficient capability” to ensure compliance as required by Section 651.5(e) of the proposed revision. Army application of Commercial Activities includes identification of those employee functions that are “government in nature” (GIN), as defined in OMB guidelines. The correct application of those guidelines will satisfy the concerns voiced by the respondent. Similarly, the respondent was concerned over the replacement of career civil servants with military personnel in responsible NEPA oversight and approval positions. This revision clearly places the responsibility for an adequately trained NEPA staff on the Army leadership (§§ 651.4 (a)(2), (c)(1)(v), (e)(1), (f)(4), (g)(8), (o)(12), (r)(1), and (r)(2)), and subsequent oversight of the overall NEPA program performance (§§ 651.4 (a), (f)(6) and (o)(1)). With respect to the respondent’s concerns over military (as opposed to civilian) control over NEPA requirements, this revision adds NEPA requirements to the Army Officer Foundation Standards (§ 651.4 (r)(1)).

The second respondent felt that the rule would not insure that impacts to a state’s fish and wildlife resources are considered and addressed early in the Army NEPA planning process, and recommended that a REC require documentation of potential impacts to wildlife or wildlife habitat. This issue is addressed in §§ 651.29 (a)(2), (c)(1) and (3), and (e)(1) and (4). The respondent believed that Sections §§ 651.36 (b) and 651.39 of the proposed rule contradict § 651.36 (c) and CEQ Regulation 40 CFR § 1506.6 (a). The cited sections of this proposed rule are not contradictory. Instead, they require open public access and encourage participation, as necessary, to insure that public concerns and issues are incorporated in Army decision making. As an example, § 651.21 of this rule allows for the circulation of a “draft” FNSI which is only “finalized” after opportunities for public involvement have been afforded. Some discretion on the timing and nature of public involvement is afforded, in § 651.36 (b), to the proponents of an action, sufficient participation is required under this rule to insure required public cognizance

and the opportunity for more extensive levels of participation, at the discretion of the affected public. The second respondent also expressed concern over the applicability and desirability of CX (c) (1) (in Appendix B), which excludes areas of less than 5 acres of disturbance, if the location of the proposed action is a wetland or habitat area. This CX remains in this final rule, as a proposed action that affects wetlands, sensitive habitat, or other special circumstances, the CX would be prohibited under § 651.29. Noted conflicts on the maximum length of an EIS, between § 651.40 and Appendix E (a) (3), has been resolved in this final rule. Finally this respondent called for a definition of “Significantly Affecting the Environment” which is more consistent with CEQ Regulation 40 CFR 1508.27, and this change has been made in this final rule.

**c. Administrative Requirements***The Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5, U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organization must include an initial regulatory flexibility analysis describing the regulation’s impact on small entities. Such an action, however, need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

The Department of the Army has considered the impact of this part under the Regulatory Flexibility Act. It has been certified that the final rule will not have a significant economic impact on a substantial number of small entities.

*The Paperwork Reduction Act*

This part does not involve the collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

*Executive Order 13132, Federalism*

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. This organization has determined that this rule has no

federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

*Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights*

This rule is issued with respect to the National Environmental Policy Act of 1969 and therefore establishes the Army's responsibilities for the early integration of environmental consideration into planning and decision-making. This rule should not impact the provisions of Executive Order 12630 or the Private Property Rights Act.

*Executive Order 12866, Regulatory Planning and Review*

This rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The revision is not a "major" rule within the meaning of Executive Order 12866. The effect on the economy will be less than \$100 million. The rule will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies. The rule will not have a significant adverse impact on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

*Executive Order 12875 Enhancing the Intergovernmental Partnership*

The rule does not impose non-statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

*Executive Order 12988, Civil Justice*

This rule is in compliance with the provisions and requirements of Executive Order 12988.

*Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

The rule is issued with respect to existing environmental guidelines and laws. Therefore, this rule should not directly impact this executive order.

*Unfunded Mandates Act*

This revision does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and therefore is not subject to the requirements of the Unfunded Mandates Reform Act.

*National Environmental Policy Act*

This part implements the National Environmental Policy Act of 1969 (NEPA), and establishes the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

*Submission to Congress and the Comptroller General of the General Accounting Office*

Pursuant to Section 801(a)(1)(A) of the Administrative Procedures Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedures Act, as amended.

**List of Subjects in 32 CFR Part 651**

Ecology, Environmental impact statements, Environmental protection, Natural resources.

Dated: December 6, 2001.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), DASA (ESOH).*

For the reasons as set forth in the preamble, 32 CFR Part 651 is revised to read as follows:

**PART 651—ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200—2)**

**Subpart A—Introduction**

Sec.

- 651.1 Purpose.
- 651.2 References.
- 651.3 Explanation of abbreviations and terms.
- 651.4 Responsibilities.
- 651.5 Army policies.
- 651.6 NEPA analysis staffing.
- 651.7 Delegation of authority for non-acquisition systems.
- 651.8 Disposition of final documents.

**Subpart B—National Environmental Policy Act and the Decision Process**

- 6511.9 Introduction.
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**Authority:** 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

## Subpart A—Introduction

### § 651.1 Purpose.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA), setting forth the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

(b) This part requires environmental analysis of Army actions affecting human health and the environment; providing criteria and guidance on actions normally requiring Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and listing Army actions that are categorically excluded from such requirements, provided specific criteria are met.

(c) This part supplements the regulations of the Council on Environmental Quality (CEQ) in the Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) for Army actions, and must be read in conjunction with them.

(d) All Army acquisition programs must use this part in conjunction with Department of Defense (DOD) 5000.2–R (Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems).

(e) This part applies to actions of the Active Army and Army Reserve, to functions of the Army National Guard (ARNG) involving federal funding, and to functions for which the Army is the DOD executive agent. It does not apply to Civil Works functions of the US Army Corps of Engineers (USACE) or to combat or combat-related activities in a combat or hostile fire zone. Operations Other Than War (OOTW) or Stability and Support Operations (SASO) are subject to the provisions of this part as specified in Subpart H of this part. This part applies to relevant actions within the United States, which is defined as all States; the District of Columbia; territories and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. This regulation also applies to actions in the Commonwealths of Puerto Rico and the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia and Palau (Republic of Belau). In addition, this part addresses the responsibility of the Army for the assessment and consideration of environmental effects

for peacetime SASO operations worldwide. Throughout this part, emphasis is placed upon quality analysis of environmental effects, not the production of documents. Documentation is necessary to present and staff results of the analyses, but the objective of NEPA and Army NEPA policy is quality analysis in support of the Army decision maker. The term “analysis” also includes any required documentation to support the analysis, coordinate NEPA requirements, and inform the public and the decision maker.

### § 651.2 References.

Required and related publications and referenced forms are listed in Appendix A of this part.

### § 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary in Appendix F of this part.

### § 651.4 Responsibilities.

(a) *The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E))*. ASA(I&E) is designated by the Secretary of the Army (SA) as the Army's responsible official for NEPA policy, guidance, and oversight. In meeting these responsibilities, ASA(I&E) will:

(1) Maintain liaison with the Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), Congressional oversight committees, and other federal, state, and local agencies on Army environmental policies.

(2) Review NEPA training at all levels of the Army, including curricula at Army, DOD, other service, other agency, and private institutions; and ensure adequacy of NEPA training of Army personnel at all levels.

(3) Establish an Army library for EAs and EISs, which will serve as:

(i) A means to ascertain adherence to the policies set forth in this part, as well as potential process improvements; and

(ii) A technical resource for proponents and preparers of NEPA documentation.

(b) *The Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(AL&T))*. ASA(AL&T) will:

(1) Under oversight of the ASA(I&E), execute those NEPA policy provisions contained herein that pertain to the ASA(AL&T) responsibilities in the Army materiel development process, as described in Army Regulation (AR) 70–1, Army Acquisition Policy.

(2) Prepare policy for the Army Acquisition Executive (AAE) to develop and administer a process of review and approval of environmental analyses during the Army materiel development process.

(3) Prepare research, development, test, and evaluation (RDT&E) and procurement budget justifications to support Materiel Developer (MATDEV) implementation of NEPA provisions.

(c) *The Army Acquisition Executive (AEE)*. The AAE will, under the Army oversight responsibilities assigned to ASA(I&E):

(1) Administer a process to:

(i) Execute all those NEPA policy provisions contained herein that pertain to all acquisition category (ACAT) programs, projects, and products;

(ii) Ensure that Milestone Decision Authorities (MDAs), at all levels, assess the effectiveness of environmental analysis in all phases of the system acquisition process, including legal review of these requirements;

(iii) Establish resource requirements and program, plan, and budget exhibits for inclusion in annual budget decisions;

(iv) Review and approve NEPA documentation at appropriate times during materiel development, in conjunction with acquisition phases and milestone reviews as established in the Acquisition Strategy; and

(v) Establish NEPA responsibility and awareness training requirements for Army Acquisition Corps personnel.

(2) Ensure Program Executive Officers (PEOs), Deputies for Systems Acquisition (DSAs), and direct-reporting Program Managers (PMs) will:

(i) Supervise assigned programs, projects, and products to ensure that each environmental analysis addresses all applicable environmental laws, executive orders, and regulations.

(ii) Ensure that environmental considerations are integrated into system acquisition plans/strategies, Test and Evaluation Master Plans (TEMPs) and Materiel Fielding Plans, Demilitarization/Disposal Plans, system engineering reviews/Integrated Process Team (IPT) processes, and Overarching Integrated Process Team (OIPT) milestone review processes.

(iii) Coordinate environmental analysis with appropriate organizations to include environmental offices such as Army Acquisition Pollution Prevention Support Office (AAPPSO) and U.S. Army Environmental Center (USAEC) and operational offices and organizations such as testers (developmental/operational), producers, users, and disposal offices.

(3) Ensure Program, Project, Product Managers, and other MATDEVs will:

(i) Initiate the environmental analysis process prescribed herein upon receiving the project office charter to commence the materiel development process, and designate a NEPA point of contact (POC) to the Director of Environmental Programs (DEP).

(ii) Integrate the system's environmental analysis (including NEPA) into the system acquisition strategy, milestone review planning, system engineering, and preliminary design, critical design, and production readiness reviews.

(iii) Apply policies and procedures set forth in this part to programs and actions within their organizational and staff responsibility.

(iv) Coordinate with installation managers and incorporate comments and positions of others (such as the Assistant Chief of Staff for Installation Management (ACSIM) and environmental offices of the development or operational testers, producers, users, and disposers) into the decision-making process.

(v) Initiate the analysis of environmental considerations, assess the environmental consequences of proposed programs and projects, and undergo environmental analysis, as appropriate.

(vi) Maintain the administrative record of the program's environmental analysis in accordance with this part.

(vii) Coordinate with local citizens and other affected parties, and incorporate appropriate comments into NEPA analyses.

(viii) Coordinate with ASA(I&E) when NEPA analyses for actions under AAE purview require publication in the **Federal Register** (FR).

(d) *The Deputy Chief of Staff for Operations and Plans (DCSOPS)*. DCSOPS is the proponent for Training and Operations activities. DCSOPS will ensure that Major Army Commands (MACOMs) support and/or perform, as appropriate, NEPA analysis of fielding issues related to specific local or regional concerns when reviewing Materiel Fielding Plans prepared by Combat Developers (CBTDEVs) or MATDEVs. This duty will include the coordination of CBTDEV and MATDEV information with appropriate MACOMs and Deputy Chief of Staff for Logistics (DCSLOG).

(e) *The Assistant Chief of Staff for Installation Management (ACSIM)*. ACSIM is responsible for coordinating, monitoring, and evaluating NEPA activities within the Army. The Environmental Programs Directorate is the Army Staff (ARSTAF) POC for

environmental matters and serves as the Army staff advocate for the Army NEPA requirements contained in this part. The ACSIM will:

(1) Encourage environmental responsibility and awareness among Army personnel to most effectively implement the spirit of NEPA.

(2) Establish and maintain the capability (personnel and other resources) to comply with the requirements of this part. This responsibility includes the provision of an adequately trained and educated staff to ensure adherence to the policies and procedures specified by this part.

(f) *The Director of Environmental Programs*. The director, with support of the U.S. Army Environmental Center, and under the ACSIM, will:

(1) Advise Army agencies in the preparation of NEPA analyses, upon request.

(2) Review, as requested, NEPA analyses submitted by the Army, other DOD components, and other federal agencies.

(3) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making and adaptive management processes.

(4) Propose and develop Army NEPA guidance pursuant to policies formulated by ASA(I&E).

(5) Advise project proponents regarding support and defense of Army NEPA requirements through the budgeting process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Oversee proponent implementation and execution of NEPA requirements, and develop and execute programs and initiatives to address problem areas.

(8) Assist the ASA(I&E) in the evaluation of formal requests for the delegation of NEPA responsibilities on a case-by-case basis. This assistance will include:

(i) Determination of technical sufficiency of the description of proposed action and alternatives (DOPAA) when submitted as part of the formal delegation request (§ 651.7).

(ii) Coordination of the action with the MACOM requesting the delegation.

(9) Periodically provide ASA(I&E) with a summary analysis and recommendations on needed improvements in policy and guidance to Army activities concerning NEPA

implementation, in support of ASA(I&E) oversight responsibilities.

(10) Advise headquarters proponents on how to secure funding and develop programmatic NEPA analyses to address actions that are Army-wide, where a programmatic approach would be appropriate to address the action.

(11) Designate a NEPA PM to coordinate the Army NEPA program and notify ASA(I&E) of the designation.

(12) Maintain manuals and guidance for NEPA analyses for major Army programs in hard copy and make this guidance available on the World Wide Web (WWW) and other electronic means.

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

(14) Forward electronic copies of all EAs, and EISs to AEC to ensure inclusion in the Army NEPA library; and ensure those same documents are forwarded to the Defense Technical Information Center (DTIC).

(g) *Heads of Headquarters, Army agencies*. The heads of headquarters, Army agencies will:

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for state-funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of NEPA analyses and documentation.

(3) Initiate the preparation of necessary NEPA analyses, assess proposed programs and projects to determine their environmental consequences, and initiate NEPA documentation for circulation and review along with other planning or decision-making documents. These other documents include, as appropriate, completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folders, Acquisition Strategies, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate NEPA analyses with ARSTAF agencies.

(5) Designate, record, and report to the DEP the identity of the agency's single POC for NEPA considerations.

(6) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the DEP.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this part and include

provisions for NEPA requirements through the Program Planning and Budget Execution System (PPBES) process.

(h) *The Assistant Secretary of the Army for Financial Management (ASA(FM))*. ASA(FM) will establish procedures to ensure that NEPA requirements are supported in annual authorization requests.

(i) *The Judge Advocate General (TJAG)*. TJAG will provide legal advice to the Army Staff and assistance in NEPA interpretation, federal implementing regulations, and other applicable legal authority; determine the legal sufficiency for Army NEPA documentation; and interface with the Army General Counsel (GC) and the Department of Justice on NEPA-related litigation.

(j) *The Army General Counsel*. The Army General Counsel will provide legal advice to the Secretary of the Army on all environmental matters, to include interpretation and compliance with NEPA and federal implementing regulations and other applicable legal authority.

(k) *The Surgeon General*. The Surgeon General will provide technical expertise and guidance to NEPA proponents in the Army, as requested, in order to assess public health, industrial hygiene, and other health aspects of proposed programs and projects.

(l) *The Chief, Public Affairs*. The Chief, Public Affairs will:

(1) Provide guidance on issuing public announcements such as Findings of No Significant Impact (FNSIs), Notices of Intent (NOIs), scoping procedures, Notices of Availability (NOAs), and other public involvement activities; and establish Army procedures for issuing/announcing releases in the FR.

(2) Review and coordinate planned announcements on actions of national interest with appropriate ARSTAF elements and the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)).

(3) Assist in the issuance of appropriate press releases to coincide with the publication of notices in the FR.

(4) Provide assistance to MACOM and installation Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(m) *The Chief of Legislative Liaison*. The Chief of Legislative Liaison will notify Members of Congress of impending proposed actions of national concern or interest. The Chief will:

(1) Provide guidance to proponents at all levels on issuing Congressional

notifications on actions of national concern or interest.

(2) Review planned congressional notifications on actions of national concern or interest.

(3) Prior to (and in concert with) the issuance of press releases and publications in the FR, assist in the issuance of congressional notifications on actions of national concern or interest.

(n) *Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander*. Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander will:

(1) Monitor proposed actions and programs within their commands to ensure compliance with this part, including mitigation monitoring, utilizing Environmental Compliance Assessment System (ECAS), Installation Status Report (ISR), or other mechanisms.

(2) Task the proponent of the proposed action with funding and preparation of NEPA documentation and involvement of the public.

(3) Ensure that any proponent at the MACOM level initiates the required environmental analysis early in the planning process, plans the preparation of necessary NEPA documentation, and uses the analysis to aid in the final decision.

(4) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(5) Maintain official record copies of all NEPA documentation for which they are the proponent, and file electronic copies of those EAs, and final EISs with AEC.

(6) Provide coordination with Headquarters, Department of the Army (HQDA) for proposed actions that have either significant impacts requiring an EIS or are of national interest. This process will require defining the purpose and need for the action, alternatives to be considered, and other information, as requested by HQDA. It also must occur early in the process and prior to an irrevocable commitment of resources that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). When delegated signature authority by HQDA, this process also includes the responsibility for complying with this part and associated Army environmental policy.

(7) Approve and forward NEPA documentation, as appropriate, for actions under their purview.

(8) In the case of the Director, ARNG, or his designee, approve all federal

NEPA documentation prepared by all ARNG activities.

(9) Ensure environmental information received from MATDEVs is provided to appropriate field sites to support site-specific environmental analysis and NEPA requirements.

(10) Designate a NEPA PM to coordinate the MACOM NEPA program and maintain quality control of NEPA analyses and documentation that are processed through the command.

(11) Budget for resources to maintain oversight of NEPA and this part.

(o) *Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard*. Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard will:

(1) Establish an installation (command organization) NEPA program and evaluate its performance through the Environmental Quality Control Committee (EQCC) as required by AR 200-1, Environmental Protection and Enhancement.

(2) Designate a NEPA POC to coordinate and manage the installation's (command organization's) NEPA program, integrating it into all activities and programs at the installation. The installation commander will notify the MACOM of the designation.

(3) Establish a process that ensures coordination with the MACOM, other installation staff elements (to include PAOs and tenants) and others to incorporate NEPA requirements early in the planning of projects and activities.

(4) Ensure that actions subject to NEPA are coordinated with appropriate installation organizations responsible for such activities as master planning, natural and cultural resources management, or other installation activities and programs.

(5) Ensure that funding for environmental analysis is prioritized and planned, or otherwise arranged by the proponent, and that preparation of NEPA analyses, including the involvement of the public, is consistent with the requirements of this part.

(6) Approve NEPA analyses for actions under their purview. The Adjutant General will review and endorse documents and forward to the NGB for final approval.

(7) Ensure the proponent initiates the NEPA analysis of environmental consequences and assesses the environmental consequences of proposed programs and projects early in the planning process.

(8) Assist in the review of NEPA analyses affecting the installation or



activity, and those prepared by DOD and other Army or federal agencies, as requested.

(9) Provide information through the chain of command on proposed actions of national interest to higher headquarters prior to initiation of NEPA documentation.

(10) Maintain official record copies of all NEPA documentation for which they are the proponent and forward electronic copies of those final EISs and EAs through the MACOM to AEC.

(11) Ensure that the installation proponents initiate required environmental analyses early in the planning process and plan the preparation of necessary NEPA documentation.

(12) Ensure NEPA awareness and/or training is provided for professional staff, installation-level proponents, and document reviewers (for example, master planning, range control, etc.).

(13) Solicit support from MACOMs, CBTDEVs, and MATDEVs, as appropriate, in preparing site-specific environmental analysis.

(14) Ensure that local citizens are aware of and, where appropriate, involved in NEPA analyses, and that public comments are obtained and considered in decisions regarding proposals.

(15) Use environmental impact analyses to determine the best alternatives from an environmental perspective, and to ensure that these determinations are part of the Army decision process.

(p) *Environmental Officers.* Environmental officers (at the Installation, MACOM, and Army activity level) shall, under the authority of the Installation Commander; Commanders of U.S. Army Reserves Regional Support Commands; and Director NGB-ARE (Installation Commanders):

(1) Represent the Installation, MACOM, or activity Commander on NEPA matters.

(2) Advise the proponent on the selection, preparation, and completion of NEPA analyses and documentation. This approach will include oversight on behalf of the proponent to ensure adequacy and support for the proposed action, including mitigation monitoring.

(3) Develop and publish local guidance and procedures for use by NEPA proponents to ensure that NEPA documentation is procedurally and technically correct. (This includes approval of Records of Environmental Consideration (RECs).)

(4) Identify any additional environmental information needed to

support informed Army decision-making.

(5) Budget for resources to maintain oversight with NEPA and this part.

(6) Assist proponents, as necessary, to identify issues, impacts, and possible alternatives and/or mitigations relevant to specific proposed actions.

(7) Assist, as required, in monitoring to ensure that specified mitigation measures in NEPA analyses are accomplished. This monitoring includes assessing the effectiveness of the mitigations.

(8) Ensure completion of agency and community coordination.

(q) *Proponents.* Proponents at all levels will:

(1) Identify the proposed action, the purpose and need, and reasonable alternatives for accomplishing the action.

(2) Fund and prepare NEPA analyses and documentation for their proposed actions. This responsibility will include negotiation for matrix support and services outside the chain of command when additional expertise is needed to prepare, review, or otherwise support the development and approval of NEPA analyses and documentation. These NEPA costs may be borne by successful contract offerors.

(3) Ensure accuracy and adequacy of NEPA analyses, regardless of the author. This work includes incorporation of comments from appropriate servicing Army environmental and legal staffs.

(4) Ensure adequate opportunities for public review and comment on proposed NEPA actions, in accordance with applicable laws and EOs as discussed in § 651.14 (e). This step includes the incorporation of public and agency input into the decision-making process.

(5) Ensure that NEPA analysis is prepared and staffed sufficiently to comply with the intent and requirements of federal laws and Army policy. These documents will provide enough information to ensure that Army decision makers (at all levels) are informed in the performance of their duties (40 CFR 1501.2, 1505.1). This result requires coordination and resolution of important issues developed during the environmental analysis process, especially when the proposed action may involve significant environmental impacts, and includes the incorporation of comments from an affected installation's environmental office in recommendations made to decision makers.

(6) Adequately fund and implement the decision including all mitigation actions and effectiveness monitoring.

(7) Prepare and maintain the official record copy of all NEPA analyses and documentation for which they are the proponent. This step will include the provision of electronic copies of all EAs, final EISs, and Records of Decision (RODs), through their chain of command, to AEC, and forwarding of those same documents to the Defense Technical Information Center (DTIC) as part of their public distribution procedures. In addition, copies of all EAs and FNSIs (in electronic copy) will be provided to ODEP. A copy of the documentation should be maintained for six years after signature of the FNSI/ROD.

(8) Maintain the administrative record for the environmental analysis performed. The administrative record shall be retained by the proponent for a period of six years after completion of the action, unless the action is controversial or of a nature that warrants keeping it longer. The administrative record includes all documents and information used to make the decision. This administrative record should contain, but is not limited to, the following types of records:

(i) Technical information used to develop the description of the proposed action, purpose and need, and the range of alternatives.

(ii) Studies and inventories of affected environmental baselines.

(iii) Correspondence with regulatory agencies.

(iv) Correspondence with, and comments from, private citizens, Native American tribes, Alaskan Natives, local governments, and other individuals and agencies contacted during public involvement.

(v) Maps used in baseline studies.

(vi) Maps and graphics prepared for use in the analysis.

(vii) Affidavits of publications and transcripts of any public participation.

(viii) Other written records that document the preparation of the NEPA analysis.

(ix) An index or table of contents for the administrative record.

(9) Identify other requirements that can be integrated and coordinated within the NEPA process. After doing so, the proponent should establish a strategy for concurrent, not sequential, compliance; sharing similar data, studies, and analyses; and consolidating opportunities for public participation. Examples of relevant statutory and regulatory processes are given in § 651.14 (e).

(10) Identify and coordinate with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a

resource that might be impacted. Coordination should be accomplished in cooperation with the Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities. Applicable agencies include, but are not limited to:

- (i) State Historic Preservation Officer.
- (ii) Tribal Historic Preservation Officer.
- (iii) U.S. Fish and Wildlife Service.
- (iv) Regional offices of the EPA.
- (v) State agencies charged with protection of the environment, natural resources, and fish and wildlife.
- (vi) USACE Civil Works regulatory functions, including Clean Water Act, Section 404, permitting and wetland protection.
- (vii) National Marine Fisheries Service.
- (viii) Local agencies and/or governing bodies.
- (ix) Environmental interest groups.
- (x) Minority, low-income, and disabled populations.
- (xi) Tribal governments.
- (xii) Existing advisory groups (for example, Restoration Advisory Boards, Citizens Advisory Commissions, etc.).

(11) Identify and coordinate, in concert with environmental offices, proposed actions and supporting environmental analyses with local and/or regional ecosystem management initiatives such as the Mojave Desert Ecosystem Management Initiative or the Chesapeake Bay Initiative.

(12) Review Army policies, including AR 200-1 (Environmental Protection and Enhancement), AR 200-3 (Natural Resources—Land, Forest, and Wildlife Management), and AR 200-4 (Cultural Resources Management) to ensure that the proposed action is coordinated with appropriate resource managers, operators, and planners, and is consistent with existing Army plans and their supporting NEPA analyses.

(13) Identify potential impacts to (and consult with as appropriate) American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures (for example, sacred sites, traditional cultural properties, treaty rights, subsistence hunting or fishing rights, or cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA)). All consultation shall be conducted on a Government-to-Government basis in accordance with the Presidential Memorandum on Government-to-Government Relations with Tribal Governments (April 29, 1994) (3 CFR, 1994 Comp., p. 1007) and AR 200-4 (Cultural Resources Management). Proponents shall consider, as

appropriate, executing Memoranda of Agreements (MOAs) with interested Native American groups and tribes to facilitate timely and effective participation in the NEPA process. These agreements should be accomplished in cooperation with Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities.

(14) Review NEPA documentation that relies upon mitigations that were not accomplished to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unaccomplished mitigation was used to support a FNSI. Additional public notice/involvement must accompany any rewrites.

(r) *The Commander, U.S. Army Training and Doctrine Command (TRADOC)*. The Commander, TRADOC will:

(1) Ensure that NEPA requirements are understood and options incorporated in the Officer Foundation Standards (OFS).

(2) Integrate environmental considerations into doctrine, training, leader development, organization, materiel, and soldier (DTLOMS) processes.

(3) Include environmental expert representation on all Integrated Concept Teams (ICTs) involved in requirements determinations.

(4) Ensure that TRADOC CBTDEVs retain and transfer any environmental analysis or related data (such as alternatives analysis) to the MATDEV upon approval of a materiel need. This information and data will serve as the basis for the MATDEV's Acquisition Strategy and subsequent NEPA analyses.

(5) Ensure that environmental considerations are incorporated into the Mission Needs Statements (MNSs) and Operational Requirements Documents (ORDs).

#### **§ 651.5 Army policies.**

(a) NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use

the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

(b) The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

(c) Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by federal and DOD orders, directives, and policy guidance. Some examples are in § 651.14 (e). Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

(d) The Army will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the military mission in project planning and decision-making. Efficiency will be promoted through the following:

(1) Awareness and involvement of the proponent in the NEPA process.

(2) NEPA technical and awareness training, as appropriate, at all decision levels of the Army.

(3) Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

(4) Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision-making at hand.

(5) Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

(6) Early integration of the NEPA process into all aspects of Army planning, so as to prevent disruption in the decision-making process; ensuring that NEPA personnel function as team members, supporting the Army planning process and sound Army decision-making. All NEPA analyses will be prepared by an interdisciplinary team.

(7) Partnering or coordinating with agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

(8) Oversight of the NEPA program to ensure continuous process improvement. NEPA requirements will be integrated into other environmental reporting requirements, such as the ISR.

(9) Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

(10) Environmental analysis of strategic plans based on:

(i) Scoping thoroughly with agencies, organizations, and the public;

(ii) Setting specific goals for important environmental resources;

(iii) Monitoring of impacts to these resources;

(iv) Reporting of monitoring results to the public; and

(v) Adaptive management of Army operations to stay on course with the strategic plan's specific resource goals.

(11) Responsive staffing through HQDA and the Secretariat. To the extent possible, documents and transmittal packages will be acted upon within 30 calendar days of receipt by each office through which they are staffed. These actions will be approved and transmitted, if the subject material is adequate; or returned with comment in those cases where additional work is required. Cases where these policies are violated should be identified to ASA (I&E) for resolution.

(e) Army leadership and commanders at all levels are required to:

(1) Establish and maintain the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this part. This should include the use of the PPBES, EPR, and other established resourcing processes. This capability can be provided through the use of a given mechanism or mix of mechanisms

(contracts, matrix support, and full-time permanent (FTP) staff), but sufficient FTP staff involvement is required to ensure:

(i) Army cognizance of the analyses and decisions being made; and

(ii) Sufficient institutional knowledge of the NEPA analysis to ensure that Army NEPA responsibilities (pre- and post-decision) are met. Every person preparing, implementing, supervising, and managing projects involving NEPA analysis must be familiar with the requirements of NEPA and the provisions of this part.

(2) Ensure environmental responsibility and awareness among personnel to most effectively implement the spirit of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, notification through the chain of command, and training and education will NEPA goals be realized.

(f) The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for Army decisions involving activities outside the United States (see § 651.1(e)) will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), host country final governing standards, DOD Directive (DODD) 6050.7 (Environmental Effects Abroad of Major DOD Actions), DOD Instructions (DODIs), and the requirements of this part. An environmental planning and evaluation process will be incorporated into Army actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

(g) Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

(1) Supplemental NEPA documentation is required when:

(i) The Army makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to

environmental concerns and bearing on the proposed action or its impact.

(2) This review requires that the proponent merely initiate another "hard look" to ascertain the adequacy of the previous analyses and documentation in light of the conditions listed in paragraph (g)(1) of this section. If this review indicates no need for new or supplemental documentation, a REC can be produced in accordance with this part. Proponents are required to periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review in a REC format.

(h) Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also avoid extensive, time-consuming, and costly analyses or revisions. Project proponents and NEPA program managers must be continuously informed and involved.

(i) When appropriate, NEPA analyses will reflect review for operations security principles and procedures, described in AR 530-1 (Operations Security (OPSEC)), on the cover sheet or signature page.

(j) Environmental analyses and associated investigations are advanced project planning, and will be funded from sources other than military construction (MILCON) funds. Operations and Maintenance Army (OMA), Operations and Maintenance, Army Reserve (OMAR), and Operations and Maintenance, Army National Guard (OMANG), RDT&E, or other operating funds are the proper sources of funds for such analysis and documentation. Alternative Environmental Compliance Achievement Program (non-ECAP) funds will be identified for NEPA documentation, monitoring, and other required studies as part of the MILCON approval process.

(k) Costs of design and construction mitigation measures required as a direct result of MILCON projects will be paid from MILCON funds, which will be included in the cost estimate and description of work on DD Form 1391, Military Construction Project Data.

(l) Response actions implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation

and Recovery Act (RCRA) are not legally subject to NEPA and do not require separate NEPA analysis. As a matter of Army policy, CERCLA and RCRA analysis and documentation should incorporate the values of NEPA and:

(1) Establish the scope of the analysis through full and open public participation;

(2) Analyze all reasonable alternative remedies, evaluating the significance of impacts resulting from the alternatives examined; and

(3) Consider public comments in the selection of the remedy. The decision maker shall ensure that issues involving substantive environmental impacts are addressed by an interdisciplinary team.

(m) MATDEVs, scientists and technologists, and CBTDEVs are responsible for ensuring that their programs comply with NEPA as directed in this part.

(1) Prior to assignment of a MATDEV to plan, execute, and manage a potential acquisition program, CBTDEVs will retain environmental analyses and data from requirements determination activities, and Science and Technology (S&T) organizations will develop and retain data for their technologies. These data will transition to the MATDEV upon assignment to plan, execute, and manage an acquisition program. These data (collected and produced), as well as the decisions made by the CBTDEVs, will serve as a foundation for the environment, safety, and health (ESH) evaluation of the program and the incorporation of program-specific NEPA requirements into the Acquisition Strategy. Programmatic ESH evaluation is considered during the development of the Acquisition Strategy as required by DOD 5000.2-R for all ACAT programs. Programmatic ESH evaluation is not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this part are integrated. Environmental analysis must be a continuous process throughout the materiel development program. During this continuous process, NEPA analysis and documentation may be required to support decision-making prior to any decision that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). In accordance with DOD 5000.2.R, the MATDEV is responsible for environmental analysis of acquisition life-cycle activities (including disposal). Planning to accomplish these responsibilities will be included in the appropriate section of the Acquisition Strategy.

(2) MATDEVs are responsible for the documentation regarding general environmental effects of all aspects of

the system (including operation, fielding, and disposal) and the specific effects for all activities for which he/she is the proponent.

(3) MATDEVs will include, in their Acquisition Strategy, provisions for developing and supplementing their NEPA analyses and documentation, and provide data to support supplemental analyses, as required, throughout the life cycle of the system. The MATDEV will coordinate with ASA (AL&T) or MACOM proponent office, ACSIM, and ASA(I&E), identifying NEPA analyses and documentation needed to support milestone decisions. This requirement will be identified in the Acquisition Strategy and the status will be provided to the ACSIM representative prior to milestone review. The Acquisition Strategy will outline the system-specific plans for NEPA compliance, which will be reviewed and approved by the appropriate MDA and ACSIM. Compliance with this plan will be addressed at Milestone Reviews.

(n) AR 700-142 requires that environmental requirements be met to support materiel fielding. During the development of the Materiel Fielding Plan (MFP), and Materiel Fielding Agreement (MFA), the MATDEV and the materiel receiving command will identify environmental information needed to support fielding decisions. The development of generic system environmental and NEPA analyses for the system under evaluation, including military construction requirements and new equipment training issues, will be the responsibility of the MATDEV. The development of site-specific environmental analyses and NEPA documentation (EAs/EISs), using generic system environmental analyses supplied by the MATDEV, will be the responsibility of the receiving Command.

(o) Army proponents are encouraged to draw upon the special expertise available within the Office of the Surgeon General (OSG) (including the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM)), and USACE District Environmental Staff to identify and evaluate environmental health impacts, and other agencies, such as USAEC, can be used to assess potential environmental impacts). In addition, other special expertise is available in the Army, DOD, other federal agencies, state and local agencies, tribes, and other organizations and individuals. Their participation and assistance is also encouraged.

#### **§ 651.6 NEPA analysis staffing.**

(a) NEPA analyses will be prepared by the proponent using appropriate resources (funds and manpower). The proponent, in coordination with the appropriate NEPA program manager, shall determine what proposal requires NEPA analysis, when to initiate NEPA analysis, and what level of NEPA analysis is initially appropriate. The proponent shall remain intimately involved in determining appropriate milestones, timelines, and inputs required for the successful conduct of the NEPA process, including the use of scoping to define the breadth and depth of analysis required. In cases where the document addresses impacts to an environment whose management is not in the proponents' chain of command (for example, installation management of a range for MATDEV testing or installation management of a fielding location), the proponent shall coordinate the analysis and preparation of the document and identify the resources needed for its preparation and staffing through the command structure of that affected activity.

(b) The approving official is responsible for approving NEPA documentation and ensuring completion of the action, including any mitigation actions needed. The approving official may be an installation commander; or, in the case of combat/materiel development, the MATDEV, MDA, or AAE.

(c) Approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process. Funding needed to accomplish the review shall be negotiated with the proponent, if required. Lead reviewer may be an installation EC or a NEPA POC designated by an MDA for a combat/materiel development program.

(d) The most important document is the initial NEPA document (draft EA or draft EIS) being processed. Army reviewers are accountable for ensuring thorough early review of draft NEPA analyses. Any organization that raises new concerns or comments during final staffing will explain why issues were not raised earlier. NEPA analyses requiring public release in the FR will be forwarded to ASA(I&E), through the chain of command, for review. This includes all EISs and all EAs that are of national interest or concern. The activities needed to support public release will be coordinated with ASA(I&E). Public release will not proceed without ASA(I&E) approval.

(e) Public release of NEPA analyses in the FR should be limited to EISs, or EAs

that are environmentally controversial or of national interest or concern. When analyses address actions affecting numerous sites throughout the Continental United States (CONUS), the proponent will carefully evaluate the need for publishing an NOA in the FR, as this requires an extensive review process, as well as supporting documentation alerting EPA and members of Congress of the action. At a minimum, and depending on the proponent's command structure, the following reviews must be accomplished:

(1) The NEPA analysis must be reviewed by the MACOM Legal Counsel or TJAG, ACSIM, ASA(I&E), and Office of General Counsel (OGC).

(2) The supporting documentation must be reviewed by Office of the Chief of Legislative Liaison (OCLL) and Office of the Chief of Public Affairs (OCPA).

(3) Proponents must allow a minimum of 30 days to review the documentation and must allow sufficient time to address comments from these offices prior to publishing the NOA.

(4) The proponent may consider publishing the NOA in local publication resources near each site. Proponents are strongly advised to seek the assistance of the local environmental office and command structure in addressing the need for such notification.

#### **§ 651.7 Delegation of authority for non-acquisition systems.**

(a) MACOMs can request delegation authority and responsibility for an EA of national concern or an EIS from ASA(I&E). The proponent, through the appropriate chain of command, and with the concurrence of environmental offices, forwards to HQDA (ODEP) the request to propose, prepare, and finalize an EA and FNSI or EIS through the ROD stage. The request must include, at a minimum, the following:

(1) A description of the purpose and need for the action.

(2) A description of the proposed action and a preliminary list of alternatives to that proposed action, including the "no action" alternative. This constitutes the DOPAA.

(3) An explanation of funding requirements, including cost estimates, and how they will be met.

(4) A brief description of potential issues of concern or controversy, including any issues of potential Army-wide impact.

(5) A plan for scoping and public participation.

(6) A timeline, with milestones for the EIS action.

(b) If granted, a formal letter will be provided by ASA(I&E) outlining extent,

conditions, and requirements for the NEPA action. Only the ASA(I&E) can delegate this authority and responsibility. When delegated signature authority by HQDA, the MACOM will be responsible for complying with this part and associated Army environmental policy. This delegation, at the discretion of ASA(I&E), can include specific authority and responsibility for coordination and staffing of:

(1) EAs and FNSIs, and associated transmittal packages, as specified in § 651.35(c).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45. Such delegation will specify requirements for coordination with ODEP and ASA (I&E).

#### **§ 651.8 Disposition of final documents.**

All NEPA documentation and supporting administrative records shall be retained by the proponent's office for a minimum of six years after signature of the FNSI/ROD or the completion of the action, whichever is greater. Copies of EAs, and final EISs will be forwarded to AEC for cataloging and retention in the Army NEPA library. The DEIS and FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACSIM shall forward copies of all FEISs to DTIC, the National Archives, and Records Administration.

### **Subpart B—National Environmental Policy Act and the Decision Process**

#### **§ 651.9 Introduction.**

(a) The NEPA process is the systematic examination of possible and probable environmental consequences of implementing a proposed action. Integration of the NEPA process with other Army projects and program planning must occur at the earliest possible time to ensure that:

(1) Planning and decision-making reflect Army environmental values, such as compliance with environmental policy, laws, and regulations; and that these values are evident in Army decisions. In addition, Army decisions must reflect consideration of other requirements such as Executive Orders and other non-statutory requirements, examples of which are enumerated in § 651.14(e).

(2) Army and DOD environmental policies and directives are implemented.

(3) Delays and potential conflicts in the process are minimized. The public

should be involved as early as possible to avoid potential delays.

(b) All Army decision-making that may impact the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts (section 102(2)(a), Public Law 91-190, 83 Stat. 852, National Environmental Policy Act of 1969 (NEPA)). This approach allows timely identification of environmental effects and values in sufficient detail for concurrent evaluation with economic, technical, and mission-related analyses, early in the decision process.

(c) The proponent of an action or project must identify and describe the range of reasonable alternatives to accomplish the purpose and need for the proposed action or project, taking a "hard look" at the magnitude of potential impacts of implementing the reasonable alternatives, and evaluating their significance. To assist in identifying reasonable alternatives, the proponent should consult with the installation environmental office and appropriate federal, tribal, state, and local agencies, and the general public.

#### **§ 651.10 Actions requiring environmental analysis.**

The general types of proposed actions requiring environmental impact analysis under NEPA, unless categorically excluded or otherwise included in existing NEPA documentation, include:

(a) Policies, regulations, and procedures (for example, Army and installation regulations).

(b) New management and operational concepts and programs, including logistics; RDT&E; procurement; personnel assignment; real property and facility management (such as master plans); and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan. NEPA requirements may be incorporated into other Army plans in accordance with 40 CFR 1506.4.

(c) Projects involving facilities construction.

(d) Operations and activities including individual and unit training, flight operations, overall operation of installations, or facility test and evaluation programs.

(e) Actions that require licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, or Federal Aviation Administration air space

request (new, renewal, or amendment), in accordance with AR 95-50.

(f) Materiel development, operation and support, disposal, and/or modification as required by DOD 5000.2-R.

(g) Transfer of significant equipment or property to the ARNG or Army Reserve.

(h) Research and development including areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(i) Leases, easements, permits, licenses, or other entitlement for use, to include donation, exchange, barter, or Memorandum of Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to use land for special events such as air shows or carnivals.

(j) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government-Owned, Contractor-Operated (GOCO) industrial plants or housing and construction via third-party contracting.

(k) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare proper environmental documentation may rest with the non-Army requester, who will provide needed information for Army review. The Army must review and adopt all NEPA documentation before approving such requests.

(l) Projects involving chemical weapons/munitions.

#### **§ 651.11 Environmental review categories.**

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or the Army and must prohibit, exempt, or make impossible full compliance with the procedures of NEPA (40 CFR 1506.11). While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action are still subject to NEPA analysis and

documentation. The fact that Congress has directed the Army to take an action does not constitute an exemption.

(b) *Emergencies.* In the event of an emergency, the Army will, as necessary, take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property, without the specific documentation and procedural requirements of other sections of this part. In such cases, at the earliest practicable time, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Installations and Environment (DUSD(IE)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this part or the CEQ regulations. However, the Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this notification requirement. After action reports may be required at the discretion of the ASA(I&E).

(c) *Categorical Exclusions (CXs).* These are categories of actions that normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a substantial effect on the human environment. Qualification for a CX is further described in Subpart D and Appendix B of this part. In accordance

with § 651.29, actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA.

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (paragraphs (a) through (c) of this section) must be analyzed to determine if they could cause significant impacts to the human or natural environment (see § 651.39). The EA determines whether possible impacts are significant, thereby warranting an EIS. This requires a "hard look" at the magnitude of potential impacts, evaluation of their significance, and documentation in the form of either an NOI to prepare an EIS or a FNSI. The format (§ 651.34) and requirements for this analysis are addressed in Subpart E of this part (see § 651.33 for actions normally requiring an EA). The EA is a valuable planning tool to discuss and document environmental impacts, alternatives, and controversial actions, providing public and agency participation, and identifying mitigation measures.

(e) *EIS.* When an action clearly has significant impacts or when an EA cannot be concluded by a FNSI, an EIS must be prepared. An EIS is initiated by the NOI (§ 651.22), and will examine the significant environmental effects of the proposed action as well as accompanying measures to mitigate those impacts. This process requires formal interaction with the public, a formal "scoping" process, and specified timelines for public review of the documentation and the incorporation of public comments. The format and requirements for the EIS are addressed in Subpart F of this part (see § 651.42 for actions normally requiring an EIS).

#### **§ 651.12 Determining appropriate level of NEPA analysis.**

(a) The flow chart shown in Figure 1 summarizes the process for determining documentation requirements, as follows:

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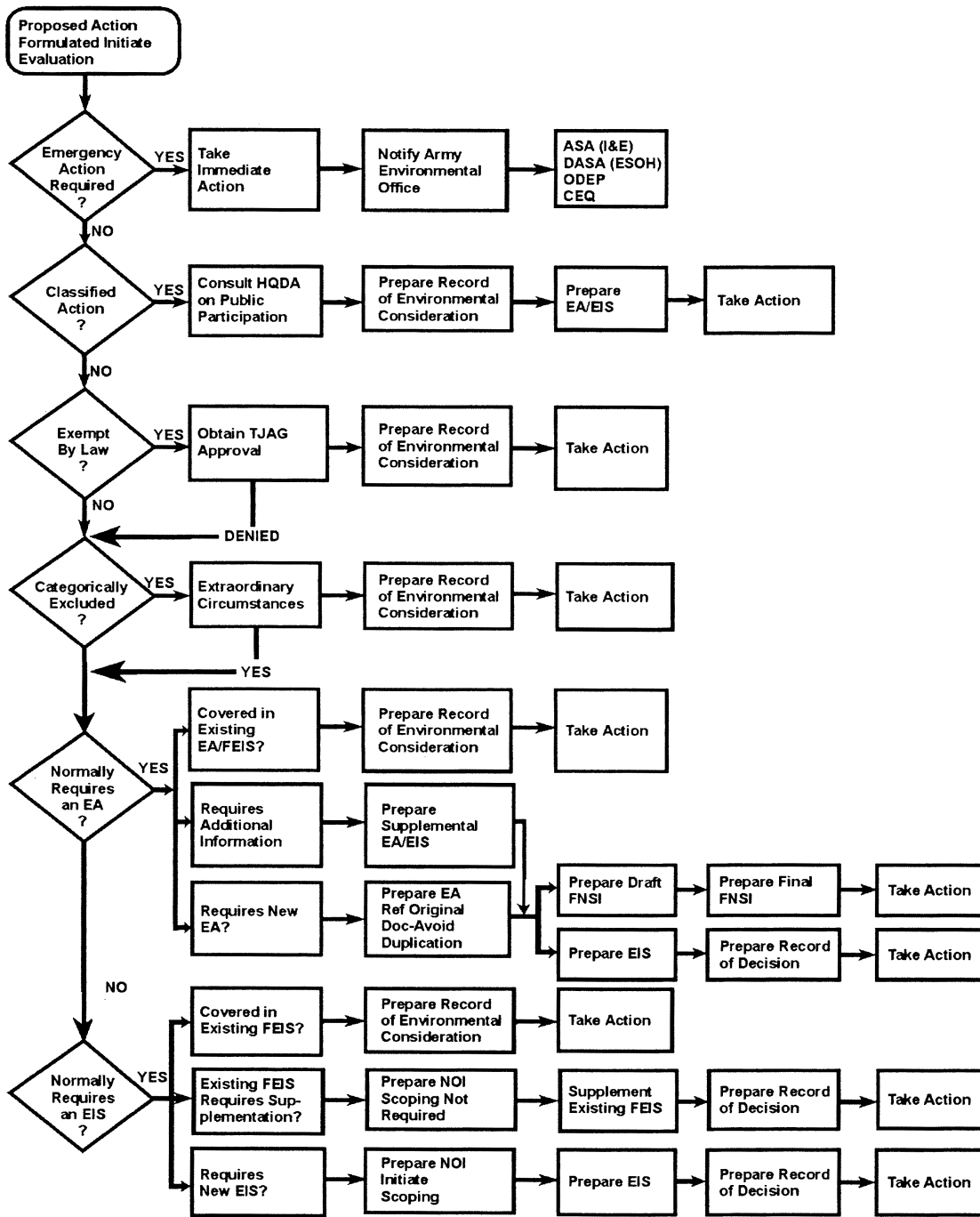


Figure 1. Flow chart summarizing process for determination of document requirements.

(1) If the proposed action qualifies as a CX (Subpart D of this part), and the screening criteria are met (§ 651.29), the action can proceed. Some CXs require a REC.

(2) If the proposed action is adequately covered within an existing EA or EIS, a REC is prepared to that effect. The REC should state the applicable EA or EIS title and date, and identify where it may be reviewed (§ 651.19, Figure 3). The REC is then attached to the proponent's record copy of that EA or EIS.

(3) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, a supplement is prepared, considering the new, modified, or missing information. Existing documents are incorporated by reference and conclusions are published as either a FNSI or NOI to supplement the EIS.

(4) If the proposed action is not covered adequately in any existing EA or EIS, or is of a significantly larger scope than that described in the existing document, an EA is prepared, followed by either a FNSI or NOI to prepare an EIS. Initiation of an EIS may proceed without first preparing an EA, if deemed appropriate by the proponent.

(5) If the proposed action is not within the scope of any existing EA or EIS, then the proponent must begin the preparation of a new EA or EIS, as appropriate.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will document their use in a REC FNSI, or ROD.

#### § 651.13 Classified actions.

(a) For proposed actions and NEPA analyses involving classified information, AR 380-5 (Department of the Army Information Security Program) will be followed.

(b) Classification does not relieve a proponent of the requirement to assess and document the environmental effects of a proposed action.

(c) When classified information can be reasonably separated from other information and a meaningful environmental analysis produced, unclassified documents will be prepared and processed in accordance with this part. Classified portions will be kept separate and provided to reviewers and decision makers in accordance with AR 380-5.

(d) When classified information is such an integral part of the analysis of a proposal that a meaningful unclassified NEPA analysis cannot be

produced, the proponent, in consultation with the appropriate security and environmental offices, will form a team to review classified NEPA analysis. This interdisciplinary team will include environmental professionals to ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA, including public participation requirements for those aspects which are not classified.

#### § 651.14 Integration with Army planning.

(a) *Early integration.* The Army goal is to concurrently integrate environmental reviews with other Army planning and decision-making actions, thereby avoiding delays in mission accomplishment. To achieve this goal, proponents shall complete NEPA analysis as part of any recommendation or report to decision makers prior to the decision (subject to 40 CFR 1506.1). Early planning (inclusion in Installation Master Plans, INRMPs, ICRMPs, Acquisition Strategies, strategic plans, etc.) will allow efficient program or project execution later in the process.

(1) The planning process will identify issues that are likely to have an effect on the environment, or to be controversial. In most cases, local citizens and/or existing advisory groups should assist in identifying potentially controversial issues during the planning process. The planning process also identifies minor issues that have little or no measurable environmental effect, and it is sound NEPA practice to reduce or eliminate discussion of minor issues to help focus analyses. Such an approach will minimize unnecessary analysis and discussion in the NEPA process and documents.

(2) Decision makers will be informed of and consider the environmental consequences at the same time as other factors such as mission requirements, schedule, and cost. If permits or coordination are required (for example, Section 404 of the Clean Water Act, Endangered Species Act consultation, Section 106 of the National Historic Preservation Act (NHPA), etc.), they should be initiated no later than the scoping phase of the process and should run parallel to the NEPA process, not sequential to it. This practice is in accordance with the recommendations presented in the CEQ publication entitled "The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years."

(3) NEPA documentation will accompany the proposal through the Army review and decision-making processes. These documents will be forwarded to the planners, designers,

and/or implementers, ensuring that the recommendations and mitigations upon which the decision was based are being carried out. The implementation process will provide necessary feedback for adaptive environmental management; responding to inaccuracies or uncertainties in the Army's ability to accurately predict impacts, changing field conditions, or unexpected results from monitoring. The integration of NEPA into the ongoing planning activities of the Army can produce considerable savings to the Army.<sup>1</sup>

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of NEPA documentation is important to ensure that environmental values are integrated into Army planning and decisions.

(1) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (Subpart D and Appendix B of this part), the proponent may proceed immediately with that action upon receipt of all necessary approvals, (including local environmental office confirmation that the CX applies to the proposal) and the preparation of a REC, if required.

(2) *Findings of no significant impact.* (i) A proponent will make an EA and draft FNSI available to the public for review and comment for a minimum of 30 days prior to making a final decision and proceeding with an action. If the proposed action is one of national concern, is unprecedented, or normally requires an EIS (§ 651.42), the FNSI must be published in the FR. Otherwise, the FNSI must be published in local newspapers and be made widely available. The FNSI must articulate the deadline for receipt of comments, availability of the EA for review, and steps required to obtain the EA. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism. (In no cases will the only coordination mechanism be a website.) At the conclusion of the appropriate comment

<sup>1</sup> For example, a well-executed EA or EIS on an Installation Master Plan can eliminate the need for many case-by-case analyses and documentation for construction projects. After the approval of an adequate comprehensive plan (which adequately addresses the potential for environmental effects), subsequent projects can tier off of the Master Plan NEPA analysis (AR 210-20). Other integration of the NEPA process and broad-level planning can lead to the "tiering" of NEPA, allowing the proponent to minimize the effort spent on individual projects, and "incorporating by reference" the broader level environmental considerations. This tiering allows the development of program level (programmatic) EAs and EISs, which can introduce greater economies of scale. These assessments are addressed in more detail in paragraph (c) of this section.



period, as specified in Figure 2, the decision maker may sign the FNSI and

take immediate action, unless sufficient public comments are received to

warrant more time for their resolution. Figure 2 follows:

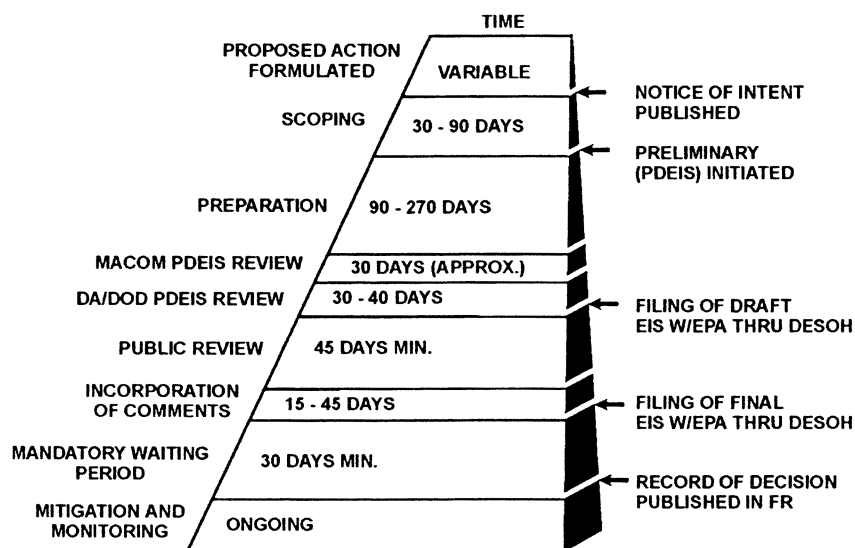


Figure 2. Time involved for preparing and processing an environmental impact statement.

(ii) A news release is required to publicize the availability of the EA and draft FNSI, and a simultaneous announcement that includes publication in the FR must be made by HQDA, if warranted (see § 651.35 (e)). The 30-day waiting period begins at the time that the draft FNSI is publicized (40 CFR 1506.6(b)).

(iii) In cases where the 30-day comment period jeopardizes the project and the full comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority (such as a MACOM). In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days. A deadline and POC for receipt of comments must be included in the draft FNSI and the news release.

(3) *EIS*. The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. An NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. Failure to deliver an NOA to EPA by close of business on Friday will result in an additional one-week delay. A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods, calculated from the publication date of the EPA notice, will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506(c)(2)).

(iii) Not less than 90 days from filing the DEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and (d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) Because the entire EIS process could require more than one year (Figure 2 in paragraph (b)(2)(i) of this section), the process must begin as soon as the project is sufficiently mature to allow analysis of alternatives and the proponent must coordinate with all staff elements with a role to play in the NEPA process. DEIS preparation and response to comments constitute the largest portion of time to prepare an FEIS.

(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There

is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. After the availability of the ROD is announced, the action may proceed. This announcement must be made through the FR for those EISs for which HQDA signs the ROD. For other EISs, announcements in the local press are adequate. Figure 2 in paragraph (b)(2)(i) of this section indicates typical and required time periods for EISs.

(c) *Programmatic environmental review (tiering)*. (1) Army agencies are encouraged to analyze actions at a programmatic level for those programs that are similar in nature or broad in scope (40 CFR 1502.4(c), 1502.20, and 1508.23). This level of analysis will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad programmatic EA or EIS has been prepared, any subsequent EIS or EA on an action included within the entire program or policy (particularly a site-specific action) need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action.<sup>2</sup> This subsequent

<sup>2</sup> As an example, an appropriate way to address diverse weapon system deployments would be to produce site-specific EAs or EISs for each major deployment installation, using the generic environmental effects of the weapon system

document will state where the earlier document is available.

(2) Army proponents are normally required to prepare many types of management plans that must include or be accompanied by appropriate NEPA analysis. NEPA analysis for these types of plans can often be accomplished with a programmatic approach, creating an analysis that covers a number of smaller projects or activities. In cases where such activities are adequately assessed as part of these normal planning activities, a REC can be prepared for smaller actions that cite the document in which the activities were previously assessed. Care must be taken to ensure that site-specific or case-specific conditions are adequately addressed in the existing programmatic document before a REC can be used, and the REC must reflect this consideration. If additional analyses are required, they can "tier" off the original analyses, eliminating duplication. Tiering, in this manner, is often applicable to Army actions that are long-term, multi-faceted, or multi-site.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS, the proponent initiates the scoping process (see Subpart G of this part for procedures and actions). This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping, process participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other NEPA documents. The scoping phase of the NEPA process, as part of project planning, will identify aspects of the proposal that are likely to have an effect or be controversial; and will ensure that the NEPA analyses are useful for a decision maker. For example, the early identification and initiation of permit or coordination actions can facilitate problem resolution, and, similarly, cumulative effects can be addressed early in the process and at the appropriate spatial and temporal scales.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include:

- (i) The size and type of the proposed action.
- (ii) Whether the proposed action is of regional or national interest.
- (iii) Degree of any associated environmental controversy.

identified in a programmatic EA or EIS prepared by the MATDEV.

(iv) Size of the affected environmental parameters.

(v) Significance of any effects on them.

(vi) Extent of prior environmental review.

(vii) Involvement of any substantive time limits.

(viii) Requirements by other laws for environmental review.

(ix) Cumulative impacts.

(3) Through scoping, many future controversies can be eliminated, and public involvement can be used to narrow the scope of the study, concentrating on those aspects of the analysis that are truly important.

(4) The proponent may incorporate scoping as part of the EA process, as well. If the proponent chooses a public involvement strategy, the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the "umbrella" that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

- (1) Clean Air Act, as amended (General Conformity Rule, 40 CFR parts 51 and 93).
- (2) Endangered Species Act.
- (3) NHPA, sections 106 and 110.
- (4) NAGPRA (Public Law 101-601, 104 Stat. 3048).

(5) Clean Water Act, including Section 404(b)(1).

(6) American Indian Religious Freedom Act.

(7) Fish and Wildlife Coordination Act.

(8) Comprehensive Environmental Response, Compensation, and Liability Act.

(9) Resource Conservation and Recovery Act.

(10) Pollution Prevention Act.

(11) The Sikes Act, Public Law 86-797, 74 Stat. 1052.

(12) Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (Executive Order 12856, 3 CFR, 1993 Comp., p. 616).

(13) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898, 3 CFR, 1994 Comp., p. 859).

(14) Indian Sacred Sites (Executive Order 13007, 3 CFR, 1996 Comp., p. 196).

(15) Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045, 3 CFR, 1997 Comp., p. 198).

(16) Federal Support of Community Efforts Along American Heritage Rivers (Executive Order 13061, 3 CFR, 1997 Comp., p. 221).

(17) Floodplain Management (Executive Order 11988, 3 CFR, 1977 Comp., p. 117).

(18) Protection of Wetlands (Executive Order 11990, 3 CFR, 1977 Comp., p. 121).

(19) Environmental Effects Abroad of Major Federal Actions (Executive Order 12114, 3 CFR, 1979 Comp., p. 356).

(20) Invasive Species (Executive Order 13112, 3 CFR, 1999 Comp., p. 159).

(21) AR 200-3, Natural Resources—Land, Forest, and Wildlife Management.

(22) Environmental analysis and documentation required by various state laws.

(23) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(24) Any permitting and licensing procedures required by federal and state law.

(25) Any installation and Army master planning functions and plans.

(26) Any installation management plans, particularly those that deal directly with the environment.

(27) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(28) Environmental Noise Management Program.

(29) Hazardous waste management plans.

(30) Integrated Cultural Resource Management Plan as required by AR 200-4 and DODD 4700.4, Natural Resources Management Program.

(31) Asbestos Management Plans.

(32) Integrated Natural Resource Management Plans, AR 200-3, Natural Resources—Land, Forest, and Wildlife Management, and DODD 4700.4, Natural Resources Management Program.

(33) Environmental Baseline Surveys.

(34) Programmatic Environment, Safety, and Health Evaluation (PESHE) as required by DOD 5000.2-R and DA Pamphlet 70-3, Army Acquisition Procedures, supporting AR 70-1, Acquisition Policy.

(35) The DOD MOU to Foster the Ecosystem Approach signed by CEQ, and DOD, on 15 December 1995; establishing the importance of “non-listed,” “non-game,” and “non-protected” species.

(36) Other requirements (such as health risk assessments), when efficiencies in the overall Army environmental program will result.

(f) *Integration into Army acquisition.* The Army acquisition community will integrate environmental analyses into decision-making, as required in this part ensuring that environmental considerations become an integral part of total program planning and budgeting, PEOs, and Program, Product, and Project Managers integrate the NEPA process early, and acquisition planning and decisions reflect national and Army environmental values and considerations. By integrating pollution prevention and other aspects of any environmental analysis early into the materiel acquisition process, the PEO and PM facilitate the identification of environmental cost drivers at a time when they can be most effectively controlled. NEPA program coordinators should refer to DA Pamphlet 70-3, Army Acquisition Procedures, and the Defense Acquisition Deskbook (DAD) for current specific implementation guidance, procedures, and POCs.

(g) *Relations with local, state, regional, and tribal agencies.* (1) Army installation, agency, or activity environmental officers or planners should establish a continuing relationship with other agencies, including the staffs of adjacent local, state, regional, and tribal governments and agencies. This relationship will promote cooperation and resolution of mutual land use and environment-related problems, and promote the concept of regional ecosystem management as well as general cooperative problem solving. Many of these “partners” will have specialized

expertise and access to environmental baseline data, which will assist the Army in day-to-day planning as well as NEPA-related issues. MOUs are encouraged to identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from state and area-wide planning and development agencies. Through this process, the proponent may gain insights on other agencies’ approaches to EAs, surveys, and studies applicable to the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

(2) In some cases, local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to reasonable alternatives or significant impacts associated with a proposed action. When appropriate, proponents of an action should determine whether these entities have an interest in becoming a cooperating agency (§ 651.45 (b) and 40 CFR 1501.6). If cooperating agency status is established, a memorandum of agreement is required to document specific expectations, roles, and responsibilities, including analyses to be performed, time schedules, availability of pre-decisional information, and other issues. Cooperating agencies may use their own funds, and the designation of cooperating agency status neither enlarges nor diminishes the decision-making status of any federal or non-federal entities (see CEQ Memorandum for Heads of Federal Agencies entitled “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” dated 28 July 1999, available from the President’s Council on Environmental Quality (CEQ), Executive Office of the President of the U.S.). In determining sufficient jurisdiction or expertise, CEQ regulations can be used as guidance.

(h) *The Army as a cooperating agency.* Often, other agencies take actions that can negatively impact the Army mission. In such cases, the Army may have some special or unique expertise or jurisdiction.

(1) The Army may be a cooperating agency (40 CFR 1501.6) in order to:

(i) Provide information or technical expertise to a lead agency.

(ii) Approve portions of a proposed action.

(iii) Ensure the Army has an opportunity to be involved in an action of another federal agency that will affect the Army.

(iv) Provide review and approval of the portions of EISs and RODs that affect the Army.

(2) Adequacy of an EIS is primarily the responsibility of the lead agency. However, as a cooperating agency with approval authority over portions of a proposal, the Army may adopt an EIS if review concludes the EIS adequately satisfies the Army’s comments and suggestions.

(3) If the Army is a major approval authority for the proposed action, the appropriate Army official may sign the ROD prepared by the lead agency, or prepare a separate, more focused ROD. If the Army’s approval authority is only a minor aspect of the overall proposal, such as issuing a temporary use permit, the Army need not sign the lead agency’s ROD or prepare a separate ROD.

(4) The magnitude of the Army’s involvement in the proposal will determine the appropriate level and scope of Army review of NEPA documents. If the Army is a major approval authority or may be severely impacted by the proposal or an alternative, the Army should undertake the same level of review as if it were the lead agency. If the involvement is limited, the review may be substantially less. The lead agency is responsible for overall supervision of the EIS, and the Army will attempt to meet all reasonable time frames imposed by the lead agency.

(5) If an installation (or other Army organization) should become aware of an EIS being prepared by another federal agency in which they may be involved within the discussion of the document, they should notify ASA(I&E) through the chain of command. ASA(I&E) will advise regarding appropriate Army participation as a cooperating agency, which may simply involve local coordination.

#### **§ 651.15 Mitigation and monitoring.**

(a) Throughout the environmental analysis process, the proponent will consider mitigation measures to avoid or minimize environmental harm. Mitigation measures include:

(1) Avoiding the impact altogether, by eliminating the action or parts of the action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect on the environment.

(4) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact, by replacing or providing substitute resources or environments. (Examples and further clarification are presented in Appendix C of this part.)

(b) When the analysis proceeds to an EA or EIS, mitigation measures will be clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal document implementing the action (for example, contracts, leases, or grants). Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document, will be budgeted and funded (or funding arranged) by the proponent, and will be identified, with the appropriate fund code, in the EPR (AR 200-1). Mitigations will be monitored through environmental compliance reporting, such as the ISR (AR 200-1) or the Environmental Quality Report. Mitigation measures are identified and funded in accordance with applicable laws, regulations, or other media area requirements.

(c) Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigation measures in such a manner, the FNSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the proponent must publish an NOI and prepare an EIS.

(d) Potential mitigation measures that appear practical, and are unobtainable within expected Army resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis to the maximum extent practicable. A number

of factors determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality. Although mission conflicts are inevitable, they are not necessarily insurmountable; and the proponent should be cautious about declaring all mitigations impractical and carefully consider any manpower requirements. The key point concerning both the manpower and cost constraints is that, unless money is actually budgeted and manpower assigned, the mitigation does not exist. Coordination by the proponent early in the process will be required to allow ample time to get the mitigation activities into the budget cycle. The project cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(e) Mitigation measures that were considered but rejected, including those that can be accomplished by other agencies, must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated impacts are significant.

(f) Proponents may request assistance with mitigation from cooperating non-Army agencies, when appropriate. Such assistance is appropriate when the requested agency was a cooperating agency during preparation of a NEPA document, or has the technology, expertise, time, funds, or familiarity with the project or the local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(g) The proponent agency or other appropriate cooperating agency will implement mitigations and other conditions established in the EA or EIS, or commitments made in the FNSI or ROD. Legal documents implementing the action (such as contracts, permits, grants) will specify mitigation measures to be performed. Penalties against a contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(h) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation (see Appendix C of this part for guidelines on implementing such a program). Whether adoption of a monitoring and enforcement program is

applicable (40 CFR 1505.2(c)) and whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(1) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(2) The outcome of the mitigation measure is uncertain (for example, new technology);

(3) Major environmental controversy remains associated with the selected alternative; or

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources). Proponents must follow local installation environmental office procedures to coordinate with appropriate federal, tribal, state, or local agencies responsible for a particular program to determine what would constitute "adverse effects."

(i) Monitoring is an integral part of any mitigation system.

(1) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, and required provisions are enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, or an in-house (Army) lead agency. Detailed guidance is contained in Appendix C of this part. The proponent is ultimately responsible for performing any mitigation activities. All monitoring results will be sent to the installation Environmental Office; in the case of the Army Reserves, the Regional Support Commands (RSCs); and, in the case of the National Guard, the NGB.

(2) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. While quantitative measurements are desired, qualitative measures may be required. The objective is to obtain enough information to judge the effect of the mitigation. In establishing the monitoring system, the responsible agent should coordinate the monitoring with the Environmental Office. Specific steps and guidelines are included in Appendix C of this part.

(j) The monitoring program, in most cases, should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated. Technical results from the analysis should be summarized by the proponent and coordinated with the installation Environmental Office. Subsequent coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the Environmental Office.

(k) If the mitigations are effective, the monitoring should be continued as long as the mitigations are needed to address impacts of the initial action. If the mitigations are ineffective, the proponent and the responsible group should re-examine the mitigation measures, in consultation with the Environmental Office and appropriate experts, and resolve the inadequacies of the mitigation or monitoring. Professionals with specialized and recognized expertise in the topic or issue, as well as concerned citizens, are essential to the credibility of this review. If a different program is required, then a new system must be established. If ineffective mitigations are identified which were required to reduce impact below significance levels (§ 651.35 (g)), the proponent may be required to publish an NOI and prepare an EIS (paragraph (c) of this section).

(l) Environmental monitoring report. An environmental monitoring report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects. Further guidance and clarification are included in Appendix C of this part.

#### **§ 651.16 Cumulative impacts.**

(a) NEPA analyses must assess cumulative effects, which are the impact on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by federal, non-federal agencies, and private parties must be considered (40 CFR 1508.7).

(b) The scoping process should be used to identify possible cumulative impacts. The proponent should also contact appropriate off-post officials, such as tribal, state, county, or local planning officials, to identify other actions that should be considered in the cumulative effects analysis.

(c) A suggested cumulative effects approach is as follows:

(1) Identify the boundary of each resource category. Boundaries may be geographic or temporal. For example, the Air Quality Control Region (AQCR) might be the appropriate boundary for the air quality analysis, while a watershed could be the boundary for the water quality analysis. Depending upon the circumstances, these boundaries could be different and could extend off the installation.

(2) Describe the threshold level of significance for that resource category. For example, a violation of air quality standards within the AQCR would be an appropriate threshold level.

(3) Determine the environmental consequence of the action. The analysis should identify the cause and effect relationships, determine the magnitude and significance of cumulative effects, and identify possible mitigation measures.

#### **§ 651.17 Environmental justice.**

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 11 February 1994, 3 CFR, 1994 Comp., p. 859) requires the

proponent to determine whether the proposed action will have a disproportionate impact on minority or low-income communities, both off-post and on-post.

### **Subpart C—Records and Documents**

#### **§ 651.18 Introduction.**

NEPA documentation will be prepared and published double-sided on recycled paper. The recycled paper symbol should be presented on the inside of document covers.

#### **§ 651.19 Record of environmental consideration.**

A Record of Environmental Consideration (REC) is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX, or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the above information is included. To reduce paperwork, a REC can reference such documents as real estate Environmental Baseline Studies (EBSs) and other documents, as long as they are readily available for review. While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental laws and regulations. Figure 3 illustrates a possible format for the REC as follows:

| <b>Record of Environmental Consideration (REC)</b>   |   |
|--|---|
| <b>To: (Environmental Officer)</b>   |   |
| <b>From: (Proponent)</b>   |   |
| <b>Project title:</b>  |   |
| <b>Brief description:</b>  |   |
| <b>Anticipated date and/or duration of proposed action: (Month/year)</b>   |   |
| <b>Reason for using record of environmental consideration (choose one):</b>  |   |
| a. Adequately covered in an (EA, EIS) entitled _____, dated _____  |   |
| The EA/EIS may be reviewed at _____, (location)  |   |
| OR,  |   |
| b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because _____ |   |
| _____  |   |
| _____  |   |
| <b>Date</b>  | <b>Project Proponent</b>                      |
| _____  |   |
| <b>Date</b>  | <b>Installation Environmental Coordinator</b> |
| <b>Variation from this format is acceptable provided basic information and approvals are included in any modified document.</b>  |   |

**Figure 3. Suggested format for Record of Environmental Consideration.**

#### **§ 651.20 Environmental assessment.**

An EA is intended to assist agency planning and decision-making. While required to assess environmental impacts and evaluate their significance, it is routinely used as a planning document to evaluate environmental impacts, develop alternatives and mitigation measures, and allow for agency and public participation. It:

(a) Briefly provides the decision maker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(b) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(c) Facilitates preparation of an EIS, if required.

(d) Includes brief discussions of the need for the proposed action, alternatives to the proposed action (NEPA, section 102(2)(e)), environmental impacts, and a listing of persons and agencies consulted (see Subpart E of this part for requirements).

(e) The EA provides the proponent, the public, and the decision maker with sufficient evidence and analysis for determining whether environmental impacts of a proposed action are potentially significant. An EA is substantially less rigorous and costly than an EIS, but requires sufficient detail to identify and ascertain the

significance of expected impacts associated with the proposed action and its alternatives. The EA can often provide the required "hard look" at the potential environmental effects of an action, program, or policy within 1 to 25 pages, depending upon the nature of the action and project-specific conditions.

#### **§ 651.21 Finding of no significant impact.**

A Finding of No Significant Impact (FNSI) is a document that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, that an EIS will not be prepared. The FNSI includes a summary of the EA and notes any related NEPA documentation. If the EA is attached, the FNSI need not repeat any of the EA discussion, but may incorporate it by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in § 651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and

recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

#### **§ 651.22 Notice of intent.**

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

(a) Describe the proposed and alternative actions.

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

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

#### **§ 651.23 Environmental impact statement.**

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

#### **§ 651.24 Supplemental EAs and supplemental EISs.**

As detailed in § 651.5(g) and in 40 CFR 1502.9(c), proposed actions may

require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

#### **§ 651.25 Notice of availability.**

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

#### **§ 651.26 Record of decision.**

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

#### **§ 651.27 Programmatic NEPA analyses.**

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

### **Subpart D—Categorical Exclusions**

#### **§ 651.28 Introduction.**

Categorical Exclusions (CXs) are categories of actions with no individual or cumulative effect on the human or natural environment, and for which

neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact.

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

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

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

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

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

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

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

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

(3) Imposition of uncertain or unique environmental risks.

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

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

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

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

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

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

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

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

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

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

(14) Introduction/employment of unproven technology.

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

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

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

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

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

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

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC.

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

This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows:

- (1) "USFWS concurred in informal coordination that E/T species will not be affected".
- (2) "Corps of Engineers determined action is covered by nationwide general permit".
- (3) "SHPO concurred with action".
- (4) "State Department of Natural Resources concurred that no effect to state sensitive species is expected".

#### § 651.30 CX actions.

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

#### § 651.31 Modification of the CX list.

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

### Subpart E—Environmental Assessment

#### § 651.32 Introduction.

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

- (1) Is not an emergency (§ 651.11(b)).
  - (2) Is not exempt from (or an exception to) NEPA (§ 651.11(a)).
  - (3) Does not qualify as a CX (§ 651.11(c)).
  - (4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19).
  - (5) Does not normally require an EIS (§ 651.42).
- (b) An EA can be 1 to 25 pages in length and be adequate to meet the

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

#### § 651.33 Actions normally requiring an EA.

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

- (a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.
- (b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.
- (c) Changes to established installation land use that generate impacts on the environment.
- (d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.
- (e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.
- (f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedent (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.
- (g) Development and approval of installation master plans.
- (h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).
- (i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

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

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

(l) Production of hazardous or toxic materials.

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

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

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

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

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

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

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

#### § 651.34 EA components.

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

- (a) Signature (Review and Approval) page.
- (b) Purpose and need for the action.
- (c) Description of the proposed action.
- (d) Alternatives considered. The alternatives considered, including appropriate consideration of the "No Action" alternative, the "Proposed Action," and all other appropriate and reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria



for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

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

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

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

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

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

#### § 651.35 Decision process.

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

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

(c) The FNSI must contain the following:

- (1) The name of the action.
- (2) A brief description of the action (including any alternatives considered).
- (3) A short discussion of the anticipated environmental effects.
- (4) The facts and conclusions that have led to the FNSI.
- (5) A deadline and POC for further information or receipt of public comments (see § 651.47).

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

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

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

who may be affected, and others deemed appropriate.

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

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

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

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

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

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

#### § 651.36 Public involvement.

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

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

- (1) Magnitude of the proposed project/action.
- (2) Extent of anticipated public interest, based on experience with similar proposals.
- (3) Urgency of the proposal.
- (4) National security classification.
- (5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

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

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

- (1) Dissemination of information to local and installation communities.
- (2) Invitation and incorporation of public comments on Army actions.
- (3) Consultation with appropriate persons and agencies.

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

#### § 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is

open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

#### § 651.38 Existing environmental assessments.

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

#### § 651.39 Significance.

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

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

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

#### Subpart F—Environmental Impact Statement

##### § 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the

programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making.

(b) The NEPA process should support sound, informed, and timely (early) decision-making; not produce encyclopedic documents. CEQ guidance (40 CFR 1502.7) should be followed, establishing a page limit of 150 pages (300 pages for complex projects). To the extent practicable, EISs will "incorporate by reference" any material that is reasonably available for inspection by potentially interested persons within the time allowed for comment. The incorporated material shall be cited in the EIS and its content will be briefly described. Material based on proprietary data, that is itself not available for review and comment, shall not be incorporated by reference.

##### § 651.41 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to:

- (a) Significantly affect environmental quality, or public health or safety.
- (b) Significantly affect historic (listed or eligible for listing in the National Register of Historic Places, maintained by the National Park Service, Department of Interior), or cultural, archaeological, or scientific resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Significantly impact prime and unique farmlands located off-post, wetlands, floodplains, coastal zones, or ecologically important areas, or other areas of unique or critical environmental sensitivity.

(d) Result in significant or uncertain environmental effects, or unique or unknown environmental risks.

(e) Significantly affect a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials

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

that may have significant environmental impact.

(i) Be highly controversial from an environmental standpoint.

(j) Cause loss or destruction of significant scientific, cultural, or historical resources.

#### **§ 651.42 Actions normally requiring an EIS.**

The following actions normally require an EIS:

(a) Significant expansion of a military facility or installation.

(b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

(d) Land acquisition, leasing, or other actions that may lead to significant changes in land use.

(e) Realignment or stationing of a brigade or larger table of organization equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic, with no significant biophysical environmental impact).

(f) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(g) Major changes in the mission or facilities either affecting environmentally sensitive resources (see § 651.29(c)) or causing significant environmental impact (see § 651.39).

#### **§ 651.43 Format of the EIS.**

The EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following (detailed content is discussed in Appendix E of this part):

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for the action.

(e) Alternatives considered, including proposed action and no-action alternative.

(f) Affected environment (baseline conditions) that may be impacted.

(g) Environmental and socioeconomic consequences.

(h) List of preparers.

(i) Distribution list.

(j) Index.

(k) Appendices (as appropriate).

#### **§ 651.44 Incomplete information.**

When the proposed action will have significant adverse effects on the human

environment, and there is incomplete or unavailable information, the proponent will ensure that the EIS addresses the issue as follows:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the Army will include the information in the EIS.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (for example, the means for obtaining it are beyond the state of the art), the proponent will include in the EIS:

(1) A statement that such information is incomplete or unavailable.

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

#### **§ 651.45 Steps in preparing and processing an EIS.**

(a) *NOI*. The NOI initiates the formal scoping process and is prepared by the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The OCLL will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) The NOI transmittal package includes the NOI, the press release, information for Members of Congress, memorandum for correspondents, and a "questions and answers" (Q&A) package. The NOI shall clearly state the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(3) The proponent forwards the NOI and the transmittal package to the appropriate HQDA (ARSTAF) proponent for coordination and staffing

prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (ODEP), OCLL, TJAG, OGC, OCPA, relevant MACOMs, and others). Only the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA(ESOH)) can authorize release of an NOI to the FR for publication, unless that authority has been delegated. A cover letter (similar to Figure 5 in § 651.46) will accompany the NOI. An example NOI is shown in Figure 6 in § 651.46.

(b) *Lead and cooperating agency determination*. As soon as possible after the decision is made to prepare an EIS, the proponent will contact appropriate federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In the case of State ARNG actions that have federal funding, the NGB will be the lead agency for the purpose of federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping*. The proponent will begin the scoping process described in § 651.48. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS preparation and processing*. Prior to publication of a DEIS, the proponent can prepare a PDEIS, allowing for internal organization and the resolution of internal Army consideration, prior to a formal request for comments.

(1) *PDEIS*. Based on information obtained and decisions made during the scoping process, the proponent may prepare the PDEIS. To expedite headquarters review, a summary document is also required to present the purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring. This summary will be forwarded, through the chain of command, to ODEP, the DASA(ESOH), and other interested offices for review and comment. If requested by these offices, a draft PDEIS can be provided following review of the summary. The PDEIS is not normally made available to the public and should be stamped "For Internal Use Only-Deliberative Process."

(2) *DEIS*. The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review and those for filing with the EPA. Distribution may include interested congressional delegations and committees, governors, national environmental organizations, the DOD and federal agency headquarters, and

other selected entities. The Army proponent will finalize the FR NOA, the proposed news release, and the EPA filing letter for signature of the DASA (ESOH). A revised process summary of the contents (purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring) will accompany the DEIS to HQDA for review and comment. If the action has been delegated by the ASA (I&E), only the process summary is required, unless the DEIS is requested by HQDA.

(i) When the DEIS has been formally approved, the preparer can distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneously with, filing with EPA. The list includes federal, state, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(ii) Following approval, the proponent will forward five copies of the DEIS to EPA for filing and notice in the FR; publication of EPA's NWR commences the public comment period. The proponent will distribute the DEIS prior to, or simultaneously with, filing with EPA. Distribution will include appropriate federal, state, regional, and local agencies; Native American tribes; and organizations and private citizens who have expressed interest in the proposed action.

(iii) For proposed actions that are environmentally controversial, or of national interest, the OCLL shall be notified of the pending action so that appropriate congressional coordination may be effected. The OCPA will coordinate public announcements through its chain of command. Proponents will ensure that the DEIS and subsequent NEPA documents are provided in electronic format to allow for maximum information flow throughout the process.

(e) *Public review of DEIS.* The DEIS public comment period will be no less than 45 days. If the statement is unusually long, a summary of the DEIS may be circulated, with an attached list of locations where the entire DEIS may be reviewed (for example, local public libraries). Distribution of the complete DEIS should be accompanied by the announcement of availability in established newspapers of major circulation, and must include the following:

(1) Any federal agency that has jurisdiction by law or special expertise with respect to any environmental

impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.

(2) The applicant, if the proposed action involves any application of proposal for the use of Army resources.

(3) Any person, organization, or agency requesting the entire DEIS.

(4) Any Indian tribes, Native Alaskan organizations, or Native Hawaiian organizations potentially impacted by the proposed action.

(5) Chairs/co-chairs of any existing citizen advisory groups (for example, Restoration Advisory Boards).

(f) *Public meetings or hearings.* Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6(c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings at least 15 days prior to the meeting.

(g) *Response to comments.* Comments will be incorporated in the DEIS by modification of the text and/or written explanation. Where possible, similar comments will be grouped for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(h) *The FEIS.* If the changes to the DEIS are exclusively clarifications or minor factual corrections, a document consisting of only the DEIS comments, responses to the comments, and errata sheets may be prepared and circulated. If such an abbreviated FEIS is anticipated, the DEIS should contain a statement advising reviewers to keep the document so they will have a complete set of "final" documents. The final EIS to be filed with EPA will consist of a complete document containing a new cover sheet, the errata sheets, comments and responses, and the text of the draft EIS. Coordination, approval, filing, and public notice of an abbreviated FEIS are the same as for a draft DEIS. If extensive modifications are warranted, the proponent will prepare a new, complete FEIS. Preparation, coordination, approval, filing, and public notice of the FEIS are the same as the process outlined for the DEIS. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. One copy (electronic) of the FEIS will be forwarded to ODEP. The FEIS will clearly identify the Army's preferred alternative unless prohibited by law.

(i) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published the NWR of the FEIS in the FR, or 90 days after the NWR of the DEIS, whichever is later. EPA

publishes NWRs weekly. Those NWRs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(j) *ROD.* The ROD documents the decision made and the basis for that decision.

(1) The proponent will prepare a ROD for the decision maker's signature, which will:

(i) Clearly state the decision by describing it in sufficient detail to address the significant issues and ensure necessary long-term monitoring and execution.

(ii) Identify all alternatives considered by the Army in reaching its decision, specifying the environmentally preferred alternative(s). The Army will discuss preferences among alternatives based on relevant factors including environmental, economic, and technical considerations and agency statutory missions.

(iii) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(iv) Discuss how those considerations entered into the final decision.

(v) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not.

(vi) Identify or incorporate by reference the mitigation measures that were incorporated into the decision.

(2) Implementation of the decision may begin immediately after approval of the ROD.

(3) The proponent will prepare an NOA to be published in the FR by the HQDA proponent, following congressional notification. Processing and approval of the NOA is the same as for an NOI.

(4) RODs will be distributed to agencies with authority or oversight over aspects of the proposal, cooperating agencies, appropriate congressional, state, and district offices, all parties that are directly affected, and others upon request.

(5) One electronic copy of the ROD will be forwarded to ODEP.

(6) A monitoring and enforcement program will be adopted and summarized for any mitigation (see Appendix C of this part).

(k) *Pre-decision referrals.* 40 CFR part 1504 specifies procedures to resolve federal agency disagreements on the

environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

(l) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

(m) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS and the ROD. Implementation of the mitigation plan is the responsibility of the proponent (see Appendix C of this part). The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action. For weapon system acquisition programs, the proponent will coordinate with the appropriate

responsible parties before identifying potential mitigations in the EIS/ROD.

(n) *Implementing the decision.* The proponent will provide for monitoring to assure that decisions are carried out, particularly in controversial cases or environmentally sensitive areas (Appendix C of this part). Mitigation and other conditions that have been identified in the EIS, or during its review and comment period, and made part of the decision (and ROD), will be implemented by the lead agency or other appropriate consenting agency. The proponent will:

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Ensure that the proponent's project budget includes provisions for mitigations.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(5) Make results of relevant monitoring available to citizens advisory groups, and others that expressed such interest during the EIS process.

#### **§ 651.46 Existing EISs.**

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this part. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3. Figures 4 through 8 to Subpart F of part 651 follow:

**BILLING CODE 3710-01-P**

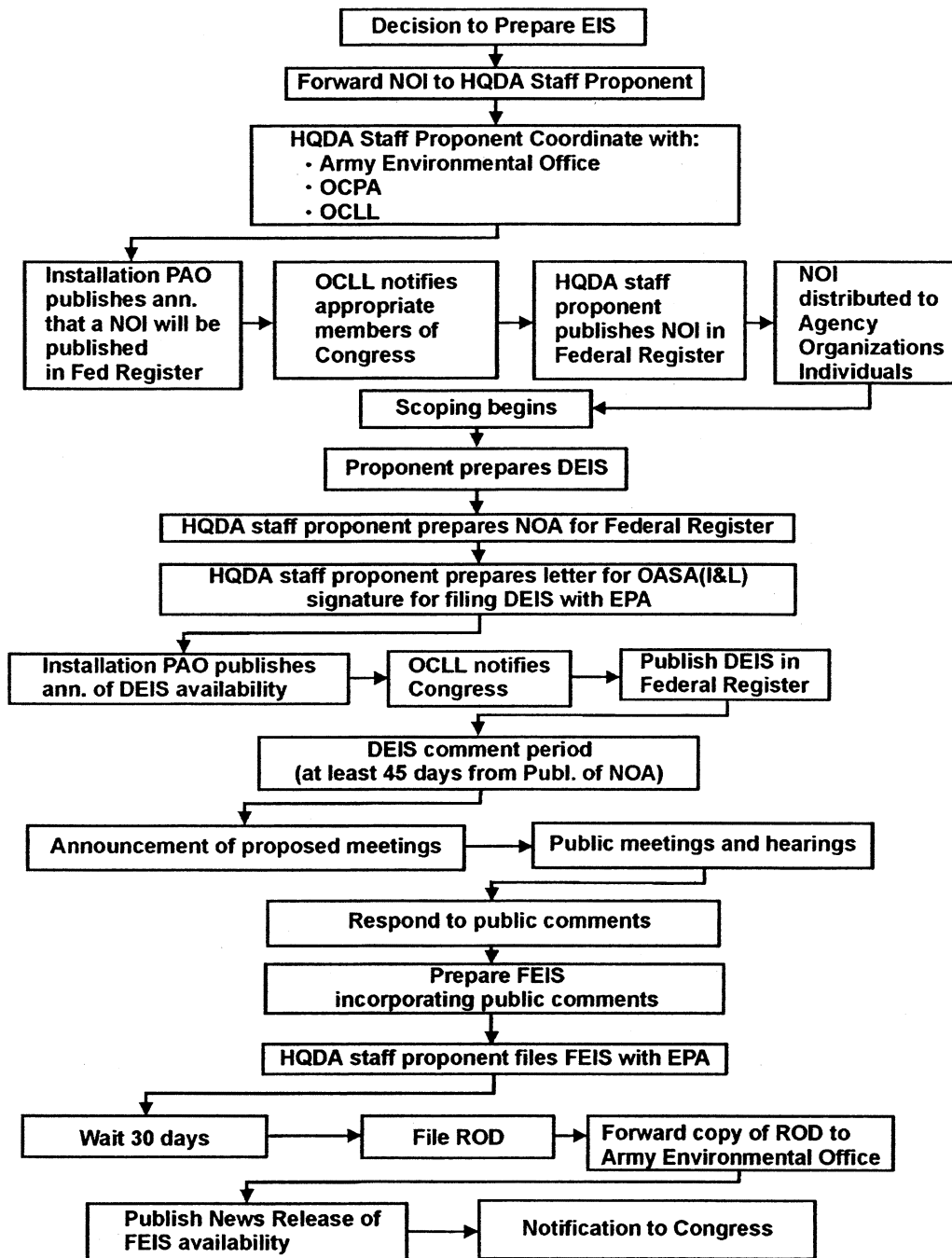


Figure 4. Steps in preparing and processing an environmental impact statement.



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110**

January 14, 1999

Director  
Office of the Federal Register  
National Archives and Records  
Administration  
Washington, D. C. 20408

Dear Sir:

The enclosed notice of intent (NOI) to prepare an Environmental Impact Statement for the Fort Sill Real Property Master Plan is submitted for publication in the Notice section of the Federal Register.

Please publish this NOI in the earliest possible edition of the Federal Register. This notice is required for the Department of the Army to perform its military mission and to comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

To confirm publication date of this notice or for further information, please contact Mr. Greg Brewer at (703) 692-9220.

Please bill this to charge code 3710-08-M.

Sincerely,

A handwritten signature in cursive script that reads "Raymond J. Fatz".

Raymond J. Fatz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I,L&E)

Enclosure

Figure 5. Sample Notice of Intent Transmittal Letter.

**DEPARTMENT OF DEFENSE****Department of the Army****Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, Okla.****AGENCY:** Department of the Army, DOD**ACTION:** Notice of Intent

**SUMMARY:** This announced the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Okla., to prepare an Environmental Impact Statement (EIS) in support of revisions to the installations' Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

**ADDRESSES:** Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT-PE-E (J. Randolph), P.O. Box 61, Tulsa, Okla. 74121-0061.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at (580) 442-3409.

**SUPPLEMENTARY INFORMATION:** The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS that will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternative locations for specific projects, partial implementation of the specific project, or other modifications of the specific project. The alternatives will be developed during preparation of the Draft EIS (DEIS) as a result of public input and of environmental analysis of the proposals within the plan.

**SIGNIFICANT ISSUES:** The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited with the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze will include the following:

1. Development of a large deployment marshaling area near an existing railhead facility; Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.
2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.
3. Probably construction projects: Whereby, the following projects would be complete: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a contingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

DATED: January 14, 1999


  
Raymond J. Fatz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Figure 6. Sample of Notice of Intent.





**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110**

March 25, 1999

Director  
Office of Federal Activities  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D. C. 20044

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement for the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the national Environmental Policy Act (40 CFR, Parts 1500-1508).

The point of contact for this action is Ms. Theresa Persick-Arnold at (703) 697-0216.

Sincerely,

  
Raymond J. Fatz

Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Enclosures

Figure 7. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Environmental Protection Agency.



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE  
(ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

Raymond J. Fatz

Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

BILLING CODE 3710-01-C

**Subpart G—Public Involvement and the Scoping Process**

**§ 651.47 Public involvement.**

(a) As a matter of Army policy, public involvement is required for all EISs, and is strongly encouraged for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate

adjustments as it proceeds (AR 360-5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with White House Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these

gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335-15).

#### **§ 651.48 Scoping process.**

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process should:

(1) Eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) Make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decisionmaking process.

(c) Proper scoping will reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will

use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 04, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.49, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process (including public involvement) will depend upon:

(1) The size and type of the proposed action.

(2) Whether the proposed action is of regional or national interest.

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in § 651.49, § 651.50, and § 651.51, respectively.

#### **§ 651.49 Preliminary phase.**

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the

scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including:

(1) The scoping process itself.

(2) Collection or analysis of environmental data, including required studies.

(3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

#### **§ 651.50 Public interaction phase.**

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified in paragraph (a) of this section, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, in any technical area where

foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of "any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

#### **§ 651.51 The final phase.**

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the

analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 651.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

#### **§ 651.52 Aids to information gathering.**

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web (WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating "virtual" public participation, as well as the dissemination of analyses and information as they evolve.

#### **§ 651.53 Modifications of the scoping process.**

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

### **Subpart H—Environmental Effects of Major Army Action Abroad**

#### **§ 651.54 Introduction.**

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp., p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes; planning for military exercises, training plans, and military operations.

#### **§ 651.55 Categorical exclusions.**

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2–5(c).

#### **§ 651.56 Responsibilities.**

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(IE) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

(2) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and SOFAs.

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed on those actions reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) on significant or sensitive actions affecting relations with another nation.

(d) TJAG, in coordination with the OGC, will provide advice and assistance concerning the requirements of Executive Order 12114 and DODD 6050.7.

(e) The Chief of Public Affairs will provide advice and assistance on public affairs as necessary.

### **Appendix A to Part 651—References**

Military publications and forms are accessible from a variety of sources through the use of electronic media or paper products. In most cases, electronic publications and forms that are associated with military organizations can be accessed at various address or web sites on the Internet. Since electronic addresses can frequently change, or similar web links can also be modified at several locations on the Internet, it's advisable to access those sites using a search engine that is most accommodative, yet beneficial to the user. Additionally, in an effort to facilitate the public right to information, certain publications can also be purchased through the National Technical Information Service (NTIS). Persons interested in obtaining certain types of publications can write to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

#### *Section I—Required Publications*

AR 360–5

Army Public Affairs, Public Information.

#### *Section II—Related Publications*

A related publication is merely a source of additional information. The user does not have to read it to understand this part.

AR 5–10

Reduction and Realignment Actions.

- AR 11-27  
Army Energy Program.
- AR 95-50  
Airspace and Special Military Operation Requirements.
- AR 140-475  
Real Estate Selection and Acquisition: Procedures and Criteria.
- AR 200-1  
Environmental Protection and Enhancement.
- AR 200-3  
Natural Resources—Land, Forest, and Wildlife Management.
- AR 200-4  
Cultural Resources Management.
- AR 210-10  
Administration.
- AR 210-20  
Master Planning for Army Installations.
- AR 335-15  
Management Information Control System.
- AR 380-5  
Department of the Army Information Security Program.
- AR 385-10  
Army Safety Program.
- AR 530-1  
Operations Security (OPSEC).
- DA PAM 70-3  
Army Acquisition Procedures.
- Defense Acquisition Deskbook  
An electronic knowledge presentation system available through the Deputy Under Secretary of Defense (Acquisition Reform) and the Office of the Under Secretary of Defense (Acquisition and Technology).
- DOD 5000.2-R  
Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.
- DODD 4100.15  
Commercial Activities Program.
- DODD 4700.4  
Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).
- DODD 6050.7  
Environmental Effects Abroad of Major Department of Defense Actions.
- DODI 4715.9  
Environmental Planning and Analysis
- Executive Order 11988  
Floodplain Management, 3 CFR, 1977 Comp., p. 117
- Executive Order 11990  
Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.
- Executive Order 12114  
Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 comp., p. 356.
- Executive Order 12778  
Civil Justice Reform, 3 CFR, 1991 Comp., p. 359.
- Executive Order 12856  
Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 CFR, 1993 Comp., p. 616.
- Executive Order 12861  
Elimination of One-Half of Executive Branch Internal Regulations, 3 CFR, 1993 Comp., p. 630.
- Executive Order 12866  
Regulatory Planning and Review, 3 CFR, 1993 Comp., p. 638.
- Executive Order 12898  
Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 3 CFR, 1994 Comp., p. 859.
- Executive Order 13007  
Indian Sacred Sites, 3 CFR, 1996 Comp., p. 196.
- Executive Order 13045  
Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR, 1997 Comp., p. 198.
- Executive Order 13061  
Federal Support of Community Efforts Along American Heritage Rivers, 3 CFR, 1997 Comp., p. 221.
- Executive Order 13083  
Federalism, 3 CFR, 1998 Comp., p. 146.
- Public Laws: American Indian Religious Freedom Act.  
42 U.S.C. 1996.
- Clean Air Act  
As amended (42 U.S.C. 7401, *et seq.*).
- Clean Water Act of 1977  
Public Law 95-217, 91 Stat. 1566 and Public Law 96-148, Sec. 1(a)-(c), 93 Stat. 1088.  
Comprehensive Environmental Response, Compensation, and Liability Act of 1980.  
As amended (CERCLA, Superfund) (42 U.S.C. 9601 *et seq.*) Endangered Species Act of 1973.  
Public Law 93-205, 87 Stat. 884.
- Fish and Wildlife Coordination Act  
Public Law 85-624, Sec. 2, 72 Stat. 563 and Public Law 89-72, Sec. 6(b), 79 Stat. 216.
- National Environmental Policy Act of 1969  
Public Law 91-190, 83 Stat. 852.
- National Historic Preservation Act  
Public Law 89-665, 80 Stat. 915.
- Native American Graves Protection and Repatriation Act  
Public Law 101-601, 104 Stat. 3048.
- Pollution Prevention Act of 1990  
Public Law 101-508, Title VI, Subtitle G, 104 Stat. 13880-321.
- Resource Conservation and Recovery Act of 1976  
Public Law 94-580, 90 Stat. 2795.
- Sikes Act  
Public Law 86-797, 74 Stat. 1052.
- Note.** The following CFRs may be found in your legal office or law library. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20401.
- 36 CFR Part 800  
Advisory Council on Historic Preservation.
- 40 CFR Parts 1500-1508  
Council on Environmental Quality.
- Section III—Prescribed Forms*  
This section contains no entries.
- Section IV—Referenced Forms*  
DA Form 2028  
Recommended Changes to Publications and Blank Forms.  
DD Form 1391  
Military Construction Project Data.
- Appendix B to Part 651—Categorical Exclusions**
- Section I—Screening Criteria*  
Before any CXs can be used, Screening Criteria as referenced in § 651.29 must be met.
- Section II—List of CXs*  
(a) For convenience only, the CXs are grouped under common types of activities (for example, administration/ operation, construction/demolition, and repair and maintenance). Certain CXs require a REC, which will be completed and signed by the proponent. Concurrence on the use of a CX is required from the appropriate environmental officer (EO), and that signature is required on the REC. The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be sent, through channels, to the ASA (I&E). Subordinate Army headquarters may not modify the CX list through supplements to this part. Proposed modifications to the list of CXs will be published in the FR by HQDA, to provide opportunity for public comment.  
(b) Administration/operation activities:  
(1) Routine law and order activities performed by military/military police and physical plant protection and security personnel, and civilian natural resources and environmental law officers.  
(2) Emergency or disaster assistance provided to federal, state, or local entities (REC required).  
(3) Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated (subject to previous NEPA review).  
(4) Proposed activities and operations to be conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will

remain within established permit limits, if any (REC required).

(5) Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

(6) Routinely conducted recreation and welfare activities not involving off-road recreational vehicles.

(7) Deployment of military units on a temporary duty (TDY) or training basis where existing facilities are used for their intended purposes consistent with the scope and size of existing mission.

(8) Preparation of administrative or personnel-related studies, reports, or investigations.

(9) Approval of asbestos or lead-based paint management plans drafted in accordance with applicable laws and regulations (REC required).

(10) Non-construction activities in support of other agencies/organizations involving community participation projects and law enforcement activities.

(11) Ceremonies, funerals, and concerts. This includes events such as state funerals, to include flyovers.

(12) Reductions and realignments of civilian and/or military personnel that fall below the thresholds for reportable actions as prescribed by statute (10 U.S.C. 2687) and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to implement (REC required). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations (REC required).

(13) Actions affecting Army property that fall under another federal agency's list of categorical exclusions when the other federal agency is the lead agency (decision maker), or joint actions on another federal agency's property that fall under that agency's list of categorical exclusions (REC required).

(14) Relocation of personnel into existing federally-owned (or state-owned in the case of ARNG) or commercially-leased space, which does not involve a substantial change in the supporting infrastructure (for example, an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase is an example of substantial change) (REC required).

(c) Construction and demolition:

(1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

(2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

(d) Cultural and natural resource management activities:

(1) Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).

(2) Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with USACE permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and stormwater control structures (REC required).

(3) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations.

(4) Studies, data collection, monitoring and information gathering that do not involve major surface disturbance. Examples include topographic surveys, bird counts, wetland mapping, and other resources inventories (REC required).

(5) Maintenance of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs.

(e) Procurement and contract activities:

(1) Routine procurement of goods and services (complying with applicable procedures for sustainable or "green" procurement) to support operations and infrastructure, including routine utility services and contracts.

(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

(3) Conversion of commercial activities under the provisions of AR 5-20. This includes only those actions that do not change the actions or the missions of the organization or alter the existing land-use patterns.

(4) Modification, product improvement, or configuration engineering design change to materiel, structure, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (Title 10, U.S.C., Section 2403. "Major weapon systems: Contractor guarantees"), and does not result in any unusual disposal requirements.

(6) Acquisition or contracting for spares and spare parts, consistent with the approved Technical Data Package (TDP).

(7) Modification and adaptation of commercially available items and products for military application (for example, sportsman's products and wear such as holsters, shotguns, sidearms, protective shields, etc.), as long as modifications do not alter the normal impact to the environment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers

and industry (such as rubber bullets, stun grenades, smoke bombs, etc.) for military police and crowd control activities where there is no change from the original product design and there are no unusual disposal requirements. The development and use by the military of non-lethal munitions and restraints which are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) Real estate activities:

(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (REC required).

(2) Disposal of excess easement areas to the underlying fee owner (REC required).

(3) Transfer of real property administrative control within the Army, to another military department, or to other federal agency, including the return of public domain lands to the Department of Interior, and reporting of property as excess and surplus to the GSA for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for those systems on property that has been declared excess and proposed for disposal (REC required).

(5) Acquisition of real property (including facilities) where the land use will not change substantially or where the land acquired will not exceed 40 acres and the use will be similar to current or ongoing Army activities on adjacent land (REC required).

(6) Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly (REC required).

(g) Repair and maintenance activities:

(1) Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to: Removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint or work on historic structures).

(2) Routine repairs and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to: grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original conditions; pruning vegetation, removal of dead, diseased, or damaged trees and cleaning culverts; and minor soil stabilization activities.

(3) Routine repair and maintenance of equipment and vehicles (for example, autos, tractors, lawn equipment, military vehicles, etc.) which is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles. This does not include depot maintenance of unique military equipment.

(h) Hazardous materials/hazardous waste management and operations:

(1) Use of gauging devices, analytical instruments, and other devices containing sealed radiological sources; use of industrial radiography; use of radioactive material in medical and veterinary practices; possession of radioactive material incident to performing services such as installation, maintenance, leak tests, and calibration; use of uranium as shielding material in containers or devices; and radioactive tracers (REC required).

(2) Immediate responses in accordance with emergency response plans (for example, Spill Prevention Control and Countermeasure Plan (SPCCP)/Installation Spill Contingency Plan (ISCP), and Chemical Accident and Incident Response Plan) for release or discharge of oil or hazardous materials/substances; or emergency actions taken by Explosive Ordnance Demolition (EOD) detachment or Technical Escort Unit.

(3) Sampling, surveying, well drilling and installation, analytical testing, site preparation, and intrusive testing to determine if hazardous wastes, contaminants, pollutants, or special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance) are present (REC required).

(4) Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance), and/or hazardous waste that complies with EPA, Army, or other regulatory agency requirements. This CX is not applicable to new construction of facilities for such management purposes.

(5) Research, testing, and operations conducted at existing enclosed facilities consistent with previously established safety levels and in compliance with applicable federal, state, and local standards. For facilities without existing NEPA analysis, including contractor-operated facilities, if the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.

(6) Reutilization, marketing, distribution, donation, and resale of items, equipment, or materiel; normal transfer of items to the Defense Logistics Agency. Items, equipment, or materiel that have been contaminated with hazardous materials or wastes will be adequately cleaned and will conform to the applicable regulatory agency's requirements.

(i) Training and testing:

(1) Simulated war games (classroom setting) and on-post tactical and logistical exercises involving units of battalion size or smaller, and where tracked vehicles will not be used (REC required to demonstrate coordination with installation range control and environmental office).

(2) Training entirely of an administrative or classroom nature.

(3) Intermittent on-post training activities (or off-post training covered by an ARNG land use agreement) that involve no live fire or vehicles off established roads or trails. Uses include, but are not limited to, land navigation, physical training, Federal

Aviation Administration (FAA) approved aerial overflights, and small unit level training.

(j) Aircraft and airfield activities:

(1) Infrequent, temporary (less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate (REC required).

(2) Flying activities in compliance with Federal Aviation Administration Regulations and in accordance with normal flight patterns and elevations for that facility, where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been subject to NEPA public review.

(3) Installation, repair, or upgrade of airfield equipment (for example, runway visual range equipment, visual approach slope indicators).

(4) Army participation in established air shows sponsored or conducted by non-Army entities on other than Army property.

### Appendix C to Part 651—Mitigation and Monitoring

(a) The CEQ regulations (40 CFR parts 1500–1508) recognize the following five means of mitigating an environmental impact. These five approaches to mitigation are presented in order of desirability.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action. This method avoids environmental impact by eliminating certain activities in certain areas.

As an example, the Army's Integrated Training Area Management (ITAM) program accounts for training requirements and activities while considering natural and cultural resource conditions on ranges and training land. This program allows informed management decisions associated with the use of these lands, and has mitigated potential impacts by limiting activities to areas that are compatible with Army training needs. Sensitive habitats and other resources are thus protected, while the mission requirements are still met.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. Limiting the degree or magnitude of the action can reduce the extent of an impact. For example, changing the firing time or the number of rounds fired on artillery ranges will reduce the noise impact on nearby residents. Using the previous ITAM example, the conditions of ranges can be monitored, and, when the conditions on the land warrant, the intensity or magnitude of the training on that parcel can be modified through a variety of decisions.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. Either reseeding or replanting the areas with native plants after the exercise can mitigate this impact.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control

structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, deer habitat in the project area can be replaced with deer habitat in another area; an in-kind replacement at a different location. This replacement can occur either on the impact site or at another location. This type of mitigation is often used in water resources projects.

(b) The identification and evaluation of mitigations involves the use of experts familiar with the predicted environmental impacts. Many potential sources of information are available for assistance. These include sources within the Army such as the USACHPPM, the USAEC, the MACOM environmental office, the ODEP, COE research laboratories, COE districts and divisions, and DoD Regional Support Centers. State agencies are another potential source of information, and the appropriate POC within these agencies may be obtained from the installation environmental office. Local interest groups may also be able to help identify potential mitigation measures. Other suggested sources of assistance include:

- (1) Aesthetics:
  - (i) Installation Landscape Architect.
  - (ii) COE District Landscape Architects.
- (2) Air Quality:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Preventive Medicine Officer.
- (3) Airspace:
  - (i) Installation Air Traffic and Airspace Officers.
  - (ii) DA Regional Representative to the FAA.
  - (iii) DA Aeronautical Services.
  - (iv) Military Airspace Management System Office.
  - (v) Installation Range Control Officer.
- (4) Earth Science:
  - (i) Installation Environmental Specialist.
  - (ii) USACE District Geotechnical Staff.
- (5) Ecology:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Wildlife Officer.
  - (iii) Installation Forester.
  - (iv) Installation Natural Resource Committee.
  - (v) USACE District Environmental Staff.
- (6) Energy/Resource Conservation:
  - (i) Installation Environmental Specialist.
- (7) Health and Safety:
  - (i) Installation Preventive Medicine Officer.
  - (ii) Installation Safety Officer.
  - (iii) Installation Hospital.
  - (iv) Installation Mental Hygiene and Psychiatry Officer.
  - (v) Chaplain's Office.
- (8) Historic/Archaeological Resources:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Historian or Architect.
  - (iii) USACE District Archaeologist.
- (9) Land Use Impacts:
  - (i) Installation Master Planner.



(ii) USACE District Community Planners.  
 (10) Socioeconomics:  
 (i) Personnel Office.  
 (ii) Public Information Officer.  
 (iii) USACE District Economic Planning Staff.

(11) Water Quality:  
 (i) Installation Environmental Specialist.  
 (ii) Installation Preventive Medicine Officer.

(iii) USACE District Environmental Staff.  
 (12) Noise:

(i) Preventive Medicine Officer.  
 (ii) Directorate of Public Works.  
 (iii) Installation Master Planner.

(13) Training Impacts:  
 Installation Director of Plans, Training, and Mobilization

(c) Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. These changes avoid noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly re-seeding areas after construction.

(d) Monitoring and enforcement programs are applicable (40 CFR 1505.2(c)) and the specific adopted action is an important case (40 CFR 1505.3) if:

(1) There is a change in environmental conditions or project activities that were assumed in the EIS, such that original predictions of the extent of adverse environmental impacts may be too limited.

(2) The outcome of the mitigation measure is uncertain, such as in the case of the application of new technology.

(3) Major environmental controversy remains associated with the selected alternative.

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal-or state-listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm must be made in coordination with the appropriate federal, state, or local agency responsible for each particular program.

(e) Five basic considerations affect the establishment of monitoring programs:

(1) *Legal requirements.* Permits for some actions will require that a monitoring system be established (for example, dredge and fill permits from the USACE). These permits will

generally require both enforcement and effectiveness monitoring programs.

(2) *Protected resources.* These include federal-or state-listed endangered or threatened species, important historic or archaeological sites (whether or not these are listed or eligible for listing on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement-monitoring program must be undertaken in conjunction with the federal, state, or local agency that manages the type of resource.

(3) *Major environmental controversy.* If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(4) *Mitigation outcome.* The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, which may have worked successfully in one area, may not work in another.

(5) *Changed conditions.* The final consideration is whether any condition, such as the environmental setting, has changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental document (see §§ 651.5(g) and 651.24) and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

(f) *Enforcement monitoring program.* The development of an enforcement monitoring program is governed by who will actually perform the mitigation; a contractor, a cooperating agency, or an in-house (Army) lead agency. The lead agency is ultimately responsible for performing any mitigation activities.

(1) *Contract performance.* Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provision.

(2) *Cooperating agency performance.* The lead agency must ensure that, if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

(3) *Lead agency performance.* If the lead agency performs the mitigation, the proponent must ensure that needed tasks are performed, provide appropriate funding in the project budget, arrange for necessary manpower allocations, and make any necessary changes in the agency (installation) regulations (such as environmental or range regulations).

(g) *Effectiveness monitoring.* Effectiveness monitoring is often difficult to establish. The first step is to determine what must be monitored, based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post or may be obtained from an outside source. After a source of expertise is located, the program can be established using the following criteria:

(1) Any technical parameters used must be measurable; for example, the monitoring program must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decision maker can take any necessary corrective action before the effects are irreversible.

(6) Not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeded, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

#### Appendix D to Part 651—Public Participation Plan

The objective of the plan will be to encourage the full and open discussion of issues related to Army actions. Some NEPA actions will be very limited in scope, and may not require full public participation and involvement. Other NEPA actions will obviously be of interest, not only to the local

community, but to others across the country as well.

(a) To accomplish this objective, the plan will require:

(1) Dissemination of information to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters. Such information may be subject to Freedom of Information Act and operations security review.

(2) The invitation of public comments through two-way communication channels that will be kept open through various means.

(3) The use of fully informed public affairs officers at all levels.

(4) Preparation of EAs which incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(5) Consultation of persons and agencies such as:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service) or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Native Americans.

(v) Members and officials of those identifiable interest groups of local or national scope that may have an interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(b) Public involvement should be solicited using the following processes and procedures:

(1) Direct individual contact. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of a very limited scope. This contact should identify:

(i) Persons expected to express an opinion and later participate.

(ii) Preliminary positions of such persons on the scope of issues that the analysis must address.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues, inviting the public to express views on the proposed courses of action. Public suggestions or additional alternative courses of action may be expressed at these

gatherings which need not be formal public hearings.

(4) Any other processes and procedures to accomplish the appropriate level of public involvement.

(c) Scoping Guidance. All affected parties must be included in the scoping process (AR 360-5). The plan must include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(5) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(6) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(7) Persons and agencies to be consulted include the following:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action, (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(v) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(8) The public involvement processes and procedures by which participation may be solicited include the following:

(i) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the

preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(ii) Small workshops or discussion groups.

(iii) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(iv) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(9) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of (a) of this appendix.

(10) Public surveys or polls to identify public opinion of a proposed action will be performed (AR 335-15, chapter 10).

(d) Preparing the Notice of Intent. In preparing the NOI, the proponent will:

(1) In the NOI, identify the significant issues to be analyzed in the EIS.

(2) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(3) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(4) Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

(5) Identify the proposed method for accomplishing the scoping procedure.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(i) The scoping process itself.

(ii) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(iii) Preparation of DEISs and FEISs.

(iv) Filing of the ROD.

(v) Taking the action.

(7) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(8) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

#### **Appendix E to Part 651—Content of the Environmental Impact Statement**

(a) EISs will:

(1) Be analytic rather than encyclopedic. Impacts will be discussed in proportion to their significance; and insignificant impacts will only be briefly discussed, sufficient to show why more analysis is not warranted.

(2) Be kept concise and no longer than absolutely necessary to comply with NEPA, CEQ regulations, and this part. Length should

be determined by potential environmental issues, not project size. The EIS should be no longer than 300 pages.

(3) Describe the criteria for selecting alternatives, and discuss those alternatives, including the "no action" alternative, to be considered by the ultimate decision maker.

(4) Serve as a means to assess environmental impacts of proposed military actions, rather than justifying decisions.

(b) The EIS will consist of the following:

(1) *Cover sheet.* The cover sheet will not exceed one page (40 CFR 1502.11) and will be accompanied by a signature page for the proponent, designated as preparer; the installation environmental office (or other source of NEPA expertise), designated as reviewer; and the Installation Commander (or other Activity Commander), designated as approver. It will include:

(i) The following statement: "The material contained in the attached (final or draft) EIS is for internal coordination use only and may not be released to non-Department of Defense agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority." This sheet will be removed prior to filing the document with the EPA.

(ii) A list of responsible agencies including the lead agency and any cooperating agency.

(iii) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with state and county (or other jurisdiction as applicable) where the action is located.

(iv) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

(v) A designation of the statement as a draft, final, or draft or final supplement.

(vi) A one-paragraph abstract of the statement that describes only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(vii) The date by which comments must be received, computed in cooperation with the EPA.

(2) *Summary.* The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. The summary presentation will focus on the scope of the EIS, including issues that will not be evaluated in detail. It should list all federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other federal environmental protection laws will be included (40 CFR 1502.25). To simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. The EIS summary should be written at the standard middle school reading level. This summary should not exceed 15 pages. An additional summary document will be prepared for separate submission to the DEP and the ASA(I&E). This will identify progress "to the date," in addition to the standard EIS summary which:

(i) Summarizes the content of the document (from an oversight perspective).

(ii) Outlines mitigation requirements (to improve mitigation tracking and the programming of funds).

(iii) Identifies major and unresolved issues and potential controversies. For EIS actions that have been delegated by the ASA(I&E), this document will also include status of requirements and conditions established by the delegation letter.

(3) *Table of contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

(4) *Purpose of and need for the action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here.

(5) *Alternatives considered, including proposed action and no action alternative.* This section presents all reasonable alternatives and their likely environmental impacts, written in simple, nontechnical language for the lay reader. A no action alternative must be included (40 CFR 1502.14(d)). A preferred alternative need not be identified in the DEIS; although a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)). The environmental impacts of the alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decision maker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of graphics and tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In summary, the following points are required:

(i) A description of all reasonable alternatives, including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(ii) A comparative presentation of the environmental consequences of all reasonable alternative actions, including the preferred alternative.

(iii) A description of the mitigation measures and/or monitoring procedures (§ 651.15) nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated and/or monitoring procedures (§ 651.15).

(iv) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

(6) *Affected environment (baseline conditions) that may be impacted.* This

section will contain information about existing conditions in the affected areas in sufficient detail to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form, or referenced.

(7) *Environmental and socioeconomic consequences.* This section forms the scientific and analytic basis for the comparison of impacts. It should discuss:

(i) Direct effects and their significance.

(ii) Indirect effects and their significance.

(iii) Possible conflicts between the proposed action and existing land use plans, policies, and controls.

(iv) Environmental effects of the alternatives, including the proposed action and the no action alternative.

(v) Energy requirements and conservation potential of various alternatives and mitigation measures.

(vi) Irreversible and irretrievable commitments of resources associated with the proposed action.

(vii) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.

(viii) Urban quality, historic, and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(ix) Cumulative effects of the proposed action in light of other past, present, and foreseeable actions.

(x) Means to mitigate or monitor adverse environmental impacts.

(xi) Any probable adverse environmental effects that cannot be avoided.

(8) *List of preparers.* The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines) (40 CFR 1502.17), including those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they must be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, this list will not exceed two pages. Contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. These statements will be referenced in this section of the EIS.

(9) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or

organizations. The distribution of the DEIS and FEIS will include the CBTDEVs from whom comments were requested, irrespective of whether they provided comments.

(10) *Index*. The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

(11) *Appendices (as appropriate)*. If an agency prepares an appendix to an EIS, the appendix will consist of material prepared in connection with an EIS (distinct from material not so prepared and incorporated by reference), consist only of material that substantiates any analysis fundamental to an impact statement, be analytic and relevant to the decision to be made, and be circulated with the EIS or readily available.

## Appendix F to Part 651—Glossary

### Section 1—Abbreviations

#### AAE

Army Acquisition Executive.

#### AAPPSO

Army Acquisition Pollution Prevention Support Office.

#### ACAT

Acquisition Category.

#### ACSIM

Assistant Chief of Staff for Installation Management.

#### ADNL

A-weighted day-night levels.

#### AQCR

Air Quality Control Region.

#### AR

Army Regulation.

#### ARNG

Army National Guard.

#### ARSTAF

Army Staff.

#### ASA(AL&T)

Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

#### ASA(FM)

Assistant Secretary of the Army for Financial Management.

#### ASA(I&E)

Assistant Secretary of the Army (Installations and Environment).

#### ASD(ISA)

Assistant Secretary of Defense (International Security Affairs).

#### CARD

Cost Analysis Requirements Description.

#### CBTDEV

Combat Developer.

#### CEQ

Council on Environmental Quality.

#### CERCLA

Comprehensive Environmental Response Compensation and Liability Act.

#### CDNL

C-Weighted Day-Night Levels.

#### CFR

Code of Federal Regulations.

#### CONUS

Continental United States.

#### CX

Categorical Exclusion.

#### DA

Department of the Army.

#### DAD

Defense Acquisition Deskbook.

#### DASA(ESOH)

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

#### DCSLOG

Deputy Chief of Staff for Logistics.

#### DCSOPS

Deputy Chief of Staff for Operations and Plans.

#### DEIS

Draft Environmental Impact Statement.

#### DEP

Director of Environmental Programs.

#### DOD

Department of Defense.

#### DOPAA

Description of Proposed Action and Alternatives.

#### DSA

Deputy for System Acquisition.

#### DTIC

Defense Technical Information Center.

#### DTLOMS

Doctrine, Training, Leader Development, Organization, Materiel, and Soldier.

#### DUSD(IE)

Deputy Under Secretary of Defense for Installations and Environment.

#### EA

Environmental Assessment.

#### EBS

Environmental Baseline Studies.

#### EC

Environmental Coordinator.

#### ECAP

Environmental Compliance Achievement Program.

#### ECAS

Environmental Compliance Assessment System.

#### EE/CA

Engineering Evaluation/Cost Analysis.

#### EIGS

Environmental Impact Computer System.

#### EIFS

Economic Impact Forecast System.

#### EIS

Environmental Impact Statement.

#### EJ

Environmental Justice.

#### EOD

Explosive Ordnance Demolition.

#### EPA

Environmental Protection Agency.

#### EPR

Environmental Program Requirements.

#### EQCC

Environmental Quality Control Committee.

#### ESH

Environment, Safety, and Health.

#### FAA

Federal Aviation Administration.

#### FEIS

Final Environmental Impact Statement.

#### FNSI

Finding of No Significant Impact.

#### FR

Federal Register.

#### FS

Feasibility Study.

#### FTP

Full-Time Permanent.

#### GC

General Counsel.

#### GOCO

Government-Owned, Contractor-Operated.

#### GSA

General Services Administration.

#### HQDA

Headquarters, Department of the Army.

#### ICRMP

Integrated Cultural Resources Management Plan.

#### ICT

Integrated Concept Team.

#### INRMP

Integrated Natural Resources Management Plan.

#### IPT

Integrated Process Team.

#### ISCP

Installation Spill Contingency Plan.

#### ISR

Installation Status Report.

#### ITAM

Integrated Training Area Management.

#### LCED

Life Cycle Environmental Documentation.

#### MACOM

Major Army Command.

#### MATDEV

Materiel Developer.

#### MDA

Milestone Decision Authority.

#### MFA

Materiel Fielding Agreement.

|  |   |   |
|--|---|---|
| MFP  | ORD   | TOE   |
| Materiel Fielding Plan.  | Operating Requirements Document.                  | Table of Organization Equipment.  |
| MILCON   | OSD   | TRADOC  |
| Military Construction.   | Office of the Secretary of Defense.               | U.S. Army Training and Doctrine Command.  |
| MNS  | OSG   | USACE   |
| Mission Needs Statement.   | Office of the Surgeon General.                    | U.S. Army Corps of Engineers.   |
| MOA  | PAO   | USACHPPM  |
| Memorandum of Agreement.   | Public Affairs Officer.                           | U.S. Army Center for Health Promotion and Preventive Medicine.  |
| MOU  | PCB   | USAEC   |
| Memorandum of Understanding.                                     | Polychlorinated Biphenyls.                        | U.S. Army Environmental Center.   |
| NAGPRA   | PDEIS   | U.S.C.  |
| Native American Graves Protection and Repatriation Act.          | Preliminary Draft Environmental Impact Statement. | United States Code.   |
| NEPA   | PEO   | <i>Section II—Terms</i>   |
| National Environmental Policy Act.                               | Program Executive Officer.                        | Categorical Exclusion   |
| NGB  | PM  | A category of actions that do not require an EA or an EIS because Department of the Army (DA) has determined that the actions do not have an individual or cumulative impact on the environment.  |
| National Guard Bureau.   | Program Manager.                                  | Environmental (or National Environmental Policy Act) Analysis   |
| NHPA   | POC   | This term, as used in this part, will include all documentation necessary to coordinate and staff analyses or present the results of the analyses to the public or decision maker.  |
| National Historic Preservation Act.                              | Point of Contact.                                 | Foreign Government  |
| NOA  | POL   | A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.   |
| Notice of Availability.  | Petroleum, Oils, and Lubricants.                  | Foreign Nations   |
| NOI  | PPBES   | Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments; also includes contiguous zones and fisheries zones of foreign nations. |
| Notice of Intent.  | Program Planning and Budget Execution System.     | Global Commons  |
| NPR  | RCRA  | Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.  |
| National Performance Review.                                     | Resource Conservation and Recovery Act.           | Headquarters, Department of the Army proponent  |
| NRC  | RDT&E   | As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decision-making process.   |
| Nuclear Regulatory Commission.                                   | Research, Development, Test, and Evaluation.      | Major Federal Action  |
| NWR  | REC   | Reinforces, but does not have a meaning independent of, “significantly affecting the environment,” and will be interpreted in that context. A federal proposal with “significant effects” requires an EIS, whether it is “major” or not. Conversely, a “major federal action” without “significant effects” does not necessarily require an EIS.  |
| Notice of Availability of Weekly Receipts (EPA).                 | Record of Environmental Consideration.            |   |
| OASD(PA)   | ROD   |   |
| Office of the Assistant Secretary of Defense for Public Affairs. | Record of Decision.                               |   |
| OCLL   | RONA  |   |
| Office of the Chief of Legislative Liaison.                      | Record of Non-Applicability.                      |   |
| OCPA   | RSC   |   |
| Office of the Chief of Public Affairs.                           | Regional Support Command.                         |   |
| ODEP   | S&T   |   |
| Office of the Director of Environmental Programs.                | Science and Technology.                           |   |
| OFS  | SA  |   |
| Officer Foundation Standards.                                    | Secretary of the Army.                            |   |
| OGC  | SARA  |   |
| Office of General Counsel.                                       | Superfund Amendments and Reauthorization Act.     |   |
| OIPT   | SASO  |   |
| Overarching Integrated Process Team.                             | Stability and Support Operations.                 |   |
| OMA  | SOFA  |   |
| Operations and Maintenance Army.                                 | Status of Forces Agreement.                       |   |
| OMANG  | SPPCCP  |   |
| Operations and Maintenance Army National Guard.                  | Spill Prevention Control and Countermeasure Plan. |   |
| OMAR   | TDP   |   |
| Operations and Maintenance Army Reserve.                         | Technical Data Package.                           |   |
| OOTW   | TDY   |   |
| Operations Other Than War.                                       | Temporary Duty.                                   |   |
| OPSEC  | TEMP  |   |
| Operations Security.   | Test and Evaluation Master Plan.                  |   |
|  | TJAG  |   |
|  | The Judge Advocate General.                       |   |

**Preparers**

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

**Proponent**

Proponent identification depends on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Public Works becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance

(O&M) Activity; Commanding General, TRADOC becomes the proponent of a change in initial entry training; and the Program Manager becomes the proponent for a major acquisition program. The proponent may or may not be the preparer.

(2) In general, the proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

**Significantly Affecting the Environment**

The significance of an action's, program's, or project's effects must be evaluated in light

of its context and intensity, as defined in 40 CFR 1508.27.

**Section III—Special Abbreviations and Terms**

This part uses the following abbreviations, brevity codes or acronyms not contained in AR 310–50. These include use for electronic publishing media and computer terminology, as follows:

WWW World Wide Web.

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**BILLING CODE 3710–08–P**

***APPENDIX D***  
***CEQ Forty Most Asked Questions***

**EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY**

**Memorandum to Agencies:**

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR Parts 1500-1508)

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**1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?**

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

**1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?**

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

**2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?**

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

**2b. Must the EIS analyze alternatives outside the jurisdiction or**



**capability of the agency or beyond what Congress has authorized?**

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

**3. No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?**

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section

1500.1(a).

**4a. Agency's Preferred Alternative. What is the "agency's preferred alternative"?**

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

**4b. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?**

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

**4c. Who recommends or determines the "preferred alternative?"**

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

**5a. Proposed Action v. Preferred Alternative. Is the "proposed action" the same thing as the "preferred alternative"?**

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is [46 FR 18028] internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

**5b. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?**

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

**6a. Environmentally Preferable Alternative. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?**

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

**6b. Who recommends or determines what is environmentally preferable?**

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentators from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

**7. Difference Between Sections of EIS on Alternatives and Environmental Consequences. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?**

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives

including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

**8. Early Application of NEPA. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?**

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connection with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early

corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues [46 FR 18029] and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

**9. Applicant Who Needs Other Permits. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?**

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

**10a. Limitations on Action During 30-Day Review Period for Final EIS. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?**

A. No federal decision on the proposed action shall be made or recorded

until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. Section 1506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

**10b. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?**

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

**11. Limitations on Actions by an Applicant During EIS Process. What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?**

A. The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. Section 1506.1(b). These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

**12a. Effective Date and Enforceability of the Regulations. What actions are subject to the Council's new regulations, and what actions are grandfathered under the old guidelines?**

A. The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a particular environmental document, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

**12b. Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?**

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and [46 FR 18030] subject to the Council's former Guidelines.

**12c. Can a violation of the regulations give rise to a cause of action?**

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

**13. Use of Scoping Before Notice of Intent to Prepare EIS. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?**

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

**14a. Rights and Responsibilities of Lead and Cooperating Agencies. What are**

**the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?**

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process -- primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

**14b. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?**

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead



agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

**14c. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?**

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

**14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?**

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

**15. Commenting Responsibilities of EPA. Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?**

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 U.S.C. Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

**16. Third Party Contracts. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?**

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

**17a. Disclosure Statement to Avoid Conflict of Interest. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?**

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the

EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

**17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?**

A. Yes.

**18. Uncertainties About Indirect Effects of A Proposal. How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?**

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

**19a. Mitigation Measures. What is the scope of mitigation measures that must be discussed?**

A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

**19b. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?**

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an

ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

**20. Worst Case Analysis. [Withdrawn by final rule issued at 51 Fed. Reg. 15618 (April 25, 1986).]**

**21. Combining Environmental and Planning Documents. Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?**

A. Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS, and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA

and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

**22. State and Federal Agencies as Joint Lead Agencies. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?**

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among [46 FR 18033] federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

**23a. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).**

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

**23b. What constitutes a "land use plan or policy" for purposes of this discussion?**

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

**23c. What options are available for the decisionmaker when conflicts with such plans or policies are identified?**

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

**24a. Environmental Impact Statements on Policies, Plans or Programs. When are EISs required on policies, plans or programs?**

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS. Section 1508.18. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." Section 1508.23.

**24b. When is an area-wide or overview EIS appropriate?**

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or

proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

**24c. What is the function of tiering in such cases?**

A. Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

**25a. Appendices and Incorporation by Reference. When is it appropriate to use appendices instead of including information in the body of an EIS?**

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

**25b. How does an appendix differ from incorporation by reference?**

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to

comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

**26a. Index and Keyword Index in EISs. How detailed must an EIS index be?**

A. The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

**26b. Is a keyword index required?**

A. No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modelling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

**27a. List of Preparers. If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?**

A. Section 1502.17 requires identification of the names and qualifications



of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

**27b. Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?**

A. Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

**27c. How much information should be included on each person listed?**

A. The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

**28. Advance or Xerox Copies of EIS. May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?**

A. Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

**29a. Responses to Comments. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?**

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an

EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentor said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

**29b. How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?**

A. This question might arise in several possible situations. First, a commentor on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a). For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentor on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and setaside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commentor on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commentor points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentor on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

**30. Adoption of EISSs. When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?**

A. Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a), (c). If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).

A cooperating agency with jurisdiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own

Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.

An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in [46 FR 18036] the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

**31a. Application of Regulations to Independent Regulatory Agencies. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?**

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6, 1507.1, and 1507.3.

**31b. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?**

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

**32. Supplements to Old EISs. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?**

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old

should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

**33a. Referrals. When must a referral of an interagency disagreement be made to the Council?**

A. The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

**33b. May a referral be made after this issuance of a Record of Decision?**

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

**34a. Records of Decision. Must Records of Decision (RODs) be made public? How should they be made available?**

A. Under the regulations, agencies must prepare a "concise public record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

**34b. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?**

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to

the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

**34c. What provisions should Records of Decision contain pertaining to mitigation and monitoring?**

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3 (a), (b). If the proposal is to be carried out by the [46 FR 18037] federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

**34d. What is the enforceability of a Record of Decision?**

A. Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

**35. Time Required for the NEPA Process. How long should the NEPA process take to complete?**

A. When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex

energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

**36a. Environmental Assessments (EA). How long and detailed must an environmental assessment (EA) be?**

A. The environmental assessment is a concise public document which has three defined functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. Section 1508.9(a).

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b).

While the regulations do not contain page limits for EA's, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

**36b. Under what circumstances is a lengthy EA appropriate?**

A. Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

**37a. Findings of No Significant Impact (FONSI). What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?**

A. The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. Section 1508.13. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental

effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

**37b. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?**

A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501.4(e)(2), 1508.27. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

**38. Public Availability of EAs v. FONSI's. Must (EAs) and FONSI's be made public? If so, how should this be done?**

A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI's. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

**39. Mitigation Measures Imposed in EAs and FONSI's. Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?**

A. Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist [46 FR 18038] agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." Section 1501.3(b), 1508.9(a)(2). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.



**40. Propriety of Issuing EA When Mitigation Reduces Impacts. If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?**

[N.B.: Courts have disagreed with CEQ's position in Question 40. The 1987-88 CEQ Annual Report stated that CEQ intended to issue additional guidance on this topic. Ed. note.]

A. Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. Sections 1508.8, 1508.27.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. Section 1501.4(e)(2).

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

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March 16, 1981

***APPENDIX E***  
***CEQ Scoping Guidance***

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 Jackson Place, N.W.  
Washington, DC 20008

April 30, 1981

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MEMORANDUM FOR GENERAL COUNSELS NEPA LIAISONS AND  
PARTICIPANTS IN SCOPING

**SUBJECT: Scoping Guidance**

As part of its continuing oversight of the implementation of the NEPA regulations, the Council on Environmental Quality has been investigating agency experience with scoping. This is the process by which the scope of the issues and alternatives to be examined in an EIS is determined. In a project led by Barbara Bramble of the General Counsel's staff, the Council asked federal agencies to report their scoping experiences; Council staff held meetings and workshops in all regions of the country to discuss scoping practice; and a contract study was performed for the Council to investigate what techniques work best for various kinds of proposals.

Out of this material has been distilled a series of recommendations for successfully conducting scoping. The attached guidance document consists of advice on what works and what does not, based on the experience of many agencies and other participants in scoping. It contains no new legal requirements beyond those in the NEPA regulations. It is intended to make generally available the results of the Council's research, and to encourage the use of better techniques for ensuring public participation and efficiency in the scoping process.

NICHOLAS C. YOST  
General Counsel

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**SCOPING GUIDANCE**

**I. Introduction**

**A. Background of this document.**

In 1978, with the publication of the proposed NEPA regulations (since adopted as formal rules, 40 C.F.R. Parts 1500-1508), the Council on Environmental Quality gave formal recognition to an increasingly used term-- scoping. Scoping is an idea that has long been familiar to those involved in NEPA compliance: In order to manage effectively the preparation of an environmental impact statement (EIS), one must determine the scope of the document - that is, what will be covered, and in what detail. Planning of this kind was a normal component of EIS preparation. But the consideration of issues and choice of alternatives to be examined was in too many cases completed outside of public review. The innovative approach to scoping in the regulations is that the process is open to the public and state and local governments, as well as to affected federal agencies. This open process gives rise to important new opportunities for better and more efficient NEPA analyses; and simultaneously places new responsibilities on public and agency participants alike to surface their concerns early. Scoping helps insure that real problems are identified early and properly studied; that issues that are of no concern do not consume time and effort; that the draft statement when first made public is balanced and thorough; and that the delays occasioned by re-doing an inadequate draft are avoided. Scoping does not create problems that did not already exist; it ensures that problems that would have been raised anyway are identified early in the process.

Many members of the public as well as agency staffs engaged the NEPA process have told the Council that the open scoping requirement is one of the most far-reaching changes engendered by the NEPA regulations. They have predicted that scoping could have a profound positive effect on environmental analyses, on the impact statement process itself, and ultimately on decisionmaking.

Because the concept of open scoping was new, the Council decided to encourage agencies' innovation without unduly restrictive guidance. Thus the regulations relating to scoping are very simple. They state that "there shall be an early and open process for determining the scope of issues to be addressed" which "shall be termed scoping," but they lay down few specific requirements. (Section 1501.7\*). They require an open process with public notice; identification of significant and insignificant issues; allocation of EIS preparation assignments; identification of related analysis requirements in order to avoid duplication of work; and the planning of a schedule for EIS preparation that meshes with the agency's decisionmaking schedule. (Section 1501.7(a)). The regulations encourage, but do not require, setting time and page limits for the EIS, and holding scoping meetings. (Section 1501.7(b)). Aside from these general outlines, the regulations left the agencies on their own. The Council did not believe, and still does not, that it is necessary or appropriate to dictate the specific manner in which over 100 federal agencies should deal with the public. However, the Council has received several requests for more guidance. In 1980 we decided to investigate the agency and the public response to the scoping requirement, to find out what was working and what was not, and to share this with all agencies and the public.

The Council first conducted its own survey, asking federal agencies to report some of their scoping experiences. The Council then contracted with the American Arbitration Association and Clark McGlennon Associates to survey the scoping techniques of major agencies and to study several innovative methods in detail.\*\* Council staff conducted a two-day workshop in Atlanta in June 1980, to discuss with federal agency NEPA staff and several EIS contractors what seems to work best in scoping of different types of proposals, and discussed scoping with federal, state, and local officials in meetings in all 10 federal regions.

This document is a distillation of all the work that has been done so far by many people to identify valuable scoping techniques. It is offered as a guide to encourage success and to help avoid pitfalls. Since scoping methods are still evolving, the Council welcomes any comments on this guide, and may add to it or revise it in coming years.

#### **B. What scoping is and what it can do.**

Scoping is often the first contact between proponents of a proposal and the public. This fact is the source of the power of scoping and of the trepidation that it sometimes evokes. If a scoping meeting is held, people on both sides of an issue will be in the same room and, if all goes well, will speak to each other. The possibilities that flow from this situation are vast. Therefore, a large portion of this document is devoted to the productive management of meetings and the de-fusing of possible heated disagreements.

Even if a meeting is not held, the scoping process leads EIS preparers to think about the proposal early on, in order to explain it to the public and affected agencies. The participants respond with their own concerns about significant issues and suggestions of alternatives. Thus as the draft EIS is prepared, it will include, from the beginning, a reflection or at least an acknowledgement of the cooperating agencies' and the public's concerns. This reduces the need for changes after the draft is finished, because it reduces the chances of overlooking a significant issue or reasonable

alternative. It also in many cases increases public confidence in NEPA and the decisionmaking process, thereby reducing delays, such as from litigation, later on when implementing the decisions. As we will discuss further in this document, the public generally responds positively when its views are taken seriously, even if they cannot be wholly accommodated.

But scoping is not simply another "public relations" meeting requirement. It has specific and fairly limited objectives: (a) to identify the affected public and agency concerns; (b) to facilitate an efficient EIS preparation process, through assembling the cooperating agencies, assigning EIS writing tasks, ascertaining all the related permits and reviews that must be scheduled concurrently, and setting time or page limits (c) to define the issues and alternatives that will be examined in detail in the EIS while simultaneously devoting less attention and time to issues which cause no concern; and (d) to save time in the overall process by helping to ensure that draft statements adequately address relevant issues, reducing the possibility that new comments will cause a statement to be rewritten or supplemented.

Sometimes the scoping process enables early identification of a few serious problems with a proposal, which can be changed or solved because the proposal is still being developed. In these cases, scoping the EIS can actually lead to the solution of a conflict over the proposed action itself. We have found that this extra benefit of scoping occurs fairly frequently. But it cannot be expected in most cases, and scoping can still be considered successful when conflicts are clarified but not solved. This guide does not presume that resolution of conflicts over proposals is a principal goal of scoping, because it is only possible in limited circumstances. Instead, the Council views the principal goal of scoping to be an adequate and efficiently prepared EIS. Our suggestions and recommendations are aimed at reducing the conflicts among affected interests that impede this limited objective. But we are aware of the possibilities of more general conflict resolution that are inherent in any productive discussions among interested parties. We urge all participants in scoping processes to be alert to this larger context, in which scoping could prove to be the first step in environmental problem solving.

Scoping can lay a firm foundation for the rest of the decisionmaking process. If the EIS can be relied upon to include all the necessary information for formulating policies and making rational choices, the agency will be better able to make a sound and prompt decision. In addition, if it is clear that all reasonable alternatives are being seriously considered, the public will usually be more satisfied with the choice among them.

## **II. Advice for Government Agencies Conducting Scoping**

### **A. General context.**

Scoping is a process, not an event or a meeting. It continues throughout the planning for an EIS, and may involve a series of meetings, telephone conversations, or written comments from different interested groups. Because it is a process, participants must remain flexible. The scope of an EIS occasionally may need to be modified later if a new issue surfaces, no matter how thorough the scoping was. But it makes sense to try to set the scope of the statement as early as possible.

Scoping may identify people who already have a knowledge about a site or an alternative proposal or a relevant study, and induce them to make it available. This can save a lot of research time and money. But people will not come forward unless they believe their views and materials will receive serious consideration. Thus scoping is a crucial first step toward building public confidence in a fair environmental analysis and ultimately a fair decisionmaking process.

One further point to remember: the lead agency cannot shed its responsibility to assess each significant impact or alternative even if one is found after scoping. But anyone who hangs back and fails to raise something that reasonably could have been raised earlier on will have a hard time prevailing during later stages of the NEPA process or if litigation ensues. Thus a thorough scoping process does provide some protection against subsequent lawsuits.

## **B. Step-by-step through the process.**

### **1. Start scoping after you have enough information**

Scoping cannot be useful until the agency knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal and a suggested initial list of environmental issue and alternatives. Until that time there is no way to explain to the public or other agencies what you want them to get involved in. So the first stage is to gather preliminary information from the applicant, or to compose a clear picture of your proposal, if it is being developed by the agency.

### **2. Prepare an information packet.**

In many cases, scoping of the EIS has been preceded by preparation of an environmental assessment (EA) as the basis for the decision to proceed with an EIS. In such cases, the EA will, of course, include the preliminary information that is needed.

If you have not prepared an EA, you should put together a brief information packet consisting of a description of the proposal, an initial list of impacts and alternatives, maps, drawings, and any other material or references that can help the interested public to understand what is being proposed. The proposed work plan of the EIS is not usually sufficient for this purpose. Such documents rarely contain a description of the goals of the proposal to enable readers to develop alternatives.

At this stage, the purpose of the information is to enable participants to make an intelligent contribution to scoping the EIS. Because they will be helping to plan what will be examined during the environmental review, they need to know where you are now in that planning process.

Include in the packet a brief explanation of what scoping is, and what procedure will be used, to give potential participants a context for their involvement. Be sure to point out that you want comments from participants on very specific matters. Also reiterate that no decision has yet been made on the contents of the EIS, much less on the proposal itself. Thus, explain that you do not yet have a preferred alternative, but that you may identify the preferred alternative in the draft EIS. (See Section 1502.14(e)). This should reduce the tendency of participants to perceive the protocol as already a definite plan. Encourage them to focus on recommendations for

improvements to the various alternatives.

Some of the complaints alleging that scoping can be a waste of time stem from the fact that the participants may not know what the proposal is until they arrive at a meeting. Even the most intelligent among us can rarely make useful, substantive comments on the spur of the moment. Don't expect helpful suggestions to result if participants are put in such a position.

### **3. Design the scoping process for each project.**

There is no established or required procedure for scoping. The process can be carried out by meetings, telephone conversations, written comments, or a combination of all three. It is important to tailor the type, the timing and the location of public and agency comments to the proposal at hand.

For example, a proposal to adopt a land management plan for a National Forest in a sparsely populated region may not lend itself to calling a single meeting in a central location. While people living in the area and elsewhere may be interested, any meeting place will be inconvenient for most of the potential participants. One solution is to distribute the information packet, solicit written comments, list a telephone number with the name of the scoping coordinator, and invite comments to be phoned in. Otherwise, small meetings in several locations may be necessary when face-to-face communication is important.

In another case, a site specific construction project may be proposed. This would be a better candidate for a central scoping meeting. But you must first find out if anyone would be interested in attending such a meeting. If you simply assume that a meeting is necessary, you may hire a hall and a stenographer, assemble your staff for a meeting, and find that nobody shows up. There are many proposals that just do not generate sufficient public interest to cause people to attend another public meeting. So a wise early step is to contact known local citizens groups and civic leaders.

In addition, you may suggest in your initial scoping notice and information packet that all those who desire a meeting should call to request one. That way you will only hear from those who are seriously interested in attending.

The question of where to hold a meeting is a difficult one in many cases. Except for site specific construction projects, it may be unclear where the interested parties can be found. For example, an EIS on a major energy development program may involve policy issues and alternatives to the program that are of interest to public groups all over the nation, and to agencies headquartered in Washington, D.C., while the physical impacts might be expected to be felt most strongly in a particular region of the country. In such a case, if personal contact is desired, several meetings would be necessary, especially in the affected region and in Washington, to enable all interests to be heard.

As a general guide, unless a proposal has no site specific issues, scoping meetings should not be confined to Washington. Agencies should try to elicit the views of people who are closer to the affected regions.

The key is to be flexible. It may not be possible to plan the whole scoping process at the outset, unless you know who all the potential players are. You can start with written comments, move on to an informal meeting, and



hold further meetings if desired.

There are several reasons to hold a scoping meeting. First, some of the best effects of scoping stem from the fact that all parties have the opportunity to meet one another and to listen to the concerns of the others. There is no satisfactory substitute for personal contact to achieve this result. If there is any possibility that resolution of underlying conflicts over a proposal may be achieved, this is always enhanced by the development of personal and working relationships among the parties.

Second, even in a conflict situation people usually respond positively when they are treated as partners in the project review process. If they feel confident that their views were actually heard and taken seriously, they will be more likely to be satisfied that the decisionmaking process was fair even if they disagree with the outcome. It is much easier to show people that you are listening to them if you hold a face-to-face meeting where they can see you writing down their points, than if their only contact is through written correspondence.

If you suspect that a particular proposal could benefit from a meeting with the affected public at any time during its review, the best time to have the meeting is during this early stage. The fact that you are willing to discuss openly a proposal before you have committed substantial resources to it will often enhance the changes for reaching an accord.

If you decide that a public meeting is appropriate, you still must decide what type of meeting, or how many meetings, to hold. We will discuss meetings in detail below in "Conducting a Public Meeting." But as part of designing the scoping process, you must decide between a single meeting and multiple ones for different interest groups, and whether to hold a separate meeting for government agency participants.

The single large public meeting brings together all the interested parties, which has both advantages and disadvantages. If the meeting is efficiently run, you can cover a lot of interests and issues in a short time. And a single meeting does reduce agency travel time and expense. In some cases it may be an advantage to have all interest groups hear each others' concerns, possibly promoting compromise. It is definitely important to have the staffs of the cooperating agencies, as well as the lead agency, hear the public views of what the significant issues are and it will be difficult and expensive for the cooperating agencies to attend several meetings. But if there are opposing groups of citizens who feel strongly on both sides of an issue, the setting of the large meeting may needlessly create tension and an emotional confrontation between the groups. Moreover, some people may feel intimidated in such a setting, and won't express themselves at all.

The principal drawback of the large meeting, however, is that it is generally unwieldy. To keep order, discussion is limited, dialogue is difficult, and often all participants are frustrated, agency and public alike. Large meetings can serve to identify the interest groups for future discussion, but often little else is accomplished. Large meetings often become "events" where grand standing substitutes for substantive comments. Many agencies resort to a formal hearing-type format to maintain control, and this can cause resentments among participants who come to the meeting expecting a responsive discussion.

For these reasons, we recommend that meetings be kept small and informal, and that you hold several, if necessary, to accommodate the different interest groups. The other solution is to break a large gathering into small discussion groups, which is discussed below. Using either method increases the likelihood that participants will level with you and communicate their underlying concerns rather than make an emotional statement just for effect.

Moreover, in our experience, a separate meeting for cooperating agencies is quite productive. Working relationships can be forged for the effective participation of all involved in the preparation of the EIS. Work assignments are made by the lead agency, a schedule may be set out for production of parts of the draft EIS, and information gaps can be identified early. But a productive meeting such as this is not possible at the very beginning of the process. It can only result from the same sort of planning and preparation that goes into the public meetings. We discuss below the special problems of cooperating agencies, and their information needs for effective participation in scoping.

#### **4. Issuing the public notice.**

The preliminary look at the proposal, in which you develop the information packet discussed above, will enable you to tell what kind of public notice will be most appropriate and effective.

Section 1501.7 of the NEPA regulations requires that a notice of intent to prepare an EIS must be published in the Federal Register prior to initiating scoping.\*\*\* This means that one of the appropriate means of giving public notice of the upcoming process could be the same Federal Register notice. And because the notice of intent must be published anyway, the scoping notice is not an absolute requirement, and other means of public notice often are more effective, including local newspapers, radio and TV, posting notices in public places, etc. (See Section 1506.6 of the regulations.)

What is important is that the notice actually reach the affected public. If the proposal is an important new national policy in which national environmental groups can be expected to be interested, these groups can be contacted by form letter with ease. (See the Conservation Directory for a list of national groups.)\*\*\*\* Similarly, for proposals that may have major implications for the business community, trade associations can be a helpful means of alerting affected groups. The Federal Register notice can be relied upon to notify others that you did not know about. But the Federal Register is of little use for reaching individuals or local groups interested in a site specific proposal. Therefore notices in local papers, letters to local government officials and personal contact with a few known interested individuals would be more appropriate. Land owners abutting any proposed project site should be notified immediately.

Remember that issuing press releases to newspapers, and radio and TV stations is not enough, because they may not be used by the media unless the proposal is considered "newsworthy." If the proposal is controversial, you can try alerting reporters or editors to an upcoming scoping meeting for coverage in special weekend sections used by many papers. But placing a notice in the legal notice section of the paper is the only guarantee that it will be published.

## **5. Conducting a Public Meeting.**

In our study of agency practice in conducting scoping, the most interesting information on what works and doesn't work involves the conduct of meetings. Innovative techniques have been developed, and experience shows that these can be successful.

One of the most important factors turns out to be the training and experience of the moderator. The U.S. Office of Personnel Management and others give training courses on how to run a meeting effectively. Specific techniques are taught to keep the meeting on course and to deal with confrontations. These techniques are sometimes called "meeting facilitation skills."

When holding a meeting, the principle thing to remember about scoping is that it is a process to initiate preparation of an EIS. It is not concerned with the ultimate decision on the proposal. A fruitful scoping process leads to an adequate environmental analysis, including all reasonable alternatives and mitigation measures. This limited goal is in the interest of all the participants, and thus offer the possibility of agreement by the parties on this much at least. To run a successful meeting you must keep the focus on this positive purpose.

At the point of scoping therefore, in one sense all the parties involved have a common goal, which is a thorough environmental review. If you emphasize this in the meeting you can stop any grandstanding speeches without a heavy hand, by simply asking the speaker if he or she has any concrete suggestions for the group on issues to be covered in the EIS. By frequently drawing the meeting back to this central purpose of scoping, the opponents of a proposal will see that you have not already made a decision, and they will be forced to deal with the real issues. In addition, when people see that you are genuinely seeking their opinion, some will volunteer useful information about a particular subject or site that they may know better than anyone on your staff.

As we stated above, we found that at informal meetings in small groups are the most satisfactory for eliciting useful issues and information. Small groups can be formed in two ways: you can invite different interest groups to different meetings, or you can break a large number into small groups for discussion.

One successful model is used by the Army Corps of Engineers, among others. In cases where a public meeting is desired, it is publicized and scheduled for a location that will be convenient for as many potential participants as possible. The information packet is made available in several ways, by sending it to those known to be interested, giving a telephone number in the public notices for use in requesting one, and providing more at the door of the meeting place as well. As participants enter the door, each is given a number. Participants are asked to register their name, address and/or telephone for use in future contact during scoping and the rest of the NEPA process.

The first part of the meeting is devoted to a discussion of the proposal in general, covering its purpose, proposed location, design, and any other aspects that can be presented in a lecture format. A question and answer period concerning this information is often held at this time. Then if there are more than 15 or 20 attendees at the meeting, the next step is to

break it into small groups for more intensive discussion. At this point, the numbers held by the participants are used to assign them to small groups by sequence, random drawing, or any other method. Each group should be no larger than 12, and 8-10 is better. The groups are informed that their task is to prepare a list of significant environmental issues and reasonable alternatives for analysis in the EIS. These lists will be presented to the main group and combined into a master list, after the discussion groups are finished. The rules for how priorities are to be assigned to the issues identified by each group should be made clear before the large group breaks up.

Some agencies ask each group member to vote for the 5 or 10 most important issues. After tallying the votes of individual members, each group would only report out those issues that received a certain number of votes. In this way only those items of most concern to the member would even make the list compiled by each group. Some agencies go further, and only let each group report out the top few issues identified. But you must be careful not to ignore issues that may be considered a medium priority by many people. They may still be important, even if not in the top rank. Thus, instead of simply voting, the members of the groups should rank the listed issues in order of perceived importance. Points may be assigned to each item on the basis of the rankings by each member, so that the group can compile a list of issues in priority order. Each group should then be asked to assign cut-off numbers to separate high, medium and low priority items. Each group should then report out to the main meeting all of its issues, but with priorities clearly assigned.

One member of the lead agency or cooperating agency staff should join each group to answer questions and to listen to the participants' expressions of concern. It has been the experience of many of those who have tried this method that it is better not to have the agency person lead the group discussions. There does need to be a leader, who should be chosen by the group members. In this way, the agency staff member will not be perceived as forcing his opinions on the others.

If the agency has a sufficient staff of formally trained "meeting facilitators," they may be able to achieve the same result even where agency staff people lead the discussion groups. But absent such training, the staff should not lead the discussion groups. A good technique is to have the agency person serve as the recording secretary for the group, writing down each impact and alternative that is suggested for study by the participants. This enhances the neutral status of the agency representative, and ensures that he is perceived as listening and reacting to the views of the group. Frequently, the recording of issues is done with a large pad mounted on the wall like a blackboard, which has been well received by agency and public alike, because all can see that the views expressed actually have been heard and understood.

When the issues are listed, each must be clarified or combined with others to eliminate duplication or fuzzy concepts. The agency staff person can actually lead in this effort because of his need to reflect on paper exactly what the issues are. After the group has listed all the environmental impacts and alternatives and any other issues that the members wish to have considered, they are asked to discuss the relative merits and importance of each listed item. The group should be reminded that one of its tasks is to eliminate insignificant issues. Following this, the members assign priorities or vote using one or the methods described

above.

The discussion groups are then to return to the large meeting to report on the results of their rankings. At this point further discussion may be useful to seek a consensus on which issues are really insignificant. But the moderator must not appear to be ruthlessly eliminating issues that the participants ranked of high or medium importance. The best that can usually be achieved is to "deemphasize" some of them, by placing them in the low priority category.

#### **6. What to do with the comments.**

After you have comments from the cooperating agencies and the interested public, you must evaluate them and make judgments about which issues are in fact significant and which ones are not. The decision of what the EIS should contain is ultimately made by the lead agency. But you will now know what the interested participants consider to be the principal areas for study and analysis. You should be guided by these concerns, or be prepared to briefly explain why you do not agree. Every issue that is raised as a priority matter during scoping should be addressed in some manner in the EIS, either by in-depth analysis, or at least a short explanation showing that the issue was examined, but not considered significant for one or more reasons.

Some agencies have claimed that the time savings claimed for scoping have not been realized because after public groups raise numerous minor matters, they cannot focus the EIS on the significant issues. It is true that it is always easier to add issues than it is to subtract them during scoping. And you should realize that trying to eliminate a particular environmental impact or alternative from study may arouse the suspicions of some people. Cooperating agencies may be even more reluctant to eliminate issues in their areas of specific expertise than the public participants. But the way to approach it is to seek consensus on which issues are less important. These issues may then be deemphasized in the EIS by a brief discussion of why they were not examined in depth.

If no consensus can be reached, it is still your responsibility to select the significant issues. The lead agency cannot abdicate its role and simply defer to the public. Thus, a group of participants at a scoping meeting should not be able to "vote" an insignificant matter into a big issue. If a certain issue is raised and in your professional judgment you believe it is not significant, explain clearly and briefly in the EIS why you believe it is not significant. There is no need to devote time and pages to it in the EIS if you can show that it is not relevant or important to the proposed action. But you should address in some manner all matters that were raised in the scoping process, either by an extended analysis or a brief explanation showing that you acknowledge the concern.

Several agencies have made a practice of sending out a post-scoping document to make public the decisions that have been made on what issues to cover in the EIS. This is not a requirement, but in certain controversial cases it can be worthwhile. Especially when scoping has been conducted by written comments, and there has been no face-to-face contact, a postscoping document is the only assurance to the participants that they were heard and understood until the draft EIS comes out. Agencies have acknowledged to us that "letters instead of meetings seem to get disregarded easier." Thus a reasonable quid pro quo for relying on comment letters would be to send out

a post-scoping document as feedback to the commentors.

The post-scoping document may be as brief as a list of impacts and alternatives selected for analysis; it may consist of the "scope of work" produced by the lead and cooperating agencies for their own FTC work or for the contractor; or it may be a special document that describes all the issues and explains why they were selected.

#### **7. Allocating work assignments and setting schedules.**

Following the public participation in whatever form, and the selection of issues to be covered, the lead agency must allocate the EIS preparation work among the available resources. If there are no cooperating agencies, the lead agency allocates work among its own personnel or contractors. If there are cooperating agencies involved, they may be assigned specific research or writing tasks. The NEPA regulations require that they normally devote their own resources to the issues in which they have special expertise or jurisdiction by law. (Sections 1501.6(b)(3),(5), and 1501.7(a)(4).

In all cases, the lead agency should set a schedule for completion of the work, designate a project manager and assign the reviewers, and must set a time limit for the entire NEPA analysis if requested to do so by an applicant. (Section 1501.8).

#### **8. A few ideas to try.**

##### **a. Route design workshop**

As part of a scoping process, a successful innovation by one agency involved route selection for a railroad. The agency invited representatives of the interested groups (identified at previous public meeting) to try their hand at designing alternative routes for a proposed rail segment. Agency staff explained design constraints and evaluation criteria such as the desire to minimize damage to prime agricultural land and valuable wildlife habitat. The participants were divided into small groups for a few hours of intensive work. After learning of the real constraints on alternative routes, the participants had a better understanding of the agency's and applicant's viewpoints. Two of the participants actually supported alternative routes that affected their own land because the overall impacts of these routes appeared less adverse.

The participants were asked to rank the five alternatives they had devised and the top were included in the EIS. But the agency did not permit the groups to apply the same evaluation criteria to the routes proposed by the applicant of the agency. Thus public confidence in the process was not as high as it could have been, and probably was reduced when the applicant's proposal was ultimately selected.

The Council recommends that when a hands-on design workshop is used, the assignment of the group be expanded to include evaluation of the reasonableness of all the suggested alternatives.

##### **b. Hotline**

Several agencies have successfully used a special telephone number, essentially a hotline, to take public comments before, after, or instead of

a public meeting. It helps to designate a named staff member to receive these calls to that some continuity and personal relationships can be developed.

c. Videotape of sites

A videotape of proposed sites is an excellent tool for explaining site differences and limitations during the lecture-format part of a scoping meeting.

d. Videotaping meetings

One agency has videotaped whole scoping meetings. Staff found that the participants took their roles more seriously and the taping appeared not to precipitate grandstanding tactics.

e. Review committee

Success has been reported from one agency which sets up review committees, representing all interested groups, to oversee the scoping process. The committees help to design the scoping process. In cooperation with the lead agency, the committee reviews the materials generated by the scoping meeting. Again, however, the final decision on EIS content is the responsibility of the lead agency.

f. Consultant as meeting moderator

In some hotly contested cases, several agencies have used the EIS consultant to actually run the scoping meeting. This is permitted under the NEPA regulations and can be useful to de-fuse a tense atmosphere if the consultant is perceived as a neutral third party. But the responsible agency officials must attend the meetings. There is no substitute for developing a relationship between the agency officials and the affected parties. Moreover, if the responsible officials are not prominently present, the public may interpret that to mean that the consultant is actually making the decisions about the EIS, and not the lead agency.

g. Money saving tips

Remember that money can be saved by using conference calls instead of meetings, tape-recording the meetings instead of hiring a stenographer, and finding out whether people want a meeting before announcing it.

**C. Pitfalls.**

We list here some of the problems that have been experienced in certain scoping cases, in order to enable others to avoid the same difficulties.

**1. Closed meetings.**

In response to informal advice from CEQ that holding separate meetings for agencies and the public would be permitted under the regulations and could be more productive, one agency scheduled a scoping meeting for the cooperating agencies some weeks in advance of the public meeting. Apparently, the lead agency felt that the views of the cooperating agencies would be more candidly expressed if the meeting were closed. In any event, several members of the public learned of the meeting and asked to be

present. The lead agency acquiesced only after newspaper reporters were able to make a story out of the closed session. At the meeting, the members of the public were informed that they would not be allowed to speak, nor to record the proceedings. The ill feeling aroused by this chain of events may not be repaired for a long time. Instead, we would suggest the following possibilities:

a. Although separate meetings for agencies and public groups may be more efficient, there is no magic to them. By all means, if someone insists on attending the agency meeting, let him. There is nothing as secret going on there as he may think there is if you refuse him admittance. Better yet, have your meeting of cooperating agencies after the public meeting. That may be the most logical time anyway, since only then can the scope of the EIS be decided upon and assignments made among the agencies. If it is well done, the public meeting will satisfy most people and show them that you are listening to them.

b. Always permit recording. In fact, you should suggest it for public meetings. All parties will feel better if there is a record of the proceeding. There is no need for a stenographer, and tape is inexpensive. It may even be better than a typed transcript, because staff and decision-makers who did not attend the meeting can listen to the exchange and may learn a lot about public perceptions of the proposal.

c. When people are admitted to a meeting, it makes no sense to refuse their requests to speak. However, you can legitimately limit their statements to the subject at hand--scoping. You do not have to permit some participants to waste the others' time if they refuse to focus on the impacts and alternatives for inclusion in the EIS. Having a tape of the proceedings could be useful after the meeting if there is some question that speakers were improperly silenced. But it takes an experienced moderator to handle a situation like this.

d. The scoping stage is the time for building confidence and trust on all sides of a proposal, because this is the only time when there is a common enterprise. The attitudes formed at this stage can carry through the project review process. Certainly it is difficult for things to get better. So foster the good will as long as you can by listening to what is being said during scoping. It is possible that out of that dialogue may appear recommendations for changes and mitigation measures that can turn a controversial fight into an acceptable proposal.

## **2. Contacting interested groups.**

Some problems have arisen in scoping where agencies failed to contact all the affected parties, such as industries or state and local governments. In one case, a panel was assembled to represent various interests in scoping an EIS on a wildlife-related program. The agency had an excellent format for the meeting, but the panel did not represent industries that would be affected by the program or interested state and local governments. As a result, the EIS may fail to reflect the issues of concern to these parties.

Another agency report to us that it failed to contact parties directly because staff feared that if they missed someone they would be accused of favoritism. Thus they relied on the issuance of press releases which were not effective. Many people who did not learn about the meetings in time sought additional meeting opportunities, which cost extra money and delayed



the process.

In our experience, the attempt to reach people is worth the effort. Even if you miss someone, it will be clear that you tried. You can enlist a few representatives of an interest group to help you identify and contact others. Trade associations, chambers of commerce, local civic groups, and local and national conservation groups can spread the word to members.

### **3. Tiering.**

Many people are not familiar with the way environmental impact statements can be "tiered" under the NEPA regulations, so that issues are examined in detail at the stage that decisions on them are being made. See Section 1508.28 of the regulations. For example, if a proposed program is under review, it is possible that site specific actions are not yet proposed. In such a case, these actions are not addressed in the EIS on the program, but are reserved for a later tier of analysis. If tiering is being used, this concept must be made clear at the outset of any scoping meeting, so that participants do not concentrate on issues that are not going to be addressed at this time. If you can specify when these other issues will be addressed it will be easier to convince people to focus on the matters at hand.

### **4. Scoping for unusual programs.**

One interesting scoping case involved proposed changes in the Endangered Species Program. Among the impacts to be examined were the effects of this conservation program on user activities such as mining, hunting, and timber harvest, instead of the other way around. Because of this reverse twist in the impacts to be analyzed, some participants had difficulty focusing on useful issues. Apparently, if the subject EIS is unusual, it will be even harder than normal for scoping participants to grasp what is expected of them.

In the case of the Endangered Species Program EIS, the agency planned an intensive 3 day scoping session, successfully involved the participants, and reached accord on several issues that would be important for the future implementation of the program. But the participants were unable to focus on impacts and program alternatives for the EIS. We suggest that if the intensive session had been broken up into 2 or 3 meetings separated by days or weeks, the participants might have been able to get used to the new way of thinking required, and thereby to participate more productively. Programmatic proposals are often harder to deal with in a scoping context than site specific projects. Thus extra care should be taken in explaining the goals of the proposal and in making the information available well in advance of any meetings.

### **D. Lead and Cooperating Agencies.**

Some problems with scoping revolve around the relationship between lead and cooperating agencies. Some agencies are still uncomfortable with these roles. The NEPA regulations, and the 40 Questions and Answers about the NEPA Regulations, 46 Fed. Reg. 18026, (March 23, 1981) describe in detail the way agencies are now asked to cooperate on environmental analyses. (See Questions 9, 14, and 30.) We will focus on the early phase of that cooperation.

It is important for the lead agency to be as specific as possible with the cooperating agencies. Tell them what you want them to contribute during scoping: environmental impacts and alternatives. Some agencies still do not understand the purpose of scoping.

Be sure to contact and involve representatives of the cooperating agencies who are responsible for NEPA-related functions. The lead agency will need to contact staff of the cooperating agencies who can both help to identify issues and alternatives and commit resources to a study, agree to a schedule for EIS preparation, or approve a list of issues as sufficient. In some agencies that will be at the district or state office level (e.g., Corps of Engineers, Bureau of Land Management, and Soil Conservation Service). In still others, the field offices do not have NEPA responsibilities or expertise and you will deal directly with headquarters (e.g., Federal Energy Regulatory Commission, Interstate Commerce Commission). In all cases, you are looking for the office that can give you the answers you need. So keep trying until you find the organizational level of the cooperating agency that can give you useful information and that has the authority to make commitments.

As stated in 40 Questions and Answers about the NEPA Regulations, the lead agency has the ultimate responsibility for the content of the EIS, but if it leaves out a significant issue or ignores the advice or expertise of the cooperating agency, the EIS may be found later to be inadequate. (46 Fed. Reg. 18030, Question 14b.) At the same time, the cooperating agency will be concerned that the EIS contain material sufficient to satisfy its decisionmaking needs. Thus, both agencies have a stake in producing a document of good quality. The cooperating agencies should be encouraged not only to participate in scoping but also to review the decisions made by the lead agency about what to include in the EIS. Lead agencies should allow any information needed by a cooperating agency to be included, and any issues of concern to the cooperating agency should be covered, but it usually will have to be at the expense of the cooperating agency.

Cooperating agencies have at least as great a need as the general public for advance information on a proposal before any scoping takes place. Agencies have reported to us that information from the lead agency is often too sketchy or comes too late for informed participation. Lead agencies must clearly explain to all cooperating agencies what the proposed action is conceived to be at this time, and what present alternatives and issues the lead agency sees, before expecting other agencies to devote time and money to a scoping session. Informal contacts among the agencies before scoping gets underway are valuable to establish what the cooperating agencies will need for productive scoping to take place.

Some agencies will be called upon to be cooperators more frequently than others, and they may lack the resources to respond to the numerous requests. The NEPA regulations permit agencies without jurisdiction by law (i.e., no approval authority over the proposal) to decline the cooperating agency role. (Section 1501.6(c)). But agencies that do have jurisdiction by law cannot opt out entirely and may have to reduce their cooperating effort devoted to each EIS. (See Section 1501.6(c) and 40 Questions and Answers about the NEPA Regulations, 46 Fed. Reg. 18030, Question 14a.) Thus, cooperators would be greatly aided by a priority list from the lead agency showing which proposals most need their help. This will lead to a more efficient allocation of resources.

Some cooperating agencies are still holding back at the scoping stage in order to retain a critical position for later in the process. They either avoid the scoping sessions or fail to contribute, and then raise objections in comments on the draft EIS. We cannot emphasize enough that the whole point of scoping is to avoid this situation. As we stated in 40 Questions and Answers about the NEPA Regulations, "if the new alternative [or other issue] was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the [lead] agency." (46 Fed. Reg. 18035, Question 29b.)

### **III. Advice for Public Participants**

Scoping is a new opportunity for you to enter the earliest phase of the decisionmaking process on proposals that affect you. Through this process you have access to public officials before decisions are made and the right to explain your objections and concerns. But this opportunity carries with it a new responsibility. No longer may individuals hang back until the process is almost complete and then spring forth with a significant issue or alternatives that might have been raised earlier. You are now part of the review process, and your role is to inform the responsible agencies of the potential impacts that should be studied, the problems a proposal may cause that you foresee, and the alternatives mitigating measures that offer promise.

As noted above, and in 40 Questions and Answers, no longer will a comment raised for the first time after the draft EIS is finished be accorded the same serious consideration it would otherwise have merited if the issue had been raised during scoping. Thus you have a responsibility to come forward early with known issues.

In return, you get the chance to meet the responsible officials and to make the case for your alternative before they are committed to a course of action. To a surprising degree this avenue has been found to yield satisfactory results. There's no guarantee, of course, but when the alternative you suggest is really better, it is often hard for a decisionmaker to resist.

There are several problems that commonly arise that public participants should be aware of:

#### **A. Public input is often only negative**

The optimal timing of scoping within the NEPA process is difficult to judge. On the other hand, as explained above (Section II.B.1), if it is attempted too early, the agency cannot explain what it has in mind and informed participation will be impossible. On the other hand, if it is delayed, the public may find that significant decisions are already made, and their comments may be discounted or will be too late to change the project. Some agencies have found themselves in a tactical cross-fire when public criticism arises before they can even define their proposal sufficiently to see whether they have a worthwhile plan. Understandably, they would be reluctant after such an experience to invite public criticism early in the planning process through open scoping. But it is in your interest to encourage agencies to come out with proposals in the early stage because that enhances the possibility of your comments being used. Thus public participants in scoping should reduce the emotion level

whenever possible and use the opportunity to make thoughtful, rational presentations on impacts and alternatives. Polarizing over issues too early hurts all parties. If agencies get positive and useful public responses from the scoping process, they will more frequently come forward with proposals early enough so that they can be materially improved by your suggestions.

#### **B. Issues are too broad**

The issues that participants tend to identify during scoping are much too broad to be useful for analytical purposes. For example, "cultural impacts" -- what does this mean? What precisely are the impacts that should be examined? When the EIS preparers encounter a comment as vague as this they will have to make their own judgment about what you meant, and you may find that your issues are not covered. Thus, you should refine the broad general topics, and specify which issues need evaluation and analysis.

#### **C. Impacts are not identified**

Similarly, people (including agency staff) frequently identify "causes" as issues but fail to identify the principal "effects" that the EIS should evaluate in depth. For example, oil and gas development is a cause of many impacts. Simply listing this generic category is of little help. You must go beyond the obvious causes to the specific effects that are of concern. If you want scoping to be seen as more than just another public meeting, you will need to put in extra work.

#### **IV. Brief Points For Applicants.**

Scoping can be an invaluable part of your early project planning. Your main interest is in getting a proposal through the review process. This interest is best advanced by finding out early where the problems with the proposal are, and where accommodations can be made. Scoping is an ideal meeting place for all the interest groups if you have not already contacted them. In several cases, we found that the compromises made at this stage allowed a project to move efficiently through the permitting process virtually unopposed.

The NEPA regulations place an affirmative obligation on agencies to provide for cases where actions are planned by private applicants" so that designated staff are available to consult with the applicants, to advise applicants of information that will be required during review, and to insure that the NEPA process commences at the earliest possible time. (Section 1501.2(d)). This section of the regulations is intended to ensure that environmental factors are considered at an early stage in the applicant's planning process. (See 40 Questions and Answers about the NEPA Regulations), 46 Fed. Reg. 18028, Questions 8 and 9.)

Applicants should take advantage of this requirement in the regulations by approaching the agencies early to consult on alternatives, mitigation requirements, and the agency's information needs. This early contact with the agency can facilitate a prompt initiation of the scoping process in cases where an EIS will be prepared. You will need to furnish sufficient information about your proposal to enable the lead agency to formulate a coherent presentation for cooperating agencies and the public. But don't wait until your choices are all made and the alternatives have been eliminated. (Section 1506.1).

During scoping, be sure to attend any of the public meetings unless the agency is dividing groups by interest affiliation. You will be able to answer any questions about the proposal, and even more important, you will be able to hear the objections raised, and find out what the real concerns of the public are. This is, of course, vital information for future negotiation with the affected parties.

***APPENDIX F***

***CEQ Guidance Regarding NEPA Regulations***

[This memorandum was published in the Federal Register and appears at 48 Fed. Reg. 34263 (1983). Ed. Note]

## GUIDANCE REGARDING NEPA REGULATIONS

40 CFR Part 1500

### *MEMORANDUM*

For: Heads of Federal Agencies

From: A. Alan Hill, Chairman, Council on Environmental Quality

Re: Guidance Regarding NEPA Regulations

The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) were issued on November 29, 1978. These regulations became effective for, and binding upon, most federal agencies on July 30, 1979, and for all remaining federal agencies on November 30, 1979.

As part of the Council's NEPA oversight responsibilities it solicited through an August 14, 1981, notice in the Federal Register public and agency comments regarding a series of questions that were developed to provide information on the manner in which federal agencies were implementing the CEQ regulations. On July 12, 1982, the Council announced the availability of a document summarizing the comments received from the public and other agencies and also identifying issue areas which the Council intended to review. On August 12, 1982, the Council held a public meeting to address those issues and hear any other comments which the public or other interested agencies might have about the NEPA process. The issues addressed in this guidance were identified during this process.

There are many ways in which agencies can meet their responsibilities under NEPA and the 1978 regulations. The purpose of this document is to provide the Council's guidance on various ways to carry out activities under the regulations.

## Scoping

The Council on Environmental Quality (CEQ) regulations direct federal agencies which have made a decision to prepare an environmental impact statement to engage in a public scoping process. Public hearings or meetings, although often held, are not required; instead the manner in which public input will be sought is left to the discretion of the agency.

The purpose of this process is to determine the scope of the EIS so that preparation of the document can be effectively managed. Scoping is intended to ensure that problems are identified early and properly studied, that issues of little significance do not consume time and effort, that the draft EIS is thorough and balanced, and that delays occasioned by an inadequate draft EIS are avoided. The scoping process should identify the public and agency concerns; clearly define the environmental issues and alternatives to be examined in the EIS including the elimination of nonsignificant issues; identify related issues which originate from separate legislation, regulation, or Executive Order (e.g. historic preservation or endangered species concerns); and identify state and local agency requirements which must be addressed. An effective scoping process can help reduce unnecessary paperwork and time delays in preparing and processing the EIS by clearly identifying all relevant procedural requirements.

In April 1981, the Council issued a "Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping" on the subject of Scoping Guidance. The purpose of this guidance was to give agencies suggestions as to how to more effectively carry out the CEQ scoping requirement. The availability of this document was announced in the Federal Register at 46 FR 25461. It is still available upon request from the CEQ General Counsel's office.

The concept of lead agency (§1508.16) and cooperating agency (§1508.5) can be used effectively to help manage the scoping process and prepare the environmental impact statement. The lead agency should identify the potential



cooperating agencies. It is incumbent upon the lead agency to identify any agency which may ultimately be involved in the proposed action, including any subsequent permitting [48 FR 34264]a actions. Once cooperating agencies have been identified they have specific responsibility under the NEPA regulations (40 CFR 1501.6). Among other things cooperating agencies have responsibilities to participate in the scoping process and to help identify issues which are germane to any subsequent action it must take on the proposed action. The ultimate goal of this combined agency effort is to produce an EIS which in addition to fulfilling the basic intent of NEPA, also encompasses to the maximum extent possible all the environmental and public involvement requirements of state and federal laws, Executive Orders, and administrative policies of the involved agencies. Examples of these requirements include the Fish and Wildlife Coordination Act, the Clean Air Act, the Endangered Species Act, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Farmland Protection Policy Act, Executive Order 11990 (Protection of Wetlands), and Executive Order 11998 (Floodplain Management).

It is emphasized that cooperating agencies have the responsibility and obligation under the CEQ regulations to participate in the scoping process. Early involvement leads to early identification of significant issues, better decisionmaking, and avoidance of possible legal challenges. Agencies with "jurisdiction by law" must accept designation as a cooperating agency if requested (40 CFR 1501.6).

One of the functions of scoping is to identify the public involvement/public hearing procedures of all appropriate state and federal agencies that will ultimately act upon the proposed action. To the maximum extent possible, such procedures should be integrated into the EIS process so that joint public meetings and hearings can be conducted. Conducting joint meetings and hearings eliminates duplication and should significantly reduce the time and cost of processing an EIS and any subsequent approvals. The end result will be a

more informed public cognizant of all facets of the proposed action.

It is important that the lead agency establish a process to properly manage scoping. In appropriate situations the lead agency should consider designating a project coordinator and forming an interagency project review team. The project coordinator would be the key person in monitoring time schedules and responding to any problems which may arise in both scoping and preparing the EIS. The project review team would be established early in scoping and maintained throughout the process of preparing the EIS. This review team would include state and local agency representatives. The review team would meet periodically to ensure that the EIS is complete, concise, and prepared in a timely manner.

A project review team has been used effectively on many projects. Some of the more important functions this review team can serve include: (1) A source of information, (2) a coordination mechanism, and (3) a professional review group. As an information source, the review team can identify all federal, state, and local environmental requirements, agency public meeting and hearing procedures, concerned citizen groups, data needs and sources of existing information, and the significant issues and reasonable alternatives for detailed analysis, excluding the non-significant issues. As a coordination mechanism, the team can ensure the rapid distribution of appropriate information or environmental studies, and can reduce the time required for formal consultation on a number of issues (e.g., endangered species or historic preservation). As a professional review group the team can assist in establishing and monitoring a tight time schedule for preparing the EIS by identifying critical points in the process, discussing and recommending solutions to the lead agency as problems arise, advising whether a requested analysis or information item is relevant to the issues under consideration, and providing timely and substantive review comments on any preliminary reports or analyses that may be prepared during the process. The presence of professionals from all scientific disciplines which have a significant

role in the proposed action could greatly enhance the value of the team.

The Council recognizes that there may be some problems with the review team concept such as limited agency travel funds and the amount of work necessary to coordinate and prepare for the periodic team meetings. However, the potential benefits of the team concept are significant and the Council encourages agencies to consider utilizing interdisciplinary project review teams to aid in EIS preparation. A regularly scheduled meeting time and location should reduce coordination problems. In some instances, meetings can be arranged so that many projects are discussed at each session. The benefits of the concept are obvious: timely and effective preparation of the EIS, early identification and resolution of any problems which may arise, and elimination, or at least reduction of, the need for additional environmental studies subsequent to the approval of the EIS.

Since the key purpose of scoping is to identify the issues and alternatives for consideration, the scoping process should "end" once the issues and alternatives to be addressed in the EIS have been clearly identified. Normally this would occur during the final stages of preparing the draft EIS and before it is officially circulated for public and agency review.

The Council encourages the lead agency to notify the public of the results of the scoping process to ensure that all issues have been identified. The lead agency should document the results of the scoping process in its administrative record.

The NEPA regulations place a new and significant responsibility on agencies and the public alike during the scoping process to identify all significant issues and reasonable alternatives to be addressed in the EIS. Most significantly, the Council has found that scoping is an extremely valuable aid to better decisionmaking. Thorough scoping may also have the effect of reducing the frequency with which proposed actions are challenged in court on the basis of an inadequate EIS. Through the techniques identified in this guidance, the lead

agency will be able to document that an open public involvement process was conducted, that all reasonable alternatives were identified, that significant issues were identified and non-significant issues eliminated, and that the environmental public involvement requirements of all agencies were met, to the extent possible, in a single "one-stop" process.

### Categorical Exclusions

Section 1507 of the CEQ regulations directs federal agencies when establishing implementing procedures to identify those actions which experience has indicated will not have a significant environmental effect and to categorically exclude them from NEPA review. In our August 1981 request for public comments, we asked the question "Have categorical exclusions been adequately identified and defined?".

The responses the Council received indicated that there was considerable belief that categorical exclusions were not adequately identified and defined. A number of commentators indicated that agencies had not identified all categories of actions that meet the categorical exclusion definition (§1508.4) or that agencies were overly restrictive in their interpretations of categorical exclusions. Concerns were expressed that agencies were requiring [48 FR 34265] too much documentation for projects that were not major federal actions with significant effects and also that agency procedures to add categories of actions to their existing lists of categorical exclusions were too cumbersome.

The National Environmental Policy Act and the CEQ regulations are concerned primarily with those "major federal actions significantly affecting the quality of the human environment" (42 U.S.C. 4332). Accordingly, agency procedures, resources, and efforts should focus on determining whether the proposed federal action is a major federal action significantly affecting the quality of the human environment. If the answer to this question is yes, an environmental impact

statement must be prepared. If there is insufficient information to answer the question, an environmental assessment is needed to assist the agency in determining if the environmental impacts are significant and require an EIS. If the assessment shows that the impacts are not significant, the agency must prepare a finding of no significant impact. Further stages of this federal action may be excluded from requirements to prepare NEPA documents.

The CEQ regulations were issued in 1978 and most agency implementing regulations and procedures were issued shortly thereafter. In recognition of the experience with the NEPA process that agencies have had since the CEQ regulations were issued, the Council believes that it is appropriate for agencies to examine their procedures to insure that the NEPA process utilizes this additional knowledge and experience. Accordingly, the Council strongly encourages agencies to re-examine their environmental procedures and specifically those portions of the procedures where "categorical exclusions" are discussed to determine if revisions are appropriate. The specific issues which the Council is concerned about are (1) the use of detailed lists of specific activities for categorical exclusions, (2) the excessive use of environmental assessments/findings of no significant impact and (3) excessive documentation.

The Council has noted some agencies have developed lists of specific activities which qualify as categorical exclusions. The Council believes that if this approach is applied narrowly it will not provide the agency with sufficient flexibility to make decisions on a project-by-project basis with full consideration to the issues and impacts that are unique to a specific project. The Council encourages the agencies to consider broadly defined criteria which characterize types of actions that, based on the agency's experience, do not cause significant environmental effects. If this technique is adopted, it would be helpful for the agency to offer several examples of activities frequently performed by that agency's personnel which would normally fall in these categories. Agencies also need to consider whether the cumulative effects of several small actions would cause sufficient

environmental impact to take the actions out of the categorically excluded class.

The Council also encourages agencies to examine the manner in which they use the environmental assessment process in relation to their process for identifying projects that meet the categorical exclusion definition. A report(1 ) to the Council indicated that some agencies have a very high ratio of findings of no significant impact to environmental assessments each year while producing only a handful of EIS's. Agencies should examine their decisionmaking process to ascertain if some of these actions do not, in fact, fall within the categorical exclusion definition, or, conversely, if they deserve full EIS treatment.

As previously noted, the Council received a number of comments that agencies require an excessive amount of environmental documentation for projects that meet the categorical exclusion definition. The Council believes that sufficient information will usually be available during the course of normal project development to determine the need for an EIS and further that the agency's administrative record will clearly document the basis for its decision. Accordingly, the Council strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded.

Categorical exclusions promulgated by an agency should be reviewed by the Council at the draft stage. After reviewing comments received during the review period and prior to publication in final form, the Council will determine whether the categorical exclusions are consistent with the NEPA regulations.

#### Adoption Procedures

During the recent effort undertaken by the Council to review the current NEPA regulations, several participants indicated federal agencies were not utilizing the adoption procedures as authorized by the CEQ regulations. The concept of

adoption was incorporated into the Council's NEPA Regulations (40 CFR 1506.3) to reduce duplicative EISs prepared by Federal agencies. The experiences gained during the 1970's revealed situations in which two or more agencies had an action relating to the same project; however, the timing of the actions was different. In the early years of NEPA implementation, agencies independently approached their activities and decisions. This procedure lent itself to two or even three EISs on the same project. In response to this situation the CEQ regulations authorized agencies, in certain instances, to adopt environmental impact statements prepared by other agencies.

In general terms, the regulations recognize three possible situations in which adoption is appropriate. One is where the federal agency participated in the process as a cooperating agency. (40 CFR 1506.3(c)). In this case, the cooperating agency may adopt a final EIS and simply issue its record of decision.(2) However, the cooperating agency must independently review the EIS and determine that its own NEPA procedures have been satisfied.

A second case concerns the federal agency which was not a cooperating agency, but is, nevertheless, undertaking an activity which was the subject of an EIS. (40 CFR 1506.3(b)). This situation would arise because an agency did not anticipate that it would be involved in a project which was the subject of another agency's EIS. In this instance where the proposed action is substantially the same as that action described in the EIS, the agency may adopt the EIS and recirculate (file with EPA and distribute to agencies and the public) it as a final EIS. However, the agency must independently review the EIS to determine that it is current and that its own NEPA procedures have been satisfied. When recirculating the final EIS the agency should provide information which identifies what federal action is involved.

The third situation is one in which the proposed action is not substantially the same as that covered by the EIS. In this case, any agency may adopt an EIS or a

portion thereof by circulating the EIS as a draft or as a portion of the agency's draft and preparing a final EIS. (40 CFR 1506.3(a)). Repetitious analysis and time consuming data collection can be easily eliminated utilizing this procedure.

The CEQ regulations specifically address the question of adoption only in terms of preparing EIS's. However, the objectives that underlie this portion of the regulations -- i.e., reducing delays and eliminating duplication -- apply with equal force to the issue of adopting other environmental documents. Consequently, the Council encourages agencies to put in place a mechanism for [48 FR 34266] adopting environmental assessments prepared by other agencies. Under such procedures the agency could adopt the environmental assessment and prepare a Finding of No Significant Impact based on that assessment. In doing so, the agency should be guided by several principles:

- First, when an agency adopts such an analysis it must independently evaluate the information contained therein and take full responsibility for its scope and content.
- Second, if the proposed action meets the criteria set out in 40 CFR 1501.4(e)(2), a Finding of No Significant Impact would be published for 30 days of public review before a final determination is made by the agency on whether to prepare an environmental impact statement.

### Contracting Provisions

Section 1506.5(c) of the NEPA regulations contains the basic rules for agencies which choose to have an environmental impact statement prepared by a contractor. That section requires the lead or cooperating agency to select the contractor, to furnish guidance and to participate in the preparation of the environmental impact statement. The regulation requires contractors who are employed to prepare an environmental impact statement to sign a disclosure statement stating that they have no financial or other interest in the outcome of the project. The responsible federal official must independently evaluate the statement prior to its approval and take responsibility for its scope and contents.

During the recent evaluation of comments regarding agency implementation of



the NEPA process, the Council became aware of confusion and criticism about the provisions of Section 1506.5(c). It appears that a great deal of misunderstanding exists regarding the interpretation of the conflict of interest provision. There is also some feeling that the conflict of interest provision should be completely eliminated.(3)

#### Applicability of §1506.5(c)

This provision is only applicable when a federal lead agency determines that it needs contractor assistance in preparing an EIS. Under such circumstances, the lead agency or a cooperating agency should select the contractor to prepare the EIS.(4)

This provision does not apply when the lead agency is preparing the EIS based on information provided by a private applicant. In this situation, the private applicant can obtain its information from any source. Such sources could include a contractor hired by the private applicant to do environmental, engineering, or other studies necessary to provide sufficient information to the lead agency to prepare an EIS. The agency must independently evaluate the information and is responsible for its accuracy.

#### Conflict of Interest Provisions

The purpose of the disclosure statement requirement is to avoid situations in which the contractor preparing the environmental impact statement has an interest in the outcome of the proposal. Avoidance of this situation should, in the Council's opinion, ensure a better and more defensible statement for the federal agencies. This requirement also serves to assure the public that the analysis in the environmental impact statement has been prepared free of subjective, self-serving research and analysis.

Some persons believe these restrictions are motivated by undue and unwarranted suspicion about the bias of contractors. The Council is aware that many contractors would conduct their studies in a professional and unbiased manner. However, the Council has the responsibility of overseeing the administration of the National Environmental Policy Act in a manner most consistent with the statute's directives and the public's expectations of sound government. The legal responsibilities for carrying out NEPA's objectives rest solely with federal agencies. Thus, if any delegation of work is to occur, it should be arranged to be performed in as objective a manner as possible.

Preparation of environmental impact statements by parties who would suffer financial losses if, for example, a "no action" alternative were selected, could easily lead to a public perception of bias. It is important to maintain the public's faith in the integrity of the EIS process, and avoidance of conflicts in the preparation of environmental impact statements is an important means of achieving this goal.

The Council has discovered that some agencies have been interpreting the conflicts provision in an overly burdensome manner. In some instances, multidisciplinary firms are being excluded from environmental impact statements preparation contracts because of links to a parent company which has design and/or construction capabilities. Some qualified contractors are not bidding on environmental impact statement contracts because of fears that their firm may be excluded from future design or construction contracts. Agencies have also applied the selection and disclosure provisions to project proponents who wish to have their own contractor for providing environmental information. The result of these misunderstandings has been reduced competition in bidding for EIS preparation contracts, unnecessary delays in selecting a contractor and preparing the EIS, and confusion and resentment about the requirement. The Council believes that a better understanding of the scope of §1506.5(c) by

agencies, contractors and project proponents will eliminate these problems.

Section 1506.5(c) prohibits a person or entity entering into a contract with a federal agency to prepare an EIS when that party has at that time and during the life of the contract pecuniary or other interests in the outcomes of the proposal. Thus, a firm which has an agreement to prepare an EIS for a construction project cannot, at the same time, have an agreement to perform the construction, nor could it be the owner of the construction site. However, if there are no such separate interests or arrangements, and if the contract for EIS preparation does not contain any incentive clauses or guarantees of any future work on the project, it is doubtful that an inherent conflict of interest will exist. Further, §1506.5(c) does not prevent an applicant from submitting information to an agency. The lead federal agency should evaluate potential conflicts of interest prior to entering into any contract for the preparation of environmental documents.

#### Selection of Alternatives in Licensing and Permitting Situations

Numerous comments have been received questioning an agency's obligation, under the National Environmental Policy Act, to evaluate alternatives to a proposed action developed by an applicant for a federal permit or license. This concern arises from a belief that projects conceived and developed by private parties should not be questioned or second-guessed by the government. There has been discussion of developing two standards to determining the range of alternatives to be evaluated: The "traditional" standard for projects which are initiated and developed by a Federal agency, and a second standard of evaluating only those alternatives presented by an applicant for a permit or license.

Neither NEPA nor the CEQ regulations make a distinction between actions initiated by a Federal agency and by applicants. Early NEPA case law, while emphasizing the need for a rigorous examination of alternatives, did [48 FR

34267] not specifically address this issue. In 1981, the Council addressed the question in its document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations".(5 ) The answer indicated that the emphasis in determining the scope of alternatives should be on what is "reasonable". The Council said that, "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant."

Since issuance of that guidance, the Council has continued to receive requests for further clarification of this question. Additional interest has been generated by a recent appellate court decision. *Roosevelt Campobello International Park Commission v. E.P.A.* (6) dealt with EPA's decision of whether to grant a permit under the National Pollutant Discharge Elimination System to a company proposing a refinery and deep-water terminal in Maine. The court discussed both the criteria used by EPA in its selecting of alternative sites to evaluate, and the substantive standard used to evaluate the sites. The court determined that EPA's choice of alternative sites was "focused by the primary objectives of the permit applicant . . ." and that EPA had limited its consideration of sites to only those sites which were considered feasible, given the applicant's stated goals. The court found that EPA's criteria for selection of alternative sites was sufficient to meet its NEPA responsibilities.

This decision is in keeping with the concept that an agency's responsibilities to examine alternative sites has always been "bounded by some notion of feasibility" to avoid NEPA from becoming "an exercise in frivolous boilerplate".(7 ) NEPA has never been interpreted to require examination of purely conjectural possibilities whose implementation is deemed remote and speculative. Rather, the agency's duty is to consider "alternatives as they exist and are likely to exist."(8 ) In the *Roosevelt Campobello* case, for example, EPA examined three alternative sites and two alternative modifications of the project at the preferred alternative site. Other factors to be developed during the scoping process --

comments received from the public, other government agencies and institutions, and development of the agency's own environmental data -- should certainly be incorporated into the decision of which alternatives to seriously evaluate in the EIS. There is, however, no need to disregard the applicant's purposes and needs and the common sense realities of a given situation in the development of alternatives.

## Tiering

Tiering of environmental impact statements refers to the process of addressing a broad, general program, policy or proposal in an initial environmental impact statement (EIS), and analyzing a narrower site-specific proposal, related to the initial program, plan or policy in a subsequent EIS. The concept of tiering was promulgated in the 1978 CEQ regulations; the preceding CEQ guidelines had not addressed the concept. The Council's intent in formalizing the tiering concept was to encourage agencies, "to eliminate repetitive discussions and to focus on the actual issues ripe for decisions at each level of environmental review." (9)

Despite these intentions, the Council perceives that the concept of tiering has caused a certain amount of confusion and uncertainty among individuals involved in the NEPA process. This confusion is by no means universal; indeed, approximately half of those commenting in response to our question about tiering (10) indicated that tiering is effective and should be used more frequently. Approximately one-third of the commentators responded that they had no experience with tiering upon which to base their comments. The remaining commentators were critical of tiering. Some commentators believed that tiering added an additional layer of paperwork to the process and encouraged, rather than discouraged, duplication. Some commentators thought that the inclusion of tiering in the CEQ regulations added an extra legal requirement to the NEPA process. Other commentators said that an initial EIS could be prepared when

issues were too broad to analyze properly for any meaningful consideration. Some commentators believed that the concept was simply not applicable to the types of projects with which they worked; others were concerned about the need to supplement a tiered EIS. Finally, some who responded to our inquiry questioned the courts' acceptance of tiered EISs.

The Council believes that misunderstanding of tiering and its place in the NEPA process is the cause of much of this criticism. Tiering, of course, is by no means the best way to handle all proposals which are subject to NEPA analysis and documentation. The regulations do not require tiering; rather, they authorize its use when an agency determines it is appropriate. It is an option for an agency to use when the nature of the proposal lends itself to tiered EIS(s).

Tiering does not add an additional legal requirement to the NEPA process. An environmental impact statement is required for proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. In the context of NEPA, "major Federal actions" include adoption of official policy, formal plans, and programs as well as approval of specific projects, such as construction activities in a particular location or approval of permits to an outside applicant. Thus, where a Federal agency adopts a formal plan which will be executed throughout a particular region, and later proposes a specific activity to implement that plan in the same region, both actions need to be analyzed under NEPA to determine whether they are major actions which will significantly affect the environment. If the answer is yes in both cases, both actions will be subject to the EIS requirement, whether tiering is used or not. The agency then has one of two alternatives: Either preparation of two environmental impact statements, with the second repeating much of the analysis and information found in the first environmental impact statement, or tiering the two documents. If tiering is utilized, the site-specific EIS contains a summary of the issues discussed in the first statement and the agency will incorporate by reference discussions from the first statement. Thus, the second, or site-specific statement,

would focus primarily on the issues relevant to the specific proposal, and would not duplicate material found in the first EIS. It is difficult to understand, given this scenario, how tiering can be criticized for adding an unnecessary layer to the NEPA process; rather, it is intended to streamline the existing process.

The Council agrees with commentators who stated that there are stages in the development of a proposal for a program, plan or policy when the issues are too broad to lend themselves to meaningful analysis in the framework of an EIS. The CEQ regulations specifically define a "proposal" as existing at, "that stage in the development of an action when an agency subject to [NEPA] has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing the goal and the effects can be meaningfully evaluated." (11) Tiering is not intended to force an agency to prepare an EIS before this stage is reached; rather, it is a technique to be used once meaningful analysis can [48 FR 34268] be performed. An EIS is not required before that stage in the development of a proposal, whether tiering is used or not.

The Council also realizes that tiering is not well suited to all agency programs. Again, this is why tiering has been established as an option for the agency to use, as opposed to a requirement.

A supplemental EIS is required when an agency makes substantial changes in the proposed action relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action, and is optional when an agency otherwise determines to supplement an EIS.(12) The standard for supplementing an EIS is not changed by the use of tiering; there will no doubt be occasions when a supplement is needed, but the use of tiering should reduce the number of those occasions.

Finally, some commentators raised the question of courts' acceptability of tiering. This concern is understandable, given several cases which have reversed

agency decisions in regard to a particular programmatic EIS. However, these decisions have never invalidated the concept of tiering, as stated in the CEQ regulations and discussed above. Indeed, the courts recognized the usefulness of the tiering approach in case law before the promulgation of the tiering regulation. Rather, the problems appear when an agency determines not to prepare a site-specific EIS based on the fact that a programmatic EIS was prepared. In this situation, the courts carefully examine the analysis contained in the programmatic EIS. A court may or may not find that the programmatic EIS contains appropriate analysis of impacts and alternatives to meet the adequacy test for the site-specific proposal. A recent decision by the Ninth Circuit Court of Appeals (13) invalidated an attempt by the Forest Service to make a determination regarding wilderness and non-wilderness designations on the basis of a programmatic EIS for this reason. However, it should be stressed that this and other decisions are not a repudiation of the tiering concept. In these instances, in fact, tiering has not been used; rather, the agencies have attempted to rely exclusively on programmatic or "first level" EISs which did not have site-specific information. No court has found that the tiering process as provided for in the CEQ regulations is an improper manner of implementing the NEPA process.

In summary, the Council believes that tiering can be a useful method of reducing paperwork and duplication when used carefully for appropriate types of plans, programs and policies which will later be translated into site-specific projects. Tiering should not be viewed as an additional substantive requirement, but rather a means of accomplishing the NEPA requirements in an efficient manner as possible.

#### Footnotes

1. Environmental Law Institute, NEPA In Action Environmental Offices in Nineteen Federal Agencies, A Report To the Council on Environmental Quality, October 1981.
2. Records of decision must be prepared by each agency responsible for making a



- decision, and cannot be adopted by another agency.
3. The Council also received requests for guidance on effective management of the third-party environmental impact statement approach. However, the Council determined that further study regarding the policies behind this technique is warranted, and plans to undertake that task in the future.
  4. There is no bar against the agency considering candidates suggested by the applicant, although the Federal agency must retain its independence. If the applicant is seen as having a major role in the selection of the contractor, contractors may feel the need to please both the agency and the applicant. An applicant's suggestion, if any, to the agency regarding the choice of contractors should be one of many factors involved in the selection process.
  5. 46 FR 18026 (1981).
  6. 684 F.2d 1041 (1st Cir. 1982).
  7. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978).
  8. Monarch Chemical Works, Inc. v. Exon, 466 F.Supp. 639, 650 (1979), quoting Carolina Environmental Study Group v. U.S., 510 F.2d 796, 801 (1975).
  9. Preamble, FR, Vol. 43, No. 230, p. 55984, 11/29/78.
  10. "Is tiering being used to minimize repetition in an environmental assessment and in environmental impact statements?", 46 FR 41131, August 14, 1981.
  11. 40 CFR 1508.23 (emphasis added).
  12. 40 CFR 1502.9(c).
  13. California v. Block, 18 ERC 1149 (1982).

a[48 FR 34264] indicates that the subsequent text may be cited to 48 Fed. Reg. 34264 (1983). Ed. Note.

***APPENDIX G***

***Samples of Draft and Final Findings of No Significant Impact  
(FNSIs)***

**FINDING OF NO SIGNIFICANT IMPACT (FNSI)  
WESTSIDE BUFFER TRAINING AREA  
FOREST THINNING AND PRESCRIBED FIRE PROJECT  
CAMP NAVAJO, BELLEMONT, ARIZONA**

**Introduction**

The Arizona Army National Guard (AZARNG) prepared the Westside Buffer Training Area Forest Thinning and Prescribed Fire Project Environmental Assessment (EA) to identify and evaluate potential environmental effects associated with forest restoration treatments in Bellemont, Arizona. The AZARNG prepared the EA in accordance with the National Environmental Policy Act (NEPA) (42 USC § 4321 to 4370e), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations) (40 CFR Parts 1500-1508), and *Environmental Analysis of Army Actions* (32 CFR 651).

The purpose and need for the proposed action is to ensure the continued availability of the Westside Buffer Training Area for military training by reducing the risk of catastrophic wildfire. This action will also maintain key ecological components of the area and ensure AZARNG adherence to regulatory requirements.

**1. Description of the Proposed Action and Alternatives**

**Proposed Action.** The Proposed Action is the AZARNG's Preferred Alternative. The AZARNG propose to use a combination of mechanical thinning and prescribed fire to treat the forest within the Westside Buffer Training Area. Stands would be managed over a period of approximately 5years. Of the 7,084 acres that comprise the Westside Buffer Training Area, a total of 3,812 acres would be treated. The treatment type would vary based on stand conditions. The Proposed Action consists of 1,269 acres of mechanical thinning, 530 acres of broadcast burning, and 2,013 acres of both mechanical thinning and broadcast burning. An additional 3,272 acres would be deferred. Deferred areas are areas where no treatment would occur.

**Alternatives Considered.** In addition to the Proposed Action, the AZARNG analyzed a Thin Only and a No Action Alternative.

Under the Thin Only Alternative, 5,178 acres would be mechanically thinned and 1,906 acres would be deferred. While no broadcast burning would occur under the Thin Only Alternative, pile burning of slash created during thinning operations would be conducted during appropriate weather conditions. Though the Thin Only Alternative would result in the largest reduction in fire risk, the Proposed Action is preferred because it provides a more balanced approach to achieving the desired objectives.

Under the No Action Alternative, no treatment of the forest would occur. The No Action Alternative would not satisfy the purpose and need for the proposed action because it would not reduce the risk of catastrophic wildfire. An environmental analysis of the No Action Alternative is still required by CEQ regulations to serve as a benchmark against which the Proposed Action can be evaluated.

## **2. Environmental Analysis**

Based on the analysis contained in the EA, it has been determined that the Westside Buffer Training Area Forest Thinning and Prescribed Fire Project would not have any significant impacts on the human or natural environments, provided that the mitigation measures listed in the final EA are implemented.

**Mitigation.** Mitigation measures to minimize project impacts on the human and natural environments are detailed in Section 5.14 of the final EA. Several mitigation measures implemented to protect the Mexican spotted owl and cultural sites would be required to reduce significant adverse effects. However, other mitigation measures for air quality and the Abert's squirrel would be implemented to minimize less than significant effects. Because of the multiple objectives of this program, thinning and/or burning prescriptions would vary from stand to stand, but would follow these general management guidelines throughout the analysis area.

A number of mitigation measures will be implemented to reduce potentially significant effects to less than significant levels. The measures are discussed in Section 5.13 and Appendix H of the final EA. They are also organized by resource area below.

a. **Biological Resources.** To mitigation potential effects to the Mexican Spotted Owl and Bald Eagle, the following measures will be implemented.

(1) No trees over 9 inches diameter at breast height (dbh) will be cut in the area of proposed activities.

(2) No thinning or burning will occur in the area of proposed activities during the breeding season (Mar 1 – Aug 31)

(3) Most thinning and burning activities will not occur when bald eagles are present at Camp Navajo (Oct 15 – Apr 15). However, if an eagle is detected during this timeframe, thinning operation will cease until the eagle has left the area of its own accord.

(4) No trees greater than 18 inches dbh will be cut in restricted and/or critical habitat.

(5) Except for 12 acres surrounding the Volunteer Mountain fire lookout, no thinning will occur in mixed conifer protected or restricted habitat.

(6) Except for 12 acres surrounding the Volunteer Mountain fire lookout, no thinning will be conducted on slopes greater than 40 percent.

(7) Burning will be conducted so as to minimize smoke impacts to the PAC.

(8) Ponderosa pines greater than 18 inches dbh, Gambel oak greater than 12 inches diameter at root collar, snags greater than 18 inches dbh, and downed logs greater than 12 inches diameter at the midpoint will be protected prior to prescribed burning by raking accumulated forest litter away from the base of these trees, snags, and logs.

(9) Ten percent of the pine-oak restricted habitat will be managed for target/threshold conditions.

b. Cultural Resources. Implementation of the Proposed Action could result in significant adverse effects to archaeological resources within the area of potential effect (APE). To mitigate these potential effects, all archaeological sites within the APE will be avoided.

The following mitigation measures will be implemented to reduce minor adverse impacts associated with the Proposed Action:

a. Air Quality. Implementation of the Proposed Action could result in minor adverse effects to the air quality within the Sycamore Canyon Wilderness. To minimize these effects, burns would be conducted under controlled conditions and during periods of good smoke dispersal. These activities would also be coordinated with the Arizona Department of Environmental Quality.

b. Biological Resources. Implementation of the Proposed Action will adversely affect the Abert's squirrel and associated canopy dependent wildlife species. To reduce effects on these species, meso-reserves will be set aside within several thinned stands. Management within meso-reserves will strive to maintain multi-aged patches with the following structural characteristics:

(1) A basal area of greater than 150 feet per acre.

(2) Fifty percent canopy closure with interlocking canopies.

(3) A well defined tree component with at least 20 trees per acre at greater than 18 inches dbh.

Meso-reserves would range in size from 18 to 91 acres for the Proposed Action and from 22 to 103 acres for the Thin Only Alternative. Thinning within meso-reserves would be limited to a light thin-from-below and would be aimed primarily at removing ladder fuels and very small diameter (<5 inches dbh) trees. However, some larger trees may be removed within the three meso-reserves occurring in stands 32, 40, and 70, because the primary management objective in these stands would be to maintain MSO target/threshold habitat.

In addition to the preceding mitigation measures, the AZARNG will implement Best Management Practices (BMPs) to further minimize potential effects under the Proposed Action. A complete list of BMPs can be found in Section 5.15 of the final EA.

### **3. Regulations**

The Proposed Action will not violate NEPA, the CEQ Regulations, 32 CFR 651, or any other Federal, state, or local environmental regulations.

### **4. Commitment to Implementation**

The National Guard Bureau (NGB) and AZARNG affirm their commitment to implement this EA in accordance with NEPA. Implementation is dependent on funding. The AZARNG and the NGB's Environmental Programs Division will ensure that adequate funds are requested in future years' budgets to achieve the goals and objectives set forth in this EA.

### **5. Public Review and Comment**

The draft EA was made available for public review and comment from March 9 – April 9, 2005, and the final EA and draft FNSI were made available for public review and comment from February 13 – 28, 2006. Documents were available at the AZARNG Department of Emergency and Military Affairs in Phoenix, Arizona, the Flagstaff Public Library in Flagstaff, Arizona, and the Camp Navajo Environmental Office in Belmont, Arizona. One comment was provided by the Flagstaff Fire Department during draft public review. The comment supported the project.

## **6. Finding of No Significant Impact**

After careful review of the EA, I have concluded that implementation of the Proposed Action would not generate significant controversy or have a significant impact on the quality of the human or natural environment. This analysis fulfills the requirements of NEPA and the CEQ Regulations. An Environmental Impact Statement will not be prepared, and the National Guard Bureau is issuing this Finding of No Significant Impact.

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Date

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Gerald I. Walter  
Colonel, US Army  
Chief, Environmental  
Programs Division

## Finding of No Significant Impact

### Programmatic Environmental Assessment (PEA) of Modularization of Army National Guard Forces

Pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and 32 Code of Federal Regulations Part 651 (*Environmental Analysis of Army Actions*), the National Guard Bureau (NGB) has conducted a Programmatic Environmental Assessment (PEA) of the potential environmental and socioeconomic effects associated with modularization of Army National Guard (ARNG) forces.

#### Proposed Action.

Consistent with guidance contained in the ARNG Campaign Plan, over the next 4 years the NGB proposes to convert the force structure and equipment of all ARNG combat brigades to “modular” brigade combat team units of action (BCT(UA)s). The proposed action would involve the transfer of authorizations for two brigades to the Active Component and the in-place conversion of all remaining combat brigades. At the completion of this portion of the proposed action, there would be 10 Heavy BCT(UA)s and 23 Infantry BCT(UA)s. Transformation of the 56<sup>th</sup> Stryker Brigade Combat Team is proceeding independently and is not a part of this proposal. Also as part of the proposed action, the eight division headquarters within the ARNG would be reorganized to create modular units of employment (UEs) to provide command and control of organic, assigned, and attached forces. Finally, ARNG Combat Service and Combat Service Support personnel and equipment would be reorganized into various types of support units of action (SUAs).

The proposed action is needed to reorganize combat forces into units whose structure, equipment, and training comply with the evolving requirements of the ARNG Campaign Plan. The need for the proposed action is to improve the ability of the Nation to respond rapidly to the challenges of the 21st century. Restructuring of ARNG organizations is needed to create forces that are more stand-alone and alike (“modular”) while retaining their broad-spectrum capability.

#### Alternatives.

The NGB considered two alternatives to the proposed action.

- *Non-modular Structure.* Under the ARNG Campaign Plan, which carries out actions set in motion in the Army’s Campaign Plan, the NGB is tasked to restructure certain forces into modular units of designated sizes having specified capabilities and weapons systems and other equipment. Deviation from the general precepts and specific requirements of Headquarters, Department of the Army directives would jeopardize the Army’s implementation of its transformation program. In this light, this alternative was found to be infeasible, and it was not evaluated in detail in the PEA.



- *Partial Reorganization of ARNG Forces.* Under this alternative, the NGB would direct modularization of only portions of ARNG forces; the remaining portions of ARNG forces would retain their historical division-centric structural design. Implementation of this alternative was deemed infeasible and, accordingly, was not evaluated in detail in the PEA.

Consistent with guidance issued by the Council on Environmental Quality, the PEA evaluated the no action alternative.

### **Environmental Consequences.**

The PEA, which is herewith incorporated, considered potential effects on real property, air quality, noise, water resources, geology and soils, biological resources, cultural resources, hazardous materials and hazardous wastes, and socioeconomics (including environmental justice and protection of children). Effects would occur as a result of weapons systems and equipment use, training, and institutional matters. Implementation of the proposed action would result in no expected effects on most of the resources evaluated. Effects would be expected on four types of resources, as discussed in the following paragraphs.

- *Effects on the noise environment.* Long-term minor beneficial effects would be expected. Elimination of more than half of the ARNG organizations' tracked vehicles would reduce the number of heavy, noisy vehicles with respect to both engine noise and organic weapons (the Abrams tank operates with a 120-mm smooth-bore cannon, and the Bradley Infantry Fighting Vehicle operates with a 25-mm chain gun and the TOW antitank missile). Plans for types and quantities of vehicles in the infantry brigades have not been finalized; operations involving Humvees and medium trucks would offset some of the noise reductions attributable to elimination of tanks and other tracked vehicles. Additional changes in the quantities of noise-producing weapons systems would also occur. Numerous personnel in units currently equipped with various towed artillery and air defense weapons systems would be transferred and retrained for duties in other types of units.
- *Effects on water resources.* Long-term minor beneficial effects would be expected. The reduction of the number of tracked vehicles by more than 50 percent would provide a long-term minor indirect benefit to surface water quality. When operated off-road, tracked vehicles tend to crush vegetation and compact soil, thus affecting the ability of vegetative cover to slow the conveyance of precipitation to surface waters. If there were less harm to vegetation and soils, there would be less sedimentation of surface waters.
- *Effects on geology and soils.* Elimination of more than half of the tanks, Bradley Fighting Vehicles, and armored personnel carriers now fielded to ARNG organizations would result in a beneficial reduction of effects on soils. This outcome would be more pronounced at installations that have soils susceptible to erosion.

- *Effects on biological resources.* Long-term minor beneficial effects would be expected. Elimination of numerous tracked vehicles fielded to ARNG organizations would result in a beneficial reduction of effects on vegetation. These benefits would be more noticeable at training facilities in dry climates, where shorter growing seasons tend to feature more fragile vegetation than that in wetter climates and climates with longer growing seasons.

ARNG organizations will conduct additional analyses, as appropriate, to address site-specific environmental effects.

Under the no action alternative, no effects would be expected. No cumulative effects were identified.

### **Mitigation.**

Because no adverse effects are expected upon implementation of the proposed action, no specific mitigation actions are recommended. To guard against the development of circumstances that could in limited cases result in site-specific adverse effects, the NGB and ARNG organizations will maintain their stewardship posture by implementing best management practices designed to safeguard environmental resources. Additionally, site-specific mitigation measures may be developed pursuant to follow-on analyses.

### **Regulations.**

The Proposed Action would not violate the National Environmental Policy Act (42 USC § 4321 to 4370e), its regulations promulgated by the CEQ (40 CFR parts 1500-1508), 32 CFR Part 651, *Environmental Analysis of Army Actions*, or any other federal, state, or local environmental regulations.

### **Commitment to Implementation.**

The National Guard Bureau (NGB) affirms its commitment to implement the PEA for the conversion of the ARNG to the Army Modular Force. Implementation is dependent on funding. The NGB Environmental Programs, Training, and Installations Divisions will ensure that adequate funds are requested in future years' budgets.

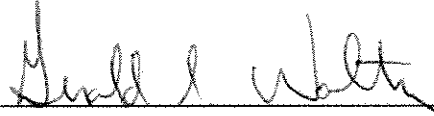
### **Public Review and Comment.**

The final PEA and draft FNSI were made available for public review and comment from 2 June to 1 July 2005. No public comments were received during the comment period.

The draft PEA was made available for public review and comment from 17 March to 15 April 2005. No public comments were received during the comment period.

**Finding of No Significant Impact.**

After careful review of the PEA, I have concluded that implementation of the Proposed Action would not generate significant controversy or have a significant impact on the quality of the human or natural environment. Per 32 CFR Part 651, the final PEA and draft FNSI were made available for a 30-day public review and comment period. No public comments were received. This analysis fulfills the requirements of NEPA and the CEQ Regulations. An Environmental Impact Statement will not be prepared, and the National Guard Bureau is issuing this Finding of No Significant Impact.

  
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Gerald I. Walter  
Colonel, US Army  
Chief, Environmental  
Programs Division

1 July 2005  
Date



DEPARTMENTS OF THE ARMY AND THE AIR FORCE  
NATIONAL GUARD BUREAU  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON, VA 22204-1382

NGB-ARE-C

DEC 9 2005

MEMORANDUM FOR The Adjutant General, Headquarters Colorado Army National Guard (COARNG), Environmental Office (ATTN: Mr. Hague), 6848 S. Revere Parkway, Englewood, Colorado 80112

SUBJECT: Environmental Assessment (EA) for Phases II and III of the COARNG Centennial Training Site

1. References:

a. 32 CFR 651, Environmental Analysis of Army Actions, 29 Mar 02.

b. Handbook, Guidance on Preparing Environmental Documentation for Army National Guard Actions in Compliance with the National Environmental Policy Act (NEPA) of 1969, Mar 02.

2. In accordance with procedures established in references 1a and 1b, the EA has been approved by the National Guard Bureau. A copy of the signed Finding of No Significant Impact is enclosed. This completes the appropriate NEPA documentation for this project in accordance with reference 1a.

3. If there is a delay in implementation of this project or project conditions change, ensure that the EA adequately addresses the action to be taken. If the EA does not address the action, new environmental documentation must be approved prior to initiation of the project.

4. The point of contact is Mr. Patrick Magnotta at (703) 607-7982 or via email at Patrick.Magnotta@ngb.army.mil.

FOR THE CHIEF, ENVIRONMENTAL PROGRAMS DIVISION:

A handwritten signature in cursive script that reads "Eric N. Andersen".

ERIC N. ANDERSEN  
Chief, Conservation Branch

Encl  
as

**FINDING OF NO SIGNIFICANT IMPACT (FNSI)  
PHASES II AND III OF THE COLORADO ARMY NATIONAL GUARD  
CENTENNIAL TRAINING SITE (CTS)  
FORT CARSON, COLORADO**

**Introduction**

The Colorado Army National Guard (COARNG) prepared an Environmental Assessment (EA) to identify and evaluate potential environmental effects from construction of Phases II and III of the CTS at Fort Carson, Colorado. The COARNG prepared the EA in accordance with the National Environmental Policy Act (NEPA, 42 USC § 4321 to 4370e), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations, 40 CFR Parts 1500-1508), and *Environmental Analysis of Army Actions* (32 CFR 651).

**1. Description of Proposed Action and Alternatives**

**Proposed Action.** The Proposed Action is the COARNG's Preferred Alternative. The Proposed Action consists of the construction and operation of a Regional Training Institute (RTI) and Battalion Complex on an approximately 20 acre parcel of the CTS. An RTI is an administrative and educational support complex that includes a dining facility and temporary housing for 100 ARNG students. The Training Site Barracks Complex includes a headquarters building and support facilities for 200 soldiers. Approximately 347,380 square-feet of new building space is proposed.

The COARNG has operated the CTS under a US Army license since 1995. The proposed RTI and Battalion Complex constitute Phases II and III of CTS construction. Phase I, the construction of a Mobilization and Training Equipment Site, has already been completed.

The purpose of the Proposed Action is to maintain soldier readiness and provide adequate facilities for required military training. There is a need for new facilities for the COARNG because the existing RTI and training support site are located in an old hospital complex. The hospital complex consists of inadequate World War II facilities that are unable to fulfill current mission requirements of the COARNG and CTS.

Construction is scheduled to take place within two years of initial project approval. There would be an increase of approximately 2,400 total personnel on Fort Carson after implementation of Phases II and III of the CTS.

**Alternatives Considered.** In addition to the Proposed Action, the COARNG analyzed a No Action Alternative. Under the No Action Alternative, the proposed site improvements would not be constructed. The COARNG Readiness Center

activities would remain in inadequate facilities that are not suitable for current mission requirements. An environmental analysis of the No Action Alternative is performed to serve as a benchmark against which the Proposed Action can be evaluated.

## **2. Environmental Analysis**

Based on the analysis contained in the EA, the COARNG has determined that the construction and operation of the RTI and Battalion Complex will not have any significant adverse impacts on the human or natural environments.

**Mitigation.** No mitigation measures will be required to reduce potentially significant effects to less-than-significant levels. If necessary, the COARNG will obtain permits for fugitive dust emissions from the El Paso County Department of Health and Environment. The COARNG will also re-survey the proposed construction site for burrowing owls prior to action implementation. Finally, a list of Best Management Practices can be found in Section 5.12 of the EA.

## **3. Regulations**

The Proposed Action will not violate NEPA, the CEQ Regulations, 32 CFR 651, or any other Federal, state, or local environmental regulations.

## **4. Commitment to Implementation**

The National Guard Bureau (NGB) and COARNG affirm their commitment to implement this EA in accordance with NEPA. Implementation is dependent on funding. The COARNG and the NGB's Environmental Programs, Training, and Installations Divisions will ensure that adequate funds are requested in future years' budgets to achieve the goals and objectives set forth in this EA.

## **5. Public Review and Comment**

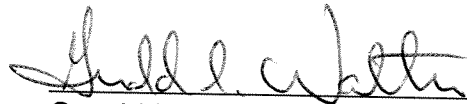
The draft EA was made available for public review and comment from February 22 – March 23, 2005, and the final EA and draft FNSI were made available for public review and comment from October 25 – November 23, 2005. The documents were available at the Penrose Public Library in Colorado Springs and Fort Carson Grant Library in Fort Carson. No comments were received.

For further information, please contact the COARNG Public Affairs Office at (720) 847-8850.

## 6. Finding of No Significant Impact

After careful review of the EA, I have concluded that implementation of the Proposed Action would not generate significant controversy or have a significant impact on the quality of the human or natural environment. This analysis fulfills the requirements of NEPA and the CEQ Regulations. An Environmental Impact Statement will not be prepared, and the National Guard Bureau is issuing this Finding of No Significant Impact.

8 December 2005  
Date

  
Gerald I. Walter  
Colonel, US Army  
Chief, Environmental  
Programs Division

***APPENDIX H***

***Sample Notice of Intent (NOI)***



Billing Code: 3710-08-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE ARMY

**SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT ON FINAL SITE  
SELECTION AND AUTHORIZATION FOR IMPLEMENTATION OF MULTI-  
PURPOSE RANGE COMPLEX-HEAVY, CAMP SHELBY, MISSISSIPPI, DE  
SOTO NATIONAL FOREST, FORREST AND PERRY COUNTIES,  
MISSISSIPPI**

**AGENCIES:** Department of the Army, National Guard Bureau;  
U. S. Department of Agriculture (USDA), Forest Service

**ACTION:** Notice of Intent

**SUMMARY:** The National Guard Bureau, as co-lead agency with  
the USDA, Forest Service, will cooperatively participate in  
the preparation of a Supplemental Environmental Impact  
Statement (SEIS) to the Final Environmental Impact Statement  
(FEIS) for Military Training Use of National Forest Lands,  
Camp Shelby, Mississippi. The SEIS will identify sites  
evaluated by both agencies for consideration in selection of  
a final site for the Multi-Purpose Range Complex-Heavy

(MPRC-H) location and disclose new information relevant to environmental concerns having a bearing on the proposed action.

**DESCRIPTION OF PROPOSED ACTION:** The National Guard Bureau proposes to construct, operate, and maintain a MPRC-H facility within the Operations Area at Camp Shelby. The project area includes National Forest System lands on the De Soto National Forest that are currently utilized for military training activities under terms and conditions of a special use permit issued by the United States Department of Agriculture, Forest Service.

The MPRC-H is a standard Army gunnery range which has three maneuver avenues. Only "practice" ammunition will be fired within the target array. The proposed project would consist of the range operation and control area, the downrange area, and the vehicle holding and maintenance area.

**PRELIMINARY ALTERNATIVES:** Two sites were initially studied in the original special uses EIS. Since that time, numerous alternative sites have been examined by both agencies. Three alternative sites, plus the no action alternative, have been identified for further analysis in this

supplement. The surface danger zones all remain within the current buffer zone of the dedicated impact area.

**No Action Alternative:** The No Action alternative provides a basis for describing the proposed action and other alternatives.

**Range 41:** This site overlays an existing tank gunnery range (Range 41) in the northern third of the impact area.

**FS3:** This site is located northeast of the Range 41 site and has a southeasterly orientation directed towards the northeast corner of the dedicated impact area.

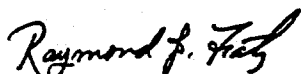
**FS4:** This site is located north of the Range 41 site and has a southeasterly orientation directed towards the northwest corner of the dedicated impact area.

**SUPPLEMENTAL EIS AVAILABILITY:** The draft supplement to the FEIS is expected to be available for public review in the spring of 1997. The responsible officials will consider the comments, responses, environmental consequences discussed in the final supplement in making a decision regarding this proposal. Each responsible official will document their decision and reasons for the decision in a Record of Decision (ROD). The Forest Service Record of Decision will be issued along with the final supplement and will be

subject to administrative review (appeal) under 36 CFR 215. The Record of Decision will address the final site selection and authorization for construction and operation of an MPRC-H on Camp Shelby Training Site under a Special Use Permit for occupation and use of National Forest administered lands. A scoping meeting will be scheduled during March 1997 with a draft supplement to follow. Comments and suggestions can be forwarded to the following individuals:

(1) Lieutenant Colonel Parker Hills, Public Affairs Office, Mississippi Army National Guard, P.O. Box 5027, Jackson, Mississippi 39296-5027, telephone (601) 973-6349, facsimile extension 6176; (2) Mr. Jeff Long, Forest Environmental Coordinator, U. S. Forest Service, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, Mississippi 39269, telephone (601) 965-5525, facsimile extension 5519; or (3) Major John Phillippe, National Guard Bureau ILE-E, 111 South George Mason Drive, Arlington, Virginia 22204, telephone (703) 607-7968.

Dated: February 26, 1997



Raymond J. Fatz

Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA (I, L&E)

***APPENDIX I***

***Sample Notice of Availability (NOA)***

Billing Code: 3710-08-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE ARMY

FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT  
REPORT (FEIS/FEIR) FOR PROPOSED COMBINED-FORCES TRAINING  
ACTIVITIES, NEW EQUIPMENT UTILIZATION, AND RANGE  
MODERNIZATION PROGRAM AT CAMP ROBERTS ARMY NATIONAL GUARD  
TRAINING SITE, CALIFORNIA

AGENCY: Department of the Army, DoD

ACTION: Notice of Availability

SUMMARY: The purpose of this project is to maximize training opportunities for military units that use Camp Roberts. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

This FEIS/EIR analyzes the proposed action, two alternatives, and the no-action alternative. The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: the M1 Abrams series of tanks would replace the M60 series tanks; Bradley Fighting Vehicles would replace the M113 series armored personnel carriers; the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers; and the AH-64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

In addition to the proposed action, the FEIS/EIR evaluates three other alternatives: No-Action, New Equipment Utilization and Range Modernization Program, and the Peak Training Use of Camp Roberts/Fort Hunter Liggett.

A 45-day public review and comment period was provided for the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR). Two public hearings were held in San Luis Obispo and Paso Robles, California, on the DEIS/EIR after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS/EIR to constitute the FEIS/EIR. After a 30-day waiting period on the FEIS/EIR, a Record of Decision will be published.

ADDRESSES: Copies of the FEIS/EIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.



FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel William  
Parsonage, EIS/EIR Project Officer, Camp Roberts Army  
National Guard Training Site, Camp Roberts, CA, 93451-5000;  
telephone (805) 238-8207.

*Raymond J. Fatz*  
Raymond J. Fatz

Deputy Assistant Secretary of the Army  
(Environment, Safety, and Occupational Health)  
OASA (IL&E)

Billing Code: 3710-08-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE ARMY

**FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS) FOR THE WESTERN  
ARMY NATIONAL GUARD AVIATION TRAINING SITE (WAATS) PROPOSED  
EXPANSION**

**LEAD AGENCIES:** National Guard Bureau, Department of the  
Army; Department of the Air Force, DoD

**COOPERATING AGENCY:** Federal Bureau of Land Management,  
Department of the Interior

**ACTION:** Notice of Availability

**SUMMARY:** Expansions to existing training areas and  
facilities at the WAATS are for the purpose of enhancing  
readiness and training of National Guard aviation units,  
improving training safety, constructing facilities to meet  
training demands, and complying with environmental require-  
ments.

This document addresses the environmental impacts of  
the proposed actions, reasonable alternatives and the impact  
upon Guard readiness of taking no action. The proposed  
action and each alternative action consist of three  
essential components: (1) increase the size of the original  
Tactical Flight Training Area (TFTA) to improve training,

enhance training safety through reduced training congestion, allowing limited ground training support activities, and to reduce noise and environmental impacts through closing some parts of the existing TFTA; (2) increase the number of helicopter gunnery training operations through construction of new ranges or modification to existing ranges; and (3) construct new facilities for housing, training, maintenance and to comply with changing environmental requirements.

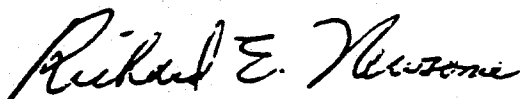
A 45-day public review and comment period was provided for the Draft Environmental Impact Statement (DEIS). The Arizona National Guard WAATS conducted six public hearings to discuss concerns and comments on the DEIS. Public hearings were held in locations throughout the project area. Specific locations, dates and times were announced through letters to those on the project mailing list and to others through notices, display advertisements and Legal Notices in general circulation newspapers. After the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the Draft EIS to constitute the FEIS.

After a 30-day waiting period on the FEIS, a Record of Decision will be published.

**COPIES:** Copies of the FEIS Executive Summary will be mailed to individuals who participated in the public scoping process. Copies of the entire FEIS may be requested from the Project Officer listed below. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy on request.

**FOR FURTHER INFORMATION, CONTACT:** The FEIS Project Officer, Lieutenant Colonel Richard Murphy, Deputy Commander, Western Army National Guard Aviation Training Site, Building 145-500, Pinal Air Park, Marana, Arizona 85653-9598; (520) 682-4590.

**Dated:** May 28, 1997



Richard E. Newsome  
Acting Deputy Assistant Secretary of the Army  
(Environment, Safety, and Occupational Health)  
OASA (I, L&E)

***APPENDIX J***

***Sample Coordination Letters Sent to Outside Agencies***



DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS

P.O. BOX 2711

LOS ANGELES, CALIFORNIA 90053-2325

May 7, 1993

REPLY TO  
ATTENTION OF

Office of the Chief  
Environmental Resources Branch

Mr. Richard Zembal  
Deputy Field Supervisor  
U.S. Fish and Wildlife Service  
2730 Loker Avenue  
Carlsbad, California 92008

Dear Mr. Zembal:

The California Army National Guard proposes the construction of six projects within the boundaries of the Los Alamitos Armed Forces Reserve Center (AFRC). The proposed construction projects include: a JP-8 fuel storage facility; a class IX facility (warehouse); a flight simulator building; an armory and storage facility; upgrading existing maintenance shops; and rehabilitating natural gas and electric distribution systems.

Please provide current information regarding any federally listed endangered, threatened, proposed, or candidate species, pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that may occur in the proposed project area at Los Alamitos AFRC.

Should you have any questions or require additional information, please contact Jessie H. Hardin, Environmental Coordinator, at (213) 894-0248.

Sincerely,

A handwritten signature in cursive script that reads "Robt S. Joe".

Robert S. Joe  
Chief, Planning Division

Enclosure



**DEPARTMENTS OF THE ARMY AND THE AIR FORCE**

**HEADQUARTERS, ALASKA NATIONAL GUARD  
OFFICE OF THE ADJUTANT GENERAL  
P.O. BOX 5800, CAMP DENALI  
FORT RICHARDSON, ALASKA 99505-5800**

**LOCAL GOVERNMENT SPECIALIST  
ALASKA DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS  
MUNICIPAL AND REGIONAL ASSISTANCE DIVISION  
333 WEST 4th. AVENUE, SUITE 220  
ANCHORAGE, AK 99501-2341**

Dear Alaska Department of Community and Regional Affairs,

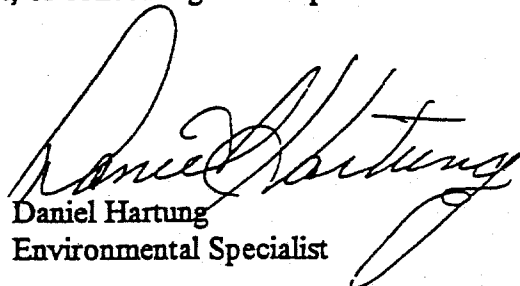
The Environmental Office of the Alaska Army National Guard (AK ARNG) is in the process of preparing an Environmental Assessment (EA) for the construction of a Alaska Army National Guard Federal Scout Armory at Atmauthuak, Alaska.

The Environmental Assessment for the construction of a Federal Scout Armory at Atmauthuak, Alaska, will be conducted in accordance with the Council on Environmental Quality Regulations to comply with the National Environmental Policy Act of 1969; as well as Army National Guard Regulation 200-2.

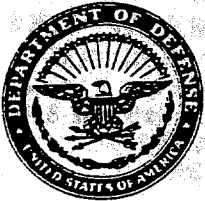
Enclosed is a copy of the Draft EA. Please review; and supply any comments to us by February 20, 1997. At the request of National Guard Bureau we are requesting a written response of this determination for incorporation into the Environmental Assessment document.

Please forward your comments to the address on the enclosed card; no later than 30 days from the receipt of this letter. Thank you for your assistance and consideration.

If you have questions concerning this request, or concerning the EA please feel free to contact me at 907-428-6764.

  
Daniel Hartung  
Environmental Specialist

cc: Bill Vagt, Chief Environmental Office AK ARNG  
Contract file  
AK ARNG FMD contracting officer  
FMO reading file



**DEPARTMENTS OF THE ARMY AND THE AIR FORCE**

**HEADQUARTERS, ALASKA NATIONAL GUARD  
OFFICE OF THE ADJUTANT GENERAL  
P.O. BOX 5800, CAMP DENALI  
FORT RICHARDSON, ALASKA 99505-5800**

**MR. JOHN WAHL, P.E.  
ENGINEERING MANAGER, AVIATION DESIGN  
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
CENTRAL REGION  
4111 AVIATION AVENUE  
P.O. BOX 196900  
ANCHORAGE, AK 99519-6900**

Dear Mr. Wahl,

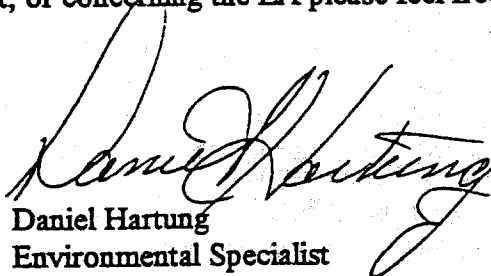
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The Environmental Assessment for the construction of a Federal Scout Armory at Atmauthuak, Alaska, will be conducted in accordance with the Council on Environmental Quality Regulations to comply with the National Environmental Policy Act of 1969; as well as Army National Guard Regulation 200-2.

Enclosed is a copy of the Draft EA. Please review; and supply any comments to us by February 20, 1997. At the request of National Guard Bureau we are requesting a written response of this determination for incorporation into the Environmental Assessment document.

Please forward your comments to the address on the enclosed card; no later than 30 days from the receipt of this letter. Thank you for your assistance and consideration.

If you have questions concerning this request, or concerning the EA please feel free to contact me at 907-428-6764.

  
Daniel Hartung  
Environmental Specialist

cc: Bill Vagt, Chief Environmental Office AK ARNG  
Contract file  
AK ARNG FMD contracting officer  
FMO reading file





RECEIVED

APR 15 1997

U.S. FISH & WILDLIFE SERVICE

DEPARTMENT OF MILITARY  
AND VETERANS AFFAIRS  
OFFICE OF THE ADJUTANT GENERAL  
2823 West Main Street  
Rapid City, South Dakota 57702-8186  
(605) 399-6702  
FAX: (605) 399-6677

April 14, 1997

RECEIVED

APR 15 1997

U.S. FISH & WILDLIFE SERVICE

Nell McPhillips  
Fish and Wildlife Enhancement  
U.S. Fish and Wildlife Service  
420 South Garfield Avenue/Suite 400  
Pierre, South Dakota 57501

Dear Ms. McPhillips:

This letter is a request for information relative to federally-listed threatened and endangered plant and animal species that could be present in the Sioux Falls area delineated on the attached map.

The area in question has been leased by the South Dakota Army National Guard (SDARNG) from the City of Sioux Falls to serve as a local training area for the 147th Field Artillery Brigade. Almost all of the area has been disturbed in the past by agricultural cultivation, rural farmstead development or seasonal flooding by the Big Sioux River.

Please search your records for listed species within and surrounding the delineated area. Your findings will be incorporated into an environmental document that is presently being prepared.

Your prompt attention to this request is certainly appreciated. If you have questions or require additional information, please contact Tom Hays (399-6265) or myself (399-6670). Thank you.

U.S. Fish & Wildlife Service

SD ES Field Office

Project as described will have no significant impact on fish and wildlife resources. It does not involve any federally listed threatened or endangered species or their habitats. If project design changes, please submit plans for review.

Sincerely,

Kevin P. Jacobson  
Environmental Program Manager  
SD Army National Guard

4-16-97

Date

Field Supervisor

# Sample "NO HISTORIC PROPERTIES AFFECTED" LETTER

Dr. Back Phil  
State Historic Preservation Officer  
100 Capitol Street, Suite 105-E  
Fredonia City, New Fredonia 22334-5678

Tell SHPO exactly what you need from them

Use this exact phrase from 36 CFR 800.4(d)(1)

Dear Dr. Phil:

The New Fredonia Army National Guard (NFARNG) plans to expand the Carpe Diem Readiness Center and adjacent parking area of about 35 acres in Carp Diem County, New Fredonia. We request your concurrence that for this undertaking there are no historic properties affected.

For your review, enclosed is a site map (Enclosure 1) and a project description with construction plans (Enclosure 2). Our findings regarding the presence of historic properties and the undertaking's effects can be found at Enclosure 3.

Your prompt attention is appreciated. If we do not receive a response after 30 days, we will proceed with the undertaking in accordance with provisions of 36 CFR 800.3(c)(4) and 36 CFR 800.4(d)(1)(i).

If you require additional information, please contact Ms. Eowyn Rohan at 800-555-1212, or by e-mail at Eowyn.Rohan@nf.ngb.army.mil.

FOR THE ADJUTANT GENERAL:

Include necessary information listed in the "Documentation Standards" in 36 CFR 800.11. If SHPO requests more info, it can reset the "30-day clock."

(Optional, if needed): Remind the SHPO that after 30 days (from the SHPO's receipt) you will proceed. This procedure is ONLY for "no historic properties affected" situations.

Colonel Bill "Beau" Baggins  
Director, Facilities Management  
New Fredonia Army National Guard

Enclosures (3)  
as

(Optional): Some SHPOs prefer a concurrence line so they can just sign it and Fax or mail it back.

I concur that no historic properties will be affected:

\_\_\_\_\_  
State Historic Preservation Officer

\_\_\_\_\_  
Date

PLEASE NOTE THAT a SHPO "timing out" does not exempt consultation with other parties, such as THPO/Tribes, the Advisory Council (if involved), or inclusion of the interested public per 36 CFR 800. Document a non-response in a Memorandum for Record (MFR).

# Sample "No Adverse Effect" Letter

Dr. Back Phil  
State Historic Preservation Officer  
100 Capitol Street, Suite 105-E  
Fredonia City, New Fredonia 22334-5678

Tell SHPO exactly what you need from them

Use this phrase from 36 CFR 800.4(d)(2) and learn 36 CFR 800.5 thoroughly for the criteria to make this judgment. Often you may need a historic preservationist contractor to assist if you need to negotiate a design change with SHPO to identify and remove the "adverse effect."

Dear Dr. Phil:

The New Fredonia Army National Guard (NFARNG) plans to expand the Carpe Diem Readiness Center and adjacent parking area of about 35 acres in Carp Diem County, New Fredonia. We request your concurrence that this undertaking will have no adverse effect on historic properties.

For your review, enclosed is a site map (Enclosure 1) and a project description with construction plans (Enclosure 2). Our findings regarding the historic properties and the factors considered for the no adverse effect determination can be found at Enclosure 3.

Your prompt attention is appreciated. If we do not receive a response after 30 days, we will proceed in accordance with provisions of 36 CFR 800.3(c)(4), 800.5(c)(1), and 800.5(d).

If you require additional information, please contact Ms. Eowyn Rohan at 800-555-1212, or by e-mail at Eowyn.Rohan@nf.ngb.army.mil.

FOR THE ADJUTANT GENERAL

Know the "Documentation Standards" in 36 CFR 800.11. If SHPO requests more info, it can reset the "30-day clock."

(Optional, if needed): Remind the SHPO that after 30 days (from the SHPO's receipt) you will proceed. In the case of a "no adverse effect," failure of SHPO/THPO to reply within 30 days indicates their concurrence with the agency's

Colonel Bill "Beau" Baggins  
Director, Facilities Management  
New Fredonia Army National Guard

Enclosures (3)  
as

(Optional): Some SHPOs prefer a concurrence line so they can just sign it and Fax or mail it back.

I concur that this undertaking will have no adverse effect on historic properties:

\_\_\_\_\_  
State Historic Preservation Officer

\_\_\_\_\_  
Date

PLEASE NOTE THAT a SHPO "timing out" does not exempt consultation with other parties, such as THPO/Tribes, the Advisory Council (if involved), or inclusion of the interested public per 36 CFR 800. Document a non-response in a Memorandum for Record (MFR).

***APPENDIX K***

***ARNG Record of Environmental Consideration and  
Environmental Checklist***

# ARNG ENVIRONMENTAL CHECKLIST

Enter information in the yellow shaded areas.

## PART A - BACKGROUND INFORMATION

1. PROJECT NAME:

2. PROJECT NUMBER:

3. DATE:

4. DESCRIPTION AND LOCATION OF THE PROPOSED ACTION:

5. START DATE (dd-mmm-yy):

6. END DATE (dd-mmm-yy):

7. STATE/ORGANIZATION:

8. SERVICE COMPONENT:

9. ADDRESS:

10. PROPONENT/UNIT NAME:

11. POC:

12. PROPONENT/UNIT ADDRESS:

13. COMM VOICE:

14. COMM FAX:

15. DSN VOICE:

16. DSN FAX:

17. EMAIL:

18. Was the project adequately addressed in a separate environmental review? Do not include Environmental  YES  NO

**Baseline Surveys (EBSs).**

If YES, fill out and attach copy of the decision document:

Document Title:

Reviewing Agency:

Date of Review: (dd-mmm-yy):

## PART B - HISTORICAL INFORMATION

1. Is the agency undergoing, or has it undergone, legal action for NEPA issues?  YES  NO

2. Has there been previous ARNG training, construction, or similar proposals on the site?  YES  NO

3. Are there any known contentious environmental issues currently associated with the site?  YES  NO

Explain any YES answers.

4. Has the proposed type of equipment (tracked or wheeled) been operated on the site before?  YES  NO

If NO, what NEPA document covers this action? Provide copy of REC, FNSI, or ROD. This does not include EBSs.

Document Title:

Preparing Agency:

Date (dd-mmm-yy):

5. Describe the environmental setting, including past and present use of the site.

**PART C - DESCRIPTION OF PROPOSED PROJECT/ACTION**

**Include a map with the site clearly marked**

1. The proposed action will involve (check all that apply):

|  |   |  |
|--|---|--|
| <input type="checkbox"/> Training Activities/Areas         | <input type="checkbox"/> Construction     | <input type="checkbox"/> Reorganization/Restationing |
| <input type="checkbox"/> Maintenance/Repair/Rehabilitation | <input type="checkbox"/> Lease or License | <input type="checkbox"/> Environmental Plans/Surveys |
| <input type="checkbox"/> EBS Preparation                   |   |  |
| <input type="checkbox"/> Other (Explain):                  |   |  |

2. Has any related real estate action been addressed in a separate environmental document within the last 5 years?  YES  NO

**If YES** Document Title: \_\_\_\_\_ Date (dd-mmm-yy): \_\_\_\_\_

3. Number of acres to be disturbed: \_\_\_\_\_

4. How is the site currently zoned?

|   |                                     |                                     |                               |
|---|-------------------------------------|-------------------------------------|-------------------------------|
| <input type="checkbox"/> Residential            | <input type="checkbox"/> Commercial | <input type="checkbox"/> Industrial | <input type="checkbox"/> Park |
| <input type="checkbox"/> Other (Explain): _____ |                                     |                                     |                               |

5. Briefly describe the surrounding area land uses (e.g., undeveloped, recreation, residential, etc):

6. Provide distances to **ALL** environmentally sensitive areas:

| TYPE                             | Distance | Unit | TYPE                 | Distance | Unit |
|----------------------------------|----------|------|----------------------|----------|------|
| a. Prime/Unique Farmland         |          |      | e. Wild/Scenic River |          |      |
| b. Wilderness Area/National Park |          |      | f. Coastal Zones     |          |      |
| c. Sole-Source Aquifer           |          |      | g. Floodplain        |          |      |
| d. Wetlands                      |          |      |                      |          |      |

**PART D - ENVIRONMENTAL IMPACT ANALYSIS**

**1. AIR**

a. Is the proposed action in a non-attainment/maintenance area?  YES  NO

**Attach a General Conformity Determination or Record of Non-Applicability (RONA) for Military Construction activities in non-attainment/maintenance areas.**

|  |   |                              |                             |
|--|---|------------------------------|-----------------------------|
| b. Will the proposed action require an air emissions permit, registration, license, etc? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|  | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

|   |   |                              |                             |
|---|---|------------------------------|-----------------------------|
| c. Will the proposed action release objectionable odors, smoke, dust, suspended particles, or noxious gases into the air? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

|   |   |                              |                             |
|---|---|------------------------------|-----------------------------|
| d. Will the proposed action expose sensitive receptors (threatened or endangered plants or animals, or children) to pollutants? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

Explain any **YES** answers and/or planned mitigation here.

**2. TRAFFIC**

a. Will the proposed action result in generation of or increase in aircraft activity/traffic?  YES  NO

b. Will the proposed action result in the generation of or increase in vehicular traffic?  YES  NO

|  |   |                              |                             |  |
|--|---|------------------------------|-----------------------------|--|
| c. Will the proposed action use and/or construct unimproved roads? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |
|  | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |

Explain any **YES** answers and/or planned mitigation here. Include aircraft types, number of sorties, and flight schedules (if applicable).

**3. NOISE**

|  |   |                              |                             |  |
|--|---|------------------------------|-----------------------------|--|
| a. Will the proposed action result in an increase in noise levels? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |
|  | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |

b. Is the proposed action close to any civilian activity where noise might affect the population (add any not listed in the spaces provided)? Include distances for all types:  YES  NO

| TYPE               | Distance | Unit | TYPE                | Distance | Unit |
|--------------------|----------|------|---------------------|----------|------|
| (1) Residence/Home |          |      | (5) Library         |          |      |
| (2) Church         |          |      | (6) Wilderness Area |          |      |
| (3) School         |          |      |                     |          |      |
| (4) Hospital       |          |      |                     |          |      |

c. Will the proposed action involve aircraft?  YES  NO

|   |   |                              |                             |  |
|---|---|------------------------------|-----------------------------|--|
| d. Will the proposed action involve night (10 pm to 7 am) operations? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |  |

Explain any **YES** answers.

**4. EARTH**

a. Will the proposed action result in long-term disruptions, displacements, compaction, or overcovering of soil, a permanent change in topography, or ground surface relief features?  YES  NO

b. Will the proposed action result in a long-term increase in wind or water soil erosion, on or off the site, after the proposed action is completed?  YES  NO

Explain any **YES** answers.

**5. NATURAL RESOURCES**

NOTE- A **subject matter expert** from the State/Territory ARNG Environmental Office must confirm the answers to these questions by signing the signature page.

a. Will the proposed action change the diversity or numbers of any species including mammals, birds, reptiles, amphibians, fish, trees, shrubs, grasses, crops, microflora, or aquatic plants?  YES  NO

b. Will the proposed action introduce any non-native species into the area?  YES  NO

c. Will the proposed action impact any plants or animals that are listed or candidates for threatened, unique, rare, or endangered status?  YES  NO

d. Will the proposed action create barriers to prevent the migration or movement of animals?  YES  NO

- e. Will the proposed action deteriorate, alter, or destroy existing fish or wildlife habitat?  YES  NO
- f. Will the proposed action deplete any non-renewable natural resources?  YES  NO
- g. Will the proposed action alter, destroy, or significantly impact environmentally sensitive areas (wetlands, coastal zones, etc.)?  YES  NO

Explain any **YES** answers.

## 6. LAND USE

- a. Will the proposed action alter the present land use of the site?  YES  NO
- b. Who owns the property?  Federal/DOD  State  City/Town/County  Private  
 Other (Explain):

- c. Does the proposed action involve a real estate action (e.g., purchase, lease, permit, or license)?  YES  NO

- |  |  |                              |                             |
|--|--|------------------------------|-----------------------------|
| Answer the following if you answered <b>YES</b> above: | (1) Has an EBS been completed? <b>If YES, attach the EBS.</b>                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|  | (2) Require an increase of acreage/amendment to an existing lease or license?      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|  | (3) Require new purchase of additional acres using federal, state, or other funds? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|  | (4) Require a new lease, license, and/or land use permit?                          | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|  | (5) Replace or dispose of existing facilities?                                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

Explain any **YES** answers.

## 7. SOLID WASTE

- a. Will the proposed action generate solid wastes that must be disposed of on or off site?  YES  NO

Explain a **YES** answer.

## 8. HAZARDOUS WASTE

- |   |   |                              |                             |
|---|---|------------------------------|-----------------------------|
| a. Will the proposed action generate hazardous waste?   |   | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| b. Will the proposed action store and/or prepare for the disposal of hazardous waste or materials?  | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| c. Does the proposed action require a permit to accumulate hazardous waste or materials at the site?  | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| d. Does the proposed action have an increased risk for explosion, spill, or the release of hazardous waste or materials (including but not limited to pesticides, chemicals, or radiation)? | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| e. Will the proposed action require the presence of trained personnel to handle and dispose of hazardous and/or toxic waste/materials?  | During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
|   | During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |



|  |   |  |
|--|---|--|
| f. Will the proposed action involve the opportunity for hazardous material minimization and recycling?   | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| Explain any <b>YES</b> answers.  |   |  |
| g. Do you have a plan describing procedures for the proper handling, storage, use, disposal, and cleanup of hazardous and/or toxic materials?  | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| Explain any <b>NO</b> answers.   |   |  |
| <b>9. WATER</b>  |   |  |
| a. Will the proposed action change currents, course, or direction of water movements in marine or fresh waters?  | <input type="checkbox"/> YES <input type="checkbox"/> NO                              |  |
| b. Will the proposed action discharge sediments, liquids, or solid wastes into surface waters, or alter the surface water quality?   | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| c. Will the proposed action change the quality and/or quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations? | <input type="checkbox"/> YES <input type="checkbox"/> NO                              |  |
| d. Does the proposed action have the potential to accidentally spill hazardous or toxic materials in or near a body of water?  | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| e. Does the proposed action have the need for a Spill Control and Countermeasure Plan, and/or Installation Spill Contingency Plan (SPCC and/or ISCP)?  | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| f. Will the proposed action construct facilities or implement actions within floodplains and/or wetlands?  | During proposed action<br>During normal operations after proposed action is completed | <input type="checkbox"/> YES <input type="checkbox"/> NO<br><input type="checkbox"/> YES <input type="checkbox"/> NO |
| g. Does the proposed action require an NPDES stormwater or wastewater discharge permit?  | <input type="checkbox"/> YES <input type="checkbox"/> NO                              |  |
| h. Does the proposed action involve the construction of a water or wastewater treatment system (oil water separators, grease traps, etc)?  | <input type="checkbox"/> YES <input type="checkbox"/> NO                              |  |
| Explain any <b>YES</b> answers.  |   |  |

## 10. CULTURAL RESOURCES

a. Does the proposed action involve an undertaking (Reference: 36 CFR 800.161[y]) to a building/structure 50 years or older?  YES  NO

**If YES** to Question a, has an architectural inventory/evaluation been completed to determine eligibility for the National Register of Historic Places?  YES  NO

b. Does the proposed action involve ground disturbance? (Reference: 36 CFR 800.161[y])  YES  NO

**If YES** to Question b, has an archaeological inventory been completed to determine if there are any archaeological sites present?  YES  NO

**If YES** to Question b, did the state contact any Federally-recognized Tribes to comment on the proposed action?  YES  NO

c. Does the proposed action fall under any Federal or Nationwide Programmatic Agreement or Programmatic Comment? **If YES**, reference it below.  YES  NO

**If NO** to Question c, has the state contacted the SHPO for comments?  YES  NO

d. Does the proposed action have the potential to affect any traditional cultural properties or sacred sites? **If YES**, attach coordination with Federally-recognized Tribes.  YES  NO

Explain any **YES** answers.

## 11. POPULATION

a. Will the proposed action alter the location, distribution, density, or growth rate of the human population of an area?  YES  NO

b. Will the proposed action affect children?  
Reference: Executive Order 13045

|   |                              |                             |
|---|------------------------------|-----------------------------|
| During proposed action                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| During normal operations after proposed action is completed | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

c. Are there any Environmental Justice issues associated with the proposed action?  
Reference: Executive Order 12898.  YES  NO

Explain any **YES** answers.

## 12. INFRASTRUCTURE

a. Will the proposed action result in the need for new systems or substantial alterations to the following utilities:

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| (1) Electrical power, fossil fuel or other (specify): | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| (2) Drinking water?                                   | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| (3) Wastewater treatment?                             | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| (4) Sewer collection system?                          | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| (5) Wash racks?                                       | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| (6) Solid waste disposal?                             | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

Explain any **YES** answers.

|  |
|--|
|  |
|--|

**PART E - INNOVATIVE READINESS TRAINING (IRT)**

Skip this portion if this is not an IRT Project

**1. REQUESTER INFORMATION**

a. REQUESTER NAME: \_\_\_\_\_ b. TITLE: \_\_\_\_\_

c. AGENCY NAME: \_\_\_\_\_

d. AGENCY ADDRESS: \_\_\_\_\_

e. COMM VOICE: \_\_\_\_\_ f. COMM FAX: \_\_\_\_\_ g. DSN VOICE: \_\_\_\_\_

h. DSN FAX: \_\_\_\_\_ i. EMAIL: \_\_\_\_\_

j. TYPE:       FEDERAL       STATE       LOCAL/MUNICIPAL       YOUTH/CHARITABLE

k. SUPPORT TYPE REQUESTED:

ENGINEER       TRANSPORTATION       TECH ASSISTANCE       LOGISTICAL  
 COMMUNICATION       ADMINISTRATIVE       CEREMONIAL       PARADE  
 OTHER (SPECIFY): \_\_\_\_\_

**2. ASSIGNED UNIT INFORMATION (Filled out by assigned National Guard unit)**

a. UNIT ASSIGNED PROJECT: \_\_\_\_\_ b. SERVICE COMPONENT: \_\_\_\_\_

c. UNIT ADDRESS: \_\_\_\_\_

d. PROJECT OFFICER      RANK:      NAME: \_\_\_\_\_

e. SITE VISIT DATE (dd-mmm-yy) \_\_\_\_\_

f. PROJECT ASSESSMENT (Give detailed assessment of project requirements. Review project requirements against the screening criteria in Section 651.29 of 32 CFR Part 651. If the project qualifies for a Categorical Exclusion, indicate the Categorical Exclusion code).

|  |
|--|
|  |
|--|

g. ESTIMATED NUMBER OF HOURS REQUIRED TO COMPLETE PROJECT: \_\_\_\_\_

h. PERSONNEL REQUIRED:      OFFICER      ENLISTED

**PART F - DETERMINATION**

a. Does the proposed action have the potential to degrade the quality of the environment, or curtail the diversity of the environment?  YES  NO

b. Does the proposed action have the potential for cumulative impacts on environmental quality when the effects are combined with those of other Federal/State actions, or when the action is of lengthy duration?  YES  NO

c. Does the proposed action have environmental effects that will cause substantial adverse effects on the human or natural environment, either directly or indirectly?  YES  NO

**On the basis of this initial evaluation, the following is appropriate (check one):**

- An **Environmental Baseline Survey (EBS)** and a **new checklist** once the EBS is completed.
- IAW 32 CFR 651 Appendix B, the proposed action qualifies for a **Categorical Exclusion (CX)** that does not require a Record of Environmental Consideration.
- A **Record of Environmental Consideration (REC)**.
- An **Environmental Assessment (EA)**.
- A **Notice of Intent (NOI)** to prepare an **Environmental Impact Statement (EIS)**.

\_\_\_\_\_  
Signature of Proponent (Requester)

\_\_\_\_\_  
Printed Name of Proponent (Requester)

\_\_\_\_\_  
Date Signed

Concurrence: \_\_\_\_\_  
Environmental Program Manager

\_\_\_\_\_  
Printed Name of Env. Program Manager

\_\_\_\_\_  
Date Signed

**Concurrence (as needed):**

\_\_\_\_\_  
Signature of Landowner

\_\_\_\_\_  
Printed Name of Landowner

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Commander

\_\_\_\_\_  
Printed Name of Commander

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Facilities Officer

\_\_\_\_\_  
Printed Name of Facilities Officer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Plans & Operations Officer

\_\_\_\_\_  
Printed Name of Plans & Operations Officer

\_\_\_\_\_  
Date Signed

## ARNG RECORD OF ENVIRONMENTAL CONSIDERATION

1. PROJECT NAME:

0

2. PROJECT NUMBER:

0

3. DATE:

0-Jan-00

4. PROJECT START DATE (dd-mmm-yy):

0-Jan-00

5. PROJECT END DATE (dd-mmm-yy):

0-Jan-00

6. DESCRIPTION AND LOCATION OF THE PROPOSED ACTION:

0

7. CHOOSE **ONE** OF THE FOLLOWING:

- An existing **Environmental Assessment** adequately covers the scope of this project.  
EA Date (dd-mmm-yy) \_\_\_\_\_ Conducted By: \_\_\_\_\_
- An existing **Environmental Impact Statement** adequately covers the scope of this project.  
EIS Date (dd-mmm-yy) \_\_\_\_\_ Conducted By: \_\_\_\_\_
- After reviewing the screening criteria and completing the ARNG Environmental Checklist, this project qualifies for a **Categorical Exclusion** (select one below).  
Categorical Exclusion Code: See 32 CFR 651 App. B ▼
- This project is exempt from NEPA requirements under the provisions of:  
Cite superseding law: \_\_\_\_\_

8. REMARKS:

\_\_\_\_\_  
Signature of Proponent (Requester)

\_\_\_\_\_  
Printed Name of Proponent (Requester)

\_\_\_\_\_  
Date Signed

Concurrence:

\_\_\_\_\_  
Environmental Program Manager

\_\_\_\_\_  
Printed Name of Env. Program Manager

\_\_\_\_\_  
Date Signed

***APPENDIX L***

***Sample DD Form 1390/91***

|  |   |          |          |              |          |                    |                           |              |          |  |  |
|--|---|----------|----------|--------------|----------|--------------------|---------------------------|--------------|----------|--|--|
| <b>1. COMPONENT</b>                                      | <b>FY _____ MILITARY CONSTRUCTION PROGRAM</b> |          |          |              |          |                    | <b>2. DATE (YYYYMMDD)</b> |              |          |  |  |
| <b>3. INSTALLATION AND LOCATION</b>                      |   |          |          |              |          | <b>4. COMMAND</b>  |                           |              |          | <b>5. AREA CONSTRUCTION COST INDEX</b> |  |
| <b>6. PERSONNEL</b>                                      | (1) PERMANENT                                 |          |          | (2) STUDENTS |          |                    | (3) SUPPORTED             |              |          | (4) TOTAL                              |  |
|  | OFFICER                                       | ENLISTED | CIVILIAN | OFFICER      | ENLISTED | CIVILIAN           | OFFICER                   | ENLISTED     | CIVILIAN |  |  |
| a. AS OF   |   |          |          |              |          |                    |                           |              |          |  |  |
| b. END FY  |   |          |          |              |          |                    |                           |              |          |  |  |
| <b>7. INVENTORY DATA (\$000)</b>                         |   |          |          |              |          |                    |                           |              |          |  |  |
| a. TOTAL ACREAGE   |   |          |          |              |          |                    |                           |              |          |  |  |
| b. INVENTORY TOTAL AS OF                                 |   |          |          |              |          |                    |                           |              |          |  |  |
| c. AUTHORIZATION NOT YET IN INVENTORY                    |   |          |          |              |          |                    |                           |              |          |  |  |
| d. AUTHORIZATION REQUESTED IN THIS PROGRAM               |   |          |          |              |          |                    |                           |              |          |  |  |
| e. AUTHORIZATION INCLUDED IN FOLLOWING PROGRAM           |   |          |          |              |          |                    |                           |              |          |  |  |
| f. PLANNED IN NEXT THREE PROGRAM YEARS                   |   |          |          |              |          |                    |                           |              |          |  |  |
| g. REMAINING DEFICIENCY                                  |   |          |          |              |          |                    |                           |              |          |  |  |
| h. GRAND TOTAL   |   |          |          |              |          |                    |                           |              |          |  |  |
| <b>8. PROJECTS REQUESTED IN THIS PROGRAM</b>             |   |          |          |              |          |                    |                           |              |          |  |  |
| a. CATEGORY  |   |          |          |              |          | b. COST<br>(\$000) | c. DESIGN STATUS          |              |          |  |  |
| (1) CODE   | (2) PROJECT TITLE                             |          |          | (3) SCOPE    |          |                    | (1) START                 | (2) COMPLETE |          |  |  |
|  |   |          |          |              |          |                    |                           |              |          |  |  |
|  |   |          |          |              |          |                    |                           |              |          |  |  |
|  |   |          |          |              |          |                    |                           |              |          |  |  |
|  |   |          |          |              |          |                    |                           |              |          |  |  |
| <b>9. FUTURE PROJECTS</b>                                |   |          |          |              |          |                    |                           |              |          |  |  |
| <b>10. MISSION OR MAJOR FUNCTIONS</b>                    |   |          |          |              |          |                    |                           |              |          |  |  |
| <b>11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES</b> |   |          |          |              |          |                    |                           |              |          |  |  |

|  |  |                   |                         |   |                 |
|--|--|-------------------|-------------------------|---|-----------------|
| 1. COMPONENT                             | FY _____ MILITARY CONSTRUCTION<br>PROJECT DATA |                   | 2. DATE<br>(YYYYMMDD)   | REPORT CONTROL<br>SYMBOL<br>DD-A&T(A)1610 |                 |
| 3. INSTALLATION AND LOCATION             |  |                   | 4. PROJECT TITLE        |   |                 |
| 5. PROGRAM ELEMENT                       | 6. CATEGORY CODE                               | 7. PROJECT NUMBER | 8. PROJECT COST (\$000) |   |                 |
| 9. COST ESTIMATES                        |  |                   |                         |   |                 |
| ITEM                                     |  | U/M               | QUANTITY                | UNIT COST                                 | COST<br>(\$000) |
|  |  |                   |                         |   |                 |
| 10. DESCRIPTION OF PROPOSED CONSTRUCTION |  |                   |                         |   |                 |



|                              |  |                   |                                |   |
|------------------------------|--|-------------------|--------------------------------|---|
| 1. COMPONENT                 | FY _____ <b>MILITARY CONSTRUCTION</b><br><b>PROJECT DATA</b> <i>(Continuation)</i> |                   | 2. DATE<br><i>(YYYYMMDD)</i>   | REPORT CONTROL<br>SYMBOL<br>DD-A&T(A)1610 |
| 3. INSTALLATION AND LOCATION |  | 4. PROJECT TITLE  |                                |   |
| 5. PROGRAM ELEMENT           | 6. CATEGORY CODE   | 7. PROJECT NUMBER | 8. PROJECT COST <i>(\$000)</i> |   |

***APPENDIX M***

***Sample Table of Contents for a Combined INRMP/EA***

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***APPENDIX N***

***DoD Directive 6050.7, Environmental Effects Abroad of Major  
Department of Defense Actions***



# Department of Defense DIRECTIVE

NUMBER 6050.7

March 31, 1979

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ASD(MRA&L)

SUBJECT: Environmental Effects Abroad of Major Department of Defense Actions

Reference: (a) Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," dated January 4, 1979

## 1. PURPOSE

Executive Order 12114 provides the exclusive and complete requirement for taking account of considerations with respect to actions that do significant harm to the environment of places outside the United States. This directive provides policy and procedures to enable Department of Defense (DoD) officials to be informed and take account of environmental considerations when authorizing or approving certain major federal actions that do significant harm to the environment of places outside the United States. Its sole objective is to establish internal procedures to achieve this purpose, and nothing in it shall be construed to create a cause of action. Guidance for taking account of considerations with respect to the environment of places within the United States is set out in DoD Directive 6050.1. That guidance is grounded on legal and policy requirements different from those applicable to this directive.

## 2. APPLICABILITY

The provisions of this directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD components").

## 3. DEFINITIONS

3.1. Environment means the natural and physical environment, and it excludes social, economic, and other environments. Social and economic effects do not give rise to any requirements under this directive.

3.2. Federal Action means an action that is implemented or funded directly by the United States Government. It does not include actions in which the United States participates in an advisory, information-gathering, representational, or diplomatic capacity but does not implement or fund the action; actions taken by a foreign government or in a foreign country in which the United States is a beneficiary of the action, but does not implement or fund the action; or actions in which foreign governments use funds derived indirectly from United States funding.

3.3. Foreign Nation means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes governments regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

3.4. Global Commons are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

3.5. Major Action means an action of considerable importance involving substantial expenditures of time, money, and resources, that affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area, and that is substantially different or a significant departure from other actions, previously analyzed with respect to environmental considerations and approved, with which the action under consideration may be associated. Deployment of ships, aircraft, or other mobile military equipment is not a major action for purposes of this directive.

3.6. United States means all States, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

#### 4. POLICY

4.1. Executive Order 12114 is based on the authority vested in the President by the Constitution and the laws of the United States. The objective of the Order is to further foreign policy and national security interests while at the same time taking into consideration important environmental concerns.

4.2. The Department of Defense acts with care in the global commons because the stewardship of these areas is shared by all the nations of the world. The Department of Defense will take account of environmental considerations when it acts in the global commons in accordance with procedures set out in enclosure 1 and its attachment.

4.3. The Department of Defense also acts with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. The Department of Defense will take account of environmental considerations in accordance with enclosure 2 and its attachments when it acts in a foreign nation.

4.4. Foreign policy considerations require coordination with the Department of State on communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive. Informal working-level communications and arrangements are not included in this coordination requirement. Consultation with the Department of State also is required in connection with the utilization of additional exemptions from this directive as specified in paragraph E2.3.3.2. of enclosure 2. Coordination and consultation with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

4.5. Executive Order 12114, implemented by this directive, prescribes the exclusive and complete procedural measures and other actions to be taken by the Department of Defense to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States.

#### 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and

Logistics) shall:

5.1.1. Serve as the responsible Department of Defense official for policy matters under Executive Order 12114 and this directive;

5.1.2. Modify or supplement any of the enclosures to this directive in a manner consistent with the policies set forth in this directive;

5.1.3. Maintain liaison with the Council on Environmental Quality with respect to environmental documents;

5.1.4. Participate in determining whether a recommendation should be made to the President that a natural or ecological resource of global importance be designated for protection; and

5.1.5. Consult with the Assistant Secretary of Defense (International Security Affairs) on significant or sensitive actions or decisions affecting relations with another nation.

5.2. The Assistant Secretary of Defense (International Security Affairs) shall:

5.2.1. Maintain liaison and conduct consultations with the Department of State as required under this directive; and

5.2.2. Serve as the responsible official, in consultation with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), for monitoring the continuing cooperation and the exchange of information with other nations concerning the environment.

5.3. The General Counsel, DoD, shall provide advice and assistance concerning the requirements of Executive Order 12114 and this directive.

5.4. The Secretaries of the Military Departments, Directors of the Defense Agencies, and Commanders of the Unified and Specified Commands, for operations under their jurisdiction, shall:

5.4.1. Prepare and consider environmental documents when required by this directive for proposed actions within their respective DoD component (this reporting requirement has been assigned Report Control Symbol DD-M(AR) 1327 (section 6.));

5.4.2. Insure that regulations and other major policy issuances are reviewed



for consistency with Executive Order 12114 and this directive;

5.4.3. Designate a single point-of-contact for matters pertaining to this directive; and

5.4.4. Consult with the Assistant Secretary of Defense (International Security Affairs) on significant or sensitive actions or decisions affecting relations with another nation.

## 6. INFORMATION REQUIREMENTS

The documents to be prepared under subsection 5.4. and enclosures 1 and 2 are assigned Report Control Symbol DD-M(AR) 1327 (formerly DD-H&E(AR) 1327).

## 7. EFFECTIVE DATE AND IMPLEMENTATION

This directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 90 days.



HAROLD BROWN  
Secretary of Defense

Enclosures - 3

1. Requirements for Environmental Considerations Global- -Commons
2. Requirements for Environmental Considerations Foreign Nations- -and Protected Global Resources
3. References

## E1. ENCLOSURE 1

### REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS-GLOBAL COMMONS

#### E1.1. GENERAL.

This enclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do significant harm to the environment of the global commons. The focus is not the place of the action, but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

#### E1.2. ACTIONS INCLUDED.

The requirements of this enclosure apply only to major federal actions that do significant harm to the environment of the global commons.

#### E1.3. ENVIRONMENTAL DOCUMENT REQUIREMENTS

E1.3.1. General. When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decision-making official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

E1.3.2. Limitations on Actions. Until the requirements of this enclosure have been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

E1.3.3. Emergencies. Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this enclosure, the DoD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This

includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

E1.3.4. Combining Documents. Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what federal agency prepared it, no new statement is required by this directive.

E1.3.5. Collective Statements. Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

E1.3.6. Tiering. Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

E1.3.7. Lead Agency. When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

E1.3.7.1. The magnitude of agency involvement;

E1.3.7.2. Which agency or agencies have project approval and disapproval authority;

E1.3.7.3. The expert capabilities concerning the environmental effects of the action;

E1.3.7.4. The duration of agency involvement; and

E1.3.7.5. The sequence of agency involvement.

E1.3.8. Categorical Exclusions. The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical

exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in Attachment 1 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendations for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

E1.3.9. Environmental Assessments. The purpose of an environmental assessment is to assist DoD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

#### E1.4. ENVIRONMENTAL IMPACT STATEMENTS

E1.4.1. General. Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in enclosure 2.

E1.4.2. Draft Statement. Environmental impact statements will be prepared in two stages and may be supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the Council on Environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in subsection 4.4. of the directive and subsection E1.4.11. of this enclosure.

E1.4.3. Final Statement. Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

E1.4.4. Supplemental Statement. Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects on the global commons. Supplemental statements will be circulated for comment as in subsection E1.4.2. above unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

E1.4.5. Statement Content. The statement will include: a section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

E1.4.6. Incomplete Information. The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

E1.4.7. Hearings. Public hearings are not required. Consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained through hearings; time considerations; and requirements for commercial confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

E1.4.8. Decision. Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be

informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decision-maker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decision-making process. Other means of making an appropriate record are also acceptable.

E1.4.9. Timing. No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the Federal Register, or 30 days after the final statement has been made available and notice thereof published in the Federal Register. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security or foreign policy, reduce the 30-day, 45-day, and 90-day periods.

E1.4.10. Classified Information. Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive. Only unclassified portions of environmental documents may be disseminated to the public.

E1.4.11. Foreign Governments. Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

Attachments - 1

1. Report Control Symbol DD-M(AR) 1327, Categorical Exclusions - Global Commons

E1.A1. ENCLOSURE 1 ATTACHMENT 1

REPORT CONTROL SYMBOL DD-M(AR) 1327  
CATEGORICAL EXCLUSIONS--GLOBAL COMMONS

## E2. ENCLOSURE 2

### REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS- - FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

#### E2.1. GENERAL.

This enclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of a foreign nation or to a protected global resource.

#### E2.2. ACTIONS INCLUDED

E2.2.1. The requirements of this enclosure apply only to the following actions:

E2.2.1.1. Major federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

E2.2.1.2. Major federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation: (1) a product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. Included in the category of "prohibited or strictly regulated" are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

E2.2.1.3. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such



determinations by the President or the Secretary of State are listed in Attachment 1 to this enclosure.

E2.2.2. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection E2.2.1., above. No action is required under this enclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

### E2.3. ENVIRONMENTAL DOCUMENT REQUIREMENTS

#### E2.3.1. General.

E2.3.1.1. There are two types of environmental documents officials shall use in taking account of environmental considerations for actions covered by this enclosure:

E2.3.1.1.1. Environmental studies--bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

E2.3.1.1.2. Environmental reviews--concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

E2.3.1.2. This section identifies the procedures for the preparation of environmental studies or reviews when required by this enclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what federal agency prepared it, no new document is required by this enclosure.

E2.3.2. Lead Agency. When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

E2.3.2.1. The magnitude of agency involvement;

E2.3.2.2. Which agency or agencies have project approval and disapproval authority;

E2.3.2.3. The expert capabilities concerning the environmental effects of the action;

E2.3.2.4. The duration of agency involvement; and

E2.3.2.5. The sequence of agency involvement.

E2.3.3. Exemptions. There are general exemptions from the requirements of this enclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

E2.3.3.1. General Exemptions. The following actions are exempt from the procedural and other requirements of this enclosure under general exemptions established for all agencies by Executive Order 12114:

E2.3.3.1.1. Actions that the DoD component concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

E2.3.3.1.2. Actions taken by the President. These include: signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidential decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

E2.3.3.1.3. Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a) (1) of the War Powers Resolution, 50 U.S.C.A. § 1543(a) (1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption

applies as long as the armed conflict continues.

E2.3.3.1.4. Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

E2.3.3.1.5. The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036, 43 Fed. Reg. 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

E2.3.3.1.6. The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.

E2.3.3.1.7. Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

E2.3.3.1.8. Disaster and emergency relief actions.

E2.3.3.1.9. Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. § 2778 (1976); advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. §§ 2401-2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions

export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. § 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

E2.3.3.1.10. Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

E2.3.3.2. Additional Exemptions. The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: case-by-case and class.

E2.3.3.2.1. Case by-Case Exemptions. Exemptions other than those specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this enclosure. The following procedures apply for approving these exemptions:

E2.3.3.2.1.1. Emergencies. This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DoD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of State and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DoD component head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultations.

E2.3.3.2.1.2. Other Circumstances. National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph E2.3.3.1. above, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DoD component concerned is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower,

Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

E2.3.3.2.2. Class Exemptions. Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DoD component concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DoD components. Notice of the establishment of a class exemption will be issued as Attachment 2 to this enclosure.

E2.3.4. Categorical Exclusions. The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in Attachment 3 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

## E2.4. ENVIRONMENTAL STUDIES

E2.4.1. General. Environmental studies are one of two alternative types of documents to be used for actions described by paragraph E2.2. of this enclosure.

E2.4.1.1. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DoD components in the decision-making process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions by the other participating nations,

bodies, or organizations.

E2.4.1.2. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (E2.2.1.2.) and actions that affect a protected global resource (E2.2.1.3.).

E2.4.2. Department of State Coordination. Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

E2.4.3. Whether to Prepare an Environmental Study. The judgment whether the action is one that would do significant harm to one of the environments covered by this enclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decision-makers who participated. If a decision is made to prepare a study then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

E2.4.4. Content of the Study. The document is a study of the environmental aspects of the proposed action to be considered in the decision-making process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection E2.4.6., below). The study should, however, include consideration of the following:

E2.4.4.1. A general review of the affected environment;

E2.4.4.2. The predicted effect of the action on the environment;

E2.4.4.3. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and

E2.4.4.4. If no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

E2.4.5. Distribution of the Study. Except as provided under "Limitations," (subsection E2.4.6., below), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection E2.4.6., below) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

E2.4.6. Limitations. The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

E2.4.6.1. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

E2.4.6.2. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

E2.4.6.3. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

E2.4.6.4. Ensure consideration of:

E2.4.6.4.1. Requirements of governmental confidentiality. This refers

to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

E2.4.6.4.2. National security requirements. This refers to the protection of classified information and other national security interests;

E2.4.6.4.3. Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

E2.4.6.4.4. The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DoD's role and control over the decision lessens; and

E2.4.6.4.5. International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

E2.4.7. Classified Information. Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

## E2.5. ENVIRONMENTAL REVIEWS

E2.5.1. General. Environmental reviews are the second of the two alternative types of documents to be used for actions covered by paragraph B of this enclosure.

E2.5.1.1. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the environmental aspects by the United States and by any foreign government involved in taking the action.



E2.5.1.2. An environmental review is prepared by the DoD component concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section E2.2., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (E2.2.1.1.).

E2.5.2. Department of State Coordination. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this enclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

E2.5.3. Whether to Prepare an Environmental Review. Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this enclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

E2.5.4. Content of the Review. An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DoD component concerned in the decision-making process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under enclosure 1 of this directive. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors affecting the content are identified under "Limitations," (subsection E2.5.6., below). To the extent reasonably practical the review should include consideration of the following:

E2.5.4.1. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors.

E2.5.4.2. Identification of the important environmental issues involved;

E2.5.4.3. The aspects of the actions taken or to be taken by the DoD component that ameliorate or minimize the impact on the environment; and

E2.5.4.4. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

E2.5.5. Distribution. Except as provided under "Limitations," (subsection E2.5.6., below), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E2.5.6., below) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

E2.5.6. Limitations. The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

E2.5.6.1. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

E2.5.6.2. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

E2.5.6.3. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

E2.5.6.4. Ensure consideration of:

E2.5.6.4.1. Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

E2.5.6.4.2. National security requirements. This refers to the protection of classified information;

E2.5.6.4.3. Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change substantially the normal content of the environmental review;

E2.5.6.4.4. The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

E2.5.6.4.5. International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

E2.5.7. Classified Information. Classified information will be safeguarded from disclosure in accordance with the DoD procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

Attachments - 3

1. Report Control Symbol DD-M(AR)1327 Protected Global Resources
2. Report Control Symbol DD-M(AR)1327 Class Exemptions Foreign Nations and Protected Global Resources
3. Report Control Symbol DD-M(AR)1327 Categorical Exclusions Foreign Nations and Protected Global Resources

E2.A1. ENCLOSURE 2 ATTACHMENT 1

REPORT CONTROL SYMBOL DD-M(AR)1327  
PROTECTED GLOBAL RESOURCES

E2.A2. ENCLOSURE 2 ATTACHMENT 2

REPORT CONTROL SYMBOL DD-M(AR)1327

CLASS EXEMPTIONS

FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

E2.A3. ENCLOSURE 2 ATTACHMENT 3

REPORT CONTROL SYMBOL DD-M(AR)1327

CATEGORICAL EXCLUSIONS

FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

### E3. ENCLOSURE 3

#### REFERENCES

| STATUTES:  | PAGE   |
|--|--|
| 22 U.S.C. Sec. 2778 (1976)   | Encl. 2, p. 15                                       |
| 50 U.S.C.A. Sec. 1543(a)(1)<br>(Supp. 1978)  | Encl. 2, p. 14                                       |
| 50 U.S.C. App. Secs. 2401-2413<br>(1970 & Supp. V 1975)  | Encl. 2, p. 15                                       |
| EXECUTIVE ORDERS:  |  |
| Executive Order 12114,<br>"Environmental Effects Abroad<br>of Major Federal Actions,"<br>January 4, 1979<br>44 Fed. Reg. 1957 (1979) | Passim   |
| Executive Order 12065,<br>National Security Information," June 28,<br>1978, 43 Fed. Reg. 28949 (1978)                                | Encl. 1, p. 10;<br>Encl. 2, p. 20<br>Encl. 2, p. 23  |
| Executive Order 12036,<br>"United States Intelligence<br>Activities," January 24,<br>1978, 43 Fed. Reg.<br>3674 (1978)               | Encl. 2, p. 14                                       |
| REGULATIONS:   |  |
| DoD Directive 6050.1,<br>"Environmental Considerations<br>in DoD Actions," March 19,<br>1974, 32 C.F.R. 214 (1978)                   | 1  |
| DoD Directive 5200.1, "DoD<br>Information Security Program,"<br>November 29, 1978  | Encl. 1, p. 10;<br>Encl. 2, p. 20;<br>Encl. 2, p. 23 |

***APPENDIX O***

***Executive Order 12114, Environmental Effects  
Abroad of Major Federal Actions***



**Executive Order 12114**  
**Environmental Effects Abroad of Major Federal Actions**

January 4, 1979

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

**SECTION 1**

Section 11-1. Purpose and Scope. The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

**SECTION 2**

2-1. Agency Procedures. Every Federal agency taking major Federal actions encompassed hereby and not exempted here from having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. Information Exchange. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3 Actions Included. Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica;)

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product or physical project producing a principal product or an emission or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreements binding on the United States by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council of Environmental Quality and the Secretary of State.

2-4 Applicable Procedures.

(a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental, issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3 as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(1).

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency. Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order. Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures. In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

#### 2-5 Exemptions and Considerations.

(a) Notwithstanding Section 2-3, the following actions are exempt from this Order;

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of

documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required:

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations, sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaning-fully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivity and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

### **SECTION 3.**

3-1. Rights of Action. This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. Foreign Relations. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. Multi-Agency Actions. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. Certain Terms. For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. Multiple Imports. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Jimmy Carter

THE WHITE HOUSE

January 4, 1979

44 FR 1957, 3 CFR, 1979 Comp., p. 356

***APPENDIX P***

***DoD Instruction 4715.5, Management of Environmental  
Compliance at Overseas Installations***

April 22, 1996

NUMBER 4715.5  
USD(A&T)

SUBJECT: Management of Environmental Compliance at Overseas Installations

References:

- (a) DoD Directive 6050.16, "DoD Policy for Establishing and Implementing Environmental Standards at Overseas Installations," September 20, 1991 (canceled)
- (b) DoD Directive 4715.1, "Environmental Security," February 24, 1996
- (c) Section 342(b) of Public Law 101-510, "National Defense Authorization Act Fiscal Year 1991," November 4, 1990, referred to in 10 U.S.C. 2701, note
- (d) Executive Order 12344, "Naval Nuclear Propulsion Program," February 1, 1982
- (e) through (m), see enclosure 1

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A. PURPOSE

This Instruction:

1. Replaces reference (a), which was canceled by reference (bb).
2. As required by reference (c), Implements policy, assigns responsibilities, and prescribes procedures under reference (b), establishing environmental compliance standards for protection of human health and the environment at DoD installations in foreign countries.
3. Provides for designation of DoD Environmental Executive Agents in accordance with subsection F.1., below.

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B. APPLICABILITY AND SCOPE

1. This Instruction:
  - a. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is

operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities, including any other integral DoD organizational entity or instrumentality established to perform a governmental function (hereafter referred to collectively as "the DoD Components").

- b. Applies to the actions of the DoD Components at installations outside the United States, its territories, and possessions.
  - c. Does not apply to DoD installations that do not have the potential to affect the natural environment (e.g., offices whose operations are primarily administrative, including defense attached offices, security assistance offices, foreign buying offices, and other similar organizations) or for which the DoD Components exercise control only on a temporary or intermittent basis.
  - d. Does not apply to the operations of U.S. military vessels, to the operations of U.S. military aircraft, or to off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when United States forces are operating as part of a multi-national force not under full control of the United States. Such excepted operations and deployments shall be conducted in accordance with applicable international agreements, other DoD Directives and Instructions and environmental annexes incorporated into operation plans or operation orders. However, it does apply to support functions for U.S. military vessels and U.S. military aircraft provided by the DoD Components, including management or disposal of off-loaded waste or material.
  - e. Does not apply to facilities and activities associated with the Naval Nuclear Propulsion Program, which are covered under E.O. 12344 (reference (dc)) and conducted under 42 U.S.C. 7158 (reference (ed)).
  - f. Does not apply to the determination or conduct of remediation to correct environmental problems caused by the Department of Defense's past activities.
  - g. Does not apply to environmental analyses conducted under E.O. 12114 (reference (ff)).
2. Nothing in this Instruction shall create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers,



or any person.

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## C. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

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## D. POLICY

It is DoD policy under reference (b) that:

1. The Department of Defense shall establish, maintain, and, as described in subsection F.3., below, comply with Final Governing Standards (FGS) to protect human health and the environment for each foreign country where the Department of Defense maintains substantial installations. Using the procedures described in section F., below, the FGS will reconcile the requirements of applicable international agreements, applicable host-nation environmental standards under E.O. 12088 (reference (gh)), and the Overseas Environmental Baseline Guidance Document (OEBGD).
2. The DoD Components shall not dispose of wastes overseas that are generated by overseas DoD actions and that are considered hazardous under either U.S. law or host-nation standards without concurrence, as set out in subsection F.4., below, of the nation where the disposal takes place.
3. DoD Components shall simplify and reduce compliance requirements. Pollution prevention shall be the preferred means for attaining compliance, where economically advantageous and consistent with mission requirements. Additional pollution prevention guidance can be found in DoD Instruction 4715.CC, "Pollution Prevention."
4. The DoD Components shall use cooperative solutions for environmental facilities or services (e.g., waste storage and disposal facilities, solid waste collection and disposal services, and water or wastewater treatment works), ) where economically advantageous and consistent with mission requirements, to include the use of acquisition authority and cross-servicing agreements negotiated under DoD Directive 2010.9 (reference (h)). Shared solutions may be with other DoD

installations or facilities, host nation governments, or public and private entities. This can include transfer of ownership through contractual agreements with municipal or private sources to provide such services.

5. The DoD Components should/shall use commercially proven solutions, where possible, to achieve, maintain, and monitor compliance. Where solutions do not exist, promote the development and use of innovative technology for the reduction or treatment of pollutants, where economically advantageous and consistent with mission requirements.
6. The DoD Components shall establish and conduct a program for regular assessment of environmental compliance at installations overseas compliance self-assessments at installations. Report, in a timely manner, all major compliance problems to Executive Agent. Promptly correct any environmental violations discovered and remedy any harm done.

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11. DoD Components shall provide annual information to DUSD(ES) on: funding levels and full-time military and civilian personnel required and requested to comply with applicable environmental laws for each military installation; examples on the effect of environmental compliance activities on operations and missions capabilities; investment levels in environmental research and development; and personnel duties and organizational structure for environmental programs. Pursuant to reference (j), this information shall be compiled and submitted as part of DoD's annual report to Congress on environmental quality.

## RESPONSIBILITIES

1. The Under Secretary of Defense for Acquisition and Technology, in coordination with the Chairman of the Joint Chiefs of Staff and the Under Secretary of Defense for Policy, shall have authority and responsibility for DoD environmental policy for overseas installations and shall coordinate DoD environmental policy for overseas installations with the other DoD Components, the Department of State, and other Federal Agencies, as appropriate.
2. The Deputy Under Secretary of Defense for Environmental Security shall implement this Instruction on behalf of the Under Secretary of Defense for Acquisition and Technology and shall:

- a. Designate DoD Environmental Executive Agents as set out in subsection F.1., below.
- b. Resolve issues raised by environmental policy principals of the DoD Components under subsection F.9., below.
- c. Provide policy and guidance, oversight, advocacy, and representation for environmental security compliance programs.
- d. Monitor compliance with this Instruction, including development use of appropriate Measures of Merit (enclosed) and periodic review of the compliance programs of the DoD Components compliance programs.

3. The Heads of the DoD Components shall:

- a. Ensure actions at installations in foreign countries, including administration and support under 10 U.S.C. 165 (reference (i)g) of forces assigned to the Unified Combatant Commanders, as well as planning, budgeting, programming, and execution, comply with the applicable standards described in subsections D.4 and D.5., above.
- b. Carry out the responsibilities of Executive Agents for particular nations when designated by the Department of Defense or delegate such authority as provided in paragraph E.3.e., below, including the following:
  - (1) Plan, budget, and program for preparation and maintenance of the FGS.
  - (2) Identify applicable host-nation environmental standards, monitor regulatory trends, and maintain copies of applicable host-nation environmental documents, standards, and regulations.
  - (3) Consult with host-nation authorities on environmental issues, as required, to maintain effective cooperation on environmental matters.
  - (4) Consult with the Chief of the U. S. Diplomatic Mission in the host nation, the affected Military Service through the chain of command, and the geographic Unified Combatant Command on significant issues arising from DoD environmental policy in that country.
  - (5) Prepare and maintain the FGS for the designated host nation, technical, legal and programmatic support to the process..
  - (6) Resolve requests for waivers from the DoD Components under subsection F.4., below.

- (7) Keep DoD Components informed of current environmental developments and trends.
- c. Provide technical, legal and programmatic support to the process for maintenance of the OEBGD.
  - d. Establish and implement an environmental compliance assessment program for overseas installations that will include internal and external environmental assessments. Conduct internal self-assessments at least annually, and Conduct external compliance self-assessments at least once every three years at all major installations.
  - e. Designate Component Commanders or other officials who are authorized to apply for waivers under subsection F.6., below, or to initiate appeals under subsection F.9., below.
  - f. Promptly notify the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) and all affected elements of command of significant environmental events.
  - g. Coordinate with, and cooperate with, and provide timely notice to with the each other regarding environmental items of common interest affecting overseas installations. Identify program needs, develop solutions to common problems, share technological information and expertise, and conduct joint activities to protect or enhance environmental quality potentially affected by DoD operations.
  - h. Promptly notify DUSD(ES) of significant environmental events.
4. The Secretary of the Air Force shall have lead responsibility for maintaining the OEBGD, including printing and distribution of any revisions.
5. The Commanders of the Unified Combatant Commands shall:
- a. Coordinate and approve implementation of this Instruction by the DoD Environmental Executive Agents in their geographic areas of responsibility, as necessary, to carry out their mission.
  - b. Resolve disputes between the DoD Components and the Executive Agent as provided in subsection F.9., below.

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## F. PROCEDURES

## 1. Designation of DoD Environmental Executive Agents

- a. The DUSD(ES) shall designate a DoD Component as the DoD Environmental Executive Agent for environmental matters in foreign countries where DoD installations are located and where the DUSD(ES) determines that the level of DoD presence justifies establishment of FGS. Current designations are listed in enclosure 3.
- b. Military Departments, the Unified Combatant Commander or an appropriate component or subunified commander may be designated as DoD Environmental Executive Agent. When a Military Department is designated as Executive Agent, the Department should delegate authority via the chain of command to an appropriate general or flag-level commander.
- c. Each Unified Combatant Commander with a geographic area of responsibility encompassing foreign countries may recommend changes adding, substituting or eliminating DoD Environmental Executive Agents. Such recommendations shall be submitted to the Chairman of the Joint Chiefs of Staff for coordination with the Military Departments prior to submittal to DUSD(ES).
- d. The DUSD(ES) shall coordinate with the Chairman of the Joint Chiefs of Staff and any affected DoD Components before adding, substituting, or eliminating DoD Environmental Executive Agents.

## 2. Maintenance of the Overseas Environmental Baseline Guidance Document

- a. The Department of Defense shall establish, maintain, and, as described in subsection F.3.h., below, comply with the OEBGD. The OEBGD shall be designed to protect human health and the environment; shall consider generally accepted environmental standards applicable to DoD installations, facilities, and actions in the United States; and shall incorporate requirements of U.S. law that have extraterritorial application to the Department of Defense.
- b. The OEBGD shall be reviewed as needed, but at least biennially, to ensure that it protects human health and the environment, and reflects consideration of current, generally accepted environmental standards applicable to similar DoD installations and actions in the United States, and incorporates requirements of U.S. law that have extraterritorial application.
- c. The Department of the Air Force shall conduct the OEBGD

review process, chairing a multidisciplinary committee consisting of, at a minimum, representatives of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Defense Logistics Agency. Field comments will be solicited during the review process.

- d. Revisions to the OEBGD proposed by the committee shall be forwarded to DUSD(ES) for coordination, final approval, and distribution, in accordance with DoD 5025.1-M (reference (j)), to the DoD Components and DoD Environmental Executive Agents.
3. Development and Maintenance of Final Governing Standards for Overseas Installations
- a. The DoD Components in a foreign nation shall consult with other DoD Components with similar environmental issues and shall coordinate environmental matters with the environmental executive agent designated under this Instruction.
  - b. The DoD Environmental Executive Agent shall identify applicable host nation environmental standards. In identifying these standards, the DoD Environmental Executive Agent shall:
    - (1) Identify published host-nation law, including transnational enforceable standards, and applicable international agreements for the protection of human health and the environment within the host nation.
    - (2) Determine the extent to which the host-nation environmental standards are adequately defined and generally in effect and enforced against host-government and private sector activities. Laws of local governmental units are not included unless they implement national laws that delegate authority to, or recognize the authority of, the local governmental unit.
    - (3) Consider whether responsibility for construction, maintenance, and operation of the installation rests with the United States or the host nation.
  - c. The DoD Environmental Executive Agent shall determine the Final Governing Standards as follows:
    - (1) The DoD Environmental Executive Agent shall use the OEBGD to establish the FGS unless the OEBGD is inconsistent with applicable host-nation environmental standards or standards under applicable international agreements and these other applicable standards provide more protection to human health and the environment. In case of inconsistency, the DoD Executive Agent shall normally use the more protective standard to establish the FGS unless a specific international agreement with the host

nation establishes a different standard applicable to U.S. installations.

- (2) The DoD Environmental Executive Agent normally should base the comparison of standards on individual standards. Where, however in the judgment of the Executive Agent, a standard cannot be considered individually because it is part of a comprehensive regulatory regime for a particular environmental subject, the comparison may be made on a broader scope. In such cases, the Executive Agent may compare the overall regulatory regime for the threat to human health or the environment in the OEBGD with the corresponding regulatory regime of the applicable host nation environmental standards or standards under applicable international agreements. The more protective regime normally shall then be used to establish the FGS.
  - (3) If a particular environmental threat is not addressed by the OEBGD but is addressed by relevant host-nation environmental standards or standards under applicable international agreements, the DoD Environmental Executive Agent shall consider the applicable host-nation environmental standards or standards under applicable international agreements to establish the FGS. Until the DoD Environmental Executive Agent establishes a standard for that threat in the FGS, the host nation or international agreement standard shall apply.
- d. The DoD Environmental Executive Agent shall issue the FGS after consultation with the appropriate in-country or theater representatives of the other DoD Components operating in the country, approval of the Unified Combatant Commander, and notification to the U.S. Diplomatic Mission.
  - e. The DoD Components in a foreign nation for which FGS have been established shall comply with the FGS established for that country.
  - f. The DoD Environmental Executive Agent shall revalidate and update the FGS on a periodic basis, but at least every two years.
  - g. The DoD Environmental Executive Agent shall forward a copy of the new or revised FGS for each country via the Unified Combatant Commander and the Chairman of the Joint Chiefs of Staff to the Military Departments and DUSD(ES) for information.
  - h. The DoD Components in a foreign nation for which no FGS have been established shall comply with applicable international agreements, applicable host nation environmental standards under E.O. 12088 (reference (gh)), and the OEBGD, and in cases of conflicting requirements, shall comply with the standard that is more protective of human health or the environment. Such DoD Components shall consult with the DoD Environmental Executive

Agent (or if no Executive Agent has been designated, with the Unified Combatant Commander) on actions that involve a substantial commitment of funds or that could set a precedent.

- i. The Reserve component commander, in consultation with the DoD Environmental Executive Agent, shall establish an awareness and training package instructing Reserve component units on Final Governing Standards (FGS) or other standards described in paragraphs F.3.e. and F.3.h., above, as appropriate.
4. Additional Procedures for Hazardous Wastes In addition to the FGS or OEBGD (where no FGS have been issued), the following additional procedures shall be followed for the disposal of hazardous waste:
- a. The DoD Components shall not dispose of wastes in a foreign nation that are generated by DoD actions and that are considered hazardous under either U.S. law or applicable host-nation standards, unless the disposal complies with either the OEBGD or FGS (under paragraphs F.3.e. and F.3.h., above, as appropriate) and is in accordance with any applicable international agreement. Absent an applicable international agreement that grants disposal authority, explicit or implicit concurrence is required by the appropriate authorities of the nation where the disposal takes place.
  - b. When the requirements of paragraph F.4.a., above, cannot be met, the hazardous waste shall be disposed of in the United States or in another foreign nation where the applicable conditions can be met, unless other disposal arrangements are approved by DUSD(ES).
  - c. The determination of whether a DoD-generated hazardous waste may be disposed of in a foreign nation shall be made by the DoD Environmental Executive Agent, in coordination with the applicable Unified Combatant Commander, Director of the Defense Logistics Agency (DLA), the other relevant DoD Components, and the Chief of the U.S. Diplomatic Mission. If there is no DoD Environmental Executive Agent, the determination shall be made by the Director of the DLA in coordination with the other relevant DoD Components, and the Chief of the U.S. Diplomatic Mission.
  - d. In addition to compliance with the applicable standards described in paragraphs F.3.e. and F.3.h., above, the DoD Components must comply with provisions of the Status of Forces Agreement (SOFA) and other applicable international agreements on the shipping and storage of hazardous wastes.
5. Planning, Programming, Budgeting of Funds and Execution



Planning, programming and budgeting of funds and other resources required for compliance with this Instruction shall be accomplished in accordance with DoD procedures generally applicable to environmental compliance and the following:

- a. For planning, programming, and budgeting, the DoD Components shall treat the applicable set of environmental compliance standards for the host nation under paragraphs F.3.e. or F.3.h., above, as validated budgetary requirements and the functional equivalents of generally accepted environmental standards for similar installations, facilities, and operations in the United States. The DoD Components shall plan, program and budget for these requirements over the length of the first Program Objectives Memorandum (POM) cycle following the effective date of this Instruction or, for modifications to the applicable set of environmental compliance standards, the effective date of the modification.
  - b. Standards contained in the FGS or OEBGD shall be given the highest priority for funding and execution and shall be funded in the current or the immediately following fiscal year if leaving them unremedied would result in one or more of the following:
    - (1) An imminent and substantial threat to human health;
    - (2) A direct threat to ongoing U.S. operations or U.S. access to an overseas base or installation; or
    - (3) A U.S. default on a standard made directly applicable to U.S. overseas operations in a basing agreement, SOFA or other international agreement.
    - (4) All other requirements should be addressed according to a risk-based prioritization, based on local circumstances and long-term objectives.
  - c. This Instruction does not require or authorize the DoD Components to expend funds or use other resources to meet requirements that are the responsibility of host nations, as stipulated in applicable international agreements. Nor, however, does this Instruction restrict the authority of a commander to protect the human health and safety of the command from environmental threats.
6. Waivers A DoD Component may request a waiver of an otherwise applicable standard under subsections F.3.e. or F.3.h., above, only if compliance with the standards at particular installations or facilities would seriously impair their actions, adversely affect relations with the host nation or would require substantial expenditure of funds for physical improvements at an

installation that has been identified for closure or at an installation that has been identified for a realignment that would remove the requirement. Waivers may not be granted to standards if noncompliance would constitute a breach of applicable U.S. law with extraterritorial effect or applicable international agreements.

- a. A DoD Component submitting a request for waiver shall:
  - (1) Identify the particular standard for which a waiver is requested;
  - (2) Describe the extent of the relief requested and the period that the waiver will be in effect;
  - (3) Describe the anticipated impact of the waiver, if any, on human health and the environment over the period of the waiver; and,
  - (4) Describe the justification for the waiver and if a complete waiver of the standard is requested, why a partial and/or temporary deviation would not be sufficient.
- b. Upon receipt of a request for waiver, the DoD Environmental Executive Agent shall consult with the relevant DoD Components and the Unified Combatant Command with geographic responsibility. Where the waiver or deviation is from a host-nation standard, the DoD Environmental Executive Agent should normally consult through the appropriate U.S. Diplomatic Mission (or other agencies established by applicable international agreements) with the responsible host-nation authority.
- c. The DoD Environmental Executive Agent may grant or deny the request for waiver in whole, in part or upon conditions. Pending action by the DoD Environmental Executive Agent, the Unified Combatant Commanders may, consistent with applicable international agreements and other law, authorize temporary emergency waivers and deviations in countries in their geographic area when they determine that such a waiver or deviation is essential to the accomplishment of an operational mission directed by the National Command Authorities. Such waivers shall be no broader than appropriate to accomplish the mission.
- d. If, as a result of consultation with host-nation authorities by the Executive Agent, it is determined that the waiver or deviation from the applicable host-nation standards should not be approved, the DoD Environmental Executive Agent or the DoD Component requesting the waiver may forward the request along with a complete report to the DUSD(ES), who shall attempt to resolve the issue through consultation with relevant authorities and other Federal Agencies as appropriate.

- e. Military Departments or Defense Agencies designated as DoD Environmental Executive Agents will not act on waiver requests received from within their own Department or Agency. Where the Military Department or Defense Agency requesting the waiver is also the DoD Environmental Executive Agent, the waiver shall be referred to the Unified Combatant Commander for decision.
  - f. A DoD Environmental Executive Agent, Unified Combatant Commander or the DUSD(ES), as appropriate, shall maintain a written record of its decision on each waiver requested.
7. Pollution Prevention Guidance Additional pollution prevention guidance can be found in DoD Instruction 4715.4 (reference (k)).
8. Annual Information The DoD Components shall provide information to DUSD(ES) required and requested to comply with paragraphs F.3.e. and F.3.h., above, for each military installation. Under 10 U.S.C. 2706(b), (reference (l)), this information shall be compiled and submitted as part of the Department of Defense's annual report to Congress on environmental quality. The DoD Components should also notify DUSD(ES) of noteworthy environmental achievements such as major environmental initiatives, milestones, and good news stories that show leadership, as appropriate.
9. Dispute Resolution If a DoD Component disagrees with the establishment of one or more FGS by an Executive Agent, the failure to fully approve a request for a waiver, or another determination of the DoD Environmental Executive Agent, the DoD Component may seek resolution of the disagreement directly with the applicable Unified Combatant Commander, who shall issue a decision after consultation with the DoD Environmental Executive Agent. If the DoD Component still disagrees with the resolution of the issue, the Component's senior environmental policy principal may refer the matter to the DUSD(ES) for final determination after notice to the Chairman of the Joint Chiefs of Staff.

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## G. INFORMATION REQUIREMENTS

- 1. The annual report to Congress on the Department of Defense's Environmental Quality compliance in subsection F.8., above, has been assigned Report Control Symbol DD-ANT (A) 1997. This

information is required before the President's Budget submission to Congress under reference (l).

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H.G EFFECTIVE DATE

This Instruction is effective immediately.

Paul G. Kaminski  
Under Secretary of Defense  
(Acquisition and Technology)

Enclosures - 3

1. References
2. Definitions
3. Designated DoD Environmental Executive Agents 1.

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Enclosed Measures of Merit

REFERENCES, continued

- (e) Section 7158 of title 42, United States Code
- (f) Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," January 4, 1979
- (g) Executive Order 12088, "Federal Compliance with Pollution Control Standards," 13, 1978
- (h) DoD Directive 2010.9, "Mutual Logistic Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies," September 30, 1988
- (i) Section 165 of title 10, United States Code
- (j) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
- (k) DoD Instruction 4715.4, "Pollution Prevention," June 18, 1996
- (l) Section 2706(b) of title 10, United States Code
- (m) DoD Directive 5530.3, "International Agreements," June 11, 1987

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Designated DoD Environmental Executive Agents

## DEFINITIONS

1. Final Governing Standards (FGS). A comprehensive set of country-specific substantive provisions, typically technical limitations on effluent, discharges, etc., or a specific management practice.
2. Installation. A facility or group of facilities at a fixed geographic location under the control of a DOD Component, and other facilities designated by a Combatant Commander base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a Military Department that is located outside the United States and outside any territory, commonwealth, or possession of the United States.
3. International Agreement. A multilateral or bilateral agreement, such as a base rights or access agreement, a status of forces agreement, including practices and standards established pursuant to such agreement, or any other instrument defined as a binding international agreement under DoD Directive 5530.3 (reference (m)e).
4. Applicable Host-Nation Environmental Standards. Either those specific management practices to control pollution or those objective, numeric or qualitative pollution control standards that are generally in effect and enforced against host-government and private sector activities. Laws of local governmental units are not included unless they implement national laws that delegate authority to, or recognize the authority of, the local governmental unit. Limitations on discharges, emissions, effluents, and disposal are included, but procedural or administrative requirements, such as permitting, licenses, fees, fines, penalties or other sanctions, are not.
5. Overseas Environmental Baseline Guidance Document (OEBGD). A set of objective criteria and management practices developed by the Department of Defense, pursuant to this Instruction, to protect human health and the environment. The OEBGD also contains procedures for use by the Department of Defense to establish the FGS for a particular geographic area or, as described in subsection F.3.h., above, to provide standards for environmental compliance where no FGS have been established.

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## DESIGNATED DOD ENVIRONMENTAL EXECUTIVE AGENTS

### MEASURES OF MERIT (MoM)

1. MoM 1: Number of self-assessment reports concerning imminent and substantial threats to human health; direct threats to ongoing U.S. operations or U.S. access to an overseas base or installation; or U.S. default on a standard made directly applicable to U.S. overseas operations in a basing agreement, SOFA or other international agreement.

2. MoM 2. Hazardous Waste Disposal: Progress toward 1999 pollution prevention goal of reducing hazardous waste disposal by 50 percent from a 1992 baseline.

3. MoM 3. Non-Hazardous Waste: Progress toward 1999 pollution prevention goal of reducing non-hazardous solid waste disposal by 50 percent from a 1992 baseline.

COUNTRY EXECUTIVE AGENT

EUROPEAN COMMAND

|                |              |
|----------------|--------------|
| United Kingdom | CINCUSAFE    |
| Germany        | CINCUSAREUR  |
| Italy          | CINCUSNAVEUR |
| Spain          | CINCUSNAVEUR |
| Greece         | CINCUSNAVEUR |
| Belgium        | CINCUSAREUR  |
| Netherlands    | CINCUSAREUR  |
| Turkey         | CINCUSAFE    |

CENTRAL COMMAND

|   |          |
|---|----------|
| All countries in Area of Responsibility | CINCCENT |
|---|----------|

ATLANTIC COMMAND

|                      |                         |
|----------------------|-------------------------|
| Azores               | USAF Air Combat Command |
| Ascension Islands    | USAF Space Command      |
| Antigua              | USAF Space Command      |
| Bahamas <sup>1</sup> | CINCLANTFLT             |
| Cuba <sup>1</sup>    | CINCLANTFLT             |
| Greenland            | USAF Space Command      |
| Iceland              | CINCLANTFLT             |

SOUTHCOM

Panama and all countries in CG, USARSO  
AOR

PACIFIC COMMAND

|              |                |
|--------------|----------------|
| Japan        | COMUSFORJAPAN  |
| Korea        | CINCUSFORKOREA |
| Diego Garcia | CINCPACFLT     |

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1: When responsibility of Cuba and the Bahamas is transferred from  
USACOM to USSOUTHCOM (not earlier than 01 June 1997), USSOUTHCOM  
shall assign Executive Agents.

***APPENDIX Q***

***Sample Environmental Annex for  
Overseas Operation Orders and Plans***



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HEADQUARTERS, US EUROPEAN COMMAND  
UNIT 30400, BOX 1000  
APO AE 09128  
6 October 1997

ANNEX L TO USCINCEUR STANDARD PLAN 4000-98 (U)  
ENVIRONMENTAL CONSIDERATIONS (U)

- (U) REFERENCES:
- a. (U) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 Jan 79 (U).
  - b. (U) Joint Pub 4-04, Joint Doctrine for Civil Engineering Support, 29 Sep 95 (U)
  - c. (U) DoD Directive 6050.7, Environmental Effects Abroad of Major DoD Actions, 31 Mar 79 (U).
  - d. (U) Joint Staff Instruction 3820.01, Environmental Engineering Effects of DoD Actions, 28 Sep 93 (U).
  - e. (U) DoDI 4715.5, Management of Environmental Compliance at Overseas Installations, 22 Apr 96 (U).
  - f. (U) DoD Overseas Environmental Baseline Guidance Document (OEBGD), Oct 92 (U).
  - g. (U) Country-Specific Final Governing Standards Governing Environmental Protection for U.S. Installations (U).
  - h. (U) USCINCEUR Directive 80-1, Protection and Enhancement of Environmental Quality, 28 Jan 94 (U).
  - i. (U) DoD 4160.21-M, Defense Utilization and Disposal Manual, Mar 90 (U).
  - j. (U) Reserved for Applicable International Agreements/Status of Forces Agreements (U).
  - k. (U) Reserved for Applicable Host-Nation Environmental Laws and Regulations.
  - l. (U) Appendix 8 (Preventive Medicine) to Annex Q to USCINCEUR Standard Plan 4000 - Medical Services (U).

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## 1. (U) General

### a. (U) Assumptions

(1) (U) A component-based Force/Joint Task Force (JTF) will be established under a designated single (Lead Service) Component. A dedicated environmental engineer function will be established within the JTF Engineer function.

(2) (U) The environmental analysis will be done in accordance with references a. and c. Based on the circumstances involved, either Appendix 1 or 2 of this annex will be completed.

(a) (U) The requirements of references a. and c. may not apply to this operation. The specific "determination" for an exclusion or exemption from an environmental assessment for the supported operation shall be provided at Appendix 2.

(b) (U) If an environmental analysis is required, the Lead Service will ensure it is prepared IAW references a. and c., in conjunction with the JTF Commander and his staff, and other combatant command planning activities. If Appendix 1 applies, any mitigating actions and other environmental requirements must be included in this execution vehicle.

(3) (U) The Force/JTF Environmental Engineer, Lead Component, and Force/JTF Surgeon (e.g., Preventive Medicine) will be involved to the maximum extent possible in the planning for the siting of US Forces, to include participation on pre-deployment site visits, in locating and evaluating suitable water sources, and in the siting decision of quarters, industrial facilities, work centers, and waste handling facilities. Early attempts will be made to obtain readily available information on applicable host nation environmental laws and regulations.

(4) (U) Host nations will provide the necessary authorizations to allow for overflight, landing, and basing rights in support of the operation.

(5) (U) Authority to transit hazardous wastes will be negotiated in advance of the deployment of U.S. Forces. Status of Forces Agreements (SOFAs) or Transit Agreements will specifically provide for the movement of U.S. generated hazardous waste produced as a result of participation in the operation using Force/JTF, contractor, or other transportation assets, as necessary to affect their disposal in an environmentally sound manner.

(6) (U) DLA will establish support within or near the AOR to perform proper disposition of hazardous waste, subject to appropriate and applicable force protection and/or security concerns. All US-generated hazardous waste will be disposed of through the support provided by DLA. If DLA support is not practicable, the generator of the hazardous waste will be responsible for managing the waste in accordance with this OPLAN and the guidance provided by the Force/JTF Environmental Engineer.

(7) (U) All excess hazardous materials will be returned to home station as hazardous material, unless directed otherwise by the Force/JTF Environmental Engineer.

(8) (U) Support or services for hazardous material and hazardous waste management will not be provided to non-U.S. Forces.

(9) (U) Final Governing Standards (FGS) apply to deployments to existing DoD installations for which FGS have been developed. The policies in this annex apply to deployments off existing DoD installations. DoD has designated Environmental Executive Agents (EEAs), IAW Reference e, as follows: CG USAREUR for Germany, Belgium, and the Netherlands; CINCNAVEUR for Italy, Spain, and Greece; and COMUSAFE for Turkey and the United Kingdom.

b. (U) Limiting Factors

(1) (U) Existing security conditions, preparation time (e.g., for transit and other agreements; supporting environmental contracts), and access by environmental personnel during the initial stage of deployment are limiting factors.

(2) (U) Operational imperatives, including force protection and the non-availability of required logistical support, may limit the ability of deployed forces to comply with the environmental protection requirements reflected herein during the course of the deployment.

(3) (U) After redeployment of units, there may be environmental actions or projects (e.g., on-site treatment of POL contaminated soils) that are required after transfer of U.S. facilities (sites and base camps).

2. (U) Mission. To provide guidance to protect the health and welfare of US personnel and minimize adverse environmental impacts during the conduct of operations resulting from implementation of this plan, and to provide an analysis of the impact of the execution of this plan on the environment.

3. (U) Execution

(1) (U) Concept of Operations

(a) (U) General Operating Concept. This Annex describes in broad terms the conduct of the Force/JTF during the operation. However, in every case, obligations are subject to existing conditions, force protection, and mission accomplishment.

1. (U) The best practical and feasible environmental engineering practices for the protection of human health and welfare and the environment shall be applied.

2. (U) U.S. Forces will comply with treaty obligations, and respect the sovereignty of other nations.

3. (U) Measures will be taken to prevent pollution and to minimize adverse environmental impacts during all aspects of the operation.

4. (U) U.S. Forces will take appropriate actions to ensure that wastes generated during the operation are managed in an environmentally sound manner.

5. (U) Failure to include environmental considerations in all aspects of the operation may expose US Forces to unnecessary health risks, cause unnecessary

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harm to the environment, and subject the US to unfavorable publicity and future claims for damages.

(2) (U) Preparation and Initial Deployment

(a) (U) Unit Environmental Coordinators. Deploying forces shall appoint an officer or senior NCO to coordinate and control unit level environmental procedures. A summary list of these appointments shall be provided to the Force/JTF Environmental Engineer upon deployment to the AOR.

(b) (U) Pre-Deployment Training. Components shall provide training to ensure familiarity with Annex L, supporting environmental annexes to component operational plans, and unit level plans and environmental procedures.

(c) (U) Manuals. Forces shall deploy with appropriate environmental reference manuals, Standard Operating Procedures (SOPs), and unit spill response plans. Unit Coordinators will contact the Force/JTF Environmental Engineer for additional references developed specifically for the operation.

(d) (U) Containers. Forces shall deploy with sufficient quantity and proper (e.g., compatible) type of hazardous waste disposal containers and overpacks for use during initial phases of the deployment. (These empty-by-design containers can be used for shipping non-liquid, non-hazardous materials during initial deployment.) Units will plan for resupply of containers sufficient to sustain them for the duration of the operation.

(e) (U) Spill Containment and Cleanup Materials. Forces shall deploy with sufficient (e.g., quantity and type) spill containment and cleanup kits and materials to cover potential releases of hazardous materials and POL during transport and during initial phases of the deployment. Units will plan for resupply of spill containment and cleanup materials sufficient to sustain them for the duration of the operation.

(3) (U) Operations. Operations shall be conducted in a manner that exhibits leadership in the area of protection of human health and the environment, and comply with the General Operating Concept outlined above. For operations occurring in countries where Final Governing Standards have been developed, environmental standards will be established in consultation with the respective DoD-designated Environmental Executive Agents (EEAs). In countries where no FGSSs have been established, the OEBGD (Reference f.) may be used as a source for additional environmental standards, as deemed appropriate by the Lead Component, in coordination with the JTF Commander. U.S. Forces shall, at a minimum, comply with the environmental standards and mitigative measures listed below.

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(a) (U) Documentation of Initial Environmental Conditions. As soon as practicable after a facility (e.g., site, base camp) is identified for occupancy by US Forces, the Force/JTF Commander will ensure the initial environmental condition is documented using appropriate in-house or contracted environmental professionals. Documentation (e.g., an environmental baseline survey) should describe, as applicable, the conditions of water sources, soil, natural resources (including endangered and threatened species, if possible), cultural and historical properties, air quality, environmental contamination, and other environmental conditions. Results should be provided through engineer channels to the Force/JTF Commander and Force/JTF Surgeon and a copy retained by the Force/JTF Environmental Engineer. Copies will be archived IAW paragraph 4 (Administration and Logistics) of this annex.

(b) (U) Potable Water. Potable water sources will be provided by Force/JTF logistics and engineering personnel. Certification of these sources will be accomplished by Force/JTF preventive medicine personnel. Ensure water sources are free from contamination by suitable placement and construction of wells and surface treatment systems, and siting and maintenance of septic systems, on-site treatment units, hazardous material and hazardous waste accumulation points, solid waste disposal sites, and other activities which may threaten the integrity of the potable water supply.

(c) (U) Gray Water. Mess, bath, and laundry operations will use existing sewage lines where available or constructed soakage pits and ponds. Location of soakage pits will be coordinated with preventive medicine personnel and will be constructed to prevent pooling and to prevent creation of new insect breeding areas. Ships will discharge gray water per service regulations.

(d) (U) Wastewater/Human Waste (Sanitary Sewage). Sanitary sewage will be disposed of using the method that is the most protective of human health and the environment under existing operational conditions. Ships will discharge black water per service regulations. The following disposal alternatives are presented in order of preference.

1. (U) Existing systems (e.g., latrines, sanitary sewers, and treatment facilities).
2. (U) Field expedient procedures.

(e) (U) Solid Waste. Solid waste will be managed using the method that is the most protective of human health and the environment under existing operational conditions. Management of solid wastes will be IAW applicable procedures determined by the Force/JTF Environmental Engineer, in consultation with preventive medicine personnel. Ships will dispose of solid waste per service regulations. The following disposal alternatives are presented in order of preference:

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1. (U) Contracted disposal.

2. (U) Field expedient procedures.

(f) (U) Infectious Waste. Infectious waste will be segregated at the point of origin. Mixtures of solid waste and infectious waste will be minimized, and will be handled as infectious waste.

1. (U) Definition. Waste produced by medical and dental treatment activities that has the potential for causing disease and may pose a risk to both individual or community health if not managed properly (e.g., pathological waste such as human tissues and body parts; human blood and blood products; sharps including hypodermic needles and syringes).

2. (U) Management. Infectious waste will be segregated, transported and stored IAW preventive medicine procedures approved through medical channels and the Force/JTF Surgeon.

3. (U) Treatment and Disposal. In-country contract disposal will be used where feasible. Methods of disposal (typically high temperature incineration) shall be approved through medical channels and the Force/JTF Surgeon. If contract disposal is not feasible, approved field expedient procedures will be used.

(g) (U) Hazardous Materials. Effort should be made to minimize the use and storage of hazardous materials. Such effort will result in the reduction of hazardous waste produced. All excess U.S. hazardous material should be reissued by the supply support activity in theater, if possible. Excess hazardous material not reissued shall be returned to home station as hazardous material, unless impractical. Hazardous materials that cannot be returned to home station shall be disposed of as a hazardous waste.

1. (U) Definition. A hazardous material is any material that, based on either chemical or physical characteristics, is capable of posing a risk to health, safety, or the environment if improperly handled, stored, issued, transported, labeled, or disposed of. Examples include: carcinogens, corrosive materials, irritants, toxic materials, combustible liquids, compressed gases, explosives, flammable materials, oxidizers, unstable (reactive) materials, pesticides, water-reactive materials, lithium batteries, and photographic chemicals.

2. (U) Shipment. Shipments of hazardous materials will be accompanied throughout by shipping documents that clearly describe the quantity and identity of the material and will include Material Safety Data Sheet (MSDS). Force/JTF or contracted vehicle operators will be provided information on the hazardous material included in the shipment, including health risks of exposure and the physical hazards of the material, including the potential for fire, explosion, and reactivity. Force/JTF or contracted vehicles transporting hazardous materials will be appropriately marked, subject to security and operational considerations, and their contents appropriately labeled. International air shipments will follow appropriate DoD and component instructions.

3. (U) Storage. Hazardous materials will be segregated from non-hazardous materials and separated from incompatible hazardous materials. Hazardous materials storage sites and containers will be checked on a regular basis to assure they are secure. Hazardous materials storage containers will be closed unless being filled or emptied.

(h) (U) Hazardous Wastes. The principle of minimizing use of hazardous materials will be used whenever possible in an effort to minimize the production of hazardous wastes. DLA will establish support within or near the AOR to perform proper disposition of hazardous waste, subject to appropriate and applicable force protection and/or security concerns. All US-generated hazardous waste shall be disposed of through the support provided by DLA. DLA will develop guidance on turn-in procedures for hazardous waste. If DLA support is not available, the generator of the hazardous waste shall be responsible for managing the waste in accordance with guidance provided by the Force/JTF Environmental Engineer.

1. (U) Definition. A hazardous waste is any discarded material that may be a solid, semi-solid, liquid, or contained gas that exhibits a characteristic such as ignitability, corrosivity, reactivity, or toxicity which has the potential to be harmful to human health or the environment, due to its quantity, concentration, chemical, or physical characteristics. Hazardous waste includes all hazardous materials that are being discarded, to include partially used and opened containers destined for disposal.

2. (U) Collection Points. Each base and unit shall establish individual or shared hazardous waste collection points. Wastes shall be properly segregated and labeled (e.g., waste oils, contaminated fuel, solvents, and chemical compounds) to ensure proper packaging for handling and final disposal.

**3. (U) Transportation/Shipment.** Service components are responsible for arranging the transportation of hazardous waste from collection points to centralized hazardous waste collection areas in accordance with procedures established by the Force/JTF Environmental Engineer in consultation with DLA. All shipments of hazardous waste will be manifested to establish a chain of custody and will indicate point of origin, material, quantities, and be accompanied by a waste profile sheet. The manifest will be signed by both the generator and the transporter as well as the receiver at the final transport destination. The waste profile sheet and hazardous waste manifest form will be developed by the Lead Component. A copy will be provided to each signatory and be retained by same. Shipments crossing international borders must be precoordinated with the Force/JTF SJA.

**4. (U) Final Disposal.** Hazardous waste will be disposed of using the method that is the most protective of human health and the environment, under existing operational conditions. References f, g, i, and j may be used as sources in establishing hazardous waste disposal standards. Ships will dispose of hazardous waste per service regulations. The following disposal alternatives are presented in order of preference:

**a. (U) DLA-Managed Disposal.** Following turn-in, DLA shall be responsible for ensuring that hazardous wastes are properly disposed of. DLA shall determine the optimum hazardous waste disposal solutions for the AOR and ensure that any DLA disposal contract achieves cost-effective disposal consistent with DoD's emphasis on environmental leadership. Any hazardous waste not disposed of through DLA shall be reported through the chain of command and through engineer channels to the Force/JTF Engineer and the Force/JTF Environmental Engineer.

**b. (U) Return to the Unit's Home Station.** International agreements (e.g., Status of Forces Agreements, transit and disposal agreements) and laws of involved nations (countries of origin, transit, and destination) must be considered before this alternative is used. This alternative required the prior approval of the Force/JTF Staff Judge Advocate and approval of the Force/JTF Environmental Engineer and coordination with the Lead Component, and applicable EEAs. This alternative, if DLA support is envisioned, requires prior coordination with the servicing Defense Reutilization and Marketing Office (DRMO) at destination.



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c. (U) Local Recycling. Local recycling of select hazardous wastes as a fuel (e.g., recovered POL) is an alternative disposal option if consistent with local practices and following a determination by the appropriate Force/JTF medical authorities that no significant risk to human health and safety is associated with burning of the particular waste as a fuel. Prior approval of the Force/JTF Environmental Engineer and consultation with the Lead Component, is required.

d. (U) Local Contracting for Disposal. Local contracting for disposal is allowed if done in a manner that is as protective of human health and safety and the environment as practicable under existing operational conditions. Prior approval of the Force/JTF Environmental Engineer and consultation with the Lead Component and applicable EEAs is required.

e. (U) Abandonment. Hazardous wastes may be abandoned only if it is determined by the Force/JTF Commander to be necessary under combat or other hostile conditions. Quantity, type, and location of wastes abandoned must be reported to the Force/JTF Environmental Engineer, as soon as practicable upon cessation of combat or hostile conditions. Abandonment does not necessarily imply dumping; it could consist of securing the waste for subsequent disposal as conditions allow. The JTF Environmental Engineer will, in turn, report this information to the Lead Component and applicable EEAs.

(i) (U) Air Quality. Equipment and facilities will be operated such that adverse health and environmental impacts are minimized. The quality of ambient air will be considered in siting of U.S. Forces activities. Problems arising from air quality will be raised to the Forces/JTF Surgeon and the Forces/JTF Environmental Engineer.

(j) (U) Petroleum, Oil, and Lubricants (POL). POL facilities must be designed and installed with attention to leak detection and prevention and spill containment requirements, as threat conditions allow. Effort should be made to ensure good housekeeping, adequate equipment maintenance and adherence to proper procedures to avoid or minimize operational spills of POL. Spill response and cleanup is generally a unit responsibility. Waste POL shall be disposed of IAW alternatives identified above for hazardous wastes.

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(k) (U) Spill Prevention and Control. Main base and satellite camps will develop a spill prevention/control plan. Special care will be taken to protect surface waters and groundwater from contamination. Spill response teams will be identified and trained to respond to spills. Spills will be cleaned up as soon as possible. Units will employ low cost equipment (e.g., drip pans) to catch leaking POL and hazardous materials, and will ensure that adequate types and quantities of containment and cleanup equipment (e.g., dry sweep and overpacks) are available at hazardous materials storage locations and on all appropriate transports (e.g., fuel transports and hazardous material transports) as well as designated overnight resting areas. Consideration should be given to cost-effective, on-site treatment for POL contaminated soils which can achieve acceptable treatment efficiencies as established by the Force/JTF Environmental Engineer, in consultation with the Lead Component, or contaminated soils will be disposed of IAW alternatives identified above for hazardous wastes. The Force/JTF Environmental Engineer will coordinate spill response plans with civilian fire departments and other host nation authorities, where practicable.

(l) (U) Natural Resources. The Force/JTF Environmental Engineer and Lead Component will pursue available documentation and intelligence assets to identify environmentally sensitive areas. To the extent practicable, and consistent with operational conditions, Commanders are to consider protection of natural resources, to include all plants and animals, and in particular, any endangered or threatened species and avoid or minimize adverse impacts. Liaison with host nation environmental authorities and local experts is encouraged by the Lead Component, in consultation with applicable EEAs, during the planning for the construction and/or leasing of major base camps or sites to be occupied by US Forces. The Force/JTF Commander will develop appropriate guidance and practices to minimize unnecessary clearing, soil erosion, degradation of air and water quality, and habitat destruction to protect identified environmentally sensitive areas.

(m) (U) Historic and Cultural Resources. The Force/JTF Environmental Engineer and Lead Component will pursue available documentation and intelligence assets to identify historic and cultural areas. To the extent practicable, and consistent with operational conditions, Commanders will consider protection of historic and cultural resources and avoid or minimize adverse impacts. Liaison with host nation environmental authorities and local experts is encouraged by the Lead Component, in consultation with applicable EEAs, during the planning for the construction of major base camps or sites to be occupied by US Forces. The Force/JTF Commander will develop appropriate guidance and practices to minimize unnecessary disturbance to historically- and culturally-significant areas.

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(n) (U) Environmental Evaluations. Unit level officers or senior NCOs will conduct regular evaluations of activities which pose a potential for environmental problems (e.g., vehicle maintenance areas, POL and hazardous waste storage areas). The frequency of the evaluations will be established by the Force/JTF Environmental Engineer. Report any significant findings to the Force/JTF Environmental Engineer, IAW paragraph 4 (Administration and Logistics) of this annex.

(o) (U) Incident Reporting. Any significant environmental incident or accident (e.g., an event which results in an imminent health threat, or a spill of a hazardous material, waste, or POL) shall be reported IAW paragraph 4 (Administration and Logistics) of this annex.

(4) (U) Exit/Redeployment

(a) (U) Hazardous Wastes/Materials. DLA will establish on-site support within or near the AOR to perform proper disposition of hazardous waste, subject to appropriate force protection and/or security concerns. All US-generated excess hazardous material should be returned to home station as hazardous material, unless impractical. If hazardous materials cannot be returned to home station, and cannot be sold or reused by DLA, they shall be disposed of as a hazardous waste.

(b) (U) Petroleum, Oil, and Lubricants (POLs). Cleanup or document spills. Empty POL tanks at fuel point and maintenance areas. Return U.S.-used POL tanks to their received condition, or retain as is, if their condition was improved. Pump out excess POL product from sumps and oil/water separators. Waste POLs and contaminated solids shall be disposed of IAW alternatives identified above for hazardous wastes.

(c) (U) Camp Closure Plan. A closure plan will be developed by the appropriate commander of US facilities (sites and base camps). The plan will include, at a minimum, acceptable procedures for the turn-in and accountability for hazardous waste and excess hazardous materials; the cleanup or documentation of POL spills, and the emptying of POL tanks and POL separators; and turn-in of waste POL.

1. (U) The Force/JTF Environmental Engineer, in consultation with the Lead Component and Force/JTF Commander, will develop more detailed guidance as regards the responsibilities of each unit commander, base camp commander, DRMO, and support contractor. Copies of this guidance will be provided the Lead Component and applicable EEAs.

2. (U) Commanders of US facilities (sites and base camps) and units will coordinate closure of disposal sites (burn pits, landfills, sewage lagoons) with the Force/JTF Environmental Engineer and will consult with the Lead Component and applicable EEAs.

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3. (U) Copies of the final Camp Closure Plan shall be provided through engineer channels to the Force/JTF Environmental Engineer and to the applicable Real Estate Office and applicable EEAs IAW paragraph 4 (Administration and Logistics ) of this annex.

(d) (U) Site Remediation. U.S. Forces will take prompt action to remediate known imminent and substantial endangerment to deployed forces. In addition, U.S. Forces will take prompt action to remediate known imminent and substantial endangerment to human health and safety due to environmental contamination caused by the operation of US Forces. Remediation is complete when the contamination no longer poses an imminent and substantial endangerment to human health. The Force/JTF Commander may also authorize remediation of environmental contamination to protect human health and safety, to maintain operations, reduce U.S. liability, or when required by contract or international agreement. The extent of remediation will be determined by assessment of the risk to human health and safety, in consultation with the Force/JTF Surgeon, or by that required to maintain operations or by contract or international agreement. Contaminated sites which are not remediated will be documented. Cleanups will be assessed in accordance with specific remediation policies and technical guidance to be established by the Lead Component, in consultation with the Force/JTF Commander and his staff. Consideration shall be given to cost-effective in-situ and/or on-site treatment which can achieve acceptable treatment efficiencies. Site assessments, remediation efforts and documentation requirements will be established and coordinated by the Force/JTF Commander Environmental Engineer. Copies of related documentation will be provided to the Lead Component and applicable EEAs.

(e) (U) Documentation of Final Environmental Conditions. As close as practicable to the redeployment of US Forces from a site (e.g., base camps and major facilities), the Force/JTF Commander will ensure that the final environmental condition is documented, including environmental contamination. For consistency, the in-house or contracted environmental professionals who conducted the initial environmental condition report should be used, if possible. The reports on final environmental condition will serve as documentation in the event of claims or other legal challenges.

1. (U) Appropriate medical and preventive medicine personnel, other technical activities, and contracted support will be assigned to assist base camp and unit commanders in the preparation of their respective site close-out report.

2. (U) Documentation should describe and compare the conditions of water sources, soil, natural resources (including endangered and threatened species, if possible), cultural and historic properties, air quality, and other environmental conditions with that found during the initial assessment.

3. (U) The mission of the site during US occupancy shall be described to include the location and operation of latrines, landfills, hazardous material and waste storage sites, landfills, POL storage areas, POL fueling operations, maintenance activities, and the location of other environmentally hazardous activities.

4. (U) Cost-effective, yet environmentally sound, options will be considered to ensure that required cleanup efforts are completed or contamination is documented prior to redeployment.

5. (U) The Force/JTF Engineer, in consultation with the Force/JTF Staff Judge Advocate and other activities (e.g., Real Estate) will identify those site conditions or existing legal or real estate agreements which define environmental actions or projects which must continue after transfer of the site and will initiate appropriate action to complete the cleanups.

6. (U) Results should be provided through engineer channels to the Force/JTF Commander and Force/JTF Surgeon.

7. (U) Copies of these reports shall be provided through engineer channels to the Force/JTF Environmental Engineer and to the applicable Real Estate Office and applicable EEAs IAW paragraph 4 (Administration and Logistics) of this annex.

(f) (U) Incident Reporting. Any significant environmental incident or accident (e.g., an event which results in an imminent health threat, or a spill of a hazardous material, waste, or POL) shall be reported IAW paragraph 4 (Administration and Logistics) of this annex.

b. (U) Tasks/Responsibilities.

(1) (U) Lead Component. A single service component will be designated as the lead for all US environmental policy and technical issues for the operation. The Lead Component will be involved to the maximum extent possible in the planning for the siting of US Forces to include participation on pre-deployment site visits and review of leases and will ensure the preparation of any required environmental analysis IAW references a. and c. The Lead Component shall pursue available documentation and intelligence data to identify environmentally sensitive and historic and cultural areas. The Lead Component will develop supplemental technical guidance, standards, and procedures; ensure consistency in policies, standards, and procedures; consult with applicable DoD-designated Environmental Executive Agents (EEA); provide US Forces information on host nation environmental laws and regulations; ensure detailed guidance is prepared for the closure of US facilities; and develop appropriate guidance for coordinating with other activities within the AOR. When environmental support is outside the scope of the Lead Component command responsibilities and resources, it shall be elevated to the combatant command. The Lead Component shall be responsible for archiving records and documents, IAW paragraph 4 (Administration and Logistics) of this annex.

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(2) (U) Force/JTF Commander. Responsible for overall implementation and compliance with Annex L and with policies, standards, and procedures established by the Lead Component for all US Forces in the AOR. Will ensure the initial and final environmental condition of US occupied facilities (e.g., sites and base camps) are documented, and will ensure that detailed guidance is developed for the closure of these same facilities. May authorize remediation of environmental contamination to protect human health and safety, to maintain operations, reduce US liability, or when required by contract or international agreement. Responsible for the delegation of appropriate authorities to the JTF Engineer and JTF Environmental Engineer to ensure successful implementation of and compliance with Annex L.

(3) (U) Force/JTF Engineer. Responsible to the JTF Commander for the operational support of the environmental section of Annex L and the appropriate staffing of an environmental office that will be responsive to the Force/JTF Commander. In coordination with the appropriate Lead Component and Force/JTF SJA and in consultation with applicable EEAs, establish a plan for coordinating with the host nation, other foreign nations, Non-Governmental Organizations (NGOs), and other activities on applicable environmental matters. In coordination with the Lead Component, and in consultation with applicable EEAs, draft agreement(s) on appropriate in-country support in working environmental issues for the duration of the operation. Will, in conjunction with the Force/JTF Director of Logistics, provide potable water sources. Will develop appropriate guidance and practices to minimize unnecessary clearing, soil erosion, degradation of air and water quality, and habitat destruction to protect identified environmentally sensitive areas and to ensure unnecessary disturbance to historic- and culturally-significant areas. Ensure detailed guidance is developed for the closure of US facilities (e.g., sites and base camps). Will identify those site conditions or existing legal or real estate agreements which define environmental actions or projects that must continue after transfer of the site and will initiate appropriate action to complete the cleanups.

(4) (U) Force/JTF Environmental Engineer. Proponent for the environmental section of Annex L and heads the environmental office. Responsible for developing more detailed environmental services guidance and standards, employing references b., d., f., g., h., i., j., and k., as appropriate, in coordination with the Lead Component. Responsible for coordinating with the Force/JTF Surgeon, Force/JTF Safety Officer, Force/JTF SJA, and the Lead Component, as appropriate. Will pursue available documentation and intelligence assets to identify environmentally sensitive areas and historic- and culturally-significant areas, and will participate to the maximum extent possible in the planning for and siting of US Forces. Responsible for consulting with the respective EEAs on applicable host nation country-specific issues. Coordinate spill response plans with civilian fire departments and other host nation authorities, where practicable. Develop detailed camp closure guidance as regards the responsibilities of each unit commander, base camp commander, DRMO, and support contractor. Retain copies of initial and final environmental condition reports. Report any necessary abandonment of hazardous wastes to the Lead Component and applicable EEAs.

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- (5) (U) Force/JTF Director of Logistics. Responsible for all aspects of hazardous materials management to include minimizing use, storage, transportation, disposition, and return to home station of excess materials. In conjunction with the Force/JTF Engineer, will provide potable water sources.
- (6) (U) Environmental Executive Agents (EEAs). Responsible for providing agreed-upon support to the Force/JTF Engineer and Environmental Engineer offices on environmental matters within host nations for which Final Governing Standards have been established, especially as it relates to consultations with host-nation authorities during pre-deployment planning, the initial stages of deployment, and redeployment.
- (7) (U) Force/JTF SJA. Responsible for legal support of the environmental section of Annex L, and for coordinating legal issues with SJAs senior in the chain of command (e.g., the Component SJA supporting the Lead Component, and the combatant command SJA).
- (8) (U) Force/JTF Surgeon. Responsible for medical (e.g., preventive medicine) support to Annex L with priorities on safe potable water, sanitation, waste disposal (e.g., hazardous and infectious), air quality, health risk assessments (e.g., for site remediation); and vector control to protect human health and welfare. Coordinate activities with the JTF Environmental Engineer and the Lead Component, as appropriate.
- (9) (U) Preventive Medicine Personnel. IAW Reference 1., will participate in the planning for siting of US forces, perform or oversee sampling, analysis, and monitoring to protect the health and safety of deployed personnel and surrounding community. Conduct periodic environmental health risk assessments of activities which pose a potential for environmental or health problems. Report any significant findings to the Unit Level Commander and Unit Level Environmental Point of Contact. Report any findings that cannot be corrected immediately or with on-hand resources to the Force/JTF Environmental Engineer and Force/JTF Surgeon.
- (10) (U) Force/JTF Safety Officer. Responsible for safety matters in support to Annex L. Coordinate activities with the JTF Environmental Engineer, the Force/JTF Surgeon, and the Lead Component, as appropriate.

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(11) (U) Service Components. Responsible for implementation of and compliance with the environmental section of Annex L within each Service and for developing supporting environmental annexes. Responsible for ensuring compliance with Service/Component environmental regulations that are not in conflict with Annex L or policies, procedures, or standards established by the Lead Component for the AOR. Provide training to ensure familiarity with Annex L, supporting environmental annexes to component operational plans, and unit level plans and environmental procedures. Responsible for collecting, storing, and transporting unit-produced hazardous materials and wastes IAW component guidance. Responsible for coordinating the turn-in of hazardous wastes and excess hazardous materials to the DRMO for final disposition and for the final disposal of hazardous wastes not turned in to DRMO IAW procedures established by the Force/JTF Environmental Engineer, in consultation with DLA. Responsible for tracking, reporting, and final disposal of hazardous waste not turned into DRMO.

(12) (U) Defense Logistics Agency (DLA). Responsible for establishing on-site support within or near the AOR to perform proper disposition of hazardous waste, subject to appropriate and applicable force protection and/or security concerns. Develop guidance on turn-in procedures for hazardous waste and excess hazardous materials. Once turned in by US Forces to DLA, DLA is responsible for ensuring that hazardous wastes are properly treated and disposed of in an environmentally responsible manner. DLA shall determine the optimum hazardous waste treatment and disposal options for the AOR and shall ensure that any DLA contract achieves cost-effective disposal consistent with DoD's emphasis on environmental leadership.

(13) (U) Commanders. Commanders are responsible to ensure that their units protect the environment IAW the General Operating Concept described previously. Commanders shall ensure that:

(a) (U) Their preparation and initial deployment, operations, and exit/redeployment in support of this OPLAN are in compliance with this annex. Environmentally sound planning is integrated into all operations to avoid or minimize adverse environmental impacts and that management plans are prepared for the proper handling and disposition of all wastes.

(b) (U) An officer or senior NCO is appointed as a Unit-level Environmental Point of Contact to coordinate and control unit level environmental procedures and assessments and a list of these appointments is provided the Force/JTF Environmental Engineer upon deployment, or at the earliest opportunity thereafter.

(c) (U) Their units deploy with appropriate environmental reference manuals, Standard Operating Procedures (SOPs), unit spill response plans, and sufficient numbers or quantities of hazardous waste disposal containers and overpacks and adequate spill containment and cleanup materials.

(d) (U) Appropriate measures are taken to minimize use of hazardous materials and avoid leaks and spills of hazardous materials and petroleum, oil, and lubricants (POL) products.



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(e) (U) Wastes generated during the operation are managed in an environmentally sound manner IAW this annex and with guidance and standards provided by the Force/JTF Environmental Engineer.

(f) (U) Any environmental contamination which presents an imminent and substantial environmental threat to human health and safety is identified in coordination with the Force/JTF Surgeon and Force/Environmental Engineer and appropriate action is taken to eliminate the threat.

(g) (U) Camp closure plans are completed, as applicable, IAW guidance developed by the Force/JTF Environmental Engineer.

(h) (U) Required remediation of contaminated sites is completed, as practicable, prior to redeployment using cost-effective and environmentally sound methods coordinated with the Force/JTF Environmental Engineer. Provide appropriate documentation of remediation efforts to the Force/JTF Environmental Engineer.

(14) (U) Unit-level Environmental Point of Contact. In coordination with Commanders, the respective Component, and the Force/JTF Environmental Engineer, develop and distribute specific procedures to ensure assigned personnel comply with the basic requirements of Annex L. Contact the Force/JTF Environmental Engineer for additional environmental references developed specifically for the operation. Conduct regular evaluations of activities which pose a potential for environmental problems (e.g., vehicle maintenance areas, POL and hazardous waste storage areas) and report any significant findings from these evaluations and other significant environmental incidents or accidents to the Force/JTF Environmental Engineer.

#### 4. (U) Administration and Logistics

a. (U) General Incident Reporting Requirements. Any significant environmental incident or accident (e.g., an event which results in an imminent health threat, or a spill of a hazardous material, waste, or POL) shall be reported IAW specific incident reporting instructions developed by the Force/JTF Environmental Engineer. The Force/JTF Environmental Engineer, Force/JTF Commander, Force/JTF Surgeon, Lead Component, and applicable EEAs shall be notified within 24 hours of major incidents, accidents, and spills of hazardous materials, wastes, and POL. Records of spills, habitat destruction, discovery of existing contaminated sites, etc. will be maintained for later use in documenting the final environmental condition IAW subparagraph c. below.

b. (U) Environmental Reports. Copies of the initial and final Environmental Condition Reports and final Camp Closure Plan for a facility (e.g., sites and base camps) occupied by US Forces shall be provided through engineer channels to the Force/JTF Environmental Engineer and to the applicable Real Estate Office and applicable EEAs.

c. (U) Records Retention. Initial and final Environmental Condition Reports, Camp Closure Plans, records and documents deemed important for later use in resolving potential environmental claims against the US government, and other records and documents required to establish important "lessons learned" shall be archived by the Lead Component for a period of not less than 3 years following the operation, or as determined by the Component with Single Service Claims Responsibility. As soon as practical after completion of the

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operation, the Lead Component will forward a list of available archived records and documents to the appropriate US Real Estate and Claims Offices, the combatant command, and applicable EEAs.

**WESLEY K. CLARK**

General, USA

Commander in Chief, Europe

**Appendices.**

- 1 — Environmental Assessments/Analyses
- 2 — Environmental Assessments - Exemptions or Exclusions

**OFFICIAL:**

John M. McDuffie

Major General, USA

Director, Logistics and Security Assistance

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HEADQUARTERS, US EUROPEAN COMMAND  
UNIT 30400, BOX 1000  
APO AE 09128  
6 October 1997

APPENDIX 1 TO ANNEX L TO USCINCEUR STANDARD PLAN 4000-98 (U)  
ENVIRONMENTAL ASSESSMENTS/ANALYSES (U)

(U) REFERNCES: See Annex L.

1. (U) Purpose. In accordance with references a. and c., Annex L, an appropriate environmental analysis will be conducted to enable DoD officials to be informed and to take account of environmental considerations when authorizing or approving certain major federal actions that do significant harm to the environment of places outside the United States. The form of the analysis is contingent upon the scope and location of the impact (e.g., global commons, foreign jurisdiction, or with a participating nation). State the regulatory or legal requirement for conducting an environmental assessment in conjunction with the supported operation. Appendix 1 is not applicable if a determination is made that the operation is exempted or excluded. Reference exemption or exclusion at Appendix 2.
2. (U) Description of Action. Not applicable if an exemption or exclusion is provided at Appendix 2. If no exemption or exclusion is being invoked, summarize the "major action" and how it does "significant harm to the environment or global resource", and state the type of assessments being prepared. Provide a summary as to whether the proposed operation is a "major action" which does "significant harm to the environment or a global resource" as defined in references a. and c.
3. (U) Exemption or Exclusion. Reference exemption or exclusion at Appendix 2.
4. (U) Analysis of Options or Alternatives. Not applicable if an exemption or exclusion is provided at Appendix 2. The Concept of Operations of Annex L specifically requires the consideration of environmental impacts and efforts to minimize adverse environmental impacts to be accomplished during all aspects of the operation. If no exemption or exclusion is being invoked, document the actions and or alternatives that were considered in the planning of the supported operation to minimize environmental impacts.
5. (U) Environmental Setting of the Operation. Not applicable if an exemption or exclusion is provided at Appendix 2. If no exemption or exclusion is being invoked, describe, at a minimum, the general environmental setting of the operation (e.g., vegetation, climate, wildlife, archeological and historic sites, water quality, and air quality). Applicable information obtained from this effort will be used in helping to document the initial environmental conditions of any site occupied by U.S. forces as a base camp or observation post as required by Annex L.

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6. (U) Environmental Impact of the Operation. Not applicable if an exemption or exclusion is provided at Appendix 2. If no exemption or exclusion is being invoked, describe, at a minimum, the impact on the natural and physical environment IAW Reference a. and c.. Applicable information obtained from this effort will be used in helping to document the initial environmental conditions of any site occupied by U.S. forces as a base camp or observation post as required by Annex L.

7. (U) Mitigation and Monitoring. Not applicable if an exemption or exclusion is provided at Appendix 2.

a. (U) Requirements: If no exemption or exclusion is being invoked, describe actions and assign responsibilities for the mitigation and monitoring of environmental impacts of the supported operation. Applicable information should be incorporated into Annex L. The Concept of Operations of Annex L specifically requires the consideration of environmental impacts and efforts to minimize adverse environmental impacts to be accomplished during all aspects of the operation. Annex L requires that operations be conducted in a manner that exhibits leadership in the area of protection of human health and the environment with commanders ensuring that potential harm to the environment be avoided or minimized when possible.

b. (U) Compliance Responsibilities. If no exemption or exclusion is being invoked, IAW reference b., state the applicability and responsibility for implementation of references f. and g. during post-hostilities phase. Typically, reference e., f., and g. are not applicable to off-installation operational deployments, however, Annex L states that references f. and g. may be used as a source for operational environmental standards, as deemed appropriate.

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HEADQUARTERS, US EUROPEAN COMMAND  
UNIT 30400, BOX 1000  
APO AE 09128  
6 October 1997

APPENDIX 2 TO ANNEX L TO USCINCEUR STANDARD PLAN 4000-98 (U)  
ENVIRONMENTAL ASSESSMENTS - EXEMPTIONS OR EXCLUSIONS (U)

(U) REFERENCES: See Annex L.

1. (U) Purpose. Appendix 2 is not applicable if an exemption or exclusion to conducting an environmental assessment is not being invoked or requested. If an exemption or exclusion is being requested, review the requirements under references a. and b. and state their application to this operation.
2. (U) Background of Action. State the legal precedence for the operation. State facts identified in the planning process which support an exemption or exclusion from the requirement to conduct an environmental assessment. The desired end state for this operation will be achieved when the Force/JTF has reestablished security or performed its mission and all U.S. Forces have been redeployed to home stations in Europe and CONUS. International agreements regarding the status of forces and transit rights of US Forces and all other national contingents supporting the operation will be executed by appropriate parties. The operation will, most likely, require that US Forces in support of the operation transit through and stage out of several countries. Such transit and staging will be conducted under international agreements and with the consent of the host nation.
3. (U) Discussion. Provide factual rationale for invoking an exemption. Reference a. and b. specifically exempt "actions taken by or pursuant to the direction of the President or a cabinet officer when the action occurs in the course of armed conflict". Document if actions contemplated under this operation will occur in the course of armed conflict. Reference a. applies to "major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and otherwise involved in the action." Reference b. states "No action is required .... with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation..." Document if actions contemplated under this operation are with the consent, participation, and involvement of the foreign nations potentially affected by the action. The consent, participation and involvement must be evidenced by international agreements authorizing the actions which will be undertaken by US Forces/JTF. References a. and b. provide other requirements for exemptions or exclusions that will need to be appropriately documented.
4. (U) Determination. Document the specific authority from reference a. and b. which allow for a determination that an environmental assessment is exempted or excluded. None-the-less, as stated previously in Annex L, consideration of environmental impacts and efforts to minimize adverse environmental impacts are to be accomplished during all aspects of the operation.

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***APPENDIX R***  
***Cost Estimating Tool***

**Environmental Assessment (EA) Cost Estimate  
Conservation Branch (NGB-ARE-C)  
Environmental Programs Division**

1. Purpose. To assist State/Territory Environmental Offices with preparing more detailed and defensible cost estimates for EA projects.
2. Background. After implementation of “Proponent Pays,” NGB-ARE and the State/Territory Environmental Offices have been asked more detailed questions about EA costs. The previous level of detail in project-specific narratives was adequate when NGB-ARE centrally managed National Environmental Policy Act (NEPA) costs. But following “Proponent Pays,” non-environmental proponents without NEPA expertise are relying upon us to provide more detailed information before funds are executed.
3. Discussion. This estimate is embedded in the Status Tool for the Environmental Program (STEP). Using the STEP (and its resources) will allow for consideration of an EA’s scope and potential issues much earlier in the NEPA process.

The estimate has been divided into 5 factors that influence EA cost:

- a. Project Description (scope).
- b. Data Gathering/Data Discovery.
- c. Public Involvement/Public Participation.
- d. Mitigation and Monitoring.
- e. Development of an Admin Record.

Please use the guidelines associated with each factor along with the below references when developing project-specific narratives.

4. References:
  - a. National Guard Bureau NEPA Handbook.
  - b. Environmental Programs Division Programming Guidance (NGB-ARE P&G).
  - c. Status Tool for the Environmental Program Project Catalog.
  - d. Status Tool for the Environmental Program Reference Library (project templates).
5. Points of Contact: NGB-ARE NEPA Program Managers.



## **EA Cost Estimate NGB-ARE-C**

### **1. PROJECT DESCRIPTION:**

a. Tell us the purpose and need for the proposed action.

b. Describe the proposed action. All proposals should include total affected acreage, proposed location(s), and current land uses. Following is some additional info for common EA projects:

(1) A construction project should include facility or complex type(s), square footage of proposed facilities, a description of supporting facilities, and the size of the proposed footprint (in acres).

(2) A range project should include the proposed range type(s) and a description of supporting facilities. Also tell us whether or not the proposed ranges will overlay existing ranges.

(3) A training activity should include weapon/vehicle types, frequency, and training location(s).

(4) A management plan should document the plan's date range and summarize its content.

If the exact size of a proposed facility is not available, please approximate using the best available information, military construction standards, training circulars, or other guidance.

c. Please document potential issues or impacts you have already identified (potential wetlands impacts, T&E issues, and the like).

d. Tell us if you have completed NEPA analyses for actions in the same area. If you have, data discovery/gathering costs may be reduced.

**2. DATA GATHERING/DATA DISCOVERY:** Data gathering requirements not covered by other substantive laws could affect cost. To show these requirements have been considered, please address the following:

a. Discuss any data gathering requirements that are NOT covered by another STEP submission (e.g. additional surveys to support resource area effects conclusions, any inventories necessary for your baseline, etc).

b. Tell us if any environmental management plans were completed for the project area.

c. Tell us if there is a real property transaction associated with the proposed action.

### **3. PUBLIC AND AGENCY INVOLVEMENT:**

a. Discuss any extraordinary consultation requirements with regulatory agencies or interested groups. These include, but are not limited to, formal consultation with the U.S. Fish and Wildlife Service (USFWS), Army Corps of Engineer (ACE) consultation for wetlands impacts, State Historic Preservation Officer (SHPO) consultation for historic structures, and consultation with Native American Tribes for traditional cultural properties or sacred sites.

b. Please outline your Public Affairs plan, tell us the approximate cost, and factor it into your estimate.

c. Tell us if this action has the potential to generate controversy or public interest.

**4. MITIGATION AND MONITORING:** If known, please tell us about any mitigation measures that would be implemented under the proposed action, and provide an approximate cost.

**5. ADMIN RECORD:** Tell us the approximate cost for development of an admin record, and factor it into your estimate.

**6. NOTE:** The estimated cost range is geared towards EAs because EISs are not routinely prepared. Please substantiate the cost of any EA that exceeds the estimated range. For EISs, deviation from the cost range will be expected.

***APPENDIX S***

***Public Affairs Guidance on National Guard Bureau  
Environmental Programs***

**PUBLIC AFFAIRS GUIDANCE**  
**ON**  
**NATIONAL GUARD BUREAU**  
**ENVIRONMENTAL PROGRAMS**

**National Guard Bureau**  
**Office of Public Affairs**  
**2500 Army Pentagon**  
**Washington, D.C. 20310-2500**

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## II. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) ENVIRONMENTAL PROGRAMS

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**PUBLIC AFFAIRS GUIDANCE**  
**ON**  
**NATIONAL GUARD BUREAU**  
**ENVIRONMENTAL PROGRAMS**

**I. INTRODUCTION**

The following public affairs guidance is provided for use in community relations/public affairs activities associated with Army and Air National Guard Environmental Programs. It is important to note that public participation and involvement are required for most environmental programs, not simply traditional public information. Emphasis on this participation and involvement can ensure sound community relations programs while complying with both the letter and spirit of legal requirements.

1. **PURPOSE.** This guidance establishes responsibilities, policies, and procedures for organizing and administering an effective environmental public affairs program within the National Guard Bureau (NGB). A good environmental public affairs program is essential for continued acceptance and success of the National Guard in all communities.

2. **NGB PUBLIC AFFAIRS POLICY ON ENVIRONMENTAL PROGRAMS.** It is NGB policy to keep the public fully informed and involved on past, present and proposed actions that have the potential to affect the environment and/or public health or welfare. To meet this policy requirement, the following principles must be adhered to:

a. NGB agencies must provide, to the public, all unclassified and documented information on environmental programs. Public documents must be placed in information repositories accessible to the public. Prompt and accurate disclosure of information is in keeping with Department of Defense (DOD) principles and, in many cases, with legal requirements;

b. News which is unfavorable or awkward for the National Guard must be released with the same care and speed as favorable news. Candor is essential in dealing with the public on environmental issues. Where the potential for public health issues exists, that information must be released in an expeditious and responsible manner;

c. Promotional or self-serving news that is suspect in terms of truthfulness and/or accuracy will be avoided. This should not be confused with news conferences and informative news releases, which are encouraged;

d. National Guard officials must be sensitive to civilian and military communities which may be affected by proposed or ongoing environmental activities;

e. National Guard officials must comply with the spirit and intent of all federal, state and local environmental laws and regulations as they relate to public involvement.

3. **APPLICABLE REGULATIONS.** Failure to comply with environmental protection requirements may result in loss of mission capability, enforcement actions by federal, state, and local agencies, lawsuits, fines, penalties, and criminal prosecution. Some federal regulations applicable to NGB environmental programs are:

- Americans with Disabilities Act of 1990
- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Defense Environmental Restoration Program (DERP)
- Emergency Planning and Community Right-To-Know Act (EPCRA)
- Endangered Species Act (ESA)
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
- Federal Water Pollution Control Act
- List of Threatened and Endangered Plant and Animal Species
- Marine Protection, Research and Sanctuaries Act
- National Environmental Policy Act (NEPA)
- National Register of Historic Places
- National Registry of National Landmarks
- Noise Control Act
- Occupational Safety and Health Act (OSHA)
- Quiet Communities Act
- Resource Conservation and Recovery Act (RCRA)
- Safe Drinking Water Act (SDWA)
- Superfund Amendment and Reauthorization Act (SARA)
- Toxic Substances Control Act (TSCA)

4. **ENVIRONMENTAL PUBLICATIONS:** The following three publications will be helpful to PAOs in accomplishing DOD and NGB objectives. Each cover public affairs activities that NGB recommends to comply with environmental laws and regulations:

- a. *Commander's Guide to Environmental Compliance* - US Army Corps of Engineers. This guide is designed to meet the environmental information needs of commanders. Intended as a "primer" on environment, the guide is structured around questions commanders need answered. The answers are concise and offer the level of detail needed for a basic knowledge that can be supplemented by staff officers;

- b. **U.S. Air Force Commander's Guide to Environmental Quality** - This guide addresses such subjects as, Environmental Impact Analysis Process, Base Comprehensive Planning, Installation Restoration Program, Air Quality, etc. One of the top priorities discussed is to establish excellent communications and public affairs programs to foster environmental awareness, and improve problem-solving capability; and
- c. **U.S. Environmental Protection Agency, *Community Relations in Superfund*** - This handbook provides: (1) policy requirements for coordinating community relations activities at Superfund sites, and (2) additional techniques and guidance that can be used to supplement and enhance the basic requirements for community relations.

**5. GENERAL GUIDANCE/RESPONSIBILITIES.** The following are responsibilities of the state/installation public affairs officer:

- a. Release, locally, all public announcements on environmental issues; i.e., Findings of No Significant Impact (FNSI/FONSI), Notices of Intent (NOI), Notices of Availability (NOA), decision documents, public meetings, completed reports, as well as any other activities which involve the public;
- b. Review and coordinate planned announcements on actions of local interest with appropriate installation, the state adjutant general, and NGB-PAE staff offices (NGB-PAE-A and NGB-PAE-F);
- c. Provide public affairs guidance to commanders, state environmental coordinators, and other environmental professionals in conducting environmental programs;
- d. Review all draft technical documents to ensure information is clear and understandable to the lay public;
- e. Be point of contact (POC) for media queries and coordinate with NGB-PAE staff offices (Army or Air Environmental Programs Branches);
- f. Be POC for all local public meetings on environmental issues; Coordinate meetings with NGB-PAE staff offices;
- g. Issue news releases at significant stages of environmental programs; i.e., local announcement of availability of draft and final environmental assessments, draft and final Environmental Impact Statements (DEIS/FEIS), Finding of No Significant Impact (FNSI/FONSI), Record of Decision (ROD), or any other decision documents;
- h. Establish and maintain liaison with TAG, NGB, installation commander, state/installation environmental coordinator, and other installation offices with respect to public affairs issues;
- i. Facilitate dialogue throughout command channels to help keep personnel informed on environmental issues and community concerns;

- j. Maintain a complete record of all news releases made, public meetings/briefings held, queries answered, coverage in print media and summaries of transcripts of electronic media reports. Copies of news clippings should be submitted directly to NGB-PAE staff offices (NGB-PAE-A or NGB-PAE-F);**
- k. Provide prompt replies (one day) to queries from the public or media. Delay is viewed by the media and the public as an attitude of no concern. Therefore, where an immediate answer cannot be found, Public Affairs Officers (PAOs) should ensure an interim reply is made and, then, follow up within a reasonable time frame (one week); and**
- l. Ensure compliance with required public affairs actions for each environmental program at each installation/facility.**



## **II. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROGRAMS**

### **1. INTRODUCTION:**

- a. Purpose.** This chapter establishes responsibilities and details specific requirements for implementing public affairs/public involvement initiatives for National Guard National Environmental Policy Act (NEPA) environmental programs;
- b. Background.** NEPA is our basic national charter for protection of the environment as it establishes policy, sets goals and provides the means for carrying out that policy. The purpose of NEPA is two-pronged. In 1969, NEPA was enacted to help public officials make decisions that are based on a clear understanding of environmental consequences and second, to use public input and involvement as a means of helping the decision maker arrive at the best possible decision. The President's Council on Environmental Quality (CEQ) is the body charged with monitoring progress toward achieving national environmental goals outlined in the NEPA and its implementing regulations described in 40 CFR (Code of Federal Regulations), Parts 1500-1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (Appendix 1);
- c. Applicable regulations.** Army Regulation 200-2; Air Force Instruction 32-7061 and Air Force Instruction 35-202 are the implementing regulations for the following: The National Environmental Policy Act of 1969 (Public Law 91-190); the President's Council on Environmental Quality (CEQ) Regulations, and Department of Defense Directive 6050.1, 30 July 1979 (Appendix 2). These regulations contain policy and procedures for all federal or federally-funded Army and Air National Guard activities;
- d. Requirements.** The NEPA of 1969 (Public Law 91-190) and the President's CEQ regulations (40 CFR parts 1500-1508) require federal agencies and state National Guard organizations which use federal resources or property to analyze and fully document potential environmental impacts of proposed actions before decisions are made and before actions are taken. Therefore, anytime federal money is to be spent on a project, operation or activity, environmental consideration must be given, and these considerations must be well-documented, analyzed and made available for public review and comment. There are essentially three degrees of environmental consideration, each requiring a specific type of documentation. Each are defined in section 2 (Overview) below.

### **2. OVERVIEW (Definitions/Terms):**

- a. Record of Environmental Consideration (REC).** Is a brief document which describes a proposed action, its anticipated time frame, and explains why further environmental analysis is not needed. A REC, used most often at the installation level, is used for projects that are exempt from NEPA requirements,

have already been addressed in existing documentation, or are categorically excluded (CX/CATEX). A categorical exclusion is a category of projects that have been predetermined to not require more detailed analysis or documentation;

- b. **Environmental Assessment (EA).** An EA is a form of documentation which helps determine the extent of environmental impacts of a project and decides whether or not those impacts are significant. An EA is a concise public document, prepared by the National Guard or a designated contractor, which describes a proposed action, the alternatives considered, and the potential impacts of each alternative. Every EA results in one of the following three decisions: to prepare a Finding of No Significant Impact (FNSI/FONSI), to initiate a Notice of Intent (NOI) that the Guard intends to complete an Environmental Impact Statement (EIS), or to take no action on the proposal. When a proposed action will have significant impacts, and especially when there is foreseeable controversy or concern, an EA may not be sufficient. At this point, a decision should be made to begin with the most detailed analysis and documentation, an Environmental Impact Statement (EIS), or to take no further action on the proposal;
- c. **Environmental Impact Statement (EIS).** An EIS is required to ensure that NEPA policies and goals are incorporated early in the process for extensive proposals or projects. An EIS is a detailed study which analyzes all environmental impacts of a proposed action and its alternatives through an extensive public involvement process. Often a time-consuming and complex process, the EIS must contain a thorough, yet concise, discussion of all significant environmental impacts relating to the proposed action.

**3. RELATED ENVIRONMENTAL DOCUMENTATION/RECORDS.** Other documents, such as a Notice of Intent (NOI), a Record of Decision (ROD), and a Finding of No Significant Impact (FNSI/FONSI) are additional elements of the NEPA process and are described in detail below:

- a. **Finding of No Significant Impact (FNSI/FONSI).** A FNSI/FONSI is a separate decision document which briefly presents reasons why an action will not significantly affect the environment and therefore, will not require an EIS. Although the FNSI/FONSI is a "stand alone" legal document, it should always be attached to the final EA when submitted for public comment and review;
- b. **Notice of Intent (NOI).** A NOI is a document announcing that the National Guard intends to prepare an EIS for a certain proposed action. The NOI is official public notice that an EIS will be prepared and is published in both the Federal Register and in local newspapers. The NOI "starts the clock" on the EIS public involvement process;
- c. **Notice of Availability (NOA).** The NOA is formal notification made both at the draft and final stages of an EIS, that the document is complete and available for public review and comment. The NOA is published both in the Federal Register and in local newspapers;

- d. **Record of Decision (ROD).** A concise public (decision) document which identifies all alternatives considered by the Guard in reaching its decision, specifying the preferred alternative. The ROD is issued at the completion of the EIS process and outlines the agency's decision on a proposal and the factors leading to that decision. The ROD is not considered to be an environmental document as the final decision considers other factors in addition to environmental issues.

#### **4. PAO RESPONSIBILITIES:**

- a. **Be involved early and often.** As public involvement is central to the NEPA process, it is critical that the PAO be involved at the earliest stages of a proposed action or project. Early involvement of the PAO can help decision makers identify issues and sensitivities which could later surface to delay or completely stop the proposal. Failure to resolve public affairs issues early in the planning stages of a proposal can lead to situations which fuel increased public scrutiny, suspicion, and eventually animosity toward the Guard. These public perceptions can ultimately erode the Guard's credibility as a responsive and responsible partner in the community;
- b. **Provide guidance and counsel.** The PAO provides public affairs guidance to the state adjutant general and state-level environmental professionals on compliance issues, specifically as they relate to public involvement in environmental programs;
- c. **Materials planning/production.** The PAO assists in all aspects of public affairs planning in support of NEPA programs. Responsibilities include developing and coordinating public/media informational materials, news releases, fact sheets, public affairs and community relations plans, public meetings and logistical support to local community briefings or meetings. The PAO should coordinate all public involvement/public affairs plans with the respective NGB environmental public affairs office. The PAO is also responsible for maintaining an information file on all public correspondence and news clips regarding environmental issues. Copies of these items must be forwarded to the appropriate Army or Air National Guard environmental public affairs office at NGB;
- d. **Coordination.** The PAO should work closely with the environmental office, operations personnel, legal, and other state readiness center (STARC) headquarters staff in preparing and reviewing all draft and final documents to ensure they are understandable and address the concerns raised by the public. When informed about plans to do an EA or EIS, the PAO must contact NGB-PAE staff to ensure higher headquarters involvement and proper staff coordination. Early involvement of the PAO will help alert the proponent to any potential controversial issues.

**5. ENVIRONMENTAL ASSESSMENT (EA) OVERVIEW.** The EA documents the extent of environmental impacts of a project and provides the facts about whether or not those impacts are significant. Consider the following:

- a. An EA must be prepared when a proposed action does not require an EIS, but is not categorically excluded. Categorical exclusions list actions that do not have an individual or cumulative impact on the environment and therefore, do not require further analysis. Every EA leads to a decision to prepare a Finding of No Significant Impact (FNSI/FONSI), an Environmental Impact Statement (EIS), or to take no action on the proposal;
- b. The EA, FNSI/FONSI, and all other related documents which support federally-funded projects will be provided to NGB-PAE for review and coordination prior to any release of the document to outside agencies or the public. EAs may be contracted out at the discretion of NGB and the state. The signature page for an EA and FNSI/FONSI is signed by NGB. Appropriate public affairs coordination and planning must be completed prior to the drafting of an EA. An average EA may take anywhere from six to nine months to complete;
- c. EAs will be prepared with the involvement of applicable local, state and federal agencies, interested organizations or citizen groups, and the general public;
  - (1) When determining the extent of public participation necessary for environmental assessments, the following criteria should be considered:
    - (a) The size and type of the proposed action;
    - (b) Extent of anticipated public interest (Will it generate local, regional or national interest?);
    - (c) Extent public will be impacted by the proposal (local versus regional or national impacts);
    - (d) Degree of any associated environmental controversy;
    - (e) Size of the affected environmental parameters;
    - (f) Extent of prior environmental review (See AR 200-2, paragraph 1 and AFR 190-1 for additional public involvement information).
  - (2) Activities where an EA may be considered or recommended:
    - (a) Special field training exercise or test activity on guard property;
    - (b) Military construction, including contracts for off-installation construction;
    - (c) An installation pesticide, fungicide, herbicide, insecticide and rodenticide use program;
    - (d) Proposed changes in doctrine or policy with potential for significant environmental impact;

- (e) Proposed changes to established installation land use or mission that would generate environmental impacts. This includes aircraft conversions and air space changes;
- (f) Repair or alteration projects affecting historically-significant structures, archeological sites, or places on, or meeting the criteria for nomination to the National Register of Historic Places;
- (g) Acquisition or alteration of, or space for, a laboratory or facility that will use hazardous materials or wastes, chemicals, drugs, or biological or radioactive materials;
- (h) Actions that could potentially cause soil erosion, affect prime or unique farmland, wetlands, flood plains, coastal zones, wilderness areas, aquifer or other water supplies or wild and scenic rivers;
- (i) Development of an installation master plan;
- (j) Development of natural resource management plans (land, forest, fish and wildlife);
- (k) Actions that take place in, or adversely affect wildlife refuges;
- (l) Actions that take place near or affect Native American Reservations or Tribal lands;
- (m) Field activities on land not controlled by the military. This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground into national airspace;
- (n) An activity that affects any species on, or proposed for the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species. Also, activities affecting any species on an applicable state or territorial list of threatened and endangered species;
- (o) Production or transporting of hazardous or toxic materials;
- (p) Operations and maintenance projects that have the potential to impact the environment.

d. **EA Steps/Stages.** There are three stages of the EA. The first is the preliminary draft EA, which is an internal working document, and not available for public review. The second stage of an EA is the final draft EA, which is used for official NGB and intergovernmental agency staffing and coordination. The final draft EA will be released for a 30-day public comment period only after successful coordination and approval from NGB. The final draft EA should not be released with an attached FNSI/FONSI, or Notice of Intent (NOI) to complete an EIS as doing so gives the impression that a decision has

already been made. The third and final stage is the final EA (an EA which has undergone complete interagency coordination and approval). The final EA is also made available to the public for a 30-day review period;

**e. EA Public Affairs Requirements:**

- (1) A final draft EA is a document that has been staffed through all appropriate channels and is ready to "go public" for the first of two, 30-day public comment periods. The final draft EA precedes the very last, completed version of the EA which has the decision document (NOI or FNSI/FONSI attached). The preliminary draft or "working draft" should not be released to the public;
- (2) Final draft EAs will be released for a 30-day public comment period after successful coordination with various state and federal agencies (i.e., NGB staff offices, U.S. Fish and Wildlife Service, State Historic Preservation Office, U.S. Forest Service, etc.). For more information on staffing, see Public Affairs Checklist for NEPA Actions at end of this chapter;
- (3) An NOI or FNSI/FONSI should not be attached to any draft version of the EA. This is because doing so gives the impression that the document is only justifying a decision which has already been made. However, if there is a specific state requirement for attaching a draft NOI or FNSI/FONSI to the draft EA, it can be included, but must be clearly marked "draft." The final, completed version of the EA must have either an NOI or FNSI/FONSI attached as these are decision documents which inform the public of the course of action the Guard will take;
- (4) Final draft and final EAs will be distributed to any state or federal agencies, organizations, and individuals who have expressed interest in the proposal as well as any others whom the proponent and NGB deem appropriate;
- (5) Notifying the public on the availability of the EA must be made via news release to local/regional general circulation newspapers and through purchased display advertisements (approximately 4 x 5 inches in size). The display ad is a paid newspaper advertisement which should appear in a prominent section of general circulation newspapers, rather than legal columns or papers. When determining how much public involvement is necessary, (how many news releases, display ads or meetings should be completed) the PAO should consider the following:
  - (a) The size of the proposal and the degree to which the public will be affected by it;
  - (b) The anticipated level of public interest or controversy;
  - (c) The size of the area affected;

- (d) Past controversy associated with similar activities (i.e., airspace reconfiguration, forestry management plans or timber cuts, increased night operations or training);
  - (e) Whether the proposed action is one of national concern, is unprecedented, or normally requires an EIS;
  - (f) Degree of any associated environmental controversy.
- (6) Legal notices, often used in the past as the sole means of public notification, are not adequate in ensuring that the public is fully informed about National Guard proposals. This is because legal notices are usually "buried" in the back of the newspaper and, therefore, do not give the public adequate opportunity to know about, or comment on, a proposal. If there is a specific state requirement to use a legal advertisement for public notification of NEPA activities, then the legal advertisement should be used in conjunction with, not in lieu of the public notice display advertisement.

**Sample Display Advertisement for a Notice of Availability:**

**Public Notice**  
**Air National Guard**  
**NOTICE OF AVAILABILITY**  
**Environmental Impact Statement**  
**RECORD OF DECISION**

The United States Air Force has issued a Record of Decision on proposed aircraft conversions for the Connecticut Air National Guard, Bradley Air National Guard Base, Conn., and the Massachusetts Air National Guard, Barnes Air National Guard Base, Mass., along with proposals for special use airspace located over the states of New Hampshire, Vermont, Maine, New York, New Jersey and Pennsylvania. This Record of Decision fully complies with appropriate provisions of the National Environmental Policy Act. Printed copies of this Record of Decision are available for public review at public libraries in the following New Hampshire communities:

|         |          |           |            |           |           |
|---------|----------|-----------|------------|-----------|-----------|
| Alton   | Ashland  | Bartlett  | Bath       | Berlin    | Bethlehem |
| Bristol | Conway   | Francis   | Gilford    | Haverhill | Jackson   |
| Lincoln | Meredith | Littleton | Whitefield | Plymouth  | Wolfsboro |

**ADDITIONAL INFORMATION IS AVAILABLE BY CONTACTING:**

**Mr. Harry Knudsen**  
**Air National Guard Readiness Center**  
**Environmental Division**  
**3500 Fetchet Ave.**  
**Andrews Air Force Base, MD 20331-6008**  
**Telephone (301) 981-8143**

It is important to identify, as early as possible, public interest in the project. It is unrealistic to expect adequate public involvement in a project when a legal notice in the back of a newspaper has been the only means of notification. In any environmental process the NGB recommends a display advertisement be used, along with a legal notice, to notify the public of any public meetings, availability of documents or public comment periods. This ensures compliance with public notification requirements.

- (7) **FNSIs/FONSI.** Public release and notification for the availability of the FNSI/FONSI and attached final EA adhere to the same public notification requirements as the final draft EA (See section e., "EA Public Affairs Requirements," items (1) through (6) of this section). This includes both a news release and display advertisement announcing the availability of the FNSI/FONSI, a summary of its findings, a description of the action being proposed, and a designated point of contact for further information. If the action is of national significance, a simultaneous announcement, that includes publication in the Federal Register, must be made by the Department of Defense through NGB channels. Both the FNSI/FONSI and final EA should be placed in the public information repository, i.e., local library, for review.

**6. Environmental Impact Statement (EIS) Overview.** An EIS is prepared when a proponent/decision-maker determines that the proposed action will have a significant effect on the environment. An EIS is required to provide full and fair discussion of significant environmental impacts. Furthermore, it allows for public participation and comment on the proposal. An EIS may be contracted out at the discretion of the NGB or state. Often a time-consuming and complex process, the average EIS can take one to three years to complete.

- a. **Conditions normally requiring an EIS.** An EIS is required when the proposal has the potential to:
  - (1) **Significantly degrade environmental quality, or public health and safety;**
  - (2) **Significantly affect historic or archaeological resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers or aquifer;**
  - (3) **Have a significant adverse effect on properties listed or meeting the criteria for listing on the National Register of Historic Places, or the National Registry of Natural Landmarks (the National Park Service maintains the National Register);**
  - (4) **Cause a significant impact to prime and unique farm lands, wetlands, flood plains, coastal zones, ecologically or culturally-important areas or other areas of critical environmental concern;**
  - (5) **Result in potentially-significant and uncertain environmental effects or unique or unknown environmental risks;**



- (6) Significantly affect a species or habitat listed or proposed for listing on the federal list of endangered or threatened species;
  - (7) Actions that would have the potential for cumulative impacts when combined with other, individual actions either planned or already implemented;
  - (8) Actions that involve the production, storage, transportation, use, treatment or disposal of hazardous or toxic materials that may have significant environmental impacts;
  - (9) Significantly impact Native American tribal lands.
- b. **General Guidance/Responsibilities for the EIS.** As with EAs, the PAO is key to ensuring that public affairs actions for the EIS are carried out at the local level. Generally, the same procedures for public involvement discussed in section for EAs apply to the EIS; however, public affairs planning will be much more comprehensive for the EIS. Coordination and timing of announcements must be carefully planned and coordinated with the NGB-PAE branches prior to public announcement of the NOI.
  - c. **Congressional Coordination.** Because congressional interest in EISs should always be anticipated in public affairs planning, congressional notification and briefings about the proposal must be planned and coordinated through NGB, and through the Departments of the Army and Air Force legislative liaison offices. Any coordination with headquarters Army or Air Force legislative offices must be made through the NGB Office of Policy and Liaison (NGB-PO) and NGB-PA. Individuals who would need to be briefed on the EIS would include local congressional delegations/staffs, House and Senate committees with anticipated interest in the proposal, state governors, as well as other interested federal agency headquarters.
  - d. **Lead and cooperating agencies.** As soon as possible after the decision is made to prepare an EIS, the proponent must contact appropriate federal, state and local agencies to identify lead or cooperating agency responsibilities concerning the preparation of the EIS. The respective NGB environmental offices and NGB-PAE staff should be fully involved in any proposed EIS prior to any outside agency coordination. For state National Guard actions which involve any federal funding, the NGB is the lead agency for the purpose of federal compliance with NEPA. Therefore, it is important that the NGB be involved in the planning of all EIS-related activities to include interagency planning meetings. The state may be either a joint-lead, or a cooperating agency, as determined by NGB. State PAOs have responsibility to ensure that NGB-PAE staff are kept fully informed and updated on all planned public affairs activities in support of an NGB-funded EISs.
  - e. **Public Involvement and the Scoping Process.** The requirement to involve the public in the EIS process (outlined in 40 CFR 1501.7 and 1506.6 "Scoping") requires that all potentially-affected "publics" be involved whenever the Guard

is developing environmental studies. This process, called "scoping," is designed to aid the Guard in determining the scope of the EIS--that is, what will be covered and in what detail. Scoping is an invaluable part of early project planning because through the scoping process, the Guard can find out early on where potential problems with the proposal may be, who are the affected parties, what alternatives should be considered and where accommodations can be made. Scoping procedures generally fall into three stages: preliminary, public interaction and final phases. The preliminary phase establishes lead and cooperating agencies, defines the scope of analysis, how scoping will be accomplished, and with whose involvement.

- (1) **Public Scoping Meetings.** Scoping can be thought of as a crucial first step toward building public confidence in the environmental analysis process; confidence that the process is credible. Although there is no established or set procedure for scoping, the standard accepted format in recent years has been that of a formal public meeting. Formal hearings which are often highly structured and impersonal, should not be held in the preliminary phase of scoping. Rather, formal public meetings are conducted during the public interaction phase of the scoping process. In deciding on what format will be used for scoping, PAOs, in close coordination with NGB-PAE staff, should use creativity and innovation in deciding "what works best" for the specific location and publics involved. Persons and agencies which should be consulted include, but are not limited to, the following:
  - (a) **Municipal, township, and county elected and appointed officials;**
  - (b) **State, county, and local government officials and administrative personnel;**
  - (c) **Local and regional administrators of other state or federal agencies or commissions that may either control resources potentially affected by the proposed action (e.g., the U.S. Forest Service) or who may be aware of other actions by different federal agencies whose possible cumulative effects must be considered along with the proposal;**
  - (d) **Members of the population with specialized interest such as farmers, ranchers, homeowners, small business owners and Native American tribes;**
  - (e) **Members and officials of identifiable interest groups both at the local and national level. Examples of such groups would include local chapters of the Sierra Club, Audubon Society and the Isaak Walton League;**
  - (f) **Any individual that has specifically requested involvement in the proposal;**

- (g) **Congressional delegations and staffs.** The purpose of public scoping meetings is to provide a working session where productive information gathering and evaluation can proceed. The final phase of scoping incorporates significant issues/concerns raised by the public, alternatives for consideration and any cumulative impacts which must be considered.
- (2) **Scoping and Public Involvement - When?** It should be noted that although the "clock" for the official scoping process does not start ticking until after the NOI publication in the Federal Register, portions of the scoping process may take place prior to publication of the NOI. This is because a certain degree of interagency planning and coordination must take place to draft a substantive and reasonable proposal for presentation to the general public for input.
- f. **Guidance for Outside Agency Coordination.** Because there could be certain sensitivities to a proposal or a related issue which extend beyond the local or regional level, NGB-PAE staff should be consulted prior to any contact with outside agencies or interest groups involved with the EIS. It is important to remember that scoping meetings should not be planned until after there is enough information available about what is actually being proposed. For example, interagency scoping would not be useful until an installation knows enough about the proposed action to present a coherent proposal and a suggested list of alternatives. Until that time, there is no way to explain to the public or other agencies what you want them to get involved in. During the public interaction phase, public meetings are usually held. The purpose of these meetings are to give the public an opportunity to comment on the proposal, listen and address issues of concern, and identify other issues that may need to be included in the EIS.
- g. **Steps/Stages for EIS public affairs planning.** (See timeline for further information.)
- (1) Upon publication of the NOI in the Federal Register (FR), an announcement by Office of the Assistant Secretary of Defense Public Affairs (OASD-PA--located at the Pentagon) will be made through a Memorandum for Correspondents (MFC). (The state PAO is responsible for providing a draft news release to NGB-PAE which will be coordinated and staffed through NGB channels to OASD-PA.)
- (2) The state PAO is responsible for ensuring that proper notice is published in local/regional newspapers. Local notice cannot precede release of the MFC by OASD-PA.
- (3) Local notification must be made via display ad, legal notice and news releases to local/regional print and broadcast media. All communications should include information about what is being proposed, how the public can participate, where scoping meetings will be held (if it has been determined) and a local point of contact and phone number where more

information can be obtained. The PAO must make sure that sufficient lead time has been factored in to ensure full participation by the public.

- (4) A public affairs plan must be developed before the publication of the NOI. This plan should be closely coordinated with NGB-PAE staff and the contractor (where applicable). It should be noted that if a contractor is hired to coordinate public involvement activities, at no time is the contractor a spokesperson for the state National Guard or for NGB. Plans developed by contractors should be carefully reviewed and staffed to ensure all players agree to the roles/responsibilities assigned. Copies of the public affairs plan must be staffed with the office of the TAG, the state PAO, and the responsible NGB-PAE office (Army or Air).
- h. Draft EIS (DEIS). Based on information obtained through the scoping process, a DEIS will be completed. The average time between the initial scoping meetings and completion of the DEIS is anywhere from 6 to 18 months depending on the number and complexity of issues identified through scoping.
  - i. Public Review of the DEIS:
    - (1) The same procedures for public notification outlined in paragraph g. (1) through (3), must be followed for release of the DEIS. The NGB will prepare an official Notice of Availability (NOA) for the Federal Register, and the MFC which will be released by OASD-PA. The state PAO is responsible for ensuring that proper notice is published in local/regional newspapers. Local notice cannot precede release of the MFC by OASD-PA.
    - (2) The length of the DEIS public comment period will be no less than 45 days from the date of publication of the NOA in the FR. The DEIS should be distributed by the proponent to all interested federal, state, regional, and local agencies, private citizens, and local organizations. Any request by an individual, organization, or agency for the entire environmental impact statement should be honored. If the document is unusually long, a summary with an attached list of locations (i.e., public libraries) where the document can be reviewed should be circulated.
    - (3) As with the NOI, local notification of the NOA must be made via display ad and legal notice to local and regional newspapers. In addition, news releases must be made to local print and broadcast media. All communications should include information about what is being proposed, how the public can participate, where the public can review the DEIS and where public meetings will be held to discuss its contents. The news release and paid display and legal advertisements must also indicate a local point of contact and phone number where more information can be obtained.
  - j. Public meetings on the DEIS. Public meetings on the DEIS are required to be held in accordance with the criteria established in 40 CFR 1506.6 "Public Involvement" (Appendix 1) and any other requirements set by NGB. A variety

of formats for public meetings have been used in the past, to include an "open house" type format which has been successful on several occasions. All planning for public meetings should be coordinated with NGB-PAE to ensure full legal compliance with the NEPA.

- k. **Response to comments.** Responding to public inquiries on the proposal will require a "team approach." Lessons learned have shown that no one person can do it alone. The project manager, the environmental specialist and the state PAO will be working closely throughout the EIS process. To ensure the Guard always "speaks with one voice," a Standard Operating Procedure (SOP) should be in place for how public and media queries will be handled and this SOP should be clearly understood by all team members prior to any public release. In some instances, it will become necessary for the EIS project manager to speak directly with the public. All media interviews should be closely coordinated with the state PAO to ensure command involvement. Under no circumstances should a contractor speak for the Guard.
- l. **Final EIS (FEIS).** Responses to public comments will be incorporated into the FEIS, which will once again be filed with the Environmental Protection Agency and undergo a public review period (30 days). The same public affairs requirements for the NOA as outlined in paragraph i will be followed. The FEIS distribution must include any person, organization or agency that submitted substantive comments on the EIS. The FEIS must also be placed in a public repository, such as local community libraries. Although there is no requirement to invite public comment during the 30-day post-filing waiting period, it is the National Guard's policy to always be open to receive and respond to public concerns regarding National Guard actions.
- m. **Record of Decision (ROD).** The final action taken during the EIS process is the ROD, which will become part of the environmental documentation for the proposed action. The ROD is a public document signed by the applicable secretary of the Army or Air Force, or their designee. It summarizes the findings of the FEIS and explains any preferred alternative that the National Guard may initiate. The ROD will also detail any mitigation that will be implemented to minimize environmental impacts and public concerns. A ROD on the proposed action will not be made until 30 days after public and congressional notification that the FEIS has been filed with the U.S. Environmental Protection Agency.
  - (1) Once the ROD is signed the PAO will distribute a news release summarizing the ROD. The PAO must have complete copies of the ROD available to facilitates public and media requests for this document.
  - (2) Public comment on the ROD is not required. However, it is National Guard policy to always be open to receive and be responsive to public concerns regarding National Guard actions.

7. NEPA Actions: Public Affairs Requirements.

**Environmental Action**

**PA Requirements**

**CX**

**Local PA Coordination**

**Environmental Assessment  
(final draft version)**

**Local PA coordination,  
NGB-PAE coordination, local news  
release, public notice display ad\*  
30-day public comment period  
community briefings/public  
meetings (where applicable)**

**Final EA with FNSI/FONSI**

**FNSI/FONSI  
Local Interest**

**Local PA coordination,  
NGB-PAE coordination,  
display ad, news release  
30-day comment period\*\***

**Final EA/FONSI/FNSI  
Regional/National Interest**

**Local PA coordination,  
NGB-PAE coordination, display  
advertisement, FNSI/FONSI must  
appear in the Federal Register,  
news release, 30-day review  
period**

**Notice of Intent (EIS)**

**STARC/PA coordination, draft  
NOI/Q's & A's submitted by  
proponent to NGB-PAE for  
MACOM/MAJCOM/PA  
coordination, NOI published in the  
Federal Register, concurrent with  
OASD/PA news release. Local  
news release announcing NOA  
and public meetings**

**Scoping**

**STARC/PA coordination,  
NGB-PAE coordination, news  
release, display ad, public  
scoping meeting(s)**

**Draft EIS**

**STARC/ PA Coordination,  
NGB-PAE coordination, NOA  
submitted to Federal Register,  
Memorandum for Correspondents  
and Q's & A's coordinated with  
NGB-PAE and released by  
OASD/PA, local news release**

announcing NOA (must not precede MFC or FR NOA publication) display ad, public meeting/hearing(s), 45-day (minimum) public comment period (starting from the day display ad appears in local newspapers)

**Final EIS**

Local PA coordination, NGB-PAE coordination, news release, display ad, final EIS filed with EPA, always on a Friday. There is a 30-day post filing waiting period.

**Record of Decision**

STARC/PA coordination, NGB-PA coordination, news release, ad.

- \* Recommended size of display ad is approximately two columns x 5 inches.
- \*\*Review Requirements in DOD 6050.1, AR 200-2, AFR 190-1, AFR 19-2.

**Public Affairs Checklist for NEPA Actions**

**Environmental Assessments**

| <u>Action</u>   | <u>Date completed</u> |
|---|-----------------------|
| <b>BEFORE EA INITIATION</b>   |                       |
| News Release on planned EA (when applicable)  | _____                 |
| Informed affected/interested parties, i.e.,<br>community leaders, regulators, state, federal<br>agencies, internal audiences prior to release<br>(where applicable)   | _____                 |
| Intergovernmental agency scoping initiated<br>for EA (when applicable)  | _____                 |
| <b>FINAL DRAFT ENVIRONMENTAL ASSESSMENT</b>   |                       |
| PA POC established/<br>contacted State Environmental Specialist   | _____                 |
| News Release drafted by state PAO<br>(discussing availability of EA for public<br>review, proposed action, points of contact,<br>location where draft can be reviewed (when<br>applicable)                    | _____                 |
| Coordinated with NGB-PAE on<br>release content/criteria   | _____                 |
| Display ad purchased (contains<br>same information as news release)   | _____                 |
| Contacted affected/interested parties,<br>i.e., community leaders, state/local/federal<br>agencies, environmental groups, clearinghouses,<br>news media prior to release of Draft EA                          | _____                 |
| News Release sent to local media  | _____                 |
| Internal audience notified<br>(via bulletin boards, unit newspaper, command<br>speeches, other Command Information channels)  | _____                 |
| Placed document in information repository   | _____                 |
| <b>FNSI/FONSI/FINAL EA</b>  |                       |
| Local PA POC identified   | _____                 |
| Contacted State Environmental Specialist  | _____                 |
| Contacted NGB-PAE POC   | _____                 |
| News Release drafted by state PAO (discussing<br>FNSI/FONSI, its availability for public review and<br>comment, proposed action, findings, points of<br>contact, and location where document can be reviewed) | _____                 |
| Coordinated news release with NGB-PAE on<br>release content/criteria  | _____                 |
| Display ad purchased (contains same information<br>as news release)   | _____                 |



Contacted affected/interested parties prior to release (i.e., community leaders, state/local/federal agencies, local environmental groups--when and if heavy interest in the action is anticipated, local news media or other interested or affected parties prior to release

FONSI/FNSI distributed to commenting agencies, organizations, individuals, groups who have expressed interest in the proposed action

News release on NOA for FNSI/FONSI sent to local media

Internal audience notified (via bulletin boards, unit newspaper, command speeches, other Command Information channels

Placed FNSI/FONSI with attached Final EA in information repository and official administrative record

### Environmental Impact Statements

Contact state environmental specialist, local PA POC identified

NGB-PAE coordination

Local/state congressional coordination (through NGB-PAE

Notice of Intent (NOI) published in Federal Register

NOI and MFC released by OASD/PA (concurrent with Federal Register public action)

NOI news release sent to local media may include when, where public scoping meetings will be held; NOI display ad purchased in local newspaper

Public Affairs Plan developed

Contacted all commenting agencies, interested/affected community leaders, agencies or commissions and environmental groups

### WHEN SCOPING PROCESS IS INITIATED

Meet with all interested/affected parties to include municipal, township, county elected officials

Meet with local and/or regional administrators of various agencies or commissions (i.e., U.S. Fish and Wildlife Service, U.S. Forest Service)

Meet with local community organizations, public interest groups with expressed or expected interest in proposed action, (i.e., Sierra Club, Audubon Society)

### WHEN DRAFT EIS IS COMPLETED

Preliminary Draft EIS Complete, local PA POC notified

Local PA review of DEIS, ensuring substantive



- easy to understand? \_\_\_\_\_
- Multidisciplinary criteria met (Are social, economic impacts of proposal considered, addressed?) \_\_\_\_\_
- Alternatives identified/clearly explained (Are all alternatives, to include "no action" alternative, and environmental impacts of each alternative addressed?) \_\_\_\_\_
- Reference documents attached (previous ROD, FNSI/FONSI, outside coordinating agencies correspondence, charts, maps) \_\_\_\_\_
- Reference documents (Are they clear, readable and understandable?) \_\_\_\_\_
- Legal review (state and NGB level) \_\_\_\_\_
- PAO review (state and NGB level) \_\_\_\_\_
- Legislative impacts review (NGB level) \_\_\_\_\_
- Public involvement (If so, is a record attached?) \_\_\_\_\_
- Public involvement record (appendix/paragraph section discussing public notification procedures used, i.e., when NOI was sent out, publications where it appeared, display ad and publications where it appeared, copy of local news release, where/date article appeared) \_\_\_\_\_
- Natural resources (Does document address issues of special concern or of high interest to regulatory agencies and environmental groups (i.e., proximity to flood plains or wetlands, effects on threatened or state or federally-listed endangered species?) \_\_\_\_\_
- Historical and cultural resources (Has draft been coordinated with SHPO?) \_\_\_\_\_
- Public access impacts addressed (Will hunting, fishing or other recreational uses, be restricted or impacted by proposed action?) \_\_\_\_\_
- Impacts to land use planning \_\_\_\_\_
- Security, policy review (Are there any statements within document which could be construed as inconsistent with national DOD policy?—see AR 200-2 Chapter 1, 1-5 Policies) \_\_\_\_\_
- Hazardous materials usage/related issues:  
 Are hazardous materials current or anticipated clearly identified, and impacts, accident remediation issues addressed? \_\_\_\_\_
- Spill plans in place? (What public notification procedures will be in place?—where applicable) \_\_\_\_\_
- Hazardous waste management, minimization plans clearly stated. \_\_\_\_\_
- Mitigation/monitoring clearly addressed and understandable? \_\_\_\_\_
- Is mitigation/monitoring outlined as part of the proposed alternative?—i.e., ITAM, HAZMIN, Hazardous waste management, pollution abatement measures in place, planned? \_\_\_\_\_

**Basic questions that should be asked when reviewing NEPA documents**

- Is document free of language which would give the impression that the decision has already been made? \_\_\_\_\_
- For final draft EAs is FNSI/FONSI attached (Should not be attached to final draft EAs)? \_\_\_\_\_
- Could proposed action generate regional/national interest? \_\_\_\_\_

**Some factors to consider in gauging regional/national significance would include**

- Size and type of proposed action. \_\_\_\_\_
- Degree of any associated/anticipated controversy. \_\_\_\_\_
- Size of the affected environmental parameters. \_\_\_\_\_
- Significance of affected environmental parameters. \_\_\_\_\_
- Significant issues that have previously generated national/regional media attention (i.e., spotted owl, red-cockeyed woodpecker, aircraft conversions). \_\_\_\_\_
- If national/regional interest is expected, has FNSI/FONSI been sent to Federal Register for publication? \_\_\_\_\_
- Were community briefings held (where high level of public interest in proposal is anticipated)? \_\_\_\_\_
- Is/should a community briefing be planned? \_\_\_\_\_
- Are the following addressed thoroughly in the document? \_\_\_\_\_
- Need for the proposed action. \_\_\_\_\_
- Alternatives to the proposed action to include the "no action" alternative. \_\_\_\_\_
- Listing of persons, agencies consulted. \_\_\_\_\_
- Description of the proposed action. \_\_\_\_\_
- Affected environment to include baseline conditions. \_\_\_\_\_
- Environmental impacts of proposed action. \_\_\_\_\_
- Will any federal or state-listed or threatened endangered species be affected by proposal? \_\_\_\_\_
- Are there any important historic or archaeological sites on or near the proposed area? \_\_\_\_\_
- Have "cumulative impacts" of the proposed action been addressed? \_\_\_\_\_

**FNSI/FONSI Review: What to look for**

- Does FNSI/FONSI reflect the following guidelines? \_\_\_\_\_
- Does not exceed two pages in length \_\_\_\_\_
- Includes name of the proposed action \_\_\_\_\_
- Includes brief discussion of the proposed action (to include any alternatives considered) \_\_\_\_\_
- A short discussion of the anticipated environmental effects \_\_\_\_\_
- The facts and conclusions that have led to the FNSI/FONSI \_\_\_\_\_
- A deadline and POC for further information \_\_\_\_\_

**On a FNSI/FONSI with regional or national interest**

- Has FNSI/FONSI been submitted with proposed news release through command channels for approval (NGB-PAE, DA, OCLL coordination) \_\_\_\_\_
- Congressional coordination for FNSI/FONSI and news release made (coordinated through NGB-PO, OCLL). \_\_\_\_\_
- FNSI/FONSI submitted to Federal Register through NGB (local publication of FNSI/FONSI will not precede Federal Register publication. \_\_\_\_\_
- NGB agency officials have signed FNSI/FONSI. \_\_\_\_\_
- Is environmental assessment attached? \_\_\_\_\_
- Does FNSI/FONSI state all practicable mitigation measures that have been adopted? \_\_\_\_\_
- Has attached final EA been coordinated with outside agencies to include: \_\_\_\_\_

**U.S. Fish and Wildlife**  
**State Department of Environmental Quality**  
**Regional EPA**  
**State Historic and Preservation Office**  
**Other interested local or state governmental agencies**  
**Visible environmental/community groups which have or will express**  
**interest in the project (i.e., the local Sierra Club for a forest**  
**management plan EA)**

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***APPENDIX T***

***Common Deficiencies and Other Lessons Learned***

## COMMON DEFICIENCIES AND OTHER LESSONS LEARNED

To help the proponent and preparers of NEPA documents in avoiding common mistakes made during the NEPA process, a number of typical deficiencies in EAs and EISs, and other lessons learned, are presented in this appendix.

### V.1 COMMON DEFICIENCIES

- ! **Purpose.** EAs and EISs are intended to be objective disclosures of physical, biological, and socioeconomic impacts of a proposed action, not vehicles for subjective defense of a proponent's position.
- ! **Legal Sufficiency.** The tone of the NEPA document should not be pre-decisional. When describing proposed actions and their resulting environmental effects, state that the actions and their effects *Awould@* occur, not *Awill@* occur. However, when discussing mitigation measures for the preferred alternative in a FNSI or ROD, state that the mitigation measures *Awill@* be implemented, not *Ashould@*, *Awould@*, or *Amay@* be implemented.
- ! **Length/Brevity.** Most EAs and EISs are too long. Tables and graphics should be used to highlight important information. Appendices should be reserved for supplemental or detailed data.
- ! **Balance and Clarity.** NEPA documents should emphasize appropriate sections. Shorten the descriptive environmental and socioeconomic portions, and concentrate the discussion on potential impacts. A NEPA document should be easily understood by a layperson and should not contain highly technical discussions of complex data.
- ! **Alternatives.** The alternatives section of an EA or EIS is a critical part of the overall document but is frequently not given adequate attention. This section must address all reasonable and feasible alternatives to the proposed action. All alternatives, including the no action alternative, must be given equal consideration throughout the document.

- ! **Quantities.** Quantitative findings must be supported with facts and scientific evidence.
  
- ! **Data.** EAs and EISs should contain the most current data available. Frequently, because documents sometimes take a long time to prepare, data become outdated before the EA or EIS is complete.
  
- ! **Compliance.** EAs and EISs frequently indicate noncompliance without stating when compliance would be attained. They should state when and how compliance would occur.
  
- ! **Mitigation.** EAs and EISs must not include mitigation measures that are not possible. They should include realistic, implementable measures.
  
- ! **Tone.** The tone of an EA or EIS should not be challenging or contentious. Issues must be addressed without inflammatory or argumentative statements.
  
- ! **Terminology.** The EA or EIS should be written for the lay reader, incorporating common language and spelling out acronyms when first used.
  
- ! **Typographical Errors.** EAs and EISs should be carefully proofed for typos and other errors. Mistakes give the entire document an aura of doubt.
  
- ! **References.** References included in the EA or EIS must be available to the public. If they are not available, they should not be used.
  
- ! **Review.** All documents must be internally reviewed. No outside agency or public coordination can occur without adequate review.

## V.2 OTHER LESSONS LEARNED

The following suggestions are put forth by staff from various federal agencies who have learned something from their NEPA process.

### V.2.1 Public Participation



- ! Because public meetings are generally not useful for projects whose impacts are spread over large areas, the public must be reached through other channels. One agency found that issuing letters to a general audience and contacting some individuals directly was successful.
  
- ! Hostility of the public toward the NEPA team at public meetings can be lessened if an installation representative contacts some of the local community leaders and other public participants prior to the public meeting.
  
- ! One agency found it useful to conduct informational public workshops prior to the formal public meeting (at which the agency formally solicits comments). The agency described environmental issues and alternatives before requesting participation, which increased the agency's credibility. As a result, the public was adequately informed prior to the public meeting, and allowed the meeting to proceed more efficiently.
  
- ! Describing environmental issues and alternatives to the public before soliciting comments will ensure that comments are based on fact instead of supposition.
  
- ! Advertising public meetings in metropolitan area newspapers is the least cost-effective way to communicate with the public.

## V.2.2 Setting and Maintaining a Schedule

- ! The NEPA process can be streamlined, and schedules adhered to, by meeting early in the planning process with all necessary internal personnel and using a checklist to identify potential environmental impacts and key issues.
  
- ! A schedule can be maintained if it is based on several key milestones and the participants remain focused on these endpoints.
  
- ! A NEPA team found it easier to maintain a schedule by conducting biweekly status reports and teleconferences to inform all participants of the status of each activity and its relation to the overall schedule.

### V.2.3 NEPA Process and Documentation

- ! The NEPA process must reflect appropriate analytic logic. Do not allow inappropriate comparisons (apples to oranges), the inclusion of massive amounts of useless data, and typographical errors that could greatly change the validity of a decision.
- ! Ensure that a NEPA document contains all the information needed to understand how the conclusions are drawn, and no other irrelevant information.
- ! Successful EAs/EISs and their summaries focus on key issues. Graphics and tables are used to clearly present and compare the environmental effects of the proposal and the alternatives.
- ! Do not oversimplify the document summary. The absolute and relative importance of each environmental effect must be clearly communicated.
- ! To facilitate quicker EA and EIS reviews, submit pre-drafts of the documents to outside agencies to acquire preliminary comments. All drafts submitted should be accompanied by a schedule for comment receipt.
- ! Hold retreat meetings (a few days in duration) with a review team at an off-site location to thoroughly review documents and discuss comments received. This approach will save time and money in the long run.

***APPENDIX U***

***Sample Statements of Work***

# STATEMENT OF WORK

## SURVEY OF BUILDINGS OVER 50 YEARS OLD & ENVIRONMENTAL ASSESSMENT

FOR

### ARMED FORCES READINESS CENTER KEAUKAHA JOINT MILITARY RESERVATION HILO, HAWAII

The Hawaii Army National Guard (HIARNG) requests the contractor to conduct an Architectural Building Survey and prepare an Environmental Assessment (EA) for the establishment of a Joint Forces Readiness Center in Hilo, Hawaii.

#### 1.0 SCOPE OF WORK

##### 1.1. INTRODUCTION

HIARNG proposes to transform the Keaukaha Military Reservation (KMR) into a Joint Military Center (KJMC) for the soldiers, airmen, veterans, and retirees living on the island of Hawaii. In addition to building a 168,584 SF Armed Forces Reserve Center (AFRC) with the respective maintenance and storage facilities, the project will also provide capabilities that do not exist today.

- **Combined Support Maintenance Shop (CSMS).** A 62,727 SF CSMS facility with MV parking.
- **USMC.** A 20,146 SF maintenance shop for the US Marine Corps including a 5,005 SF shop and 15,141 SF of storage.
- **Air National Guard (HI ANG).** The Hawaii Air National Guard requires approximately 57,075 gross square feet of expansion to meet their authorized program. This is in addition to the 30,000 SF existing facility on KMR.
- **Army & Air Force Exchange Service (AAFES).** An 8,000 SF PX will be planned for in the master plans.
- **Environmental Office.** The state environment office will require 300 SF of administration space.

- **State Maintenance Area.** A 5,440 SF maintenance facility with administration and shop space, along with covered equipment storage space.
- **USACE.** 500 SF of administration space for a US Army Corps of Engineers field office.
- **Hawaii State Office of Veterans Service.** The State Veterans Department will require 1,000 SF of administration space.
- **Combat Tracker School.** The combat tracker school will require 600 SF of administration and storage space.
- **Training Site.** The training site requirement will be 141,616 SF facility that will include approximately 292 beds.

Also within the scope of this project are the closing of HAIRNG facilities at Honoka'a (Armory and Motor Vehicle Storage Building) and Kea'au (Armory), as well as the demolition of 18 outdated buildings at the current Keaukaha Military Reservation to make room for new facilities.

- 1.1.1. The EA shall identify the cumulative environmental impacts caused by the proposed actions. The EA should include comments on the cumulative effects on communities adjacent to KJMC area and any pertinent environmental impacts. The EA should identify all approvals required to implement the proposed construction.

Concurrently, the contractor will conduct a survey to evaluate the National Register of Historic Places (NRHP) eligibility of 18 buildings, all over 50 years old, currently on the KMR site. This survey will be submitted to the State Historical Preservation Office (SHPO) for review, and the determination will be incorporated into the EA. A detailed statement of the technical specifications for the building survey is appended (Attachment A).

- 1.1.3. The contractor shall provide all necessary subject matter expertise to develop both the building and environmental assessments. The contractor shall, in cooperation with HAIRNG personnel, develop reasonable alternatives to the proposed action and analyze these in the assessment. The work shall consist of collecting and evaluating data, and coordinating with appropriate state, federal and local agencies to define baseline conditions and potential impacts of the project on resource areas including, but not limited to, those listed in Section 2.1 below.
- 1.1.4. If the proposed action does not pose significant adverse impacts, the contractor is required to prepare a draft Finding of No Significant Impact (FONSI) to accompany the final EA. If the EA finds that significant adverse impacts will occur, then the contractor will prepare a draft Notice of Intent (NOI) packet consisting of:

- 10 Questions and Answers
- Memorandum for Correspondence
- Information for Members of Congress
- NOI

Examples of these will be provided by HIARNG. The contractor will not prepare an Environmental Impact Statement.

1.1.5 The documentation shall be in sufficient format and quality to comply with the National Environmental Policy Act (NEPA), Executive Orders on Management and Protection of Wetlands (see item 1.1.5.3), Endangered Species Act, and all other applicable Federal and State regulations.

1.1.6. All work shall be performed in accordance with the Scope of Work and the following Federal and State regulations:

1.1.6.1. The National Environmental Policy Act (NEPA), codified in Title 40 of the Code of Federal Regulations (CFR) parts 1500 through 1508, *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*.

1.1.6.2. Council on Environmental Quality (CEQ), November 1975, regulations, CFR parts 1500 through 1508.

1.1.6.3. Executive Order 11988 and 11990, Floodplain Management and Protection of Wetlands, respectively, and the Clean Water Act.

1.1.6.4. 32 CFR 651, Environmental Analysis of Army Actions.

1.1.6.5 Hawaii's environmental impact statement law (Chapter 343, Hawaii Revised Statutes).

## 1.2 PROJECT AREA DESCRIPTION

1.2.1. KMR is located in Hilo on the Big Island of Hawaii, adjacent to the Hilo International Airport. The entire facility covers 506 acres, but the proposed action will affect approximately 50-60 acres of previously developed land.

1.2.2. The planned facilities would accommodate a maximum drill strength of 537 soldiers, with 39 permanent positions on the post. Currently Kea'au supports an Engineering Detachment of 30 personnel who will relocate to KJMC. Honoka'a has not been used by the HIARNG for several years.

### 1.3. PROJECT DESCRIPTION

The contractor shall provide a survey of 18 buildings older than 50 years to SHPO, according to the specifications in Attachment 1; and an Environmental Assessment for the establishment of a new JFRC at Keaukaha, and for the closing of Honoka'a and Kea'au. The EA shall include assessments of the proposed projects to be accomplished on KJMC and the impact of the proposed action and all alternatives on the natural and human environment.

## 2.0 CONTENT OF WORK

2.1. An EA is a document that provides a technical and scientific analysis of the potential environmental consequences of a proposed action and its alternatives. The EA will consist of an overview analysis and a detailed study of the area. Content of the EA will include a section on the proposed action and a section on the alternatives to the proposed actions and will be in accordance with the DA PAM 200-4. The EA should include but not be limited to a discussion of the impacts of each proposed alternative on each of the following:

2.1.1. Physical Environment. A general description of topography, geology, soil, hydrology/water quality and climate/air quality.

2.1.2. Biota. Rare and Endangered Species surveys will be provided by HIARNG.

2.1.3. Cultural Resources. Known historical or archaeological information will be furnished by the HIARNG, to be supplemented by the Building Survey required in this contract.

2.1.4. Land Use. Discuss relevant land use characteristics to local and regional settings and planning considerations

2.1.5. Socioeconomic Considerations. Discuss local economics on existing and proposed land use. Prepare an analysis as to the economic consequences of including existing and proposed land use. Discuss the constraints and factors contributing to population affects and address possibilities of civilian/ military encroachment.

2.1.6 Public Safety and Health. Discuss possible safety and health hazards the proposed transfers may have on the surrounding and base communities. Graphically delineate areas that present severe hazards to public safety.

2.1.7 Site Contamination Issues. Investigate possible outstanding contamination issues discussed in the 1997 Preliminary Assessment at Keaukaha Military Reservation, which will be provided by HIARNG.

### 3.0 TASKS AND DELIVERABLES

3.1. The EA will be prepared in the format as specified in 40 CFR, Parts 1502.10 through 1502.18 of the CEQ Regulation.

3.2. Archaeological, Cultural Resources, flora and fauna, and hazardous waste data, as known, will be provided by HIARNG.

3.3. A minimum of one progress review meeting will be held, other meetings will be held as determined by the contractor and Project Manager during the scoping meeting.

**TASK 1** The **Building Survey** will be completed as outlined in Attachment A, as expeditiously as possible, and not to exceed the timeline in Attachment A, to allow for a review by SHPO to be incorporated into the EA.

**TASK 2** The contractor shall, within 15 calendar days of contract award, provide a **draft program plan** detailing tasks, logical interactions, milestones, staff assignments, schedule, and deliverables. Comments from HIARNG will be incorporated into the final program plan.

**TASK 3** The contractor will prepare a draft **Description of Proposed Action and Alternatives (DOPAA)** within 30 calendar days of contract award. Comments from HIARNG will be incorporated into the final DOPAA. The DOPAA will act as a guide to develop the EA, and as a tool to coordinate with other agencies.

**TASK 4** The contractor will **coordinate with state, federal and local agencies** maintaining air quality, water quality, ecological, historical, and cultural data.

**TASK 5** The contractor will **analyze all pertinent data** using appropriate state-of-the-art techniques and an interdisciplinary team of experts in the environmental fields.

**TASK 6** The **preliminary draft EA** shall be due at HIARNG offices within 90 calendar days after contract award. Ten hard copies and 3 CD's of the preliminary draft are to be provided by the contractor. These should be on white bond paper, 3 hole punched on the left side and stapled in the upper left corner.

**TASK 7** The **final (100%) draft EA** shall be due at HIARNG within 15 calendar days after review comments are provided to the contractor. Ten hard copies and 3 CD's of the draft are to be provided by the contractor. These should be on white bond paper, 3 hole punched on the left side and stapled in the upper left corner.

**TASK 8** The **draft final EA** shall be due at HIARNG within 15 calendar days after the HQ EA review or contractors receipt of all comments to be included. Three hard copies and one CD of the final draft are to be provided by the contractor.



These copies should be on white bond paper, 3 hole punched on the left side and stapled in the upper left corner.

**TASK 9** The **final EA and draft FONSI** shall be due at HIARNG within 15 calendar days after the receipt of all the public review comments. Ten hard copies and 3 CD's of the final EA are to be provided by the contractor. Hard copies shall be on white bond paper, double sided copies, 3 hole punched on the left side and stapled in the upper left corner. One copy shall be a reproduction master and include IBM compatible CD.

#### **4.0 SPECIAL CONSIDERATIONS**

4.1. The contract for the Environmental Assessment Process, its data collection, synthesis of studies and documentation of the EA will be administered by National Environmental Protection Act (NEPA) Administrator at HIARNG-ENV.

His contact information is:

Karl Buermeyer

808-733-4359

karl.buermeyer@us.army.mil

4.2. The contractor may require site visits. Entry onto HIARNG property is a privilege granted by the Base Commander. Contractor personnel must adhere to conditions of access and security requirements at all times. Entry must be coordinated through the NEPA Administrator at 808-733-4359.

4.3. Originals of all material prepared under this contract are the property of HIARNG. All prepared material, as well as all documented furnished to the contractor, must be returned to HIARNG before final payment can be made.

4.5. The contract will be subject to audit if the planning services plus the negotiated fee exceeds the total contract bid. Adjustments will be made if the audit validates the contractor's fees/hours as applied to the parameters of this contract.

4.6. Due to time and regulatory constraints, the completion of this project is essential before construction begins. Therefore, earlier submission of work required is encouraged. HIARNG will attempt to facilitate this project and associated contractor needs in any reasonable manner. However, quality of data and adequacy of service shall remain top priority. The contractor shall be responsible for the professional and technical quality of all drawings, report data and other material under this contract as well as compliance with all criteria specified for use under this contract.

**PROGRAMMATIC ENVIRONMENTAL ASSESSMENT**  
**FOR**  
**ARMY NATIONAL GUARD, ENVIRONMENTAL PROGRAMS DIVISION**  
**ARMY NATIONAL GUARD CAMPAIGN PLAN**

**Contract:**

**Task Order:**

**Programmatic Environmental Assessment  
for  
Army National Guard, Environmental Programs Division**

**1.0 SCOPE**

**1.1 Introduction**

This Task Order (TO) consists of environmental services to conduct a Programmatic Environmental Assessment (PEA) for the U.S. Army National Guard's (ARNG's) Campaign Plan. The contractor shall develop the PEA and all incidental environmental architect-engineer services in accordance with applicable regulatory guidance.

The contractor shall perform a PEA of the proposed implementation of the ARNG Campaign Plan, and prepare a PEA in an ARNG approved format. The PEA will provide scientific analysis of the proposed action, alternatives (including the no action alternative), and analyze the environmental issues of concern to the public. The PEA will not include site-specific analysis. The PEA will be used as a tiering document.

The following paragraphs provide the Description of Proposed Action and Alternatives (DOPAA) as provided by the U.S. Army National Guard:

The National Guard Bureau (NGB), as a major command under the Department of Army, has taken the general guidelines from the Department of the Army (DA) Campaign Plan and is continuing to develop the ARNG Campaign Plan. NGB's objective is to transform ARNG units designated by DA over the next six years. The transformation of the 56<sup>th</sup> Stryker Brigade Combat Team (SBCT) in Pennsylvania is part of a separate Environmental Impact Statement and is not a part of this proposal.

NGB proposes to reconfigure selected ARNG units in accordance with evolving requirements under development by DA. Under the current version of the proposed action, the ARNG would transfer the authorizations for two brigades (approximately 7,000 soldiers total) to the Active component. The remainder of the transformation involves converting nine heavy brigades (either Armor or Mechanized Infantry) to Light Infantry Units of Action (UAs), ten Heavy brigades to ten Heavy UAs, and fourteen Light brigades to fourteen Light UAs. This conversion will occur on existing installations without the need to construct additional training, support, or maintenance facilities beyond those already programmed for.

The affected environment of the proposed action includes facilities administered by the National Guard of the 50 states, the District of Columbia, and the territories of Puerto Rico, the Virgin Islands, and Guam. General areas to be considered include biological, air, water, physical, socioeconomic and historical/cultural resources; hazardous materials; environmental justice and protection of children; ecosystem management; and cumulative impacts.

In carrying out the work assignments under this TO, the contractor shall furnish the personnel, services, equipment, tools, materials, vehicles, facilities, supervision and other requirements necessary for, or incidental to, the performance of work set forth herein; assure any and all program and/or project related costing information (regardless of its stage in development) is secured, as directed by the Contracting Officer (CO); and be responsible for safeguarding proprietary, classified, and other sensitive information. The contractor shall be immediately capable of addressing and interpreting all aspects of environmental law and regulation.

**1.2 This project shall be identified as:** *The Programmatic Environmental Assessment for the Implementation of the Army National Guard Bureau's Campaign Plan.*

## **2.0 APPLICABLE DOCUMENTS**

The contractor shall comply with all applicable federal, state, and local environmental statutes, instructions, manuals, handbooks, regulations, guidance, policy letters, and rules (including all changes and amendments in effect on the date of issuance of this TO). The PEA shall discuss impacts resulting from the proposed action and will be completed in compliance with formats and procedures outlined within the National Guard Bureau (NGB) "NEPA Manual." It is the contractor's responsibility to identify all applicable federal environmental statutes, instructions, manuals, handbooks, regulations, guidance, policy letters, and rules for all work performed and apply the procedures and protocols required. In addition, the contractor shall refer to applicable Army regulations and ARNG guidelines and policies.

The regulatory driver for this requirement is the National Environmental Policy Act (NEPA), 1969 as amended and the President's Council for Environmental Quality (CEQ) regulations (40 CFR 1500-1508, referred to as the CEQ Regulations) implementing NEPA, which require that federal agencies examine the potential impacts of their proposed actions. Army procedures for implementing the NEPA regulations are contained in 32 CFR Part 651, *Environmental Analysis of Army Actions*, Final Rule, 29 March 2002. All work performed under this contract shall comply with the most current edition of federal environmental regulations and laws, including but not limited to the following:

- Memorandum, dated 12 April 2004, SUBJECT: Army Campaign Plan (U)
- Army Regulation (AR) 200-1, *Environmental Protection and Enhancement*
- 32 CFR Part 651, *Environmental Analysis of Army Actions*
- AR 200-3, *National Resources- Land, Forest, and Wildlife Management*
- AR 200-4, *Cultural Resources Management*
- NGB NEPA Handbook
- NGB All States letter(s)

## **3.0 ADMINISTRATIVE AND MANAGERIAL REQUIREMENTS**

The contractor shall perform management and planning functions, as well as performance measurement and cost status reporting, during the course of this effort as specified in this TO. The contractor shall provide the deliverables in accordance with the schedule outlined below (see schedule for specifics).

| Task or Deliverable Item | Required Frequency | Required Delivery Date*                     | Number of CD Copies | Number of Paper Copies |
|--------------------------|--------------------|---|---------------------|------------------------|
| Preliminary Draft        | Once               | 60 days after Delivery Order                | -0-                 | One                    |
| Draft                    | Once               | 30 days after response to Preliminary Draft | Four                | One                    |
| Final Draft              | Once               | 30 days after response to Second Draft      | Four                | One                    |
| Final copies             | Once               | 60 days after receipt of Quality Check      | Sixty               | Three                  |

\* Delays in government reviews will not affect the amount of time provided to the Contractor to respond to government comments.

### 3.1 Coordination With Other Government Agencies

The contractor shall be responsible for day-to-day interface with other government work agencies to include, but not limited to, civil engineering, transportation, communications, legal, operations, security forces, safety and public affairs.

### 3.2 Regulatory Interface

The contractor shall assist in the application of general and site-specific regulatory requirements that pertain to this TO and maintain currency with changing DoD, Federal, State, and local statutes and regulations.

The contractor is not an employee of the government and shall not represent the government in an official or unofficial capacity without the express prior written permission from the CO. In the event that an unspecified regulatory representative approaches the contractor with a stated intent to inspect the activities of the contractor, the contractor shall respectfully decline the inspection until the CO is properly notified and a duly appointed representative is present or other direction is issued by the CO. If this is not possible, due to project constraints, the contractor shall notify the CO, Contracting Officer Representative (COR) and State PMC point of contact (POC) at the earliest possible time following the inspection.

### 3.3 Coordination With Other Contractors

The contractor shall cooperate fully with other contractors and government employees. The contractor shall not commit any act that will interfere with the performance of work by any other contractor or government employee. The CO will resolve work schedule conflicts between this contract and the additional work awarded to other contractor(s). The CO will provide written direction to the contractor to reschedule work when required.

### **3.4 Special Notification**

#### **3.4.1 Health Risks**

The contractor shall immediately report to the CO and the COR, verbally by telephone or e-mail pursuant to this TO, any issues or incidents which may indicate potential imminent risk to contracted, federal, or local personnel, the public at large or the environment. Following the verbal or e-mail notification, a written notice with supporting documentation, to include photographic documentation whenever appropriate, shall be prepared and delivered within three (3) working days to the CO. Upon request of the CO, or their COR, the contractor shall provide pertinent raw laboratory data immediately (not to exceed two (2) weeks) via facsimile and provide final results and laboratory quality data via standard mail as soon as possible.

#### **3.4.2 Identification and Change of Critical Contractor Personnel**

The contractor shall submit an organizational chart displaying key personnel involved in this effort and their respective labor categories. The contractor shall immediately notify the COR of any changes in critical contractor personnel. The contractor shall obtain COR approval of any proposed changes in project personnel along with the steps taken/proposed to ensure there are no impacts to the schedule or costs associated with individual tasks. The contractor shall identify to the COR all subcontractors to be used under this TO, prior to signing any contract or initiating any work. The contractor shall provide subcontractor qualifications to the COR prior to subcontractor utilization.

#### **3.4.3 Timeline:**

The contractor will adhere to the timeline found in attachment 1 for the development of the PEA. Meeting minutes will be forwarded to all in attendance within one week of the meeting.

### **4.0 MANAGEMENT, PLANNING, AND REPORTING REQUIREMENTS**

The contractor shall plan project activities, including the development, implementation, and maintenance of project schedules, events, status of resources, report(s) on the activities and progress toward accomplishing project objectives, and document for Government review and approval the results of the project efforts for this TO.

#### **4.1 Post Award Meeting/Teleconference**

After the issuance of this TO, the contractor shall attend a post award meeting/teleconference at the location specified by the COR. The purpose of the meeting shall be to become familiar with the work requirements, information, and/or site-specific data addressed under the TO. The contractor shall prepare and submit minutes of all conferences and meetings as directed by the COR.

## **4.2 Progress Meetings**

The contractor shall attend progress meetings with the NGB representative(s) quarterly, as directed by the COR. Meetings can be in-person, telephonic or video teleconference. The contractor shall prepare and submit minutes of all conferences and meetings as directed by the COR.

## **4.3 Work Breakdown Structure**

The contractor shall prepare a contract work breakdown structure (CWBS) for all activities in this TO. The breakdown structure shall be used to prepare proposals, project schedules, and financial reports.

## **4.4 Contractor's Progress, Status, and Management Report**

The contractor shall prepare and submit a Contractor's Progress, Status, and Management Report (CPSMR). The initial report shall identify issues, tasks, logical interactions, time lines, staff assigned, schedule, deliverables and data needs and outline the contractor's approach to complete the PEA. The initial report shall also include a plan for studies required to fill in any data gaps that exist. The initial CPSMR shall be used in lieu of a formal work plan. Subsequent reports shall be used to review and evaluate the overall progress of the project, along with any existing or potential problem areas. The report shall include a summary of the events that occurred during the reporting period, discussion of performance, identification of problems, proposed solutions, corrective actions taken, and outstanding issues. The report shall also include project schedule status and estimated completion date.

## **4.5 Technical Project Report**

**PEA Report.** After all data collection and records review/investigation, the contractor shall prepare a PEA report in accordance with 32 CFR Part 651 (*Environmental Analysis of Army Actions*, Final Rule, 29 March 2002). The contractor shall use to the fullest extent possible all previously developed information necessary to prepare the PEA. The contractor shall analyze all pertinent data. The level of analysis shall be in sufficient detail to permit determination of the significance of the impacts for each environmental attribute. If necessary, the contractor shall revise the DOPAA.

**Finding of No Significant Impact.** If the Army National Guard determines that the PEA supports a Finding of No Significant Impact (FNSI), the COR will direct the contractor to prepare the FNSI. The contractor shall prepare the FNSI in accordance with 32 CFR Part 651 (*Environmental Analysis of Army Actions*, Final Rule, 29 March 2002). For both the draft and final public review the contractor shall coordinate and publish, in one newspaper of national circulation, a Notice of Availability of the DPEA. This task shall be undertaken in coordination with the NGB Public Affairs office. The FNSI shall include the approved PEA as an attachment to the FNSI. The FNSI shall reference the PEA and any other environmental documents related to the action.

#### 4.6 Site Survey

The contractor shall conduct site surveys telephonically as the primary means to execute this TO. No more than two site visits are to be considered as necessary to support the PEA. Site visits and meetings shall be combined whenever possible.

#### 5.0 ENVIRONMENTAL OPERATIONS AND SERVICES (EOS)

The contractor shall provide all services necessary to complete a PEA of the ARNG's Campaign Plan specified in this TO. These services are described in the following paragraphs.

The contractor shall conduct activities under the Environmental Impact Analysis Program (EIAP) to prepare a PEA and, if applicable, a FNSI for the ARNG's Campaign Plan. The PEA shall include a general description of existing conditions at typical ARNG facilities that will be affected by the implementation of the ARNG's Campaign Plan and current/suspected impacts to this environment from current/ongoing activities. The environmental attributes to be analyzed are listed in 32 CFR Part 651 and the ARNG NEPA Handbook include, but are not limited to: the human environment, geology/soils, water resources, biological resources, socioeconomic, air quality, hazardous waste sites, land use, and pollution prevention. This discussion will establish the baseline conditions relative to pest management at ARNG facilities.

The PEA shall address the environmental consequences for each alternative identified, including the "no action" alternative. The contractor shall determine the significance of these consequences, and, in coordination with the COR, determine whether an Environmental Impact Statement (EIS) is required or whether the decision maker can sign a FNSI. The PEA will also address cumulative impacts of all current and proposed activities.

The contractor shall ensure that the PEA contains sufficient diagrams, graphs, charts and narrative to allow interpretation by a broad range of people in the public sector. All pertinent contractor-developed data and ARNG data provided shall be reflected in the PEA. This includes maps and alternative comparison tables. All maps shall be generated in a Geographical Information System (GIS) format. All spatial data that is submitted must be in Spatial Data Standards (SDS) compliant personal geodatabases and they must include FGDC-compliant metadata.

The PEA and FNSI, if applicable, shall be conducted in accordance with 32 CFR Part 651 (*Environmental Analysis of Army Actions*, Final Rule, 29 March 2002).

**5.1 Public Comment:** Public comment periods on Draft and Final Programmatic Environmental Assessment: For both the draft and final public review the contractor shall coordinate and publish, in *USA Today*, a Notice of Availability of the DPEA. This task shall be undertaken in coordination with the NGB Public Affairs office. The NGB Public Affairs office is responsible for reviewing legal notices, press releases, and any other advertisement necessary to contact the public. The contractor will provide copies of announcements to the NGB-ARE POC on CD-ROM in PDF+ text format for web based posting. Any maps or geographical illustrations



produced by the contractor in support of the PEA shall be compatible with the GIS system currently in use by the ARNG.

## **6.0 MISCELLANEOUS**

### **6.1 Presentation Materials**

The contractor shall prepare and present briefing packages at meetings coordinated by the government. As part of the presentation materials, the contractor shall prepare paper copies of all slides and overheads to be handed out to proponent.

### **6.2 Photo Documentation**

The contractor shall prepare photo documentation, as necessary, to support the technical reports specified in this TO.

### **6.3 Data Management**

The contractor shall collect, prepare, publish, and distribute the data in the quantities and types designated in the agreed contract. The contractor shall designate a focal point that shall integrate the total data management effort and manage changes, additions or deletions of data items. In addition, the contractor shall identify items to be added, recommend revisions or deletion of items already listed in the contract as appropriate and maintain the status of all data deliverables. Deliverables shall be in accordance with the requirements applicable to this TO. Contractor is responsible for tracking all processes and procedures that will fill the requirement of an administrative record.

### **6.4 Government-Furnished Property and Services**

The ARNG NEPA Handbook will be provided on CD-ROM. Additional government furnished information pertinent to this TO is available, upon request, from the NGB COR.

### **6.5 Supplies And Equipment Acquisition**

For supply and equipment items, the contractor shall purchase the items using the material contract line item number of the contract unless otherwise proposed in the task assignment and work request proposals. In the event the contractor purchases a product that meets the tracking requirements of EPCRA, or its state or local equivalent, or any hazardous material, then the contractor shall provide the NGB COR with any details required for appropriate tracking as soon as the acquired products are brought onto government property.

### **6.6 Government Points Of Contact**

Government POCs are listed below. Any additional POCs will be provided under separate cover.

**COR**

Team Chief (TC)

Name of TC

Address

Office Phone #

Fax Phone #

**Installation POC**

Title

Name of installation POC

Office Symbol

Street Address

Office Phone #

Fax Phone #

**7.0 ABBREVIATIONS, ACROMNYMS, AND TERMS**

A listing of abbreviations, acronyms, and terms is provided in the basic contract.

**8.0 OWNERSHIP OF MATERIALS**

Materials, reports, drawings, maps, photographs, notes, and other work developed in the performance of this scope of work shall be and remain the property of the ARNG and may be used on any other work without additional compensation to the contractor who performed the work. The contractor shall agree not to assert any rights and not to establish any claims with respect thereto. The contractor shall agree to furnish and provide access to all retained materials owned by the ARNG.

# Schedule

| <b>Milestone</b>  | <b>Days (apprx)</b> |
|---|---------------------|
| Notice to Proceed   | 0                   |
| Kickoff Meeting   | 10                  |
| Draft Management Plan                                     | 15                  |
| Kickoff Meeting Minutes                                   | 17                  |
| Final Management Plan to NGB<br>NGB approves              | 20                  |
| Draft PEA to NGB for<br>ARE & State Review                | 55                  |
| IPR- NGB-ARE & NEPA<br>Sub-committee                      | 60                  |
| Draft Comments to Contractor<br>from NGB-ARE staff review | 65                  |
| Preliminary Final PEA                                     | 90                  |
| NGB-ARE and State Review                                  | 120                 |
| NGB-ARE Final Comment Resolution to Contractor            | 150                 |
| Errata Sheet on FINAL to NGB-ARE                          | 165                 |
| NGB-ARE approval of Errata for FINAL                      | 170                 |
| Final PEA to NGB–Digital / CD Format<br>& File Turnover   | 180                 |

1  
2 ENVIRONMENTAL ASSESSMENT (EA) AND SUPPORTING STUDIES  
3 FOR  
4 HIGH ALTITUDE AVIATION TRAINING SITE  
5 EAGLE, COLORADO  
6  
7 COLORADO ARMY NATIONAL GUARD  
8 AUGUST 2003  
9

10  
11 **1.0 BACKGROUND AND OBJECTIVE**

12 The objective of this work effort is to provide an expert investigation and analysis of potential  
13 environmental impacts that could result from operations at the COARNG High Altitude Aviation  
14 Training Site (HAATS). The proposed action is to renew the Bureau of Land Management  
15 (BLM) and US Forest Service (USFS) Memorandum of Understanding (MOU) associated with  
16 COARNG training at HAATS. No new construction is anticipated as part of the proposed  
17 action. Completion of the project scope of work (SOW) will result in an Environmental  
18 Assessment (EA) that will address overall activities of the training site. A detailed description of  
19 the activities associated with this action will be developed during the Description of the Proposed  
20 Action and Alternatives (DOPAA) task in this scope of work

21  
22 HAATS is located in the small mountain town of Gypsum, Colorado. The local airport  
23 welcomes top skiers to Vail and other local ski areas, and has been the location of HAATS since  
24 1985. The school offers a unique training methodology based on aircraft power that is designed  
25 to dramatically increase individual and crew situational awareness. Known as "Power  
26 Management," the training process requires power accountability of the pilots in all flight  
27 regimes. This accountability produces insight to every situation, including multi-ship operations.  
28 HAATS programs teach pilots to operate at maximum gross weights in high-density altitudes  
29 (DA) and mountainous environments, conditions that diminish aircraft power.

30  
31 The mountainous training area enhances the Power Management process and also provides the  
32 additional benefit of high altitude/high DA/rough terrain training. It is the only Department of  
33 Defense (DoD) aviation school that trains pilots to experience this outside the classroom. The  
34 school caters to rotor-wing military pilots from all over the world. HAATS has hosted and  
35 trained helicopter pilots from Slovenia, Norway, Denmark, the Netherlands, Germany and the  
36 Republic of Georgia.

37  
38 HAATS is run by full-time Colorado Army National Guard pilots, and is specifically designed to  
39 train military pilots from any DoD branch. The school can handle over a dozen student-pilots at  
40 any one time. Sleeping quarters are available on site but there are also many hotels nearby.  
41 Meals are on the local economy.

42  
43 Currently, OH-58 Kiowas, UH-1 Hueys, UH-60 Blackhawks and CH-47 Chinooks are the  
44 typical airframes flown at HAATS for the one week course. Pilots spend one day of the training

1 in the classroom learning the intricacies of power management in high altitude mountainous  
2 terrain. The other four days are spent flying in and out of the ragged peaks of Colorado's Rocky  
3 Mountains with altitudes ranging from the airport at 6500' to peaks of 14,000'. A one week  
4 Instructor Pilot course is also available. Current operations at HAATS includes approximately  
5 3,000 hours of utilization.

6  
7 Alternatives to be evaluated in this EA include:

- 8
- 9 • Alternative 1: Maximize TDA (equip and resource) to 4,000 hours utilization;
- 10 • Alternative 2: Increase TDA (equip and resource) to 8,000 hours utilization;
- 11 • No Action Alternative: Maintain current TDA (equip and resource) at 3,000 hours  
12 utilization.
- 13

## 14 **2.0 GENERAL GUIDELINES AND REGULATIONS**

### 15 **2.1 DoD Regulations and Guidance:**

- 16 - Department of Defense Instruction 4715.9: Environmental Planning and  
17 Analysis
- 18 - Department of Defense Direction 6050.1: Environmental Effects in the United  
19 States of DoD Actions
- 20 - AR 200-2 [The newest version of AR 200-2, renamed as Environmental Analysis  
21 of Army Actions, was published as 32 CFR Part 651 in the Federal Register of 29  
22 Mar 02 (67 FR 15289-15332)].
- 23 - AR 200-3 includes guidelines on conservation, management, and restoration of  
24 land and natural resources
- 25 - AR 200-4 addresses the protection of cultural resources on Army lands
- 26 - AR 200-5 discusses pest management principles and policies
- 27 - Army Section 106 Alternate Procedures
- 28
- 29

### 30 **2.2 Federal NEPA Statute, Regulations and Other Guidance:**

- 31 - National Environmental Policy Act (NEPA) of 1969 (Public Law 91-190, 42  
32 U.S.C. 4321-4347)
- 33 - Council on Environmental Quality (CEQ) Implementing Regulations (40 CFR  
34 Parts 1500-1508)
- 35 - NEPA's Forty Most Asked Questions
- 36 - CEQ NEPA Guidance
- 37 - Executive Orders 12898 and 13045
- 38 - NGB NEPA Handbook
- 39

### 40 **2.3 Related Statutes, Regulations and Guidance:**

- 41 - Clean Air Act
- 42 - U.S. Environmental Protection Agency Regulations for Determining Conformity  
43 Of Federal Actions To State Or Federal Implementation Plans (40 CFR Part 93)  
44 (Subpart B -- Determining Conformity of General Federal Actions to State or  
45 Federal Implementation Plans)

- 1 - National Historic Preservation Act of 1966, as amended 16 USC 470-470w.
- 2 - Advisory Council on Historic Preservation Protection of Historic and Cultural
- 3 Properties, 36 CFR 800
- 4 - Additional Guidance on Cultural Resources
- 5 - Endangered Species Act
- 6 - Section 7 - Interagency Cooperation
- 7 - Additional Guidance on Natural Resources
- 8 - Executive Orders 11514 and 11991
- 9 - Sikes Act (16 U.S.C. 670a et seq.); the Sikes Act Improvement and Amendments
- 10 of 1997 (SAIA)
- 11

### 12 **3.0 SERVICES REQUIRED**

13  
14 The contractor work efforts will include the following for preparation of an Environmental  
15 Assessment (EA) and Finding of No Significant Impact (FONSI), if appropriate, in accordance  
16 with 32 CFR 651. Successful completion of the contract work will require analysis of all  
17 pertinent data and categorizing of impacts by geographic area, i.e., on-site, immediate vicinity,  
18 regional, etc. The Contractor will perform the following specific tasks:

19  
20 **Task 1: Draft Program Management Plan (Deliverable #1).** The contractor's personnel will  
21 become thoroughly familiar with all relevant background information and Government furnished  
22 materials. The contractor will prepare a draft Management Plan with team organization, issues,  
23 tasks, staff assigned, schedule, milestones, deliverables and data needs. The plan will be brief -  
24 no more than 3-4 pages in length. The contractor will submit the plan for Government  
25 review/discussion prior to kick-off meeting and data collection efforts. The contractor will  
26 participate in a kick-off meeting with COARNG staff to initiate the NEPA process and begin  
27 data collection.

28  
29 **Task 2: Final Program Management Plan (Deliverable #2).** The contractor will revise the  
30 Draft Program Management Plan according to comments and/or guidance provided following  
31 COARNG review. The Final Program Management Plan will include a Subcontractor  
32 Implementation Plan. This plan will be a follow-up to the Program Plan and will show the final  
33 team responsibilities for each program element. The Plan will include the finalized program  
34 team list of subcontractors along with their specific program taskings.

35  
36 **Task 3: Data Collection Check List (Deliverable #3).** The contractor will coordinate with  
37 COARNG to determine any data gaps in the description of the action and obtain the necessary  
38 information. The contractor will develop a data collection check sheet to facilitate data  
39 collection and provide the check sheet to HAATS personnel in advance of a site visit.  
40 Contractor will coordinate with HAATS to plan an installation visit for data collection and to  
41 conduct interviews with environmental and operations staff. The contractor will obtain all  
42 information supporting preparation of the EA and will coordinate with local, state and federal  
43 agencies as required for data collection.

44  
45 **Task 4: Draft and Final Description of Proposed Action and Alternatives (DOPAA)**  
46 **(Deliverable #4a and 4b).** The Contractor will work with COARNG to develop a Draft

1 DOPAA. The basis for the Draft DOPAA will be the information provided on existing and  
2 proposed operations at HAATS. The DOPAA will characterize purpose and need, siting  
3 criteria, background information, the proposed action, and alternatives to the proposed action.  
4 To complete this task, the Contractor will participate in a DOPAA Meeting. The focus of the  
5 meeting will be to discuss COARNG comments on the DOPAA. COARNG comments will be  
6 included in the final DOPAA; however, it will not be produced as a stand alone document. The  
7 DOPAA will be incorporated into the Preliminary Draft EA. The Government will provide a  
8 clear description of the proposed action and the purpose and need for the action.  
9

10 **Task 5: Public Participation Plan. (Deliverable #5).** The Contractor will develop a Public  
11 Participation Plan that will outline the public outreach process. At a minimum there will be a  
12 number of sub-tasks associated with this effort. During preparation of the plan additional sub-  
13 tasks may be identified.  
14

- 15 • **Mailing/Distribution List.** The contractor will support establishment and maintenance  
16 of a mailing list of potentially affected parties or interested citizens and groups.  
17 COARNG and HAATS personnel will provide initial identification of possible parties  
18 and provide updates of the list throughout the NEPA process. The contractor will also  
19 contact other appropriate governmental sources during compilation of the list. The  
20 Initial list will be for the purpose of Intergovernmental and Interagency Coordination for  
21 Environmental Planning (IICEP) and notification purposes. A separate section for media  
22 (newspapers, radio, and television) will be included in support of any public affairs  
23 activities undertaken. Distribution lists for the Draft and Final EAs will be derived from  
24 this information and public input. The overall list will be dynamic and should build off  
25 the previous list to note columns for IICEP, notification mailings, DEA and FEA  
26 distribution. Updated versions will be made available to the COARNG for their use.  
27 The list can be provided electronically (via email or 3.25 inch floppy disks) using Excel  
28 or Access. The categories (fields) of recipients should be organized by Congressional,  
29 Federal, state or local agencies, general public, media, etc.  
30
- 31 • **Draft Public Notice.** The Contractor will create a Draft Public Notice for publication  
32 prior to each public meeting for COARNG Review.  
33
- 34 • **Final Public Notice.** The Contractor will incorporate COARNG comments and prepare  
35 a Final Public Notice. The Contractor will be responsible for mailing the public notice  
36 out to interested parties on the mailing list once all of the approvals have been received.  
37 COARNG will be responsible for issuing the notice to proceed with distribution. All  
38 correspondence will be prepared and provided in electronic format to facilitate  
39 COARNG signature on official letterhead.  
40
- 41 • **Scoping.** The intent of scoping meetings is to inform the public and federal, state and  
42 local agencies of the proposed action and how the NEPA process will be implemented.  
43 The exact format for the meeting will be developed in the Public Participation Plan. In  
44 general it will be open-house format with poster stations and places where the public can  
45 provide written comments. Comments cards will be available as well as someone to  
46 transcribe any one's oral comment. The Contractor will coordinate with COARNG to

1 designate the location and time of the three (3) scoping meetings. The Contractor will  
2 make all arrangements for rental of the meeting facility and any associated services (e.g.,  
3 arranging the room, furniture, attendee and comment cards, name tags, if required, and  
4 audio-visual equipment, if needed). Representatives of COARNG will assist in manning  
5 the poster stations.  
6

- 7 • **Draft and Final Scoping Meeting Presentation.** The Contractor will develop draft  
8 scoping material to be used at the scoping meetings. A set of visual display poster boards  
9 with explanatory text will be prepared if necessary to help communicate important  
10 information. Topics to be presented may include (but are not limited to) base and range  
11 maps, existing natural and cultural resources, the NEPA process, and current over flight  
12 information and noise levels. The Contractor will incorporate COARNG comments on  
13 the Draft materials and prepare a Final Scoping Presentation that will be used during the  
14 scoping meetings. The Contractor will prepare the final narrative, slide sets, and one set  
15 of six (6) visual display boards.  
16
- 17 • **Scoping Meetings Summary.** Upon completion of the scoping meetings, the Contractor  
18 will prepare and distribute a summary report on the meeting with copies of the comment  
19 cards within 10 days from the last scoping meeting.  
20
- 21 • **Scoping Comments Summary.** The Contractor will prepare a Scoping Comments  
22 Summary following closure of the scoping period. This document will summarize the  
23 relevant scoping issues and briefly discuss the NEPA implications and public affairs  
24 significance of these comments.  
25

26 **Task 6: Noise Analysis.** The contractor will analyze the environmental impacts of current  
27 flying operations and proposed operations. Noise contours for aircraft operations will be  
28 required for civil and military aircraft activity. Noise contours shall be prepared using the  
29 average day-night outdoor sound level (LDN) methodology and shall be overprinted on USGS  
30 1" = 2,000' maps and reduced for presentation in the environmental documents. Other  
31 methodologies (e.g., ROUTEMAP and BASEOPS) may be used if approval is obtained in  
32 advance from COARNG. Noise contour requirements for the EA will address:  
33

- 34 • Noise exposure estimates will be expressed in terms of day-night average sound levels.
- 35 • Baseline contours will include the most current data on all civil and military aircraft  
36 activity.
- 37 • NOISEMAP and/or BASEOPS methodology will be used, whichever is most appropriate  
38 to the particular application.
- 39 • Single Event Levels (SEL) and conclusions will be used for the nearest noise sensitive  
40 receptors for existing conditions (including presently used aircraft).  
41

42 **Task 7: Cultural Resources Analysis.** The Contractor shall conduct archival and historical  
43 search and a field reconnaissance visit to the proposed project area(s) to observe the potential for  
44 sensitive cultural resources to occur within these areas. The Contractor shall define the area  
45 studied and explain the methodology employed in the preparation of the analysis. The  
46 Contractor shall develop an appropriate preservation strategy for any archaeological



1 manifestations. Following completion of archival and historical work, if the archaeological  
2 investigation indicates that further on-site investigation will be necessary (i.e., a Phase II survey),  
3 the Contractor will describe in detail the purpose of such further work and justify the need for  
4 additional archaeological work, however such work is not included as part of this scope of work.  
5 The Contractor shall also assist in coordinating any additional work with the SHPO if requested.  
6 The final decision regarding the need for and the scope of any additional archaeological work  
7 shall be made by COARNG. Information obtained from this analysis will be incorporated into  
8 Affected Environment and Environmental Consequences sections of the EA.

9  
10 **Task 8: Threatened and Endangered Species Analysis.** The Contractor’s biologist will  
11 conduct a field reconnaissance visit to the proposed project area(s). The purpose is to perform  
12 site walkovers to observe plant and wildlife species that can occur within these areas. The  
13 Contractor will also conduct data collection efforts to evaluate potential environmental impacts  
14 on the Canada Lynx, or any other threatened or endangered species. The analysis will be  
15 prepared to address ESA Section 7(c) requirements for all alternatives studied in detail in the EA.  
16 The Contractor will identify any proposed and/or listed species which is/are likely to be affected  
17 by the proposed project. To complete this analysis, the contractor will:

- 18
- 19 • Conduct an on-site inspection of the area to be affected by the proposal, which may  
20 include a detailed survey of the area to determine if the species is present and whether  
21 suitable habitat exists for either expanding the existing population or potential  
22 reintroduction of the species
- 23 • Review literature and scientific data to determine species distribution, habitat needs, and  
24 other biological requirements
- 25 • Interview experts including those within the USFWS, state conservation departments,  
26 universities, and others who may have data not yet published in scientific literature
- 27 • Review and analyze the effects of the proposal on the species in terms of individuals and  
28 populations, including consideration of cumulative effects of the proposal on the species  
29 and its habitat
- 30 • Analyze alternative actions that may provide conservation measures
- 31 • Incorporate information obtained into Affected Environment and Environmental  
32 Consequences sections o of the EA.
- 33 • Assist COARNG and participate in “informal” consultation with USFWS, as appropriate,  
34 in accordance with Section 7(c) of the ESA. Formal Section 7 Consultation is not  
35 included in this Scope of Work.
- 36

37 **Task 9: Preliminary Draft Environmental Assessment (EA) and Finding of No Significant**  
38 **Impact (FONSI) (Deliverable #6a and 6b).** The contractor will use to the fullest extent  
39 possible accurate and previously developed information, studies and analyses provided by the  
40 Government to develop of this EA. The contractor will perform the analysis and develop a  
41 Preliminary Draft EA based on the DOPAA and using all appropriate information collected in  
42 Tasks 6-8 of this Scope of Work. The level of analysis will be of sufficient detail to permit  
43 determination of the significance of the impacts to the resources of concern. In addition, the  
44 Contractor will be responsible for establishing baseline socioeconomic information for the ROI  
45 and the results of impact analyses conducted for pertinent socioeconomic resource areas.  
46 Socioeconomic resources to be investigated shall include employment, income,

1 population/demographics, infrastructure, and public finance. The study shall also include an  
2 analysis of environmental justice in accordance with Executive Order (EO) 12898 and an  
3 assessment of potential effects upon children pursuant to EO 13045. The contractor is not  
4 required or responsible for any additional analyses of existing data, or for validating conclusions  
5 made in Government furnished documents. However, the contractor will analyze the  
6 information as to its relevance and applicability to the environmental analysis. A preliminary  
7 draft EA will be prepared in accordance with establish guidance and direction. COARNG will  
8 review this document and provide comments for contractor revision. The contractor shall attend  
9 a one-day review meeting to respond to COARNG review comments.

10  
11 **Task 10: Prefinal Draft EA and FONSI (Deliverable #7a and 7b).** The contractor will  
12 prepare the Prefinal Draft EA and FONSI based on Government furnished comments received on  
13 the preliminary documents. All review comments and corrections to the Preliminary Draft EA  
14 deemed appropriate by the COARNG project manager, whether provided at a local meeting or  
15 by letter, will be evaluated and incorporated in the Prefinal Draft EA by the contractor. The  
16 Prefinal Draft EA/FONSI will be submitted in hard copy and CD to COARNG and NGB (5  
17 copies + Electronic) for review. The Contractor shall attend a one-day review meeting to  
18 respond to COARNG review comments.

19  
20 **Task 11: Draft EA and Notice of Availability Advertisement (Deliverable #8).** The  
21 Contractor will incorporate Government Comments on the Preliminary Draft EA into the Draft  
22 EA. The Draft EA will be made available for a 30-day public comment period. The Draft  
23 EA/FONSI will also be submitted in .pdf for Web accessibility and be provided to COARNG for  
24 display on their Web site. The contractor will place an advertisement in up to three local  
25 newspapers in the affected area notifying the public of the 30-day public review of the Draft EA.  
26 The contractor will provide mailings of the document to designated repositories, agencies and  
27 interested public for review according to the mailing list. The Public Information Meeting, if  
28 conducted, will be held during this 30-day public review period.

29  
30 **Task 12. Public Information Meeting.** The Contractor will participate in a Public Information  
31 Meeting to discuss the Draft EA. This meeting will be similar in format as the Scoping Meeting  
32 except the poster stations will contain data developed during the development of the EA. The  
33 Contractor will coordinate with COARNG to designate the location and time of the three (3)  
34 Public Information Meetings. The Contractor will make all arrangements for rental of the  
35 meeting facility and any associated services (e.g., arranging the room, furniture, attendee and  
36 comment cards, name tags ,if required, and audio-visual equipment, if needed). Representatives  
37 of COARNG will assist in manning the poster stations.

38  
39 The Contractor will prepare Draft Public Information Meeting materials (**Deliverable 9**) to be  
40 used during the Public Information Meetings. The purpose of the public meeting is to obtain  
41 public comments on the assessment of potential impacts to the natural, man-made, and  
42 socioeconomic environments presented in the Draft EA. The material presented will consist of  
43 color graphics, slides, and visual display boards (6 boards) showing the NEPA process and maps  
44 of proposed operational locations and associated airspace. Topics for the visual display boards  
45 may include (but are not limited to) base COARNG maps, alternatives analyzed, and sensitive  
46 resources that may be affected. In addition, the Contractor will develop up to four (4) different

1 1-page, 2-sided Fact Sheets for various topics related to the EA (500 copies each). The  
2 Contractor will submit hard and electronic copies of the draft presentation material for review.  
3 Electronic copies of presentation material are to be submitted on compact disk or 3.5-inch floppy  
4 disk unless the Government prefers receipt through e-mail. Contractor will assure that all  
5 submitted electronic copies are retrievable by the recipient. Upon receipt of COARNG  
6 comments, the Contractor will incorporate COARNG comments and prepare Final Public  
7 Information Meeting Materials (**Deliverable 10**) presentation material that will be used during  
8 the public meetings. One set of the final visual display boards will be submitted.

9  
10 Upon completion of the meetings, the Contractor will prepare and distribute a Public Information  
11 Meetings Summary (**Deliverable 11**) that includes a summary of all comments received and  
12 copies of the comment cards within 10 days from the last meeting.

13  
14 The Contractor will conduct a two-day long Public Involvement Training Session in preparation  
15 for the public meetings associated with this EA. One Training Session will be held prior to the  
16 Scoping Meetings and one Training Session will be held prior to the Public Information  
17 Meetings. This training will include public involvement training and familiarization with the  
18 project issues.

19  
20 **Task 13: Response to Comments (Deliverable #12).** The contractor will review and provide a  
21 contractor response to all public comments on the Draft EA received during the 30-day public  
22 comment period. A consolidated comments package will be submitted following closure of the  
23 30-day public comment period. The Contractor will be responsible for organizing, indexing,  
24 reproducing, and distributing copies of comments received from a total of up to 100 commentors.  
25 The Contractor shall attend a 2-day Review meeting with COARNG to discuss all comments  
26 received during the Public Comment Period and to determine a strategy for implementing them  
27 into the Final EA.

28  
29 **Task 14: Prefinal Final EA and Prefinal FONSI (Deliverable #13a and 13b).** The contractor  
30 will revise the Draft EA according to comments generated during the 30-day comment period  
31 and direction provided by COARNG. The contractor will print and submit copies of the Final  
32 EA/ draft FONSI for COARNG review. The Government will review these documents and  
33 provide comments. If further revisions are required, the Contractor shall attend a Prefinal Final  
34 EA Review Meeting to receive and discuss comments on the Prefinal Final EA. The contractor  
35 will provide the revised Final FONSI to COARNG to verify that all comments and issues are  
36 appropriately addressed.

37  
38 **Task 15: Final EA and Final FONSI (Deliverable #14a and 14b).** The contractor will  
39 incorporate COARNG comments on the Prefinal Final EA and FONSI and prepare the Final EA  
40 and Final FONSI. It is anticipated that the Final EA will be a slightly revised version of the  
41 Prefinal Final EA. Copies of the Final EA/FONSI will be provided to NGB for staffing and  
42 signature. Remainder of the hard copy documents will be provided with the signed FONSI  
43 bound into the document for distribution to the interested agencies and public by the contractor.  
44 The Final EA/FONSI will be submitted in hard copy and CD for public and agency distribution.  
45 The Final EA/FONSI will also be submitted in .pdf for Web accessibility and be provided to  
46 HAATS for display on their Web site.

1  
2 **Task 16: Notice of Availability Advertisement (Deliverable #15).** Upon completion of the  
3 EA, the contractor will place notice of the approved FONSI in up to three newspapers servicing  
4 the affected area.

5  
6 **Task 17: Project Record (Deliverable #16).** The contractor will prepare a searchable  
7 electronic project record on CD-ROM at the culmination of the project in a .pdf format as  
8 directed by COARNG. The record will archive all documentation, including correspondence,  
9 personal contacts, studies, surveys, and cited references used in the preparation of the HAATS  
10 EA. The contractor will be responsible for only that information/correspondence collected by  
11 the contractor, provided by COARNG or HAATS. The CD and an itemized summary will be  
12 provided in hard copy and electronic formats.

13  
14 **Task 18: Progress Reports (Deliverable #17):** The contractor will prepare progress reports on  
15 the status of work every month. Progress reports may be submitted electronically and will  
16 briefly (1-2 pages) describe the following:

- 17
- 18 • Work performed and a quantitative statement of overall work progress, including
- 19 percentage of work accomplished on each task.
- 20 • Description of current problems that may impede performance and suggested corrective
- 21 actions.
- 22 • Discussion of work to be performed during the next month time frame.
- 23

24 **Task 19. Project Website.** The Contractor will implement a plan that summarizes the proposed  
25 approach for program management using readily available web-based tools. The plan shall  
26 address issues such as: creation of a web site allowing password-protected access by COARNG  
27 team members to updated project management files (e.g., progress reports, schedule, meeting  
28 minutes, etc.); strategy for COARNG to create a public web site for the EA; and strategy for  
29 COARNG to post the Draft EA, Final EA, and related materials on this web site. The Contractor  
30 shall provide services to implement the strategies contained in the Final Plan for Web-Based  
31 Project Management.

32  
33 **Task 20: GIS Integration and Training: The Contractor will provide the following GIS**  
34 **support:**

- 35
- 36 • **Catalogue Data.** The contractor will catalogue all data gathered in support of the EA,  
37 whether previously available, specifically developed, or acquired (USFWS, BLM, other  
38 governmental agencies). The Contractor will transfer all EA data collected to GIS layer  
39 formats using ARCINFO/ARCVIEW 8.3. Data may include, but is not limited to:
  - 40 a. Base Mapping
  - 41 b. Flight Tracks
  - 42 c. MOA/ATCAA/Special Use Airspace
  - 43 d. Airports
  - 44 e. Environmental Data
  - 45 f. Airports
  - 46 g. Socioeconomic

- 1
- 2 • **Analyze Data.** The Contractor will determine what analysis is needed for the EA with
- 3 project manager. These may include, but are not limited to:
- 4 a. Overlay analysis
- 5 b. Area calculations
- 6 c. Image analysis
- 7 d. Other pertinent GIS processes
- 8
- 9 • **Develop Mapping Templates.** The Contractor will establish data presentation templates
- 10 for approval by COARNG. These may include:
- 11 a. Determine output of data (e.g., size of mapping (11X17, 8.5X11, E-Size)
- 12 b. Develop tables for tabular data (area calculations)
- 13 c. Electronic (PDF) or hard copy
- 14
- 15 • **Data Formats.** The Contractor will prepare data to be delivered to COARNG. Data
- 16 formats may include:
- 17 a. Metadata
- 18 b. SDS (Spatial Data Standard) Compliance
- 19 c. File Type (Shape file, Coverage, e00)
- 20 d. CD-ROM or FTP delivery
- 21
- 22 • **GIS Training.** Following electronic transfer of the GIS data layers, the Contractor will
- 23 conduct a GIS Training Session. The COARNG project manager will determine the
- 24 location and attendance of the training session. The purpose will be to provide
- 25 appropriate guidance and training on the most efficient planning uses of these data. No
- 26 more than 10 personnel will attend the training.

#### 27

#### 28 4.0 MEETINGS

29

30 The Contractor shall attend the following meetings during the course of this project. All

31 meetings will occur at COARNG:

- 32
- 33 • Kick-off meeting
- 34 • DOPAA meeting to review comments on Draft DOPAA
- 35 • Public Participation Training prior to Scoping Meetings to provide training to COARNG,
- 36 NGB, and Contractor participants in the Scoping Meetings.
- 37 • Scoping Meetings (3)
- 38 • Preliminary Draft EA Review Meeting to receive and discuss COARNG comments on
- 39 Preliminary Draft EA.
- 40 • Prefinal Draft EA Review Meeting to receive and discuss COARNG/NGB comments on
- 41 Prefinal Draft EA.
- 42 • Public Participation Training prior to Public Information Meetings to provide training to
- 43 COARNG, NGB, and Contractor participants in the Public Information Meetings.
- 44 • Public Information Meetings (3)

- 1 • Public Comment Review Meeting to discuss all Public Comments received during public  
2 comment period and to discuss strategy for incorporating comments into the Prefinal  
3 Final EA.
- 4 • Prefinal Final EA Review Meeting to receive and discuss COARNG/NGB comments on  
5 the Prefinal EA before preparing the Final EA for public distribution.

## 6 **5.0 GOVERNMENT FURNISHED MATERIALS**

7

8 The following Government furnished materials will be provided to the contractor. The  
9 contractor will be familiar with the following items in completing this SOW:

10

- 11 • COARNG EA for stationing of CH-47 aircraft at Buckley AFB
- 12 • Description of Proposed Action
- 13 • Description of Alternatives
- 14 • HAATS operational data
- 15 • Flight routes and Landing Zone data
- 16 • Names and contact information for cooperating agencies
- 17 • Other information, as deemed appropriate

18

## 19 **6.0 SPECIAL CONSIDERATIONS**

20

21 **6.1** All original materials, visual aids, software developed or purchased (including hardware)  
22 for this endeavor, and text developed in the performance of the tasks herein will be the property  
23 of the Government, and will not be used, distributed, or published by the contractor or any of his  
24 employees, direct or indirect, without specific permission of the COARNG.

25

26 **6.2** The contractor or persons employed by or in any way responsible to the contractor in  
27 respect to accomplishment of this SOW will make themselves available to respond to technical  
28 issues pertaining to contractor supplied portions of the environmental documentation and in  
29 response to Freedom of Information Act (FOIA) Requests. Technical issues are perceived to be  
30 any operational or structural difficulty encountered in explaining results and the methodology.

31

32 **6.3** The contractor will, without additional expense to the Government, be responsible for  
33 obtaining any necessary licenses and permits, and for complying with any Federal, State, and  
34 local laws, codes, and regulations applicable to the performance of contractor investigations.

35

36 **6.4** Reproduction of documents will conform as follows:

37

- 38 • **Size:** Final trim size of deliverables will be 8.5 X 11 inches. Image size of standard text  
39 will not exceed 7 X 10 inches.
- 40 • **Foldouts:** Wherever appropriate, use of oversized illustrations, charts, maps,  
41 photographs or art work, may be used; however, 8 ½ X 11 inch is preferred. Foldouts  
42 will not exceed 11 X 17 inches with maximum image size of 9.75 X 15.5 inches.
- 43 • **Color:** Color will be used cases where color differentiation in graphics (illustrations,  
44 maps, diagrams, charts) is deemed appropriate for explanation and clarification.

- 1 • **Printing:** The Preliminary Draft EA should be double-sided, 1½ spaces and line  
2 numbered. Subsequent version reports should be double-sided single-spaced with the  
3 exception of the Executive Summary. Each text page should have 1.5-inch mirror margin  
4 to allow for binding and a 1-inch margin on all other sides.
- 5 • **Binding:** All reports, except the unbound "camera ready" copies, will be comb or spiral  
6 bound, with the exception of the Program Management Plan which will be stapled. Other  
7 use of perfect-binding, comb-binding or three-ring binding should be approved by  
8 COARNG prior to use.
- 9 • **Electronic Media:** All deliverables will be stored on CD or other agreed-upon media  
10 compatible with an IBM personal computer. The word processing software used to  
11 generate the text should be Microsoft Word, version 6.0 or higher. MS Windows 98 must  
12 be used, however, file names will conform to the 8.doc character DOS convention. Maps  
13 generated in support of the document should be compatible with ARCInfo/ARCView 8.3.  
14 Graphics must be in a form compatible with an IBM personal computer and imported into  
15 the Word documents. Schedules will be produced in MS Project. The DEA and FEA  
16 will be converted to .pdf files and delivered "web ready" for use according to current  
17 COARNG policy/direction. CDs should contain Adobe® Acrobat® 4.0 reader and a  
18 "README" file that can be opened on both PC and Mac computers.
- 19 • **Quality:** Report copies should be clean and of sufficient quality to be easily read on  
20 subsequent reproductions. All narrative portions will be presented in clear, standard  
21 grammar with correct spellings and punctuation.  
22

## 23 7.0 DELIVERABLES AND SCHEDULE

24  
25 The following are considered deliverable items required for each task. The contractor will be  
26 required to provide the following number of copies identified below to COARNG and COE.  
27

28 The schedule will represent the relative time frame for completion of the NEPA process, yet may  
29 require adjustment. It is anticipated that from Notice to Proceed to publication of the Final EA  
30 will require approximately 12 months. A detailed schedule will be developed as part of the  
31 program management plan in concert with COARNG; however general schedule milestones,  
32 subject to refinement, are included.

1  
2

### Deliverable Routing and Schedule

| Deliverable | Document  | Copies to<br>COARNG<br>(X paper/Y<br>electronic) | Due Date<br>(days)            |
|-------------|---|--|-------------------------------|
|             | Notice to Proceed   |  | 0                             |
| 1           | Draft Program Management Plan                                 | 4/1  | 15                            |
| 2           | Final Program Management Plan                                 | 4/1  | 30                            |
| 3           | Data Collection Check List                                    | 4/1  | 30                            |
| 4a          | Draft Description of Proposed Action and Alternatives (DOPPA) | 4/1  | 30                            |
| 4b          | Final Description of Proposed Action and Alternatives (DOPPA) | 4/1  | 45                            |
| 5           | Public Participation Plan                                     | 4/1  | 45                            |
| 6a          | Preliminary Draft Environmental Assessment (EA)               | 15/1   | 120                           |
| 6b          | Preliminary Draft Finding of No Significant Impact (FONSI)    | 15/1   | 120                           |
| 7a          | Prefinal Draft EA   | 15/1   | 180                           |
| 7b          | Prefinal Draft FONSI  | 15/1   | 180                           |
| 8           | Draft EA and Notice of Availability Advertisement             | 15/1   | 240                           |
| 9           | Draft Public Information Meeting Materials                    | 4/1  |                               |
| 10          | Final Public Information Meeting Materials                    | 4/1  |                               |
| 11          | Public Information Meetings Summary                           | 4/1  |                               |
| 12          | Response to Comments  | 4/1  | 300                           |
| 13a         | Prefinal Final EA   | 15/1   | 330                           |
| 13b         | Prefinal Final FONSI  | 15/1   | 330                           |
| 14          | Final EA and FONSI  | 15/1   | 375                           |
| 15          | Notice of Availability Advertisement                          | 4/1  | 375                           |
| 16          | Project Record  | 4/1  | 390                           |
| 17          | Progress Reports  | 0/1  | 1 <sup>st</sup> of each month |

3



1 **8.0 PAYMENT SCHEDULE:**

2 The Contractor will be incrementally paid as deliverables are submitted. Authorized percentage  
3 payments will be as shown in the table below, based on deliverables shown in the table above.  
4 The Contractor will submit billing based on the percentages denoted below:

5

| Deliverables        | Increment Payment (Percent of Total) per Deliverable Completed | Percent Total Accumulated Payment after Deliverable is Submitted |
|---------------------|--|--|
| Deliverable 4a & b  | 20 %   | 20%  |
| Deliverable 6a & b  | 30 %   | 50%  |
| Deliverable 8       | 20%  | 70%  |
| Deliverable 13a & b | 20%  | 90%  |
| Deliverable 14      | 10%  | 100%   |

6  
7

***APPENDIX V***

***Department of Justice Guidance on  
Compiling Administrative Records***

Dated: January 1999

## Guidance to Federal Agencies on Compiling The Administrative Record

### Introduction

Under the Administrative Procedure Act (APA), a court reviews an agency's action to determine if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2) (A). In making this determination, a court evaluates the agency's whole administrative record. The administrative record is the paper trail that documents the agency's decision-making process and the basis for the agency's decision.

The APA governs judicial review of a challenged agency decision. However, several statutes specify what documents and materials constitute an administrative record, e.g., 42 U.S.C. § 7607(d)(7)(A) (provision states what materials will constitute the record for the purpose of judicial review of certain enumerated types of rulemaking issued under the Clean Air Act); 42 U.S.C. § 9613(j) and (k) (CERCLA). At the outset, be sure to determine whether a statute other than the APA applies in the case. In addition, regulations may govern how to assemble a record. See, e.g., 40 C.F.R. 300.800 -300.825 (CERCLA); 40 C.F.R. Part 24 (RCRA Corrective Action). See also FRAP Rules 16 and 17 (record on review or enforcement and filing of the record).

The purpose of this memorandum is to provide guidance to agencies in compiling the administrative record of agency decisions other than a formal rulemaking or an administrative adjudication. Optimally, an agency will compile the administrative record as documents and materials are generated or received in the course of the agency decision-making process. The record may be a contemporaneous record of the action. However, the administrative record may be compiled by the agency after litigation has been initiated. An agency employee should be designated to be responsible for compiling the administrative record. That individual will be responsible for certifying the administrative record to the court. S/he may keep a record of where s/he searched for the documents and materials and who was consulted in the process of compiling the administrative record.

It is critical for the agency to take great care in compiling a complete administrative record. If the agency fails to compile the whole administrative record, it may significantly impact our ability to defend and the court's ability to review a challenged agency decision.

#### 1. General Principles for Compiling the Administrative Record

The administrative record consists of all documents and materials directly or indirectly considered by the agency decision maker in making the challenged decision. It is not limited to documents and materials relevant only to the merits of the agency's decision. It includes

documents and materials relevant to the process of making the agency's decision.

- Include documents and materials whether they support or do not support the final agency decision.
- Include documents and materials which were before or available to the decision-making office at the time the decision was made.
- Include documents and materials that were considered by or relied upon by the agency.
- Include documents and materials that were before the agency at the time of the challenged decision, even if they were not specifically considered by the final agency decision-maker.
- Include privileged and non-privileged documents and materials. (See section 4).

## 2. ~~Where To Find The Documents and Materials That Comprise The~~ Administrative Record

The agency should identify an agency employee to be responsible for compiling the administrative record. The identified agency person should be responsible, careful, and prepared to provide an affidavit. S/he should keep a record of where s/he searched for documents and who was consulted in the process. S/he should conduct a thorough search for the purpose of compiling the whole record, including the following:

- Contact all agency people, including program personnel and attorneys, involved in the final agency action and ask them to search their files and agency files for documents and materials related to the final agency action. Include agency people in field offices.
- Contact agency units other than program personnel, such as congressional and correspondence components.
- Where personnel involved in the final agency action are no longer employed by the agency, search the archives for documents and materials related to the final agency action. A former employee may be contacted for guidance as to where to search.
- Determine whether there are agency files relating to the final agency action. If there are such files, search those files.
- If more than one agency was involved in the decision-making process, the lead agency should contact the other agencies to be sure the record

contains all the documents and materials that were considered or relied on by the lead agency.

- Search a public docket room to determine whether there are relevant documents or materials.

3. What Documents and Materials To Include In The Administrative Record

a) Types of materials:

- Documents that are to be included in the administrative record should not be limited to paper but should include other means of communication or ways of storing or presenting information, including e-mail, computer tapes and discs, microfilm and microfiche. See 36 C.F.R. Chapter XII, subchapter B (electronic records). The term should include data files, graphs, charts and handwritten notes. Do not include personal notes, meaning an individual's notes taken at a meeting or journals maintained by an individual, unless they are included in an agency file. An agency file is determined by agency control, possession and maintenance.

b) Kinds of Information:

- Include all documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision-maker, even though the final decision-maker did not actually review or know about the documents and materials.
- Include policies, guidelines, directives and manuals.
- Include articles and books. Be sensitive to copyright laws governing duplication.
- Include factual information or data.
- Include communications the agency received from other agencies and from the public, and any responses to those communications. Be aware that documents concerning meetings between an agency and OMB should be included but may qualify, either partially or fully, for the deliberative process privilege.
- Include documents and materials that contain information that support or oppose the challenged agency decision.

- Exclude documents and materials that were not in existence at the time of the agency decision.
- As a general rule, do not include internal "working" drafts of documents that were or were not superseded by a more complete, edited version of the same document. Generally, include all draft documents that were circulated for comment either outside the agency or outside the author's immediate office, if changes in these documents reflect significant input into the decision-making process. Drafts, excluding "working" drafts, should be flagged for advice from the DOJ attorney or the Assistant United States Attorney (AUSA) on whether: 1) the draft was not an internal "working" draft; and 2) the draft reflects significant input into the decision-making process.
- Include technical information, sampling results, survey information, engineering reports or studies.
- ~~Include decision documents.~~
- Include minutes of meetings or transcripts thereof.
- Include memorializations of telephone conversations and meetings, such as a memorandum or handwritten notes, unless they are personal notes.

#### 4. How To Handle Privileged Documents and Materials

Generally, the administrative record includes privileged documents and materials and documents and materials that contain protected information. However, once the record is compiled privileged or protected documents and materials are redacted or removed from the record.

The agency should consult with the agency counsel and the DOJ attorney or the AUSA as to the type and the extent of the privilege(s) asserted. Be sensitive to the relevant privileges and prohibitions against disclosure, including, but not limited to, attorney-client, attorney work product, Privacy Act, deliberative or mental processes, executive, and confidential business information.

If documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld.

#### 5. How to Organize the Administrative Record

- Organize the documents and materials in a logical and accessible way.
- Organize the documents and materials in chronological order and/or by topic.
- Documents and materials that do not fit into a chronological order may be separated by category, e.g., internal policies, guidelines or manuals.
- After a DOJ attorney or an AUSA has had the opportunity to review the administrative record for completeness and organization, it may be useful to bates stamp or to number each item. A DOJ attorney or an AUSA may review the documents and materials the agency decided were not contained in the administrative record.
- Prepare an index to the administrative record.
- Index should identify each document and material by the bates stamp number or document number and a brief description of the document or material, e.g., "memorandum dated June 5, 1997 from Mary Smith to EPA Administrator Jones regarding June 6, 1997 meeting agenda." If a document or material is being withheld based on a privilege or prohibition, state the privilege or prohibition.
- The agency must certify the administrative record.<sup>2</sup> Certificate language should reflect how the agency person who was responsible for compiling the record has personal knowledge of the assembly of the administrative record. Attached are sample certificates. Neither a DOJ attorney nor an AUSA should certify the record to avoid having them be a possible witness in the case.
- The DOJ attorney or the AUSA must consult the local rules of the court in which the matter is pending to determine how to file the administrative record with the court. If the local rules are silent on this issue, the DOJ attorney or the AUSA can address the issue with the parties and the court. For example, it may be appropriate to file only the index with the court and to provide the parties with copies of the index and the opportunity to review the record or to file the parts of the record that the parties will rely on as grounds for their motions for

---

<sup>2</sup>If the agency fails to certify the record, the government may not be able to file a motion for summary judgment.

summary judgment. The U.S. Attorney's Office in the jurisdiction in which the matter is pending should always be consulted.

6. **Important For Court To Have The Whole Administrative Record**

- A court reviews the agency action based on the whole administrative record before the agency at the time the decision was made.
- The whole administrative record allows the court to determine whether the agency's decision complied with the appropriate APA standard of review.
- All agency findings and conclusion and the basis must appear in the record.
- The administrative record is the agency's evidence that its decision and its decision-making comply with relevant statutory and regulatory requirements.
- A court may remand the matter where the agency's reasoning for its decision is not contained in the administrative record.

7. **Consequences of Incomplete Administrative Record**

- If record is incomplete, government may be permitted to complete the record but, by doing so, you also may raise questions about the completeness of the entire record.
- If the court decides the record is not complete, it should remand the matter to the agency. However, it may allow extra-record discovery, including depositions of agency personnel, and may allow court testimony of agency personnel.
- Generally, although it may vary from circuit to circuit, courts will allow discovery when a party has proffered sufficient evidence suggesting:
  - \* bad faith;
  - \* improprieties may have influenced the decision-maker; or
  - \* agency relied on substantial materials not included in the record.

A party must make a strong showing that one of these exceptions applies before a court will allow extra-record inquiry.



### 8. Supplementation of the record

- When the administrative record fails to explain the agency's action, effectively frustrating judicial review, the court may allow the agency to supplement the record with affidavits or testimony.
- Be aware once the government supplements with affidavits or testimony, opposing party might depose your witnesses and/or submit additional affidavits or testimony.
- Be aware if agency counsel becomes a potential witness, it may be appropriate to screen the agency counsel from participation in the litigation. ABA Model Rule of Professional Responsibility 3.7.

### Conclusion

When an agency must defend a final agency action before a court, it should take great care in preparing the administrative record for that decision. It is worth the effort and may avoid unnecessary and/or unfortunate litigation issues later on.

This memorandum provides only internal Department of Justice guidance. It does not create any rights, substantive or procedural, which are enforceable at law by any party. No limitations are hereby placed on otherwise lawful prerogatives of the Department of Justice or any other federal agency.

### Attachments

***APPENDIX W***

***Military Construction Projects Guidance***



DEPARTMENTS OF THE ARMY AND THE AIR FORCE  
NATIONAL GUARD BUREAU  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON, VA 22204-1382

NGB-ARI

21 January 2005

MEMORANDUM FOR THE ADJUTANTS GENERAL OF ALL STATES, PUERTO RICO, THE US VIRGIN ISLANDS, GUAM, AND THE COMMANDING GENERAL DISTRICT OF COLUMBIA

SUBJECT: (All States Log Number P04-0020) Deadlines for Military Construction (MILCON) Projects in Fiscal Years 2006, 2007, and 2008

1. References:

- a. NGR 415-5, Army National Guard Military Construction Program Development and Execution, 18 July 2003.
- b. NG Pam 415-5, Army National Guard Military Construction Program Execution, 31 July 2003.
- c. DoDD 4165.6, Real Property Acquisition, Management, and Disposal, 1 September 1987.
- d. DoDI 1225.8, Programs and Procedures for Reserve Component Facilities and Unit Stationing, 6 September 2001.
- e. DoD Financial Management Regulation, Section 060201, Military Construction Appropriations, June 2004.

2. The purpose of this memorandum is to establish certain essential milestones for ARNG MILCON projects. The MILCON Program for the ARNG continues to increase each year. It has increased from a \$101,000,000 budget in FY03 to an \$823,000,000 budget in FY09, and it is estimated that the programs for FY10 and FY11 will be near \$900,000,000 each.

3. In order to maintain this level of funding we must improve program performance. The standard for construction execution of MILCON projects is to execute a contract and obligate funds in the year of appropriation.

4. The timelines for project development below contain a number of deadlines that, when met, will assist in bringing the execution of the ARNG MILCON program up to standard. The appropriate documentation for each project is expected to meet these

**NGB-ARI**

**SUBJECT: (All States Log Number P04-0020 Deadlines for Military Construction (MILCON) Projects in Fiscal Years 2006, 2007, and 2008**

deadlines. Projects that do not meet these deadlines will be moved to a later year to allow states to position themselves to meet the standard.


5. For projects in FY 06 the deadlines are:
  - a. You were to have submitted your concept design NLT 1 January 2005.
  - b. You must submit your final design NLT 1 July 2005.
  - c. You must submit bid final design NLT 1 October 2005.
6. For projects in FY 07 the deadlines are:
  - a. You must submit your preliminary design and certificate of title NLT 1 June 2005.
  - b. You must submit your final design NLT 1 July 2006.
  - c. You must submit your bid final design NLT 1 October 2006.
7. For projects in FY 08 the deadlines are:
  - a. You must submit updated DD Forms 1390/1391 to NGB-ARI-RM NLT 1 March 2005.
  - b. You must submit your preliminary design and certificate of title NLT 1 June 2006.
  - c. You must submit your final design NLT 1 July 2007.
  - d. You must submit your bid final design NLT 1 October 2007.
8. For all other projects in the Future Years Defense Program (FYDP):
  - a. All DD Forms 1390/91 must be updated annually and submitted to NGB-ARI. This will help ensure that the project estimate remains accurate and that the project can be executed in the year programmed.
  - b. You must submit a certificate of title with your preliminary design.
  - c. You must have approved National Environmental Policy Act (NEPA) documents to proceed beyond preliminary design.

NGB-ARI

SUBJECT: (All States Log Number P04-0020) Deadlines for Military Construction (MILCON) Projects in Fiscal Years 2006, 2007, and 2008

9. This memorandum will expire one year from date of publication, unless sooner rescinded or superseded.

10. Point of contact is Colonel Edward Sweeney, Chief, Installations Division, at DSN 327-7900 or 703-607-7900.



H STEVEN BLUM

Lieutenant General, US Army  
Chief, National Guard Bureau

CF:

Each State CFMO

Each State CofS

Each State USPFO

***APPENDIX X***  
***NGB Cartographic Standards***



**DEPARTMENTS OF THE ARMY AND THE AIR FORCE**  
**NATIONAL GUARD BUREAU**  
**111 SOUTH GEORGE MASON DRIVE**  
**ARLINGTON, VA 22204-1382**

NGB-ARE

**MEMORANDUM FOR STATE ENVIRONMENTAL PROGRAM MANAGERS AND  
STATE GEOGRAPHIC INFORMATION SYSTEMS (GIS) PROGRAM MANAGERS**

**SUBJECT: Cartographic Standard Requirements for GIS Products**

1. The objective of the enclosed standard is to set minimum cartographic requirements for map products produced using GIS technology. This standard applies to all GIS users and will be implemented at all Environmental Program Offices, for the purpose of this memorandum a GIS user is anyone who produces map products using GIS technology. Benefits of this standard include:

- a. Consistent map products
- b. Common look and feel
- c. Reduced data misinterpretation
- d. Ability for maps to "Stand Alone"
- e. Enhanced Army National Guard credibility

2. Geographic Information System users create a variety of products that fall within five general categories as described in enclosures: 1. Draft Products for GIS Users; 2. Draft Products for Customer Review; 3. Products for Internal Use Only; 4. Products for Public Display; and 5. Products for Official Documents and PowerPoint Slideshows. Each product category requires different map elements which are dependent upon the intended use or purpose of the map product. The number and complexity of map elements increase depending on its intended use. Draft products created by GIS users for quality control purposes require fewer map elements than products for public display and distribution.

3. Enclosures 1-5 list the cartographic standard requirements for GIS products for the above mentioned categories. The second page of Enclosure 5 includes a quick reference table, additionally Enclosure 6 includes a Cartographic Example. Compliance with this standard will move National Guard Bureau (NGB) one step closer to developing GIS products that meet existing data and records administration requirements. This standard will also improve the development of environmental documents such as Integrated Natural Resource Program Management Plans, National Environmental Policy Act documents, Integrated Cultural Resource Management Plans, Environmental Assessments, Environmental Impact Statements, and Integrated Pest Management Plans.

4. If you have any questions, please contact Mr. David Cray, NGB-ARE Geographic Information Systems Program Manager, [david.cray@ngb.army.mil](mailto:david.cray@ngb.army.mil), 703-607-7996.

5 Encls

1. Category 1
2. Category 2
3. Category 3
4. Category 4
5. Category 5
6. Category 6

CF:

NGB-ARI

NGB-AIS

NGB-ART



## CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

### Category 1 - Draft Products for Use by GIS Users

Draft or Quality Control (QC) products are working documents created by GIS users to review for errors and inconsistencies in their work. Products of this type are used to determine accuracy, quality, and the completeness of a work in progress, and are not intended for final use or public display, distribution or inclusion in official documents.

- A. Cartographic Design Requirements: Each map must contain a title, author, date, map document location, map document name, and disclaimer, as well as any additional information necessary to check the accuracy, quality, or completeness of the product.
- B. Data Administration Requirements: Draft products developed for QC purposes will be reviewed to determine their accuracy, quality, and completeness.
- C. Records Administration Requirements:

Documentation: FGDC compliant metadata is required for all data.

Security: Products generated for QC purposes, or that contain sensitive or proprietary information, are not to be displayed in prominent locations or left out on work spaces except while being used during the QC process.

Labeling: All Category 1 products sample disclaimer language:

**"DRAFT The information on this map is for planning purposes only. This information is not adequate for legal boundary definition, regulatory interpretation, or parcel-level analysis. The exact boundaries depicted on this map are based on the best available information existing at this time. This map is a "living document", in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database."**

## CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

### Category 2, Draft Products for Customer Review

Draft products for customer review are working documents created by GIS users to provide their customers an opportunity to review progress made, and check for errors and inconsistencies. Products of this type are used by the customer to ensure that their needs and expectations are met, and are not intended for public review or distribution at this time.

- A. Cartographic Design Requirements: Each map must contain a title, author, date, map document location, map document name, and disclaimer, as well as any additional information necessary to check the accuracy, completeness, or quality of the product, and satisfy the customer's needs.
- B. Data Administration Requirements: Products developed for QC purposes will be reviewed to determine the accuracy, quality, and completeness.
- C. Records Administration Requirements:

Documentation: FGDC compliant metadata is required for all data.

Security: Products generated for QC purposes, or that contain sensitive or proprietary information, are not to be displayed in prominent locations or left out on work spaces except while being used during the QC process.

Labeling: All Category 2 products sample disclaimer language:

**"DRAFT The information on this map is for planning purposes only. This information is not adequate for legal boundary definition, regulatory interpretation, or parcel-level analysis. The exact boundaries depicted on this map are based on the best available information existing at this time. This map is a "living document", in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database. No warranty is made by the State/Territory/National Guard Bureau as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data."**

## CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

### Category 3, Products for Internal Use Only

Internal use only products are created by GIS users for use by National Guard employees. While these products are not intended for use outside of the National Guard, it is possible that they will be used for purposes other than that for which they were intended. Adhering to this standard will help to guard against the misuse or misinterpretation of GIS products created for internal use only.

- A. Cartographic Design Requirements: Each map must contain the following information: title, author, date, map document location, map document name, disclaimer, scale, legend, north arrow, and geographic reference (projection, coordinate information UTM Zone, datum). Other elements that may be necessary to ensure the quality of the final product, and satisfy the customer's needs, include: a neat line; standard agency logo; office identification; locator map; data source acknowledgments; and purpose.
- B. Data Administration Requirements: Products developed for QC purposes will be reviewed to determine the accuracy, quality, and completeness.
- C. Records Administration Requirements:

Documentation: FGDC compliant metadata is required for all data.

Security: Products generated for In-House use, or that contain sensitive or proprietary information, are not to be displayed in prominent locations or left out on work spaces except while being used in connection with official business.

Labeling: All Category 3 products sample disclaimer language:

**"DRAFT The information on this map is for internal Guard planning purposes only. This map is a "living document", in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database."**

## CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

### Category 4, Products for Public Display and Distribution

Products for public display, distribution, or inclusion into official documents are created by GIS users for uses external to the National Guard and may be published, used within a public document, at public or interagency meetings, professional conferences, etc. This category must be used for all products designed for public review or dissemination, and copies must be retained for official records. An example of the map template is the last page of this enclosure.

- A. Cartographic Design Requirements: Each map must contain the following information: title, author, date, map document location, map document name, disclaimer, scale, legend, north arrow, neat line, standard agency logo, office identification, and geographic reference. Other elements that may be necessary to ensure the quality of the final product, and satisfy the map requirements, include: a locator map; data source acknowledgments; and descriptive text.
- B. Data Administration Requirements: Map products that contain sensitive information i.e., Ammo Storage locations, power grids, critical infrastructure, etc. will obtain Installation Commanders Signatures for release.
- C. Records Administration Requirements

Documentation: FGDC compliant metadata is required for all data released for public review or distribution. Metadata documentation will be collected and made available for all data displayed on map products released for public review.

Security: Category 4 documents will be made available to the public and will be releasable under the Freedom of Information Act (FOIA).

Labeling: All Category 4 products sample disclaimer language:

**“No warranty is made by the State/Territory/National Guard Bureau as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. This map is a “living document”, in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database.”**

## CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

### Category 5, Products for Official Documents and PowerPoint Slideshows

Slide shows are becoming the primary way GIS products are distributed to the public, and within the Department of Defense community. These GIS slide shows are often included in conference proceedings or handed out via cd or other digital means. The cartographic requirements for slides are slightly different from those of a hardcopy map. The space allowed for electronic display and viewing are often times more limited than the hardcopy version. The additional map information that does not fit on to the slide will be inserted into the notes for that slide, at the author's discretion. This category must be used for all products used for public review or dissemination, and copies must be retained for official records.

- A. Cartographic Design Requirements: Each slide that contains a map must contain the following information either in the notes for the slide or on the slide for display: title, author, date, map document location, map document name, disclaimer, scale, legend, north arrow, neat line, standard agency logo, office identification, and geographic reference. Other elements that may be necessary to ensure the quality of the final product, and satisfy the map requirements, include: a locator map; data source acknowledgments; and descriptive text. See Cartographic Example Encl 6.
- B. Data Administration Requirements: Slide map products that contain sensitive information i.e., Ammo Storage locations, power grids, critical infrastructure, etc. will obtain Installation Commanders Signatures for release.
- C. Records Administration Requirements

Documentation: FGDC compliant metadata is required for all data released for public review or distribution. Metadata documentation will be collected and made available for all data displayed on map products released for public review.

Security: Category 5 documents will be made available to the public and will be releasable under the Freedom of Information Act (FOIA).

Labeling: All Category 5 products sample disclaimer language:

**“No warranty is made by the State/Territory/National Guard Bureau as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. This map is a “living document”, in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database.”**

## Mapping Categories and Standard Map Elements Reference Table

- Category 1 Draft Products for Use by GIS Users
- Category 2 Draft Products for Customer Review
- Category 3 Products for Internal Use Only
- Category 4 Products for Public Display and Distribution
- Category 5 Products for PowerPoint Slide Shows and Distribution

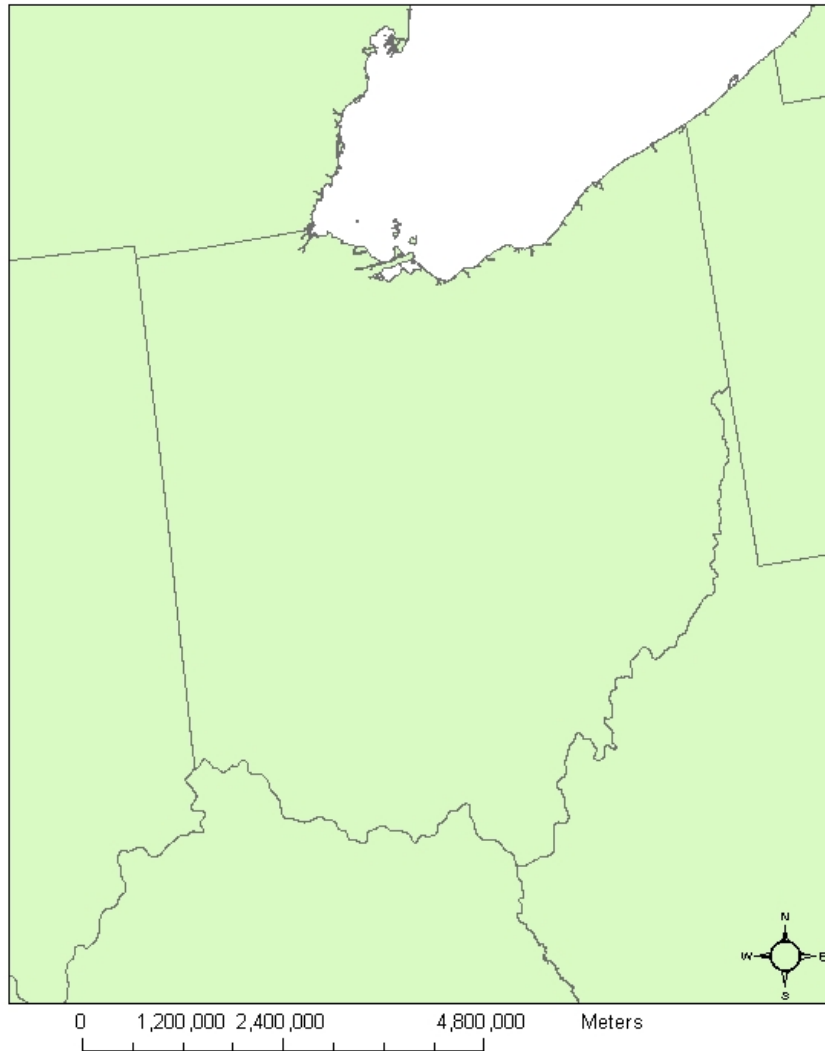
|                        | Internal to GIS |       | External to GIS |       |       |
|------------------------|-----------------|-------|-----------------|-------|-------|
|                        | Cat1            | Cat 2 | Cat 3           | Cat 4 | Cat 5 |
| Title                  | x               | x     | x               | x     | x     |
| Author                 | X               | X     | X               | X     | X     |
| Date                   | x               | x     | x               | x     | x     |
| Map Document Location  | X               | X     | X               | X     | X     |
| Map Document Name      | X               | X     | X               | X     | X     |
| Disclaimer             | X               | X     | X               | X     | X     |
| Scale                  |                 |       | x               | x     | x     |
| Legend                 |                 |       | x               | x     | x     |
| North Arrow            |                 |       | x               | x     | x     |
| Neat Line              |                 |       |                 | x     | x     |
| Agency Logo            |                 |       |                 | x     | x     |
| Office Identification  |                 |       |                 | x     | x     |
| Geographic Reference * |                 |       | x               | x     | x     |
| Locator Map            |                 |       |                 |       | x     |
| Data Source            |                 |       |                 |       | x     |
| Purpose                |                 |       |                 |       | x     |

\* Geographic Reference - Geospatial information that provides the customer with a better understanding of the physical location of information represented on a map.


# CARTOGRAPHIC STANDARD REQUIREMENTS FOR GIS PRODUCTS

## Category 4 and 5 Cartographic Example.

### Ohio the heart of it all



#### Legend

 States

David Cray  
NGB ARE C  
25 October 2004

c:/My documents/cray/GIS/map template.mxd



No warranty is made by the State/Territory/National Guard Bureau as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. This map is a living document, in that it is intended to change as new data become available and is incorporated into the Enterprise GIS database."



***APPENDIX Y***

***Sample Inside Cover Format  
for an Environmental Assessment***



## **ENVIRONMENTAL ASSESSMENT ORGANIZATION**

This Environmental Assessment (EA) evaluates the environmental effects of the Army National Guard's proposed action to implement the Facility Master Plan at the New Castle Rifle Range, Delaware. This EA will facilitate the decision process regarding the proposed action and alternatives.

**SECTION 1 PURPOSE OF AND NEED FOR THE PROPOSED ACTION** summarizes the purpose of and need for the proposed action, provides relevant background information, and describes the scope of the EA.

**SECTION 2 DESCRIPTION OF THE PROPOSED ACTION** describes the proposed action.

**SECTION 3 ALTERNATIVES CONSIDERED** examines alternatives for implementing the proposed action.

**SECTION 4 AFFECTED ENVIRONMENT** describes the existing environmental and socioeconomic setting for each location considered.

**SECTION 5 ENVIRONMENTAL CONSEQUENCES** identifies potential environmental and socioeconomic effects of implementing the proposed action and alternatives, and identifies the mitigation measures proposed.

**SECTION 6 COMPARISON OF ALTERNATIVES AND CONCLUSIONS** compares and contrasts the alternative effects, and summarizes the significance of individual and expected cumulative effects for each of the alternatives.

**SECTION 7 REFERENCES** provides bibliographical information for cited sources.

**SECTION 8 GLOSSARY** provides definitions for terms used in the EA.

**SECTION 9 LIST OF PREPARERS** identifies persons who prepared the document and their areas of expertise.

**SECTION 10 AGENCIES AND INDIVIDUALS CONSULTED** provides a listing of individuals and agencies consulted during preparation of the EA.

### **APPENDICES**

- A** Supporting Technical Data and Methodological Approaches
- B** Agency Consultation Letters
- C** Public Comments and Responses (Final EA only)
- D** Newspaper Public Notice Affidavits (Final EA only)



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***APPENDIX Z***

***Sample Signature Pages for an EA***

ENVIRONMENTAL ASSESSMENT  
for  
THE FORCE MODERNIZATION OF THE 1-113TH CAVALRY SQUADRON  
IOWA ARMY NATIONAL GUARD  
CAMP DODGE, IOWA

REVIEWED BY: Warren G. Lawson DATE: 14 Feb 96  
WARREN G. LAWSON  
Major General, Iowa ARNG  
The Adjutant General

Roger C. Schultz DATE: 15 Feb 96  
ROGER C. SCHULTZ  
COL, GS, Iowa ARNG  
Deputy Adjutant General

John A. Tymeson DATE: 14 Feb 96  
JOHN A. TYMESON  
COL, GS, Iowa ARNG  
Chief of Staff

Michael J. Bacino DATE: 13 Feb 96  
MICHAEL J. BACINO  
COL, GS, Iowa ARNG  
Plans, Operations and Training Officer

James E. McCullough DATE: 14 Feb 96  
JAMES E. MCCULLOUGH  
COL, NGB  
U.S. Property and Fiscal Officer, Iowa

Lennie J. Jave DATE: 13 Feb 96  
LENNIE J. JAVE  
COL, GS, Iowa ARNG  
Facilities Management Officer

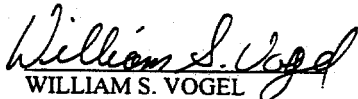
Edward J. Strobl DATE: 14 Feb 96  
EDWARD J. STROBL  
Lt Col, IA ANG  
Staff Judge Advocate

Robert C. King DATE: 14 Feb 96  
ROBERT C. KING  
LTC, GS, Iowa ARNG  
Public Affairs Officer

FINAL PROGRAMMATIC ENVIRONMENTAL ASSESSMENT  
FOR FIELDING THE PALADIN WEAPON SYSTEM

---

Prepared by:  
Mobile District  
U.S. Army Corps of Engineers



WILLIAM S. VOGEL  
Colonel, USA  
Mobile District, Commanding

Prepared for:  
Army National Guard

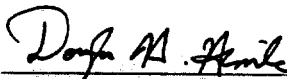


WILLIAM R. CROCKER  
Colonel, GS  
Assistant Deputy Director.  
Army National Guard for Support

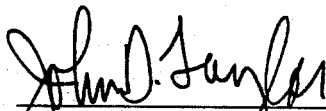
Recommended for Approval by:  
National Guard Bureau



STEVEN R. DE KRAMER  
Colonel, NGB  
Chief, Environmental Programs  
Division



DOUGLAS H. HIMLE  
Colonel, NGB  
Chief, Army Training Division



JOHN D. TAYLOR  
Colonel, GS  
Chief, Force Management Division

October 1997

# LEAD AGENCY, ABSTRACT, AND SIGNATURE PAGE

**LEAD AGENCY:** DEPARTMENT OF THE ARMY. U.S. ARMY NATIONAL GUARD BUREAU

**COOPERATING AGENCIES:** NONE

**TITLE OF PROPOSED ACTION:** Various Projects, Fort William Henry Harrison, Helena, Montana

**AFFECTED JURISDICTION:** Montana, USA

**POINT OF CONTACT:** Major Steve Martinka, Environmental Officer, Fort William Henry Harrison, c/o Environmental Office, 1100 North Main, Helena, Montana 59601, 406.444.7943

**PROPOSERS:** Army National Guard Bureau and Montana Army National Guard

**REVIEWED BY:**

**REVIEWED BY:**

**REVIEWED BY:**

**REVIEWED BY:**

**APPROVED BY:**

**DOCUMENT DESIGNATION:** Environmental Assessment

**ABSTRACT:** The Department of the Army, National Guard Bureau, proposes to continue the use of Fort William Henry Harrison, Montana, for military training purposes. This Environmental Assessment addresses 17 separate construction and site development projects that are being contemplated at Fort Harrison over the next 10 year time period. These projects are necessary to maintain the proficiency levels of the military units training at this facility to ensure compliance with their Guard mission in the event of a State or Federal emergency.

This Environmental Assessment evaluates the individual and cumulative effects of the Proposed Action(s) and the No Action Alternative with respect to a variety of criteria established by the Army National Guard, including the Geographic Setting and Land Use, Aesthetics, Air Quality, Noise, Geology and Soils, Biological Resources, Cultural Resources, Socioeconomic Environment, Infrastructure and Hazardous and Toxic Materials/Wastes.

The evaluation performed as the work product of this Environmental Assessment concludes that there will be no significant impact, either individually or cumulatively, to the local environment or quality of life as a result of the Proposed Action(s).

***APPENDIX AA***

***Sample Alternatives Comparison Matrices***

| Resource Area                      | Alternatives   |   |   |
|------------------------------------|--|---|---|
|                                    | No Action  | Proposed Action   | Alternative Action  |
| Noise                              | Average sound levels are within the guidelines established for land use compatibility: Ldnmr of 46 dB and 0.7 daily noise events above 65 dB.                              | Average sound levels are within the guidelines established for land use compatibility: Ldnmr of 49 dB and 0.6 daily noise events above 65 dB. | Average sound levels are within the guidelines established for land use compatibility: Ldnmr of 48 dB and 0.6 daily noise events above 65 dB. |
| Biological Resources               | No ground breaking activities; therefore, potential impacts on vegetation and wildlife would be negligible. No threatened or endangered species known to inhabit the area. | Same as No Action.  | Same as No Action.  |
| Cultural Resources                 | No known National Register sites; 13 eligible sites currently exposed to low-altitude overflights.   | No known National Register sites; 13 eligible sites in ROI; negligible increase in probability of adverse impacts.                            | Same as Proposed Action.  |
| Air Quality                        | Area is in attainment for all NAAQS except for localized exceedances of PM <sub>10</sub> .   | No effect on the compliance with national standards.  | Same as Proposed Action.  |
| Water Resources                    | No change to water quality.  | Same as No Action.  | Same as No Action.  |
| Hazardous & Toxic Materials/Wastes | Mishap potential would remain very low. Therefore, the risk of hazardous materials contamination would be very low.  | Mishap potential would increase over No Action; however, the risk of hazardous materials contamination would still be low.                    | Same as Proposed Action.  |

***APPENDIX BB***

***Template Requests to Eliminate the Public Review and Comment  
Period for a Draft EA, and Reduce the Comment Period for a  
Final EA/DFNSI***



**[STATE/TERRITORY LETTERHEAD]**

I, **[NAME AND TITLE OF REQUESTOR]**, request to waive the 30-day public review and comment period for the Draft Environmental Assessment for **[NAME OF PROPOSED ACTION]**.

I certify that the 30-day public review and comment period would jeopardize timely execution of this project. **[PROVIDE THE REASON WHY THE COMMENT PERIOD WOULD JEOPARDIZE THE PROJECT]**. The additional comment period provides no public benefit. **[PROVIDE A DESCRIPTION WHY THE COMMENT PERIOD WOULD NOT BENEFIT THE PUBLIC]**. Further, the proposed action is not of a national concern, is not unprecedented, and does not normally require an Environmental Impact Statement.

**[REQUESTOR'S SIGNATURE BLOCK]**

NGB-ARE-C:

\_\_\_\_\_  
Approved Date

\_\_\_\_\_  
Disapproved Date



**HEADQUARTERS IOWA NATIONAL GUARD**  
**Office of The Adjutant General**

Camp Dodge

7700 Northwest Beaver Drive  
Johnston, Iowa 50131-1902

I, NAME, TITLE, request that the public waiting period between the time that the FNSI for the NAME OF PROPOSED ACTION is publicized and the time the proposed action begins be reduced from 30 days to NUMBER OF DAYS (minimum of 15 days).

I certify that the 30-day waiting period would jeopardize the project. PROVIDE A DESCRIPTION OF THE REASON WHY THIS WOULD JEOPARDIZE THE PROJECT. The additional comment period provides no public benefit. PROVIDE A DESCRIPTION WHY THIS WOULD NOT BENEFIT THE PUBLIC. Further, the proposed action is not of a national concern, is not unprecedented, and does not normally require an EIS.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approve

\_\_\_\_\_  
Disapprove

***APPENDIX CC***

***Sample Inside Cover Format for an  
Environmental Impact Statement***

## ***ENVIRONMENTAL IMPACT STATEMENT ORGANIZATION***

This Environmental Impact Statement (EIS) addresses the proposed action to conduct military training at Camp Shelby, Mississippi. As required by AR 200-2 and the National Environmental Policy Act, the potential environmental and socioeconomic effects are analyzed.

A **SUMMARY** briefly describes the proposed action, provides a summary of environmental and socioeconomic consequences, and compares and contrasts potential effects associated with the alternatives.

**SECTION 1.0 PURPOSE OF AND NEED FOR THE PROPOSED ACTION** summarizes the purpose of and need for the proposed action, provides relevant background information, describes the scope of the EIS, summarizes public participation for the EIS, and identifies related National Environmental Policy Act reviews.

**SECTION 2.0 DESCRIPTION OF THE PROPOSED ACTION** describes the proposed action.

**SECTION 3.0 ALTERNATIVES CONSIDERED** examines alternatives for implementing the proposed action.

**SECTION 4.0 AFFECTED ENVIRONMENT** describes the existing environmental and socioeconomic setting for each location considered.

**SECTION 5.0 ENVIRONMENTAL CONSEQUENCES** identifies potential environmental and socioeconomic effects of implementing the proposed action and alternatives, identifies mitigation measures associated with each, and compares and contrasts potential effects from the alternatives.

**SECTION 6.0 REFERENCES** provides bibliographical information for cited sources.

**SECTION 7.0 INDEX** identifies page numbers for topics of reasonable interest to the reader.

**SECTION 8.0 GLOSSARY** provides definitions for terms used in the EIS.

**SECTION 9.0 LIST OF PREPARERS** identifies persons who prepared the document and their areas of expertise.

**SECTION 10.0 AGENCIES AND INDIVIDUALS CONSULTED** provides a listing of agencies and individuals consulted during preparation of the EIS.

**SECTION 11.0 DISTRIBUTION LIST** indicates recipients of the EIS.

**APPENDICES** A Supporting Technical Data and Methodological Approaches

B Agency Consultation Letters

C Public Comments and Responses (FEIS only)

**ACRONYMS AND ABBREVIATIONS** provides a list of acronyms and abbreviations used in the EIS.



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***APPENDIX DD***

***Signature Page for an EIS***

**LEAD AGENCY:** DEPARTMENT OF THE ARMY, U.S. ARMY NATIONAL GUARD BUREAU

**COOPERATING AGENCIES:** U.S. Forest Service

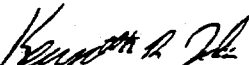
**TITLE OF PROPOSED ACTION:** Military Training Use of National Forest Lands at Camp Shelby, Mississippi

**AFFECTED JURISDICTION:** Mississippi, USA

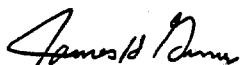
**POINT OF CONTACT:** COL Woodrow G. Lyon, Camp Shelby Training Site Commander, Camp Shelby Training Site, 1001 Lee Ave. Camp Shelby, Mississippi, 39407, Tel: (601) 584-2764.

**PROPOSERS:** Army National Guard Bureau and Mississippi Army National Guard


**REVIEWED BY:**

  
KENNETH R. JOHNSON  
Forest Supervisor  
US Department of Agriculture  
Forest Service


**REVIEWED BY:**

  
JAMES H. GARNER  
Major General, MSARNG  
The Adjutant General

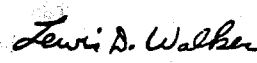
**REVIEWED BY:**

  
PHILIP W. SPENCE  
COL  
Director,  
Environmental Programs  
National Guard Bureau

**REVIEWED BY:**

  
JOHN R. D'ARAUJO  
Major General, GS  
Director,  
Army National Guard

**APPROVED BY:**

  
LEWIS D. WALKER  
Deputy Assistant Secretary  
of the Army  
(Environment, Safety,  
and Occupational Health).

**DOCUMENT DESIGNATION:** Final Environmental Impact Statement

**ABSTRACT:** The Department of the Army, National Guard Bureau, proposes to continue the use of Camp Shelby, Mississippi for military training purposes. This includes approximately 117,000 acres of National Forest land. These lands are currently being used by the Mississippi National Guard as an integral part of Camp Shelby under the terms of a Special Use Permit. This Environmental Impact Statement discusses six alternatives, including no action (no permit is issued), minimal change, and several with changes in training activity. The studies conducted concentrated on possible effects on: threatened and endangered species, biodiversity, forest fragmentation, soil loss, timber supply, recreation opportunities, and the quality of life for local residents. The studies concluded: that implementation of any alternative, with the exception of 3B will result in a non-jeopardy opinion from the U.S. Fish and Wildlife Service (will not jeopardize the continued existence of the gopher tortoise); that proposed erosion control measures will be adequate to control the most serious effects of soil movement; that the Forest Service would be able to integrate the proposed timber removal into their existing sales program if this removal were spread over several years; and that the military presence can coexist with civilian recreational use. The Army's preferred alternative will allow enough area so that both tank gunnery and battalion tracked vehicle maneuver can take place at the same time. A plan is being considered which combines aspects of more than one alternative. This will allow the agencies to balance environmental impacts with achieving the Army's training needs.

***APPENDIX EE***

***Sample Record of Decision (ROD)***

# RECORD OF DECISION

## WESTERN ARMY NATIONAL GUARD AVIATION TRAINING SITE (WAATS) EXPANSION ARIZONA ARMY NATIONAL GUARD

### I. Introduction

This Record of Decision addresses the decision of the Army National Guard Bureau (ARNG) in coordination with the United States Air Force to proceed with the proposed expansion of facilities and operations at the WAATS as addressed in the WAATS Environmental Impact Statement (EIS). The Notice of Availability of the EIS was published in the *Federal Register* on 6 June 1997.

The three major components of this expansion are the designation of a Tactical Flight Training Area for conducting flight training operations, the development of a helicopter aerial gunnery range, and implementation of a Master Construction Plan at the Silver Bell Army Heliport and the Gila Bend Air Force Auxiliary Field.

### BACKGROUND

In 1978 the National Guard Bureau and the United States Army established the National Guard Bureau Army Aviation Training Sites. The Army Aviation Training Sites' mission is to provide training to Army National Guard soldiers and units operating "mature" aircraft systems and to provide an aviation training expansion capability to the Army during a national emergency or training overload. ("Mature" aircraft are those older systems that are operated primarily or exclusively by the National Guard but remain as necessary equipment in the total Army defense plans.) Initial planning called for the operation of two Army Aviation Training Sites. The Eastern Army Aviation Training Site began operations at Fort Indiantown Gap, Pennsylvania, in 1982 with the mission of training National Guard fixed-wing, cargo helicopter, and utility helicopter aircrews. The Western Army Aviation Training Sites became operational in 1986 near Marana, Arizona, with the mission of training Guard aircrews and units assigned to attack helicopter and air cavalry missions and equipment. Each training site would also serve as a regional Flight Simulation Center for Active Duty Components and Reserve Components (United States Army Reserve and National Guard) aviation units within the region.

The principal mission of the Army Aviation Training Sites is to provide standardized and cost-effective individual qualification training and small unit/team training, allowing units within the individual states to concentrate their time and resources on larger collective unit training in support of their wartime mission as well as their state emergency missions. The original Army Aviation Training Sites' mandate was to consolidate high-cost training equipment, student facilities, and experienced training personnel at locations with suitable training areas and ranges not available within the



various states is as responsive and cost effective to the readiness of the National Guard today as it was when the original need was identified in the 1970s.

## **PUBLIC PARTICIPATION**

The President's Council on Environmental Quality (CEQ) regulations that implement NEPA require an early and open process for determining the scope of issues to be addressed in the EIS. The Lead Agencies initiated this process with the publication of a Notice of Intent (NOI) to prepare an EIS. The NOI was published in the *Federal Register* in March 1993 and is presented in Appendix A of the EIS. Letters were also sent to responsible federal, state, and local agencies, organizations, and the public requesting their input and concerns relative to the content of the EIS.

Public participation methods used include: three project newsletters; a "1-800" number used to receive input and provide answers to public questions; Open public meetings in the form of formal scoping meetings and hearings to gather comments on the Draft EIS. For each meeting, newspaper advertisements and legal notices were used to notify the public of upcoming meetings. These hearings were held in the following southern Arizona locations: Tucson, Marana, Florence, Phoenix, Gila Bend, and Sells (Tohono O'odham Nation).

In addition to the formal public meetings the Guard held over 43 small group meetings throughout the public scoping period and preparation of the Draft EIS. These meetings were typically held with a group of people with similar interests or concerns related to the project. At each of these meetings, attendees were given time to ask questions or make comments on any aspect of the proposal or the EIS. These comments were considered during the EIS process.

Copies of the Draft EIS were mailed to agencies, organizations, and individuals on the mailing lists for their review and comment. In addition, copies of the Draft EIS were placed in several libraries in the area for public review. A Notice of Availability, for the draft EIS, was published in the *Federal Register* on May 17, 1996. The notice started the 45-day public review period which concluded on July 2, 1996.

As a result of the public review of the Draft EIS, some modifications were made to the EIS to provide further clarification on the Proposed Action, alternatives, impact assessment, and proposed mitigations.

## **II. Purpose & Need and Alternatives**

The Proposed Action as addressed in the WAATS EIS, is composed of three major components: the designation of a Tactical Flight Training Area for conducting flight training operations, the development of a helicopter aerial gunnery range, and implementation of a Master Construction Plan at the Silver Bell Army Heliport and the Gila Bend Air Force Auxiliary Field. The facilities and operations proposed under each of these components are designed to meet current and future training demands of the ARNG and WAATS.

WAATS currently trains 2,347 students annually (based on flight, classroom, and simulator training conducted in 1995), and the number of students proposed to be trained at this facility could increase by 2000 to 5,104 students depending on force structure changes and funding. The largest increase in student training will occur in the areas of flight simulation, academic instruction and maintenance training courses. The overall downsizing and restructuring of the armed forces have placed a greater training requirement on the Army National Guard. As a reserve component the Army National Guard can provide the training at less cost than the Active Duty Army.

The WAATS EIS included a Proposed Action, reasonable alternatives to the proposed action, and analysis of the effect upon the environment, and the effect upon the National Guard readiness of taking no action to institute any of the alternatives. Proposals and alternatives considered in the EIS were developed, in part, as a result of input from the public as well as federal, state and local agencies during an expanded public involvement process. Most importantly the EIS provides the National Guard Bureau and United States Air Force with an understanding of the potential environmental consequences and aids in making decisions while attempting to protect, restore, and enhance the environment.

The following paragraphs provide an overview of the purpose and need for each of the three major components of the Proposed Action. Further, more detailed, information on the purpose and need for the Proposed Action can be found in Section 2 of the EIS.

### **Tactical Flight Training Area**

The increased training requirements of the ARNG have resulted in the need to expand the area within which it conducts its flight training mission. Expansion beyond the current narrow operational corridors is necessary to conduct essential navigation training, meet training safety requirements by increasing distances between training activities, while avoiding environmentally sensitive areas. Further, the TFTA allows for the operational air space needed to provide unit sustainment training. Unit sustainment training allows aviation units to train with their supporting ground equipment just as a unit would operate in the field.

### **Helicopter Gunnery Range**

Currently, the most critical shortage from a training standpoint is the lack of adequate training time. The existing Air Force East Tactical aerial gunnery range at the Barry M. Goldwater Range Complex ARNG has not been able to meet its required training levels for individual training at the existing East Tactical Range. What this lack of range time converts to is an increasing number of ARNG aviators who have not completed their required qualification training. If Air Force use of the East Tactical Range remains at its current level in the future, without modification, the ARNG would only be able to meet 21 percent of its aerial gunnery training requirements.

## **Master Construction Plan**

The construction proposed at the Silver Bell Army Heliport, the main site for the WAATS, and the Gila Bend Air Force Auxiliary Field is designed to rectify current shortages in facilities as well as provide facilities needed to meet increased training demands for both current and future missions. The primary goal of future construction is the modernization of facilities to handle the increased demand for training at the WAATS, including the addition of unit sustainment training and training requirements needed for modernization of aviation units nationwide.

## **ALTERNATIVES CONSIDERED IN DETAIL IN THE ENVIRONMENTAL IMPACT STATEMENT**

Early in the environmental planning process, the National Guard Bureau and Arizona National Guard considered whether relocation of the WAATS provided the best mission, environmental, and economic alternative to improving training conditions at the Western Army National Guard Aviation Training Site. With an active presence in every state, Puerto Rico, the Virgin Islands, and Guam, the National Guard Bureau was in a unique position to review and evaluate the training resources and environmental concerns over a very wide area. A review of potential sites within the various states concluded that training capabilities, weather, and potential environmental concerns at other sites did not warrant abandonment of the existing site. It was the opinion of the National Guard Bureau that the WAATS siting decision remained valid and that moving the WAATS was not a reasonable alternative.

Some of the alternatives considered were eliminated during preparation of the Draft EIS. These alternatives were discarded after it was determined that they were not capable of meeting the objectives or needs of the National Guard Bureau/WAATS or that the alternative would have a negative impact on public safety.

In addition to the alternatives developed around the three major project components, referred to as "viable alternatives" in this document (Alternatives A, B [Proposed Action], and C), the EIS also includes an environmental evaluation of the No Action Alternative (Alternative D) see attached chart "Summary of Alternatives Considered in Detail."

## **Alternative A**

Detailed information on this alternative is presented in Section 4.5.1 of EIS.

### **Tactical Flight Training Area (TFTA)**

Under this alternative, WAATS would continue to use the TFTA. In addition to current flight operations conducted within the TFTA, the ARNG has proposed adding unit sustainment and electronic warfare simulation. Use of the TFTA would not restrict private or commercial aviation usage in any way. This area would not be reflected on Federal Aviation Administration sectional aeronautical charts.

### **Helicopter Gunnery Range**

As part of this alternative, the ARNG has proposed developing a new helicopter gunnery range at the northeast corner of the Barry M. Goldwater Range Complex, covering about 97,000 acres. Within the proposed gunnery range, two impact areas and a bivouac site (a temporary field camp used during unit sustainment training) would be developed.

On the new helicopter gunnery range, only rockets and gun weapons would be fired. The weapons fired would all use practice munitions and would not contain high-explosive warheads. Guided missile training would not be conducted on the new range. Munitions for helicopter gunnery training would be stored at the Gila Bend Air Force Auxiliary Field. Helicopters from the WAATS would fly directly between Gila Bend Air Force Auxiliary Field and the new range.

Non-military Air travel over the proposed helicopter gunnery range is currently not restricted. Under this alternative, no new restricted airspace would be established over the gunnery range

### **Master Construction Plan**

The Master Construction Plan portion of this alternative would occur on the existing Silver Bell Army Heliport property located at the north end of the Pinal County Air Park on a 162-acre tract of land. The primary goals for future construction are modernizing equipment to handle deployment of the Apache helicopter; providing support facilities to handle the increased demand for training at the WAATS, including the addition of unit sustainment training and Apache training and the training requirements needed to modernize aviation units nationwide. The facilities proposed as part of the Master Construction Plan under this alternative are:

Dining Hall  
Organizational Maintenance Shop  
Warehouse  
High-Tech Training Center  
Facilities Management Office  
Water Plant  
Tennis Court  
Simulator Classroom  
Auditorium  
Parking Apron Expansion

Student Dormitory  
Covered Outdoor Maintenance Shop  
Ground Support Equipment Shop  
Fire Station  
Gymnasium  
Swimming Pool  
Volleyball Court  
Gate House  
Fixed Wing Aircraft Hanger  
Taxiway Expansion

### **Alternative B: Proposed Action and Preferred Alternative**

Detailed information on this alternative is presented in Section 4.5.2 of the EIS. In comparison with the other viable alternatives, it has been determined that Alternative B is the most practicable and economically feasible, because it does not require a new range complex be built, best meets operational and training objectives, and is the least environmentally damaging.

#### **Tactical Flight Training Area**

Under this alternative, the location and operations proposed are the same as those contained in Alternative A.

#### **Helicopter Gunnery Range**

This alternative does not include the development of a new helicopter gunnery range. Under this alternative, the ARNG would conduct all of its future helicopter gunnery practice at the existing East Tactical Range and the adjacent Range 3 targets. The difference between this alternative and the current use of the East Tactical Range relates to the level of air operations and how they are conducted. Under this alternative, the East Tactical Range would be divided into two air operations areas that would be used by military planners for allocating range space (this change would not change any airspace designations shown on the Federal Aviation Administration navigational maps for the area). With this arrangement, the ARNG would be able to obtain sufficient time on the East Tactical Range to meet their training needs.

## **Master Construction Plan**

Under this alternative, the location and operations proposed are the same as those contained in Alternative A.

## **Alternative C**

Detailed information on this alternative is presented in Section 4.5.3 of EIS .

### **Tactical Flight Training Area**

Under this alternative, the location of the Tactical Flight Training Area would be the same as proposed with Alternatives A and B. However, only two Level III sites will be developed (Picacho Peak Annex and Silver Bell Annex). For Alternative C, the Level III operations proposed for Alternatives A and B will be divided to the two remaining sites under this alternative.

### **Helicopter Gunnery Range**

Based on the biological studies and analysis prepared for the EIS , Impact Area 2 was identified as being less significant in terms of biological resources when compared with Impact Area 1. In order to achieve two impact areas required to secure adequate range time under this alternative, the ARNG would also continue to use the East Tactical Range under the existing operations levels.

## **Master Construction Plan**

Under this alternative, the location and operations proposed for the Silver Bell Army Heliport are the same as Alternatives A and B. On the Gila Bend Air Force Auxiliary Field, the proposed expansion of the weapons storage area would not be constructed.

## **Alternative D: No Action Alternative**

A complete description of this alternative is presented in Section 4.5.4 in the Environmental Impact Statement.

## **Tactical Flight Training Area**

For this component, the No Action Alternative would remain in the same geographic location that is currently used by the Western Army National Guard Aviation Training Site. The number of operations would remain the same, and no unit sustainment training would be conducted.

## **Helicopter Gunnery Range**

For aerial gunnery, WAATS would continue to use the Air Force's East Tactical Range at current operational levels. This would not permit additional operation periods on the range. Even if range hours are extended to include weekend operations, the ARNG would not be able to secure sufficient training time to meet current National Guard Bureau and United States Army training requirements.

## **Master Construction Plan**

For the Master Construction Plan, the No Action Alternative would maintain and operate only those facilities currently constructed. No new construction would occur.

## **III. Mitigation Measures**

Throughout the EIS many specific potential environmental affects have been identified and mitigation measures proposed to offset or prevent any damage from occurring. The following section outlines what additional mitigation measures have been identified to be required in-addition to those outlined in the EIS. The Arizona Army National Guard will abide by all measures outlined in the biological opinion issued by the USFWS in May 1997, and will share data with these and other interested parties to ensure the highest level of integrity in monitoring these vital resources.

Because of the proximity of the Mercer Ranch Site to the sensitive San Pedro River and the riparian areas along the river the Arizona Army National Guard will not pursue development of this site. The Picacho Peak State Park, the Table Top Wilderness Area, and the South Maricopa Mountains Wilderness Area will remain designated no-fly areas. Low-level overflights will not take place over any other designated sensitive receptors areas. The biological studies conducted for the EIS covered an area larger than that needed for the actual Level III site. Final siting of Level III facilities will be done based on a species-level biological survey for each site. Within the areas surveyed for this EIS, the survey will look at sensitive biologic resources and locate facilities so as to minimize biological impacts.

The Samaniego Hills Site is the most undisturbed and highly vegetated site of the four Level III sites. This site will be configured so that areas of development will be placed adjacent to Sasco Road. Impacts on vegetation would be minimized to less-than-significant levels. The Samaniego Hills Site also supports the highest diversity and abundance of wildlife, particularly along the natural drainages. Avoidance of these areas used by wildlife would reduce any impacts on these species. In addition, placing the refueling station along the existing access road (Sasco Road) would further reduce impacts on upland habitats to the south. These mitigations would reduce impacts on wildlife to levels that are not significant.

In all areas used the Arizona Army National Guard will restrict all vehicular activity to existing roads. The new roads needed within the Target Effect Area (TEA) will be sited in such a way as to avoid wildlife habitat, such as, mesquite thickets and dense saguaro stands supporting nesting raptors. Personnel would not approach raptor nesting sites by foot or vehicle and thickets and saguaros stands would be avoided to the maximum extent possible. Ground vehicle speeds would be maintained below 15 mph in the Sand Tank Mountains region to avoid impacts on wildlife traversing roads. Vehicle access out of existing natural drainages, where possible will be restricted. No additional usage of wash bottoms would be allowed.

Both Air and Ground units will restrict mission operations out of neighboring upland habitats to avoid impacts on bighorn sheep, natural and manmade surface water sites, nesting/roosting raptors, and bat roost areas. In addition to the general environmental awareness program a specific educational program would be implemented for the operations staff. The goal of this program would be to instruct the staff in ways to avoid disturbance to wildlife and wildlife habitat especially the Sonoran desert tortoise and desert bighorn sheep.

Sweeps of the TEAs using infrared or visual methods would be performed by training vehicles prior to the initiation of training. If larger wildlife (e.g., bighorn sheep, deer, javelina) are detected in or near one or more TEA, this area will be avoided at that time. The area should be revisited again later in the day, and if big game animals are still present in the vicinity, then a training helicopter is to be flown in a low-level hover in the vicinity of the target area. It is the opinion of the Arizona Game and Fish Department that this low-level hover would be sufficient to cause big game in the vicinity to leave, only if the helicopter is not used in a manner that could be considered pursuit, but rather a significant disturbance around the target area to encourage the dispersal of big game animals from around the TEAs.

Impacts on existing populations of Tumamoc globeberry would be avoided by posting the area as sensitive and educating personnel regarding the necessity for avoiding vehicular or human intrusion into this area.

If requested by the AGFD, the Guard would consider participation in the ongoing monitoring of bighorn sheep populations in the Sand Tank Mountains and Saucedo Mountains currently performed by AGFD. The monitoring effort would address the



movement, behavior, breeding, and general health of the sheep populations in relation to ongoing mission activities. Although no significant impact has been identified, if it is determined that the mission is having a demonstrated negative impact on the resident populations, then the mission would be modified in such a way as to reduce those affects to no significant levels. This may involve abandoning one or more TEAs (or existing target areas) and/or placing restrictions on other times of the year certain TEAs can be used. All injured or killed desert tortoises would be brought to the attention of the Environmental Programs Flight of Luke AFB for proper coordination with the state and federal agencies.

Efforts will be made to definitively determine the presence of the cactus ferruginous pygmy owl in the Sand Tank Mountains region and other designated areas required by the USFWS. Of particular importance would be a survey sweep of the proposed TEAs and access roads prior to the disturbance of vegetation and use of the facility. This would help guide subsequent mission operations in relation to the distribution of the owl, if found present. For example, some facilities may need to be relocated if the species is found in the project area or in the immediate vicinity. The survey effort would be performed by qualified biologists and coordinated with the state and federal agencies. Impacts on cactus ferruginous pygmy owl habitats (cactus, riparian thickets) would be avoided to the fullest extent possible.

To further reduce impact on the East Tactical Range, the Arizona Army National Guard will maintain the existing number of low-level helicopter flights to what is currently being flown at East TAC for each of the two regions described by the AGFD (over the Saucedo and Sand Tank Mountains) and restrict training activities at East TAC to 2200 hours (10:00 p.m.) to dawn during those times of the year when the lesser long-nosed bat is present (April-September).

Cultural Resources are as important to the Arizona Army National Guard as any other resource. The Arizona Army National Guard has conducted numerous cultural resource studies on its training lands. Before any action proposed in the EIS is undertaken the Arizona Army National Guard will complete the Section 106 consultation process through the Advisory Council of Historic Preservation (ACHP) as required by the Historic Preservation Act of 1966, as amended. Appropriate mitigation measures for potential adverse effects on cultural resources would be formulated after eligibility determinations are concluded. Mitigation might include measures such as avoidance, long-term preservation, interpretation programs, documentation, and data recovery excavation.

The Arizona Army National Guard has an active and proactive hazardous waste prevention and minimization program. Because of the possibility of petroleum products contaminating the training sites, particular emphasis will be placed on those actions identified in the EIS to be at risk. Therefore, the Arizona Army National Guard will implement strict programs to ensure that fuel spill minimization and containment equipment, such as drip pans, absorbent materials, shovels, and containment booms, shall be stockpiled and readily accessible at all fueling locations including the forward areas in

the TFTA. Refueling crews shall be trained in spill minimization techniques and have direct knowledge of the location of spill equipment at their respective locations. Fuel hoses and lines used at SBAH and all forward-refueling areas shall be inspected regularly to minimize risk of breakage.

Physical hazards associated with this proposal are also of great concern to the Arizona Army National Guard. Although the Air Force is responsible for running and maintaining the Barry M. Goldwater Range Complex. The Arizona Army National Guard will take additional precautions to insure the safety of not only the personnel on the range, but biological resources as well. Prior to any gunnery practice on the helicopter gunnery range, the range shall be visually inspected to ensure that no person is in the area. This can be accomplished by a ground unit, an aerial flyover, or a survey of the area with the scoring system cameras. The BMGRC was selected in part due to the natural backstop provided by surrounding mountains and hills. The WAATS shall develop a training program and procedures specific to the new range that would restrict when and how the targeting laser can be used. This may include maximum altitude for laser use or maximum angle at which the laser can be used.

#### **IV. Monitoring**

The Arizona Army National Guard uses a Integrated Training Area Management (ITAM) program to determine the land's ability to support military training with the least impact on natural and cultural resources. The Arizona Army National Guard's ITAM program consists of the following individual programs:

1. **Land Condition Trend Analysis (LCTA).** LCTA is the Army's standard program for inventorying, monitoring, and evaluating natural resources on Army lands. Using LCTA, a resource manager can evaluate trends in the conditions of those resources. In lands effected by the proposed action a baseline study will be conducted and monitoring plots established before any activity begins. These plots will be re-evaluated at least annually and the information gathered used to determine the effect on the area. These studies include both flora, fauna and cultural resources and are conducted by qualified individuals.
2. **Land Rehabilitation and Maintenance (LRAM).** LRAM provides a means of repairing, restoring, and maintaining lands that have been adversely affected by training activities. LCTA data are used to identify areas needing rehabilitation or maintenance or both. Erosion control and revegetation are typical actions that occur under this program.
3. **Geographic Information System (GIS).** GIS is a sophisticated computer system that is used to map and analyze natural data collected during surveys and inventories. Trend analysis is greatly enhanced by this system and provides decision makers with the necessary information to modify training practices if required.

The Natural and Cultural staff both full-time, part-time and contracted, will implement and maintain the LCTA program throughout the operational area used by the Western Army Aviation Training Site and will include this area in computation used to calculate the number of personnel and resources required based on current training area use and man power formulas.

The Army National Guard will also participate to the fullest extent possible in ongoing studies with the Air Force, USFWS, and AGFD. Upon locating a dead, injured, or sick endangered or threatened species specimen, initial notification will be made to the USFWS's Law Enforcement Office.

## **V. The Decision**


The Department of the Army, in coordination with the Army National Guard Bureau, the Department of the Air Force, and the Bureau of Land Management, based on extensive public input and a thorough analysis of all environmental impacts associated with the proposed expansion of training activities for WAATS, makes the decision to proceed with Alternative B. In addition to satisfying the operational needs of the WAATS, Alternative B was selected because it does not require any change to existing airspace use, will result in the least environmental impact and will incorporate the proposed mitigation measures which will serve as a means to actively monitor and assess conditions and identify trends to ensure minimal impact.

Implementation of Alternative B will proceed as outlined in the EIS with the following actions:

1. Increase use of existing East Tactical Range on the existing Barry M. Goldwater Range Complex and restructuring the airspace to allow joint use by the United States Air Force and the Western Army National Guard Aviation Training Site and not to develop a new range complex.
2. Construct all facilities listed in the Master Construction Plan and expanded weapons storage facilities at the Gila Bend Air Force Auxiliary Air Field.
3. Develop four Level III sites not to include the Mercer Ranch Site.
4. Implement the electronic warfare simulation training and perform flight training in the area designated as the Tactical Flight Training Area.


## VI. Conclusion

I have reviewed and evaluated the EIS, public and agency comments. I have determined that the process followed in preparing this EIS complies with all applicable requirements and that the final document adequately addresses the biological, physical, socioeconomic, and cultural impacts of the selected alternative. In addition, the selected alternative is also the environmentally preferred alternative. It is my decision to select Alternative B as the preferred alternative and implement those actions listed as mitigations for this alternative.

  
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WILLIAM C. BILO  
Brigadier General, GS  
Deputy Director, Army National  
Guard

21 July 1997  
Date

The Department of The Air Force is the manager of the East Tactical Range and its airspace. The Air Force concurs with the Army's choice of Alternative B and approves the increased use of East Tactical Range and related restructuring of the Airspace.

  
\_\_\_\_\_  
TERRY J. SCHWALIER, Brig Gen, USAF  
Director Operations and Training  
DCF Air and Space Operations

31 July 1997  
Date

## SUMMARY OF ALTERNATIVES CONSIDERED IN DETAIL

| Project Components   | Alternative A  | Alternative B<br>PROPOSED ACTION   | Alternative C   | Alternative D   |
|--|--|--|---|---|
| TFTA Component   | Develop four Level III sites, implement electronic warfare simulation, and perform flight training in TFTA area. | Develop four Level III sites, implement electronic warfare simulation, and perform flight training in TFTA area. | Develop two Level III sites, implement electronic warfare simulation, and perform flight training in TFTA area.                 | No action alternative. No Level III sites, no electronic warfare simulation, and continuation of flight training in TFTA area per current operations. |
| Range Component  | Develop two new Impact Areas on BMGRC for gunnery.   | Increase use of existing East TAC range by restructuring airspace to allow joint use by AF and WAATS.            | Develop one new Impact Area on BMGRC for gunnery (Impact Area 2) and use existing East TAC range under current airspace design. | No action alternative. Continue to use East TAC range as allowed by AF. No restructuring of airspace to allow increased use.                          |
| MCP Component  | All MCP facilities with weapons storage at GBAFAF (expanded to 2,650 sf).  | All MCP facilities with weapons storage at GBAFAF (expanded to 2,650 sf).  | All MCP facilities, but no expansion of weapons storage area at GBAFAF (remains at 650 SF).                                     | No action alternative. No new construction.   |
| <p><b>Note:</b> Additional alternatives are possible by mixing the three project components with any combination of Alternatives A, B, C, and D.</p> |  |  |   |   |

## RECORD OF DECISION

### Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Activities at Camp Roberts Army National Guard Training Site, California

#### I. Introduction

The Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) analyzes the environmental effects associated with combined-forces training activities, new equipment utilization, and range modernization at Camp Roberts. A joint National Environmental Policy Act/California Environmental Quality Act (NEPA/CEQA) document was prepared because implementation of the proposed action involves both federal and state agencies. The EIS/EIR fulfills the separate requirements of both NEPA and CEQA.

This three-part proposal by the National Guard Bureau and the California Army National Guard (CAARNG) would maximize training opportunities for military units that use Camp Roberts. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, or other emergencies. Adequate training opportunities, with modern ranges and up-to-date equipment, must be available to military units to allow them to train for their assigned missions.

#### II. Public Involvement

In accordance with the requirements of both NEPA and CEQA, opportunities were provided for agencies, interested organizations, and the general public to identify issues, provide input for formulating alternatives, and determine the significance of environmental effects described in the draft EIS/EIR.

**A. Scoping Process.** Three scoping meetings were held in the Camp Roberts area (San Luis Obispo, Paso Robles, and King City) in November 1994 to allow interested persons to meet individually with the CAARNG staff to discuss the proposed action. Before these meetings, notices were published in local newspapers announcing the time, date, location, and purpose of the meetings. A notice of intent (NOI) was published on October 7, 1994, in the Federal Register by the U.S. Department of Army. A notice of preparation (NOP), which included the meeting information, was prepared under CEQA and distributed to interested agencies, individuals, and organizations on October 28, 1994. The scoping meetings included a description of the purpose of the meeting, a description of the proposed action and alternatives, an overview of the EIS/EIR process, and a public comment session. Attendees made comments on issues relating to the project and on

alternatives that should be considered in the EIS/EIR.

The NOI, NOA, and information distributed at the scoping meetings requested that recipients send a written list of issues to the CAARNG to help define the scope of the EIS/EIR. Letters received in response to these requests were reviewed and used as input to the scoping process.

Scoping comments were received from 31 agencies, organizations, and individuals. Agency comments were received from the U.S. Environmental Protection Agency (EPA), local county governments, local air pollution control districts, and local special districts. The comments encompassed a wide range of topics; the following describes some of the concerns mentioned during the scoping process:

- development of adequate alternatives analysis;
- contribution of project to cumulative impacts in the project area;
- air quality, specifically emissions of particulate matter and ozone precursors;
- impacts on wetland and riparian resources;
- water quality and water usage;
- impacts on threatened and endangered species;
- landfill capacity;
- environmental justice analysis;
- waste prevention/recycling;
- noise impacts, particularly from military aircraft overflights;
- wastewater flows;
- military convoy traffic on local roads; and
- compliance with cultural resources laws and regulations.

Appendix C of the final EIS/EIR contains all written comments received during the scoping process and the transcripts of oral comments received during the three scoping meetings. The transcripts were prepared by a stenographer.

**B. Public Review of the Draft EIS/EIR.** A draft EIS/EIR was issued for public review and comment on May 13, 1996. The public review period lasted for 45 days. Written comments on the draft document were received from nine agencies, organizations, and individuals.

Two public hearings were held on the draft EIS/EIR on June 11, 1996. The hearings were held in the Camp Roberts area (San Luis Obispo and Paso Robles). Notification was provided to the public via display advertisements, press releases, and advertisements in the local print and broadcast media. The public was provided the opportunity to voice opinions regarding the draft EIS/EIR and have questions answered. The San Luis Obispo meeting was designed for public agencies and consisted of a presentation on the draft EIS/EIR followed by a period to allow attendees to submit comments. The Paso Robles meeting was designed for the

general public. After an initial period during which attendees could talk to key staff members about project issues, a formal presentation on the proposed project was given and attendees were given the opportunity to submit comments. A court reporter was present at both meetings to record the proceedings and any oral comments. A bilingual Spanish/English interpreter was present at the Paso Robles meeting.

Written comments were received from seven agencies, one organization, and one individual. No oral comments were submitted during the public meetings. Many comments provided updated information or clarification of information presented in the draft EIS/EIR.

The EPA provided substantial comments on the analysis contained in the draft EIS/EIR. The following summarizes the EPA comments:

- Provide more information for the Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative.
- Clarify the environmental justice analysis.
- Coordinate with local agencies to minimize incompatibility.
- Provide additional information regarding noise complaints.
- In cases where incremental project impacts are described but existing impacts are significant, state the conclusion regarding level of significance as "significant" rather than "less than significant".
- Clarify discussion of natural versus artificially created wetlands.

Both local air pollution control districts provided input in the form of corrected emissions data and significance thresholds and recommended that the CAARNG coordinate with the districts with regard to training scheduling and providing emissions inventory data. Other regional and local agencies provided comments on the draft EIS/EIR that included corrections and new information for inclusion in the document.

The Salinan Nation submitted written comments on the draft EIS/EIR that addressed a wide spectrum of issues but focused on impacts on cultural resources at Camp Roberts.

The final EIS/EIR includes all comments received on the draft EIS/EIR (Appendix P) and responses to those comments. Responses were prepared for each comment received. Where appropriate, revisions were made to the draft EIS/EIR in response to these comments.



C. **Public Review of the Final EIS/EIR.** The final EIS/EIR was distributed for public review on January 17, 1997. Copies of the document were provided to regulatory agencies and to each agency, organization, or individual that commented on the draft EIS/EIR. A notice of availability was mailed to all other parties on the draft EIS/EIR mailing list. A stamped postcard was included that could be mailed to request a copy of the final EIS/EIR. Four comment letters were received during the 30-day period following the filing of the notice of availability. All comments received were considered during the preparation of this record of decision.

### **III. The Decision**

It is my decision to select the alternative described as the proposed action in the final EIS/EIR to implement combined-forces training operations, utilize new military equipment, and modernize range facilities at Camp Roberts Army National Guard Training Site. In making my decision, I have considered the impacts addressed in the EIS/EIR, scoping meetings, transcripts, public hearings, and all oral and written comments received to date on the draft and final EIS/EIR. I have determined that the EIS/EIR adequately addresses the biological, physical, socioeconomic, and cultural impacts of the selected alternative. I have considered the Army's needs to provide the best training facilities possible utilizing state-of-the-art military equipment and training methods to support its mission.

Under this alternative, combined-forces training can be conducted at a scale necessary to ensure the combat readiness of military units training at Camp Roberts. Utilization of modern military equipment at Camp Roberts enables these units to train locally with state-of-the-art tanks, armored personnel carriers, artillery, and helicopters. Construction of modernized ranges at Camp Roberts will provide facilities for live-fire training at Camp Roberts that meet current training standards.

This ROD documents my selection of this alternative and explains my rationale for the decision. The selected alternative complies with all applicable federal and state laws and regulations and includes mitigation and monitoring (Sections VI and VII of the ROD). Monitoring will provide information to evaluate the effects of implementing the projects. Monitoring will also provide the basis for determining whether additional mitigation is necessary.

### **IV. Alternatives**

A. **Alternatives Considered in Detail.** The proposed action and alternatives are described below. Table 1 provides a summary of these alternatives.

**Proposed Action.** The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment (a brigade is comprised of 3,000-5,300 soldiers), new equipment utilization, and a range modernization program.

Under the combined-forces component of the proposed action, the types of training (e.g., maneuver, live weapons firing, and aviation operations) would not change from existing operations. However, the total number of soldiers training at Camp Roberts during a "peak" annual training period (normally 15 consecutive days) would be higher than usually occurs. Intensity of use at Camp Roberts would rise from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period. Supporting equipment could include approximately 960 wheeled vehicles, 490 tracked vehicles, 30 helicopters, and six fixed-wing aircraft. Most facilities and lands used to support the training activities would be used at a maximal level during this period. Current training doctrine focuses on the individual soldier, platoon (30-40 soldiers), or company (120-150 soldiers) level.

Four new types of equipment would be introduced at Camp Roberts under the proposed action. The M1 Abrams series of tanks would be placed into service at Camp Roberts to replace the existing M60 series tanks. Bradley Fighting Vehicles would replace the M113 series armored personnel carriers. All but two of the existing M110 eight-inch howitzers would be replaced by the Multiple Launch Rocket System. Lastly, the AH-1 series Cobra helicopters would be replaced by the AH-64 series Apache helicopters. Existing equipment would be replaced by the new equipment on a one-to-one basis.

The range modernization program component of the proposed action would be composed of both upgrading existing ranges and constructing new ranges, with completion anticipated by 2000. The following five ranges are addressed in the program:

- the hand grenade range, which consists of a qualification course and a familiarization range;
- the modified record fire range, which would be used to train and qualify soldiers on the M16 rifle;
- the multipurpose machine gun range, which would be used to train and qualify soldiers on various machine guns and the sniper rifle;
- the combat pistol range, which would be used to train and qualify soldiers armed with .38-caliber, .45-caliber, and 9-mm pistols; and
- the MK-19 (40-mm machine gun) range, which would be used to train soldiers on the MK-19.

Table 1. Comparison of Approximate Personnel and Equipment for Proposed Action and Alternatives

| Alternative  | Personnel | Wheeled Vehicles | Tracked Vehicles | Aircraft    |            |
|--|-----------|------------------|------------------|-------------|------------|
|  |           |                  |                  | Helicopters | Fixed-wing |
| Proposed action; larger than typical training scenario with two brigades and supporting units at Camp Roberts                      | 10,600    | 960              | 490              | 30          | 6          |
| No-action; existing operations   | 5,300     | 670              | 310              | 15          | 3          |
| New equipment utilization and range modernization; existing operations   | 5,300     | 670              | 310              | 15          | 3          |
| Peak use of Camp Roberts/Fort Hunter Liggett; larger than typical training scenario with training occurring at both training sites |           |                  |                  |             |            |
| Training at Camp Roberts   | 6,100     | 660              | 290              | 14          | 2          |
| Training at Fort Hunter Liggett  | 5,500     | 600              | 400              | 32          | 8          |

**No-Action Alternative.** The No-Action Alternative provides the environmental baseline with which the proposed action and alternatives can be compared. Under the No-Action Alternative, existing training exercises at Camp Roberts would not change, and neither the equipment nor the ranges would be upgraded.

**New Equipment Utilization and Range Modernization Program Alternative.** Under the New Equipment Utilization and Range Modernization Program Alternative, the new equipment would be fielded at Camp Roberts, and the range modernization program would be implemented. The maximum number of soldiers training at any one time at Camp Roberts would remain at 5,300.

**Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative.** The fielding of new equipment and implementation of the range modernization program would also occur under the Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative. Combined-forces training, involving two brigades, supporting units, and equipment, would be split between Camp Roberts and Fort Hunter Liggett, located approximately 29 miles northwest of Camp Roberts. The maximum number of soldiers training at Camp Roberts at any one time would be slightly higher than under existing conditions.

**B. The Environmentally Preferable Alternative.** The environmentally preferable alternative is the alternative that best promotes the national environmental policy expressed in NEPA. The analogous alternative under CEQA is the environmentally superior alternative. Generally, this is the alternative that causes the least damage to the environment and best protects natural and cultural resources.

Based on information collected and analyzed for the final EIS/EIR, the alternative selected in terms of preference solely from an environmental perspective is the No-Action Alternative. As documented in the final EIS/EIR, there are ongoing adverse effects on the environment associated with existing conditions at Camp Roberts. The regular use of Camp Roberts by the CA ARNG for training affects sensitive habitats, such as wetlands; threatened and endangered plants and wildlife; water quality; and soil erosion. However, under each of the other alternatives, including the proposed action, the magnitude of impacts would increase incrementally. In addition, impacts on air quality that would result from the proposed action and other alternatives would not occur under the No-Action Alternative.

## **V. Reasons for Selecting the Proposed Action**

Several factors were considered when the merits of each alternative were weighed:

- the environmental impacts and mitigation measures described in the final EIS/EIR that would be associated with the Proposed Action and each alternative.
- input received from the public during the scoping process and the public review period for the draft EIS/EIR.
- the purpose and need for the action as discussed in the final EIS/EIR.

Each of the three components are discussed separately below.

**Combined-Forces Training.** Under current conditions, the CA ARNG conducts annual training with a typical maximum of approximately 5,300 soldiers and their associated vehicles and equipment. To provide greater flexibility and increased training opportunities, the CA ARNG would increase the magnitude of annual training to approximately 10,600 soldiers with vehicles and equipment. This is considered the maximum capacity at Camp Roberts for simultaneous training. Under this component of the proposed action, the types of training activities would not change from existing conditions.

The only other alternative considered in the EIS/EIR that would allow training to occur at this scale is the Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative, which would involve the use of both facilities. However, this alternative assumes that the training facilities at Fort Hunter Liggett would continue to be available in the future. This assumption may not be valid if additional base closures or realignments affect Fort Hunter Liggett. Another consideration is that the CA ARNG periodically uses Fort Hunter Liggett under existing conditions. Under the alternative chosen, this activity may still continue to occur; however, the CA ARNG would still have the option to use Camp Roberts at full capacity if desired.

**New Equipment Utilization.** With the exception of the No-Action Alternative, each of the alternatives includes the fielding of the four new items of equipment. This new equipment is required to maintain a well-equipped, modern military force that is in a state of readiness to ensure accomplishment of its assigned missions. If this new equipment is not fielded at Camp Roberts, the CA ARNG would have to travel to another training site to train with this equipment. Because of the lack of dedicated training sites for reserve forces in California, the CA ARNG would have to compete with high-priority, active-duty military units for the use of active-duty training facilities. Dependence on active-duty facilities is highly undesirable and would have a substantial effect on the CA ARNG from the perspective of both readiness and budgetary concerns.

**Range Modernization Program.** With the exception of the No-Action Alternative, each of the alternatives considered includes

the construction of new or renovated ranges. The new ranges are required to give the CA ARNG the ability to conduct live-fire training to comply with established training standards. If the ranges are not constructed, the CA ARNG would have to travel to another training site to conduct this training. Because of the lack of dedicated training sites for reserve forces in California and the lack of acceptable alternative sites for constructing live-fire ranges, the CA ARNG would have to compete with high-priority, active-duty military units for the use of active-duty training facilities. Dependence on active-duty facilities is highly undesirable and would have a substantial effect on the CA ARNG from the perspective of both readiness and budgetary concerns.

**Conclusion.** The alternative selected contains each of the desired components that would allow attainment of the goals stated in the purpose and need section of the EIS/EIR. Although the other alternatives have favorable elements, this alternative includes each of the elements desired by the NGB and CA ARNG to ensure maximized training opportunities and flexibility for using training facilities and lands at Camp Roberts.

## VI. Mitigation Measures

**A. Existing Mitigation.** Camp Roberts uses the Integrated Training Area Management (ITAM) program to determine the land's ability to support military training with the least impact on natural resources. ITAM consists of the following components:

1. Land Condition Trend Analysis (LCTA). LCTA is the Army's standard program for inventorying, monitoring, and evaluating natural resources on Army lands. Using LCTA, a resource manager can evaluate trends in the conditions of those resources. At Camp Roberts, data have been collected from more than 80 LCTA plots for a 2- to 4-year period.
2. Land Rehabilitation and Maintenance (LRAM). LRAM provides a means of repairing, restoring, and maintaining lands that have been adversely affected by training activities. LCTA data are used to identify areas needing rehabilitation or maintenance or both. Erosion control and revegetation are typical actions that occur under LRAM.
3. Geographic Information System (GIS). GIS is a sophisticated computer system that is used to map and analyze natural resources data collected during surveys and inventories.
4. Environmental Awareness (EA). EA is an educational program emphasizing environmental stewardship; it is aimed at soldiers using the training facilities at Camp Roberts.

EA training materials may include videotapes, handbooks, and field cards. The EA component is used to make soldiers more aware of the effects of training activities on the environment and encourages the use of effective environmental protection measures.

5. Training Requirements Integration (TRI). This component integrates the data generated from LCTA and LRAM with future planning and scheduling of training activities.

The existing ITAM program will be used to mitigate some of the adverse effects of the proposed action as identified in the EIS/EIR—in particular, impacts on wetlands and other bodies of water, soil erosion, and water quality degradation. The use of the ITAM program and other mitigation measures is discussed for each resources area in the section below.

Camp Roberts also has existing procedures for responding to noise complaints from local residents. Complaints about blast noise from demolition training resulted in relocation of the demolition range from range Y39 to range M39 in 1994, which successfully reduced complaints about this activity. In response to safety concerns about artillery training, Camp Roberts imposed restrictions on artillery firing that included reducing the size of the artillery target area, reducing the number of guns that can be fired at any one time, and reducing the hours during which live-fire training can be conducted. These existing measures, which are now regulations, have served to limit noise impacts that would be associated with implementation of the selected alternative.

**B. Proposed Mitigation.** Mitigation has been described in the EIS/EIR to reduce the magnitude of significant impacts associated with the selected alternative. See Table ES-1 of the final EIS/EIR for a summary of significant impacts and the mitigation that will be implemented to reduce the magnitude of these impacts. In addition, the CA ARNG has undergone formal consultation with the U.S. Fish and Wildlife Service (USFWS) regarding the impacts of the proposed action on endangered and threatened species at Camp Roberts. The USFWS has issued a biological opinion stating that the proposed action would not have any adverse effects on the bald eagle (*Haliaeetus leucocephalus*), least Bell's vireo (*Vireo belli pusillus*), or American peregrine falcon (*Falco peregrinus anatum*). However, the biological opinion finds that the proposed action would affect the endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and the threatened vernal pool fairy shrimp (*Branchinecta lynchi*).

To avoid or minimize the potential for incidental take of the kit fox, the biological opinion requires the CA ARNG to continue conducting preactivity and follow-up surveys of all proposed activities that might affect potential kit fox dens. The only exception from this requirement is construction activities in the designated impact area. However, to prevent accidental

• destruction of any natal dens in the impact area, no construction activities will be allowed in the impact area before July 1 and will cease prior to January 15 of each year. The biological opinion also requires implementation of all kit fox protection measures specified in the EIS/EIR. In addition, the biological opinion recommends avoiding the permanent loss of any previously undisturbed listed species habitat at Camp Roberts, continuing the existing kit fox monitoring program, and installing road signs to alert drivers to the presence of the kit fox.

To avoid or minimize the potential for incidental take of vernal pool fairy shrimp, the biological opinion requires the CA ARNG to fence off three specific areas from training, maintenance, and construction activities. The CA ARNG is also required to establish eight additional LCTA plots in areas that have known or potential fairy shrimp habitat and that are typically heavily used for military training exercises, such as tracked vehicle training. These eight plots must be monitored annually for vegetation, disturbance, and fairy shrimp. The biological opinion further recommends programs to control or eradicate certain non-native species that compete with listed species or degrade their habitat.

Cultural resources that might be affected by the proposed action will be protected through implementation of a programmatic agreement signed by the National Guard Bureau, the CA ARNG, the Advisory Council on Historic Preservation, and the California State Historic Preservation Office. The Salinan Nation is a concurring party to the agreement. Sixteen archaeological sites and one historic building have been identified at Camp Roberts that may be eligible for listing in the National Register of Historic Places (NRHP). The programmatic agreement calls for further work, as funding permits, to establish the NRHP eligibility of these sites. In the meantime, the 16 archaeological sites will be marked as off-limits areas and monitored twice yearly by qualified personnel. The historic building will be posted as a historic structure. Activities in the impact area are excluded from any monitoring requirements. Any newly discovered sites will be protected until they have been fully evaluated by qualified personnel. In addition, standard operating procedures for protecting cultural resources at Camp Roberts will be developed.

The U.S. Army Corps of Engineers (Corps) was consulted regarding the potential impacts of the proposed action on wetlands and other waters of the United States. After reviewing all pertinent documents and conducting site surveys at Camp Roberts during January 27-31, 1997, the Corps concluded that neither combined-forces training nor new equipment utilization would affect any waters of the United States, including wetlands. Four of the proposed range modernization sites consist entirely of upland areas and are therefore not subject to Section 404 of the Clean Water Act. The fifth proposed range, the multipurpose machine gun range, contains four jurisdictional wetland areas. These four areas would be flagged before construction, and no



construction activities, staging of equipment or materials, or any other disturbance would be allowed in the flagged areas; thus, the multipurpose machine gun range also would be exempt from Section 404 requirements. Avoidance of these wetlands also eliminates the need to survey them for the threatened vernal pool fairy shrimp.

Two of the mitigation measures described in the EIS/EIR would be revised or not implemented. Range modernization activities would have the potential to result in impacts on endangered and threatened plant species in the impact area if any are present. Proposed mitigation consists of conducting preconstruction surveys before ground-disturbing activities. Endangered or threatened plant species, if found, would be either avoided or relocated. This measure would not be implemented because of the safety hazards associated with unexploded ordnance located throughout the impact area. The risk of injury to personnel conducting the mitigation surveys would be very high compared to the environmental benefits associated with verifying the presence or absence of rare plant species. Because no other feasible mitigation is available for this potential impact, the impact would be considered potentially significant and unavoidable.

The second mitigation measure has been revised. The preparation and implementation of a historic properties management plan (Table 4.0-2 of the final EIS/EIR) will not be competed. In its place, standard operating procedures for protecting cultural resources would be developed as stipulated by the programmatic agreement.

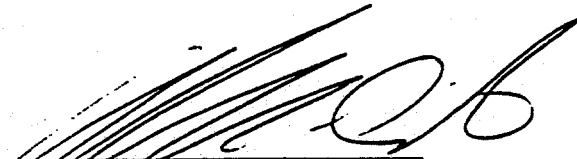
## **VII. Monitoring**

Under the requirements of both Army Regulation 200-1 and CEQA, a mitigation monitoring program has been prepared to ensure the effectiveness of mitigation proposed in the EIS/EIR and to ensure that regulatory requirements are completed. Attachment A is the mitigation monitoring program for this action.

## **VIII. Conclusion**

I have reviewed and evaluated the final EIS/EIR and public and agency comments. I have determined that the process followed in preparing this EIS/EIR complies with all applicable requirements and that the final document adequately addresses the biological, physical, socioeconomic, and cultural impacts of the selected alternative. It is my decision to select the alternative described as the proposed action to implement the three components at Camp Roberts Army National Guard Training Site, California, and to implement the mitigation and monitoring plan.

•IX. Approval Signatures and Date



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WILLIAM C. BILO  
Brigadier General, GS  
Deputy Director, Army National  
Guard

1 May 1997  
Date

## MITIGATION MONITORING PROGRAM

**Project Title:** Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, California

**Project Description:** The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment (a brigade is comprised of 3,000-5,300 soldiers), new equipment utilization, and a range modernization program. These three components are fully described in the final environmental impact statement/environmental impact report prepared for this project.

**Project Location:** The proposed project would be implemented at Camp Roberts Army National Guard Training Site, California. The training site is located in Monterey and San Luis Obispo Counties approximately 30 miles north of San Luis Obispo.

**Type of Document:** Environmental impact statement/environmental impact report

**Prepared by:** National Guard Bureau and California Army National Guard

**Program Coordinator:** Eva Begley, California Army National Guard, Senior Environmental Planner

Approved by:  
Richard E. Beardsley  
Colonel Richard E. Beardsley  
Deputy Director of Environmental Programs  
California Army National Guard

Date

4-18-97

## INTRODUCTION

The purpose of this mitigation monitoring program is to ensure implementation of mitigation measures adopted for this project to lessen or avoid significant adverse impacts identified in the environmental impact statement/environmental impact report. Adoption of this program satisfies Army Regulation 200-2 and the California Environmental Quality Act, which require preparation of mitigation monitoring programs when mitigation measures are adopted by an agency. Ultimate responsibility for completing this program lies with both the National Guard Bureau and the California Army National Guard (CAARNG).

Mitigation measures described in this document have been organized by resource area. For each mitigation measure, the party responsible for completing the individual mitigation measures and the procedures for implementing the measure are listed. If any of the responsible parties change, this mitigation monitoring program will be revised and redistributed. The CAARNG will appoint a monitoring program coordinator, who will serve as a central conduit for recording compliance and maintaining appropriate files for documenting actions taken under this program.

| Mitigation Measure   | Responsible Party  | Implementation   | Notification and Verification  |
|--|--|--|--|
| <b>Vegetation, Wildlife, and Wetlands</b>  |  |  |  |
| Instruct soldiers and commanders to cross rivers only at designated fords.   | Facility manager, Camp Roberts Army National Guard Training Site | <ol style="list-style-type: none"> <li>1. Revise environmental field cards and other training materials issued during environmental briefings to soldiers training at Camp Roberts.</li> <li>2. Revise the presentation for incoming units to include information about ford locations and restrictions on river crossings.</li> <li>3. Review training facilities maps and, if necessary, update the maps with clear information about ford sites.</li> </ol> | <ol style="list-style-type: none"> <li>1. Provide copies of the revised materials to the program coordinator.</li> <li>2. Provide an outline of the revised presentation to the program coordinator.</li> <li>3. Provide a memorandum to the program coordinator after review has been completed.</li> </ol> |
| Consult with the U.S. Army Corps of Engineers (Corps) and comply with the conditions contained in any Section 404 permit required by the Corps.  | Environmental Office, California Army National Guard (CA ARNG)   | 1. Consult with the Corps and apply for permits as advised by the Corps.   | 1. File copies of all correspondence and any permit applications in the EIS/EIR administrative record.   |
|  | Contracting officer's representative for range construction      | 2. Stake all identified wetlands; ensure that no construction activities occur in the staked areas.  | 2. Provide a memorandum to the program coordinator stating that mitigation has been complied with.   |
| Engage in formal consultation (Section 7) with the U.S. Fish and Wildlife Service (USFWS) for training activities affecting San Joaquin kit fox, vernal pool fairy shrimp, and other federally protected species, and implement reasonable and prudent measures. | Environmental Office, CA ARNG                                    | 1. Complete the consultation process with the USFWS.   | 1. Prepare a memorandum for the file summarizing the consultation process.   |

| Mitigation Measure                                    | Responsible Party | Implementation   | Notification and Verification  |
|---|-------------------|--|--|
| Facility manager, Camp Roberts<br>Army National Guard |                   | <p>2. Continue preactivity surveys, followup surveys, and monitoring of San Joaquin kit fox as required under the 1992 biological opinion.</p> <p>3. No construction activities shall occur within the impact area before July 1.</p> <p>4. Fence the three specified areas to protect vernal pool fairy shrimp habitat.</p> <p>5. Establish eight new land condition trend analysis (LCTA) plots in known or potential vernal pool fairy shrimp habitat, and monitor them for vegetation, disturbance, and vernal pool fairy shrimp annually.</p> <p>6. Revise environmental field cards and other training materials issued during environmental briefings to soldiers training at Camp Roberts.</p> <p>7. Revise the presentation for incoming units to include information about vernal pool fairy shrimp.</p> <p>8. Minimize the permanent loss of previously undisturbed habitat for listed species at Camp Roberts.</p> | <p>2. Provide all required reports to agencies as required under the 1992 biological opinion.</p> <p>3. None required.</p> <p>4. Provide a memorandum to the program coordinator when this action is completed.</p> <p>5. Provide copies of the annual report to the program coordinator and USFWS.</p> <p>6. Provide copies of the revised materials to the program coordinator.</p> <p>7. Provide an outline of the revised presentation to the program coordinator.</p> <p>8. Provide information on cumulative permanent losses of undisturbed habitat for listed species since 1992 in the annual San Joaquin kit fox report, and provide a copy of that report to the program coordinator and the USFWS.</p> |

| Mitigation Measure   | Responsible Party  | Implementation  | Notification and Verification  |
|--|--|---|--|
| <p>Conduct preconstruction surveys for nesting raptors, and if nesting raptors are found, establish a minimum 500-foot no-disturbance buffer around the nest site.</p>     | <p>Contracting officer's representative for range construction</p> | <p>9. Install signs along roads at Camp Roberts to alert drivers to the potential presence of San Joaquin kit fox.</p> <p>1. Coordinate with the Camp Roberts environmental staff to arrange for the initial survey before a notice to proceed is issued to the construction contractor.</p> <p>2. Coordinate with the Camp Roberts environmental staff to properly stake any required buffer areas before a notice to proceed is issued to the construction contractor.</p> <p>3. Coordinate with the Camp Roberts environmental staff to ensure ongoing compliance with any required buffer areas until the construction work has been completed or the nestlings have fledged.</p> | <p>9. Notify USFWS when the signs are installed.</p> <p>1. Prepare a memorandum to the program coordinator describing the results of preconstruction raptor surveys.</p> <p>2. If raptor nests are found, prepare a memorandum to the program coordinator stating that staking has been completed.</p> <p>3. After the buffer areas are removed, prepare a memorandum to the program coordinator summarizing compliance with this measure.</p> |
| <p>Conduct preconstruction surveys for burrowing owls and establish a 160-foot no-disturbance area around active nest sites located in or near the construction sites.</p> | <p>Contracting officer's representative for range construction</p> | <p>1. If construction will occur during the period of February through August, coordinate with the Camp Roberts environmental staff to arrange for the initial survey before a notice to proceed is issued to the construction contractor.</p> <p>2. Coordinate with the Camp Roberts environmental staff to properly stake any required buffer areas before a notice to proceed is issued to the construction contractor.</p>  | <p>1. Prepare a memorandum to the program coordinator describing the results of the preconstruction surveys.</p> <p>2. If nests are found, prepare a memorandum to the program coordinator stating that staking has been completed.</p>  |

| Mitigation Measure   | Responsible Party  | Implementation  | Notification and Verification  |
|--|--|---|--|
| <p>Mark known populations of Salinas Valley goldfields with staking and instruct military commanders to avoid staked areas.</p>  | <p>Facility manager, Camp Roberts, Army National Guard Training Site</p> | <ol style="list-style-type: none"> <li>1. Direct Camp Roberts environmental staff to place stakes around known Salinas Valley goldfield populations during the next spring blooming period, and enter known location data into the training site's geographic information system (GIS).</li> <li>2. Revise environmental field cards and other training materials issued during environmental briefings to soldiers training at Camp Roberts.</li> <li>3. Revise the presentation for incoming units to include information about avoiding staked areas.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Provide a memorandum to the program coordinator stating that the staking has been completed.</li> <li>2. Provide copies of the revised materials to the program coordinator.</li> <li>3. Provide an outline of the revised presentation to the program coordinator.</li> </ol>   |
| <p>Conduct preconstruction surveys before any ground disturbance, and avoid, relocate, or propagate any sensitive plant species that would be affected by construction activities.</p> | <p>Contracting officer's representative for range construction</p>       | <ol style="list-style-type: none"> <li>1. Before a notice to proceed is issued to the construction contractor, retain a qualified botanist to conduct a survey for listed plant species of the areas to be disturbed during range construction. Construction in the impact area is exempted.</li> <li>2. If special-status plants are found in areas to be disturbed, determine whether the plant populations can be avoided by modifying construction plans. If not, a qualified botanist must be retained to either relocate the affected population to an area that will not be disturbed or gather seed materials or cuttings as appropriate to allow propagation after construction is completed.</li> </ol> | <ol style="list-style-type: none"> <li>1. Provide written verification to the program coordinator that plant surveys have been completed for all construction sites outside the impact area.</li> <li>2. A report, prepared by the botanist, will be submitted to the program coordinator containing specific recommendations regarding appropriate mitigation for the plant species encountered.</li> </ol> |



| Mitigation Measure   | Responsible Party   | Implementation  | Notification and Verification  |
|--|---|---|--|
|  |   | <p>3. The botanist must coordinate any relocation or propagation activities with the California Department of Fish and Game (DFG) and USFWS.</p> <p>4. If the affected population can be avoided, the population will be marked with stakes and left undisturbed.</p> <p>5. Postconstruction monitoring of plant populations that have been relocated or propagated will be completed by a qualified botanist to the satisfaction of the DFG and USFWS.</p> | <p>3. The botanist will submit documentation of consultation with the DFG and USFWS to the program coordinator.</p> <p>4. Submit a copy of the construction drawings showing the avoidance areas to the program coordinator.</p> <p>5. Submit a report to the program coordinator describing a plan for postconstruction monitoring. The report will include documentation of DFG and USFWS concurrence. Notify the program coordinator by memorandum upon successful completion of postconstruction monitoring.</p> |
| <b>Air Quality</b>   |   |   |  |
| <p>Coordinate with the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and the San Luis Obispo County Air Pollution Control District (SLOCAPCD) to ensure that PM<sub>10</sub>, ROG, and NO<sub>x</sub> emissions data are incorporated into the North Central Coast and South Central Coast Air Basin emissions inventories for the purpose of PM<sub>10</sub> and ozone attainment planning.</p> | <p>Environmental Office, CA ARNG</p>                                    | <p>1. Upon completion of the air emissions inventory, submit a copy of the air emissions inventory for Camp Roberts to each district.</p>   | <p>1. Submit a copy of the transmittal letters to the program coordinator.</p>   |
| <p>Coordinate with the MBUAPCD and SLOCAPCD on scheduling of combined-forces training.</p>   | <p>Facility manager, Camp Roberts Army National Guard Training Site</p> | <p>1. Submit a letter to the two districts no less than 30 days before large-scale combined-forces training exercise.</p>   | <p>1. Submit a copy of this letter to the program coordinator.</p>   |

| Mitigation Measure  | Responsible Party  | Implementation   | Notification and Verification   |
|---|--|--|---|
| Implement best management practices (BMPs), such as construction site watering and hydroseeding, to control fugitive dust to the maximum degree possible. | Facility management officer, CA ARNG                             | 1. Incorporate fugitive dust control measures into the construction plans and specifications.  | 1. Provide a file copy of the construction plans and specifications to the program coordinator. |
|   | Contracting officer's representative for range construction      | 2. Conduct regular inspections of the construction sites to ensure compliance with the measures.   | 2. No action is required.   |
| <b>Hydrology, Water Resources, Geology, Seismicity, and Soils</b>   |  |  |   |
| Continue implementing the environmental awareness (EA) and LCTA components of the Integrated Training Area Management (ITAM) program.                     | Facility manager, Camp Roberts Army National Guard Training Site | 1. Carry out the EA program.   | 1. Provide a copy of all EA materials to the program coordinator.                               |
|   |  | 2. Carry out the LCTA program.   | 2. File copies of all LCTA reports with the program coordinator.                                |
| Implement the land rehabilitation and maintenance program (LRAM) component of the ITAM program.   | Facility manager, Camp Roberts Army National Guard Training Site | 1. Identify the areas in need of rehabilitation or maintenance and restore or maintain as appropriate.                                       | 1. Provide a memorandum to the program coordinator stating that work has been performed.        |
|   |  | 2. Implement the program on an annual basis.   | 2. Notify the Environmental Office of the CA ARNG of future funding requirements.               |
| <b>Energy, Public Services, and Utilities</b>   |  |  |   |
| Develop and implement a waste reduction/waste diversion program for Camp Roberts consistent with the requirements of Assembly Bill 939.                   | Facility manager, Camp Roberts Army National Guard Training Site | 1. Revise environmental field cards and other training materials issued during environmental briefings to soldiers training at Camp Roberts. | 1. Provide copies of the revised materials to the program coordinator.                          |
|   |  | 2. Revise the presentation for incoming units to include information on waste minimization.  | 2. Provide an outline of the revised presentation to the program coordinator.                   |

| Mitigation Measure   | Responsible Party  | Implementation   | Notification and Verification  |
|--|--|--|--|
| <b>Public Health and Safety</b>  |  |  |  |
| <b>Clear all unexploded ordnance from the range construction sites before commencement of work.</b>  | <b>Contracting officer's representative for range construction</b> | <ol style="list-style-type: none"> <li>1. Arrange for clearing of the areas to be affected by construction before a notice to proceed is issued to the construction contractor.</li> <li>2. Provide training to construction crews about appropriate actions to be taken if unexploded ordnance is encountered during construction.</li> </ol> | <ol style="list-style-type: none"> <li>1. Provide a memorandum to the program coordinator stating that the construction areas have been cleared.</li> <li>2. Provide a memorandum to the program coordinator stating that the construction crews have been trained.</li> </ol> |
| <b>Ensure that explosive ordnance disposal personnel are available to disarm, safely remove, or detonate any unexploded ordnance identified at range construction sites.</b> | <b>Contracting officer's representative for range construction</b> | <ol style="list-style-type: none"> <li>1. Provide the construction foreman with the name of the individual to be contacted if unexploded ordnance is encountered by construction crews.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Provide a memorandum to the program coordinator containing the name of the point of contact.</li> </ol>  |

| Mitigation Measure   | Responsible Party   | Implementation   | Notification and Verification  |
|--|---|--|--|
| <b>Cultural Resources</b>  |   |  |  |
| <p>As part of compliance with Section 106 of the National Historic Preservation Act, the National Guard Bureau, State Historic Preservation Office (SHPO), and Advisory Council on Historic Preservation (ACHP) will sign a programmatic agreement specifying how historic properties at Camp Roberts that may be potentially affected by the proposed action will be identified and treated. In addition, the CA ARNG will contract with a qualified archaeologist for temporary full-time onsite assistance in implementing the requirements of the agreement and developing standard procedures to protect historic properties considered to be potentially eligible for listing on the National Register of Historic Places.</p> | <p>Facility manager, Camp Roberts<br/>Army National Guard Training Site</p> | <ol style="list-style-type: none"> <li>1. Revise environmental field cards and other training materials issued during environmental briefings to soldiers training at Camp Roberts.</li> <br/> <li>2. Revise the presentation for incoming units to include information about cultural resources</li> <br/> <li>3. Flag 16 identified cultural resource sites as off-limits areas.</li> <br/> <li>4. Monitor each area twice per year.</li> <br/> <li>5. Post one building as a historic structure.</li> </ol> | <ol style="list-style-type: none"> <li>1. Provide copies of the revised materials to the program coordinator.</li> <br/> <li>2. Provide an outline of the revised presentation to the program coordinator.</li> <br/> <li>3. Provide an annual report to the program coordinator, ACHP, SHPO, and other parties as specified in the programmatic agreement.</li> <br/> <li>4. Provide an annual report to the program coordinator, ACHP, SHPO, and other parties as specified in the programmatic agreement.</li> <br/> <li>5. Provide an annual report to the program coordinator, ACHP, SHPO, and other parties as specified in the</li> </ol> |

| Mitigation Measure   | Responsible Party  | Implementation  | Notification and Verification  |
|--|--|---|--|
|  |  | <p>6. Survey an additional 3,000 acres at Camp Roberts as recommended by SHPO.</p> <p>7. Develop standard operating procedures for protecting cultural resources at Camp Roberts.</p>   | <p>programmatic agreement.</p> <p>6. Provide an annual report to the program coordinator, ACHP, SHPO, and other parties as specified in the programmatic agreement</p> <p>7. Notify the program coordinator and all parties to the programmatic agreement when these procedures have been adopted by Camp Roberts.</p> |
| <p>If previously unknown resources are discovered, immediately stop ground-disturbing activities within 20 meters of the discovery. Evaluate and proceed in accordance with SHPO guidance.</p> | <p>Facilities management officer, CA ARNG</p> <p>Contracting officer's representative for range construction</p> | <p>1. Include this mitigation measure on construction plans and specifications.</p> <p>2. If subsurface cultural resources are found, a qualified archaeologist and Native American representative will evaluate the find. Construction may proceed per their recommendation.</p> | <p>1. Provide a copy of the construction plans and specifications to the program coordinator.</p> <p>2. Notify the program coordinator, SHPO, and other parties designated in the programmatic agreement.</p>  |
| <p>Comply with Section 110 of the National Historic Preservation Act.</p>  | <p>Facility manager, Camp Roberts Army National Guard Training Site</p>  | <p>1. Ensure that all historic resources are adequately protected.</p>  | <p>1. Provide an annual memorandum to the program coordinator and other parties as required by law about how compliance occurs.</p>  |

***APPENDIX FF***

***Sample Records of Non-Applicability (RONAs)***

# Conformity Rule Compliance Record of Non-Applicability

Project/Action Name: \_\_\_\_\_

Project/Action Number: \_\_\_\_\_

Project/Action POC: \_\_\_\_\_

Project/Action Duration: \_\_\_\_\_

Conformity under Clean Air Act, Section 176, has been evaluated for the above described project per 40 CFR Part 51. The requirements of this rule are not applicable to this project/action because:

The project/action is described as an exempt action under 40 CFR 51.853(c) or (d),  
SPECIFY APPLICABLE EXEMPTION.

OR

Total direct and indirect emissions from the project/action have been estimated at GIVE ESTIMATED EMISSIONS FOR EVALUATED POLLUTANTS FOR EACH PROJECT YEAR and are below the de minimus threshold established at 40 CFR 51.853(b) of GIVE THE THRESHOLD VALUE FOR THE EVALUATED POLLUTANTS; AND

The project/action is not considered "regionally significant" under 40 CFR 51.853(i).

The supporting documentation and emissions estimates are:

( ) ATTACHED \_\_\_\_\_

( ) ATTACHED TO NEPA DOCUMENT \_\_\_\_\_

( ) OTHER \_\_\_\_\_

Prepared by:

Concurred by:

\_\_\_\_\_  
PROPONENT  
MANAGER

\_\_\_\_\_  
XX ARNG ENVIRONMENTAL

\_\_\_\_\_  
XX ARNG STAFF JUDGE ADVOCATE

**APPENDIX A**

**RECORD OF NON-APPLICABILITY**


**Record of Non-Applicability for the  
California Army National Guard Readiness Center and Field Maintenance Shop  
Sacramento, California**

The California Army National Guard is proposing to construct and operate a new California National Guard Readiness Center and Field Maintenance Shop in Sacramento, California. The project would house administrative offices, classrooms, training and storage areas.

The proposed Readiness Center and Field Maintenance Shop are located in an industrially-zoned area of Sacramento, California at the Former Sacramento Army Depot. The area in which the project site is located has been designated nonattainment for state ozone and PM<sub>10</sub> standards and attainment for CO, sulfates, nitrogen dioxide, sulfur dioxide.

The Proposed Action has been evaluated for compliance with Section 176© of the Clean Air Act (42 USC 7506) and with the US Environmental Protection Agency (USEPA) rule promulgated at 40 CFR Part 93. Under this rule, federal actions or actions receiving federal funding resulting in a net increase in nonattainment pollutant emissions over de minimus levels require a formal conformity determination document. The applicable de minimus levels in Sacramento County are 50 tons/year for O<sub>3</sub>, and 100 tons/year for CO. Construction of the Proposed Action would result in a net increase in NO<sub>x</sub> emissions of 3.67 tons per year, a net increase in CO emissions of 6.35 tons per year and a net increase in PM<sub>10</sub> emissions of 0.29 tons per year.

Construction and operation of the Readiness Center and Field Maintenance Shop would not result in a net increase in direct and indirect emission of nonattainment pollutants and their precursors over de minimus levels. Pursuant to 40 CRF 93.153(c)(1), I find that the requirements of the USEPA general conformity rule are not applicable to the Proposed Action.

  
\_\_\_\_\_  
JOHN H. MOORMAN  
Colonel (USA Retired)  
Director, Environmental Programs  
California Army National Guard

4 JAN 06  
Date



***APPENDIX GG***

***Technical Guide for Compliance with the  
General Conformity Rule***

## TECHNICAL GUIDE FOR COMPLIANCE WITH THE GENERAL CONFORMITY RULE

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UPDATED AUGUST 2002

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## 1.0 OVERVIEW OF THE GENERAL CONFORMITY RULE

### 1.1 Regulatory Background.

Section 176(c)(1) of the Clean Air Act (CAA) contains the legislation that mandates the general conformity rule<sup>1</sup>. This legislation prohibits the Federal Government from conducting, supporting or approving any actions that do not conform to an U.S. Environmental Protection Agency (EPA)-approved State Implementation Plan (SIP). A SIP is a State's self-authored blueprint for achieving and maintaining compliance with the goals of the CAA. Although the conformity requirement was present in the CAA prior to the Clean Air Act Amendments of 1990 (CArmy Ammunition Activity-90), it had not been enforced through any formal rulemaking or program at either the State or Federal level. The 1990 Amendments revised Section 176(c) to expand and clarify Congress' expectations of the conformity rule, and added a mandate for the EPA to establish a Federal conformity program<sup>2</sup>. The EPA fulfilled this mandate by promulgating the general conformity rule on 30 November 1993<sup>3</sup>. This rule and all subsequent amendments may be found in the Code of Federal Regulations (CFR) at 40 CFR 51 Subpart W and 40 CFR 93 Subpart B. The texts of 40 CFR 51 Subpart W and 40 CFR 93 Subpart B are essentially identical. The main difference is that 40 CFR 51 is designed to inform State authorities about their responsibilities for creating and administering a general conformity program. The 40 CFR 93 is the Federal rule intended for source owners in the absence of an EPA-approved State program. In this document, we will cite the general conformity rule as it appears in 40 CFR 93 Subpart B.

### 1.2 Purpose of this Document.

Since the promulgation of the general conformity rule, the Army has issued several policy memos and guidance documents to help interpret the rule. An earlier Army publication reviewed and interpreted each text element of the general conformity rule as it appeared in the CFR<sup>4</sup>. Unlike the earlier publication, this new technical guide is intended as an overview of policies and tools for managing general conformity at the installation level. The policy overview will clarify current Army guidance, as well as guidance offered by the EPA and other affected Federal agencies. The tools overview will include a review of calculation software, how to prepare a Record of Nonapplicability (RONA), and a list of National Ambient Air Quality Standard (NAAQS) attainment status for Army installations affected by the general conformity rule. The goal of this document is to educate the reader sufficiently so that he or she can perform most of the general conformity regulatory tasks at the installation level.

### 1.3 What is the General Conformity Rule ?

The general conformity rule was designed to ensure that Federal actions do not impede local efforts to control air pollution. It is called a conformity rule because Federal agencies are required to demonstrate that their actions "conform with" (i.e., do not undermine) the approved SIP for their geographic area. Federal agencies make this demonstration by performing a conformity review. The conformity review is the process used to evaluate and document project-related air pollutant emissions, local air quality impacts and the potential need for emission mitigation.

In Title I of the CArmy Ammunition Activity-90, Congress established two types of conformity: transportation conformity and general conformity. The transportation conformity rule pertains to Federal transportation projects, and requires them to conform with transportation aspects of an approved SIP<sup>5</sup>. The general conformity rule covers all other Federal actions not addressed by the Transportation Conformity rule. This document will address only those requirements associated with the general conformity rule.

The general conformity rule was promulgated on 30 November 1993 with an effective date of 31 January 1994. The up-to-date regulatory text (including subsequent amendments) appears in 40 CFR 51 Subpart W and 40 CFR 93 Subpart B. This regulation applies to all Federal actions (including Department of Defense (DOD) actions) occurring in NAAQS nonattainment areas or maintenance areas. It is a Federally enforceable requirement and must be included in a Title V permit as an applicable requirement<sup>6</sup>. State regulatory agencies are required to administer the general conformity rule by revising their SIPs to include a general conformity regulation. These State provisions must be at least as stringent as the Federal

regulation, but are prohibited from being more stringent unless the provisions apply equally to non-Federal entities.

**1.4 What is a Conformity Review ?**

A conformity review is a multi-step process used to determine whether a Federal action meets the requirements of general conformity rule and the associated SIP. It requires the affected Federal agency to do one or more of the following:

- evaluate the nature of the proposed action and associated air pollutant emissions
- determine whether the action is exempt by rule
- calculate air pollutant emissions and air quality impacts associated with the proposed action
- mitigate emissions if regulatory thresholds are exceeded
- prepare formal documentation of findings
- publish findings to the public and regulatory community

**1.5 When is a Conformity Review Required ?**

A conformity review must be performed when a Federal action generates air pollutants in a region that has been designated a nonattainment or maintenance area for one or more NAAQS. Nonattainment areas are geographic regions where the air quality fails to meet the NAAQS. Maintenance areas are regions where NAAQS were exceeded in the past, and are subject to restrictions specified in a SIP - approved maintenance plan to preserve and maintain the newly regained attainment status. The NAAQS pollutants include ozone (O<sub>3</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), lead, particulate matter with diameter less than or equal to 10 microns (PM<sub>10</sub>) and particulate matter with diameter less than or equal to 2.5 microns (PM<sub>2.5</sub>). Table 1 shows the air pollutants that are subject to a general conformity review based upon the NAAQS nonattainment or maintenance status. Note that both NAAQS pollutants and their precursors are subject to a conformity review<sup>7</sup>. Precursors are chemical compounds that participate in a chemical reaction to form the NAAQS air pollutant of concern.

**Table 1. Air Pollutants Subject to a General Conformity Review**

| If the region where the installation is located has been designated a Nonattainment or Maintenance area for... | Then a general conformity review must be performed for...                        |
|--|--|
| O <sub>3</sub>   | nitrogen oxides (NO <sub>x</sub> ) and volatile organic compounds (VOCs)         |
| CO   | CO   |
| PM <sub>10</sub>   | PM <sub>10</sub> and PM <sub>10</sub> precursors such as acid gases or metals    |
| PM <sub>2.5</sub>  | PM <sub>2.5</sub> and PM <sub>2.5</sub> precursors such as acid gases or metals* |
| SO <sub>2</sub>  | SO <sub>2</sub>  |
| NO <sub>2</sub>  | NO <sub>2</sub>  |
| Lead   | Lead   |

\*Although PM<sub>2.5</sub> is an NAAQS pollutant, PM<sub>2.5</sub> nonattainment designations will not be announced by EPA until 2002 or later.<sup>8</sup>

The general conformity rule does not specify a deadline for completing the conformity review and associated tasks. However, the rule states clearly that these tasks must be accomplished in a timely manner prior to initiating the proposed action.

"A Federal Agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart *before the action is taken* (emphasis added)."<sup>9</sup>

In addition, EPA has issued interpretive guidance regarding when a conformity review is required:

"Before any approval is given for an action to go forward, an agency must apply the applicability requirements to a proposed Federal action to determine if a conformity determination is required. The applicability analysis can be completed concurrently with the National Environmental Policy Act (NEPA) analysis. It would probably occur during the environmental assessment."<sup>10</sup>

This means that all information retrieval, regulatory review, computations, emission mitigation and documentation must be completed before the proposed action is initiated. If the state where the action will occur has promulgated an EPA-approved conformity program, then the deadlines for completing the conformity review will be governed by the local requirement. Appendix C provides a list of State-administered general conformity regulations and their associated citations.

### 1.6 How is a Conformity Review Accomplished ?

There are two paths that a conformity review can take. The first path is for actions that must be evaluated, but ultimately are not subject to the general conformity rule. The second path is for actions subject to the full regulatory analysis of the general conformity rule because their air pollutant emissions are expected to have a negative effect on the State's ability to comply with its SIP. A recent canvassing of Army assets revealed that most Army actions requiring a conformity review ended up on the first path (i.e., The actions were not subject to the full analysis of the general conformity rule.). Therefore, the focus of this document will be on the screening and documentation procedures for actions that require consideration under the rule, but ultimately demonstrate their emissions do not interfere with SIP compliance. Further guidance on how to conduct a full conformity analysis may be found in the CFR<sup>11</sup> or from the governing State or local regulatory authority.

The screening procedure shown below can be used to determine whether the general conformity rule applies to a proposed action. In some cases, additional research or computation may be necessary to evaluate rule applicability. In all cases, the research and computations supporting the final determination must be documented in writing and retained for the purpose of demonstrating that an appropriate review was conducted. Documentation procedures for actions that are not subject to the full analysis of the general conformity rule will be discussed in Section 2.0.

#### Step 1. Will the action take place in an air quality nonattainment or maintenance area ?

Only those Federal actions that take place in a region designated as an NAAQS nonattainment area or maintenance area must be evaluated for general conformity. The NAAQS attainment status for a region may be determined from several sources:

- 40 CFR 81 Subpart C contains the NAAQS attainment status for all regions in EPA jurisdiction. However, the CFR does not identify maintenance areas.
- The EPA maintains several Internet databases that list current NAAQS nonattainment and maintenance areas. The website we have found most useful for attainment and maintenance status is the *Green Book* website at <http://www.epa.gov/oar/oaqps/greenbk/>
- Local air quality authorities should know the attainment and maintenance status of their jurisdictions.
- Appendix D of this document contains a list of the NAAQS attainment and maintenance status for most major Army installations. Although this list is current at the time of publication, attainment and maintenance status can change and should be verified at the time of the conformity review.

If the location where the action is to occur has not been designated an NAAQS nonattainment area or maintenance area, then no further scrutiny is required and no documentation is required. If the proposed action will occur in a nonattainment or maintenance area, go to **Step 2**.

**Step 2.** Will the proposed action result in the emission of an air pollutant that is regulated due to the nonattainment or maintenance status of the region ?

The proposed action must be evaluated to determine if it will generate air pollutant emissions that aggravate a nonattainment problem or jeopardize the maintenance status of the area. Specific air pollutants that must be evaluated in nonattainment and maintenance areas, and their associated threshold levels are shown in Tables 2 and 3.

**Table 2. NAAQS Nonattainment Area Pollutants & General Conformity Thresholds**

| Nonattainment Pollutant | Nonattainment Area Classification | Pollutant to be controlled | Emission rate threshold (tons/year) |
|-------------------------|-----------------------------------|----------------------------|-------------------------------------|
| Ozone                   | Extreme                           | VOC or NO <sub>x</sub>     | 10                                  |
| Ozone                   | Severe                            | VOC or NO <sub>x</sub>     | 25                                  |
| Ozone                   | Serious                           | VOC or NO <sub>x</sub>     | 50                                  |
| Ozone                   | Moderate or Marginal              | VOC or NO <sub>x</sub>     | 100                                 |
| Ozone                   | Ozone Transport Region            | VOC                        | 50                                  |
| Ozone                   | Ozone Transport Region            | NO <sub>x</sub>            | 100                                 |
| Carbon monoxide         | Nonattainment                     | CO                         | 100                                 |
| Sulfur dioxide          | Nonattainment                     | SO <sub>2</sub>            | 100                                 |
| Nitrogen dioxide        | Nonattainment                     | NO <sub>2</sub>            | 100                                 |
| PM <sub>10</sub>        | Serious                           | PM <sub>10</sub>           | 70                                  |
| PM <sub>10</sub>        | Moderate                          | PM <sub>10</sub>           | 100                                 |
| Lead                    | Nonattainment                     | lead                       | 25                                  |

**Table 3. NAAQS Maintenance Area Pollutants & General Conformity Thresholds**

| Maintenance Pollutant | Maintenance Area Classification | Pollutant to be controlled | Emission rate threshold (tons/year) |
|-----------------------|---------------------------------|----------------------------|-------------------------------------|
| Ozone                 | Ozone Transport Region          | VOC                        | 50                                  |
| Ozone                 | Non-Ozone Transport Region      | VOC                        | 100                                 |
| Ozone                 | Maintenance                     | NO <sub>x</sub>            | 100                                 |
| Carbon monoxide       | Maintenance                     | CO                         | 100                                 |
| Sulfur dioxide        | Maintenance                     | SO <sub>2</sub>            | 100                                 |
| Nitrogen dioxide      | Maintenance                     | NO <sub>2</sub>            | 100                                 |
| PM <sub>10</sub>      | Maintenance                     | PM <sub>10</sub>           | 100                                 |
| Lead                  | Maintenance                     | lead                       | 25                                  |

Both *direct* and *indirect* air emissions associated with the proposed action must be evaluated. Direct emissions are those that occur as a direct result of the action, and occur at the same time and place as the action. Sources that may contribute to direct emissions include demolition or construction activities associated with the proposed action; equipment used to facilitate the action (e.g., construction vehicles,

temporary power generation) and new equipment that is a permanent component of the completed action (e.g., boilers, generators). *Indirect emissions* are those that occur at a later time or distance from the place where the action takes place, but may be reasonably anticipated as a consequence of the proposed action. To be counted as an indirect emission, the Federal proponent for the action must have continuing control over the source of the indirect emissions. Sources of indirect emissions include commuter activity to/from the site of the action (e.g., employee vehicle emissions); and support services to the action (e.g., increased heating, cooling, potable water or wastewater treatment needs where those services are provided by the Federal agency sponsoring the action). Both stationary and mobile sources must be included when calculating the total of direct and indirect emissions.

If the proposed action will not result in the direct or indirect emission of NAAQS nonattainment pollutants or precursors, then no further scrutiny is required and no documentation is required. If the proposed action is expected to produce NAAQS air pollutants or precursors that are regulated due to the area's nonattainment or maintenance status, go to **Step 3**.

**Step 3.** *Does the proposed action qualify as an exempt action under the conformity rule?*

The EPA has allowed that certain actions are exempt from the general conformity rule because the expected air emissions are not likely to impact the SIP. The list of exempt actions appears in 40 CFR 93.153(c) and (d), and includes a number of scenarios that could occur at a military installation. Some important exemptions include:

- continuing and recurring activities at an existing facility where the scope of such activities does not vary significantly from the current activity
- routine maintenance and repair
- transfer of ownership or titles of land, facilities, real or personal property;
- actions in response to emergencies or natural disasters
- actions that require a new or modified permit under the major New Source Review (NSR) or Prevention of Significant Deterioration (PSD) programs
- modification to existing equipment undertaken as a requirement of environmental regulation
- remedial activities carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- routine and recurring transportation of materiel and personnel

The complete list of exemptions (as it appears in the CFR) should be reviewed to determine whether an exemption is available, and to ensure that the exemption is appropriate for the proposed action. Conformity reviews resulting in a determination that the proposed action is exempt must be documented in a RONA. Supporting data for the RONA includes a brief description of the project and the specific exemption citation from the CFR. If the action is not eligible for an exemption, go to **Step 4**.

**Step 4.** *Are the anticipated air pollutant emissions resulting from the proposed action below threshold levels?*

Air pollutant emissions generated by the proposed action must be calculated and compared to the appropriate threshold level(s) as shown in Tables 2 and 3. Some specific requirements associated with the calculation include:

- An annual emission rate (in tons/year) reflecting *actual emissions*<sup>12</sup> must be calculated for the proposed action
- The annual emission rate must include both direct and indirect emissions
- The annual emission rate must include emissions from both mobile and stationary sources associated with the proposed action
- For multi-year actions, the annual emission rate must reflect the year for which air emissions are expected to be highest<sup>13</sup>

- If emission rates are estimated, calculations must be performed using EPA-preferred emission factors such as AP-42<sup>14</sup> for stationary and area sources, and the EPA motor vehicle emission model used for the preparation of SIPs.<sup>15</sup>

If the total of direct and indirect emissions for any individual pollutant will equal or exceed the associated threshold shown in Table 2 or 3, a full general conformity determination is required. If projected emissions will be below threshold levels, the action may be exempt from further conformity analysis if the emissions are not considered *regionally significant* (see **Step 5**). Calculations for proposed actions that do not exceed threshold levels must be documented in a RONA (See Section 2.0). Supporting data for the RONA includes a brief description of the proposed action, a list of NAAQS nonattainment or precursor pollutants resulting from the proposed action, their associated general conformity thresholds, projected annual emissions of each pollutant and a brief description of the emissions calculation method.

**Step 5. Is the action regionally significant ?**

An action is regionally significant if the total direct and indirect emissions of an individual pollutant (as calculated for the threshold determination in **Step 4**) amount to 10% or more of a nonattainment or maintenance area's emissions of that pollutant.<sup>16</sup> Emission inventories for nonattainment and maintenance area pollutants are published in the SIP.<sup>17</sup> (The contents of the SIP should be available from a State or local regulatory authority.) If the proposed action is regionally significant, it must undergo a full general conformity determination. If it is not regionally significant, then the action is exempt from further analysis under the conformity rule. The screening for regional significance must be documented in the RONA along with the information described in previous steps.

### 1.7 What Kind Of Military Actions Trigger a Conformity Review ?

Military actions that might require a conformity review and the air emissions of concern include the following:

- Construction or modification of any air emission source that is not covered under a NSR or PSD permit, or a CERCLA action (*evaluate pollutants emitted directly from the source*)
- Construction, renovation or demolition of buildings or facilities (*evaluate dust or other pollutants from land clearing activities, air emissions from stationary construction equipment, motor vehicle emissions from construction vehicles*)
- Increase or relocation of government personnel who did not previously work at the base (*evaluate motor vehicle emissions for new traffic on the base and emissions associated with support services to accommodate increased population [i.e., potable/wastewater treatment, heating/cooling demands]*)

An example conformity evaluation of a proposed military action is shown below.

Fort Alpha is located in an area that has been designated as a moderate non-attainment area for ozone. Pollutants of concern for an ozone nonattainment area are NO<sub>x</sub> and VOCs. The Fort has a training facility that will be increasing its student population by 1,200 new soldiers. This action will require 2 additional barracks for enlisted trainees. The new barracks will be built on 4 acres of partially wooded land in Area 56. Heat and hot water will be provided by the central heating plant. The new facilities require 3,000 square feet of paved parking, and 300 feet of paved roadway. A local contractor will perform the work.

**Direct Emissions.** For this project, there is no concern for dust emissions since the nonattainment pollutants of concern are NO<sub>x</sub> and VOCs.

*Land Clearing* - Debris generated during land clearing for the new barracks plot and associated roads and parking pad will probably be trucked to a licensed landfill, although some might be burned on-site.



Evaluate emissions from: bulldozers, excavators, and site clearing equipment; trucks and other construction passenger vehicles; open burning of land clearing debris.

*Building Construction* - The barracks will have a brick exterior surface with drywall interior walls. Cement is used for the foundation. Evaluate emissions from: cement trucks; painting interior walls; contractor vehicles

*Parking and Road Construction* Evaluate emissions from: paving (mixing and application of asphalt); traffic striping

*Training Facility* - Air emissions associated with school curriculum or training activities must be calculated. Evaluate emissions from: industrial shops (welding, painting, solvent applications); field exercises (portable generators, troop transport vehicles, weapons firing)

### Indirect Emissions.

*Municipal Services.* Providing heat and hot water for the new buildings could increase the load on the central heat plant which will lead to higher emissions of NOx and VOCs. Evaluate emissions from fuel combustion at the heating plant.

*Vehicular Traffic.* It is likely that some soldiers attending the school will have their own vehicles used for local travel. Evaluate emissions from soldiers privately owned vehicles (POVs).

<sup>1</sup>42 USC 7506(c), Activities not Conforming to approved or promulgated plans

<sup>2</sup>PL 101-549, CArmy Ammunition Activity-90, Title I, Section 101(f), Conformity Requirements

<sup>3</sup>58 FR 63214 (November 30, 1993), Final Rule, Determining Conformity of General Federal Actions to State or Federal Implementation Plans

<sup>4</sup>Webber, L. L., and Peters, L. L., Department of the Army Guide for Compliance with the General Conformity Rule under the Clean Air Act (June 15, 1995).

<sup>5</sup>40 CFR 93, Subpart A, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act

<sup>6</sup>The general conformity rule does not require a military installation to obtain a Title V Operating Permit. However, if an installation has a Title V permit and undertakes actions covered by the general conformity rule, the general conformity rule must be included in the Title V permit as an applicable requirement.

<sup>7</sup>At this time, a general conformity review is not required for Federal actions that emit hazardous air pollutants, ozone depleting chemicals, or greenhouse gases.

<sup>8</sup>Fact Sheet, Summary of EPA's Strategy for Implementing New Ozone and Particulate Matter Air Quality Standards, Office of Air Quality and Planning Standards, U.S. EPA, July 17, 1997

<sup>9</sup>40 CFR 93.150(b)

<sup>10</sup>General Conformity Guidance: Questions and Answers (Applicability: Question #1), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994

<sup>11</sup>40 CFR 93.154 through 160

<sup>12</sup>Actual emissions are those emissions produced as a direct result of the proposed action. They do not include any theoretical maximums, permit limits or the potential-to-emit associated with the activity.

<sup>13</sup>40 CFR 93.159(d)(2)

<sup>14</sup>Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources, 5th edition, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, January 1995 (with Supplements)

<sup>15</sup>40 CFR 93.159(b)(1) & (2)

<sup>16</sup>40 CFR 93.153(i)

<sup>17</sup>All nonattainment areas SIPs are required to have a current inventory of actual emission rates for

emission sources in their jurisdiction. PL 101-549, CArmy Ammunition Activity-90, Title I, Section 172(c)(3), Nonattainment Plan Provisions

## 2.0 ROLE OF THE RECORD OF NON-APPLICABILITY (RONA)

### 2.1 What is a RONA ?

A RONA is a short, written document used to declare that the requirements of the general conformity rule do not apply to a specific action. The RONA verifies that a proposed action has been reviewed properly, and provides written evidence of that review in the form of a project description, emission rate calculation (if necessary), citation of exemption category (if applicable) and any other information necessary to support the declaration of non-applicability.

### 2.2 Army Policy on RONAs.

Recent information suggests that many Army conformity reviews result in a declaration of non-applicability either because the action is exempt, or because projected emission rates do not exceed conformity thresholds. Federal regulations do not require any documentation of the conformity review process under these circumstances. However, it is Army policy that these reviews will be documented formally to ensure that a proper review takes place, and to tangibly demonstrate the Army's compliance with the general conformity rule.<sup>18</sup> The RONA must contain a description of the proposed action, and adequate documentation to support the determination of non-applicability. It must be signed by the installation's environmental coordinator, and retained at the installation for a period of 6 years after completion of the project. Failure to prepare and retain this documentation may result in a Class III Finding under an Environmental Compliance Assessment System (ECAS) review, and could jeopardize the affirmative demonstration of compliance needed for a Title V operating permit (See Section 3.3).

### 2.3 An Example RONA.

In order to improve understanding of the RONA, the AEC issued a guidance memo in September 1995 illustrating the suggested form and content for a RONA.<sup>19</sup> Their example is reproduced in Figure 1. Note that the suggested RONA is a one-page declaration summarizing why the project is not subject to a full conformity determination. If emissions calculations are used to justify the RONA, they must be attached to the RONA as supporting documentation.

| <b>GENERAL CONFORMITY - RECORD OF NON-APPLICABILITY</b>  |   |
|--|---|
| Project/Action Name:   | <i>Construction of New Housing</i>                                    |
| Project/Action Identification Number:  | <i>12-345-67-890</i>  |
| Project/Action Point of Contact:   | <i>Jane Doe, Directorate of Public Works,<br/>phone: 410-555-1212</i> |
| Begin Date: <i>MM-DD-YY</i>  | End Date: <i>MM-DD-YY</i>   |
| <p>General Conformity under the Clean Air Act, Section 176 has been evaluated for the project described above according to the requirements of 40 CFR 93, Subpart B. The requirements of this rule are not applicable to this project/action because:</p> <p>_____ The project/action is an exempt action under 40 CFR 93.153(c) or (d), (SPECIFY APPLICABLE EXEMPTION CATEGORY AND REGULATORY CITATION)</p> |   |

**OR**

\_\_\_\_\_ Total direct and indirect emission from this project/action have been estimated at (SPECIFY NAME AND ANNUAL EMISSION RATE FOR EACH POLLUTANT UNDER CONSIDERATION), and are below the conformity threshold value established at 40 CFR 93.153(b) of (SPECIFY NAME AND ASSOCIATED THRESHOLD RATE FOR EACH POLLUTANT UNDER CONSIDERATION) ;

**AND**

The project/action is not considered regionally significant under 40 CFR 93.153(i).

Supporting documentation and emissions estimates are

- ATTACHED
- APPEAR IN THE NEPA DOCUMENTATION (PROVIDE REFERENCE)
- OTHER

SIGNED \_\_\_\_\_

*(Name and Title of Environmental Coordinator)*

**Figure 1. Example Text for a RONA**

<sup>18</sup>Memorandum from HQDA, ACSIM (DAIM-ED-C) dated 27 June 1995, subject: General Conformity Under the Clean Air Act - Policy and Guidance

<sup>19</sup>Memorandum from USAEC (SFIM-AEC-ECC) dated 26 September 1995, subject: Record of Non-Applicability for the Clean Air Act General Conformity Review

### 3.0 INTERFACE WITH OTHER REGULATORY REQUIREMENTS

#### 3.1 National Environmental Policy Act (NEPA).

. There has been considerable discussion in the military community about whether proposed actions subject to a NEPA review must also receive a general conformity review. The short answer to this question is yes. If a proposed action is subject to a NEPA review, and will take place in a nonattainment or maintenance area, then air pollutant emissions associated with the action must receive a general conformity review. Although the conformity regulation promulgated by EPA is silent on the specific issue of overlap between general conformity and NEPA, there have been numerous instances of interpretive guidance from EPA, as well as some judicial proceedings that address this issue. The Federal District Court for New Hampshire (addressing reuse of the former Pease Air Force Base and associated NEPA analyses) concluded that general conformity analysis was one of the essential components of a proper air quality analysis required under NEPA. The court further indicated that the air quality analysis required under NEPA would likely be much more comprehensive than a conformity analysis since NEPA was required to look at more than just the nonattainment and maintenance area air pollutants affected under general conformity.<sup>20</sup>

There are three levels of NEPA analysis. Each level is progressively more complex depending on whether or not the proposed action may significantly affect the environment. The three analysis levels are: 1) categorical exclusion (CATEX) for actions that are exempt from NEPA; 2) environmental assessment/finding of no significant impact (EA/FONSI) for actions with minimal potential for adversely affecting the environment; and 3) environmental impact statement (EIS) for actions with a potential to adversely affect the environment. The EPA has stated that a proposed action may be reviewed concurrently for NEPA and general conformity, but that neither review may take the place of the other. In addition, separate documentation (including computations and final determination) must be retained for each analysis. Useful aspects of EPA and other related guidance, as it pertains to the overlap between NEPA and general conformity, is summarized below:

**CATEX** - The EPA was asked whether NEPA actions that receive a CATEX determination (i.e., the action would be exempt from NEPA analysis) could be exempt from a general conformity review. The EPA concluded that a CATEX does not exempt an action from conformity review.<sup>21</sup>

**EA/FONSI** - As cited earlier in Section 1.5, EPA has stated its expectation that a general conformity review would occur at the same time that a proponent is preparing documentation for an EA. This implies that EPA expects proposed actions subject to an EA to also receive a conformity review.

**EA/FONSI** - A 1996 guidance memorandum from the Army Environmental Law Division (ELD) stated that general conformity emission rate thresholds could be useful in determining what constitutes a "significant" action under NEPA. The ELD suggested that proposed actions with projected air emissions below the general conformity nonattainment and maintenance area thresholds (identified in Tables 2 and 3) might be a supporting argument when justifying a FONSI.<sup>22</sup>

**EIS** - The EPA was asked whether each alternative evaluated under an EIS would have to receive a conformity review. The EPA responded that only the alternative ultimately approved (i.e., the preferred alternative) would require a conformity review.<sup>23</sup>

**EIS** - An additional finding from the Pease Air Force Base (AFB) case noted above was that all general conformity analyses prepared for a proposed action must be included in the Final EIS. Failure to do so might violate NEPA public disclosure requirements and require the preparation of a Supplemental EIS specifically for the purpose of identifying general conformity findings.<sup>24</sup>

#### 3.2 Base Realignment and Closure (BRAC).

The BRAC process involves the relocation and liquidation of mission and property for the purpose of streamlining Army functions. Most BRAC actions fall into four categories:

- Disposing of real estate and real property
- Receiving new mission at an existing military installation
- Reducing mission at a military installation that will remain open

- Liquidating mission at a military installation that will be closed

Congress specifically exempted closure actions from NEPA, although Army policies implementing BRAC make it clear that a NEPA analysis must be performed for any other type of BRAC action. The NEPA obligations stipulated by Congress and Army have no bearing on whether a general conformity review must be conducted for a BRAC action. Only the criteria discussed in Section 1.0 should be used when determining whether a BRAC action is subject to a general conformity review. If a BRAC action is subject to NEPA review, a general conformity review may be conducted concurrently using the guidance stated previously in Section 3.1.

Some BRAC-related actions are exempt from general conformity, and these actions have been specifically identified within the rule. Exempt BRAC-related actions include<sup>25</sup> :

- Actions involving the use of land and facilities, such as leasing, where future activities will be similar in scope and operation to activities currently being conducted.<sup>26</sup>
- Actions associated with transfers of real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emission associated with the property.<sup>27</sup> This exemption would be applicable to reuse activities conducted under a lease in furtherance of conveyance that provides for the transfer of fee title upon completion of environmental remediation. The exemption would not apply in the case of standard short-term or interim leases.
- Transfers of real property from a Federal entity to another Federal entity and assignments of real property, including real property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.<sup>28</sup>

The Army BRAC Office, located within the Office of the Army Assistant Chief of Staff for Installation Management (ACSIM), is responsible for oversight and management of Army BRAC actions. This office has published a guidance manual for negotiating environmental compliance responsibilities associated with BRAC actions that may be useful for further guidance on this topic<sup>29</sup> .

### 3.3 Title V Operating Permit

Title V of the CArmy Ammunition Activity-90 established an operating permit program for all major sources of air pollution. The purpose of the Title V permit is to consolidate all federally enforceable air quality requirements for a particular facility into a single document. Since the general conformity regulation is a federally enforceable requirement, it must be included in the Title V permit of any Army installation located in an NAAQS nonattainment or maintenance area. Failure to include the general conformity requirement in the Title V permit could expose the installation to enforcement action for failure to maintain a complete and accurate permit.

Since the Title V permit requires an annual compliance certification, the installation must keep records or other affirmative proof demonstrating continuous compliance with all of the federally enforceable requirements in the permit. If an installation is subject to the general conformity rule, this means two things: 1) there must be a mechanism to capture proposed actions and screen them to determine if a general conformity review is necessary; and 2) for proposed actions needing a general conformity review, records must be kept to show how the actions were evaluated and the results of the evaluation. As discussed earlier in Section 2.0, the RONA is the appropriate record for demonstrating that a proposed action has been reviewed but that no general conformity determination is required. Failure to keep records showing that appropriate reviews were conducted could expose the installation to enforcement action for failure to comply with the general conformity rule.

<sup>20</sup>Information Paper from DAJA-EL dated 12 September 1994, subject: Federal District Court Decision in the Pease AFB Case

<sup>21</sup>General Conformity Guidance: Questions and Answers (Conformity Determination and NEPA: Question #5), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994

<sup>22</sup>Memorandum from DAJA-EL dated 22 July 1996, subject: NEPA - Significant Action

<sup>23</sup>General Conformity Guidance: Questions and Answers (Conformity Determination and NEPA: Question #4), Office of Air Quality and Planning Standards, U.S. EPA, July 13, 1994

<sup>24</sup>Information Paper from DAJA-EL dated 12 September 1994, subject: Federal District Court Decision in the Pease Air Force Base Case

<sup>25</sup>Memorandum from DAJA-EL dated 27 October 1995, subject: Meeting General Conformity Requirements in the BRAC Context

<sup>26</sup>40 CFR 93.153(c)(2)(x) and (xi)

<sup>27</sup>40 CFR 93.153(c)(2)(xix)

<sup>28</sup>40 CFR 93.153(c)(2)(xx)

<sup>29</sup>Base Realignment and Closure Manual for Compliance With the National Environmental Policy Act, Assistant Chief of Staff for Installation Management, Base Realignment and Closure Office, Attn: DAIM-BO, September 1995

## 4.0 REFERENCES AND RESOURCES FOR GENERAL CONFORMITY REVIEWS

### 4.1 Policy and Technical Support

|                                    |   |
|------------------------------------|---|
| Army policy on general conformity: | U.S. Army Environmental Center<br>5179 Hoadley Road<br>Aberdeen Proving Ground, MD 21010-5401<br>Phone: 410-436-1214, DSN 584-1214; FAX: x1675  |
| Legal issues, resolution of NOVs:  | Environmental Law Division<br>U.S. Army Legal Services Agency, ATTN: DAJA-E L<br>901 N. Stuart St., Arlington, VA 22203<br>Phone: 703-696-1569, DSN 426-1569, FAX x2940                                   |
| Technical questions, regulatory    | U.S. Army Center for Health Promotion and Preventive Medicine (Air Quality Surveillance)<br>5158 Blackhawk Road<br>Aberdeen Proving Ground, MD 21010-5403<br>Phone: 410-436-2509, DSN 584-2509, FAX x3656 |

### 4.2 Guidance Documents in the Military Community

The table below contains the title, points of contact and/or website for general conformity guidance documents that are in circulation in the military community.

| Proponent  | Document Title  |
|--|---|
| <b>Army</b>  | Department of the Army Guide for Compliance with the General Conformity Rule under the Clean Air Act<br><b>Website:</b><br><a href="http://www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/doa1.html">www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/doa1.html</a>                   |
| <b>Army Base Realignment and Closure Office</b>      | Base Realignment and Closure Manual for Compliance With the National Environmental Policy Act<br><b>POC:</b> Barbara Anderson: 703-693-3501   |
| <b>Air Force</b>                                     | U.S. Air Force Conformity Guide<br><b>Website:</b><br><a href="http://www.denix.osd.mil/denix/DOD/Working/policy/AF/uscfg/uscfg.html">www.denix.osd.mil/denix/DOD/Working/policy/AF/uscfg/uscfg.html</a>  |
| <b>Air Force and Federal Aviation Administration</b> | Air Quality Procedures for Civilian Airports and Air Force Bases<br><b>POC:</b> Julie Draper: 202-267-3494<br><b>Website:</b><br><a href="http://www.aee.faa.gov/aee-100/aee-120/aqp/aqp1.htm">www.aee.faa.gov/aee-100/aee-120/aqp/aqp1.htm</a>   |
| <b>Navy</b>  | Draft, Chief of Naval Operations Interim Guidance on Compliance With the Clean Air Act General Conformity Rule<br><b>Website:</b><br><a href="http://www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/cleanair.html">www.denix.osd.mil/denix/DOD/Working/CAASSC/Conform/cleanair.html</a> |
| <b>Environmental Protection Agency</b>               | General Conformity Guidance: Questions and Answers<br>New General Conformity Q's & A's<br><b>Website:</b><br><a href="http://www.epa.gov/ttn/oarpg/t1fs.html">www.epa.gov/ttn/oarpg/t1fs.html</a>   |

### 4.3 Emission Estimating Software

We are aware of several computer models that can assist with general conformity emission rate calculations. These models estimate air pollutant emissions associated with a proposed action so that the



user can determine whether any of the general conformity emission rate thresholds might be exceeded. If model results indicate that a threshold is exceeded, then a full-scale general conformity determination may be necessary. Most conformity models have been developed by Federal agencies directly affected by the general conformity rule, although some models have been developed commercially. Models with Federal proponents are reviewed below. Recall that the conformity rule requires emission rate calculations to be accomplished using EPA-preferred emission factors. Users should ensure that model-based calculations meet this criteria, where applicable.

#### 4.3.1 Air Conformity Application Model (ACAM)

**Proponent:** Air Force Center for Environmental Excellence (AFCEE)

**Model Summary:** ACAM is a screening model that can calculate rough estimates of conformity-related emissions and potential conformity determination requirements for a proposed action. The program calculates emissions increases resulting from assignment of new equipment and personnel to an existing Air Force base, and then compares these results to general conformity thresholds. The proposed action is rated red, yellow or green depending on the calculated potential for approaching or exceeding conformity thresholds. The model allows the user to create scenarios by selecting from a pre-established list of air emissions sources. These sources include: various fixed and rotary-winged aircraft, fire fighter training, paint booths, solvent degreasers, construction-related emissions and vehicular emissions due to workforce commuters. The model uses EPA's *Mobile5a*, to calculate vehicle emissions, and *Air Force's Aircraft Generation Equipment Emissions Estimator* (AGEEE) for aircraft emissions. The AFCEE has recently received funding to update and upgrade ACAM. The new version is expected to be available in December 2000. *Neat Features:* Imbedded database contains all Air Force bases with associated NAAQS attainment status, base emission rates, county emission rates, regional significance levels and regulatory point of contact for area where the base is located. *Concerns:* The model is designed as a screening tool only, emission estimates need to be verified by more detailed calculation if proposed action is close to conformity threshold levels. The NAAQS attainment status data is from 1994 and emission factors need to be updated.

**Latest Version/Last Update:** ACAM v2.0 Pro/1996

**POC:** Frank Castaneda, Air Force Center for Environmental Excellence

Phone: 210-536-4202; FAX: 210-536-3890; Email: frank.castaneda@hqafcee.brooks.af.mil

#### 4.3.2 NAVFAC Conformity Applicability Analysis Program (NAVCAP)

**Proponent:** Naval Facilities Engineering Command

**Model Summary:** The NAVCAP is a Microsoft Windows-based program that calculates air emissions for conformity-related actions. The program performs calculations in two main worksheets: construction-related emissions and operation-related emissions. Each worksheet contains an imbedded selection of emission sources that are likely to be associated with various phases of the project. The construction worksheet includes emission sources associated with demolition, initial site preparation, construction, and start-up/acceptance/move-in phases. The operation worksheet includes building heating, employee commuting, equipment (aircraft, ships, motor vehicles) and services (fuel storage, solvent/coating usage, fire training). The model uses a combination of EPA emission factors and Navy emission data to calculate pollutant emission rates. *Neat Features:* Windows-based program is easy to navigate. *Concerns:* Current version of the model is out-of-date; EPA emission factors need to be updated.

**Latest Version/Last Update:** NAVCAP Version 1.0/1997

**POC:** Felix Mestey P.E., Naval Facilities Engineering Command

Phone: 202-685-9313; FAX: 202-685-1670; Email: mesteyf@navfac.navy.mil

#### 4.3.3 Emissions and Dispersion Modeling System (EDMS)

**Proponent:** Federal Aviation Administration (FAA)

**Model Summary:** The EDMS is a Microsoft Windows-based program designed to assess the air quality impacts of airport emission sources. It has a dual capability to compute air pollutant emission rates and to predict the ambient air pollution levels resulting from those emissions. The EDMS can calculate emissions

from aviation sources such as aircraft, auxiliary power units and ground support equipment; as well as non-aviation sources such as boilers, generators, incinerators, fire training facilities, coating operations, deicing operations, solvent degreasers, fuel storage tanks and ground access vehicles. Emission factors for stationary sources are taken from EPA's AP-42, vehicle emission factors are from EPA's Mobile5a, aircraft emission factors are from the International Civil Aviation Organization Engine Exhaust Emissions Data Bank. In 1993, the EPA accepted EDMS as a "Preferred Guideline" dispersion model for evaluating air quality impacts from civil airports and military bases. The FAA has designated EDMS as the required model for performing air quality analyses for aviation sources. *Neat Features:* Extremely clear and comprehensive documentation; emission factors and algorithms are up-to-date and reflect EPA's preferences. *Concerns:* Model is designed for airports and may not be generally applicable to some Army conformity projects. The EDMS must be purchased from FAA at a cost of \$200.

**Latest Version/Last Update:** EDMS Version 3.2/February 25, 2000

**Model POC:** Julie Draper, Federal Aviation Administration

Phone: 202-267-3493; FAX: 202-267-5594; Email: julie.draper@faa

***APPENDIX HH***

***Executive Order 12898, Environmental Justice***

[Federal Register: February 16, 1994 (Volume 59, Number 32)]

**Executive Order 12898--Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations**

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Executive Order of February 11, 1994

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation

1-101. Agency Responsibilities

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice

- a. Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees:
  - i. Department of Defense;
  - ii. Department of Health and Human Services;
  - iii. Department of Housing and Urban Development;
  - iv. Department of Labor;
  - v. Department of Agriculture;
  - vi. Department of Transportation;
  - vii. Department of Justice;
  - viii. Department of the Interior;
  - ix. Department of Commerce;
  - x. Department of Energy;
  - xi. Environmental Protection Agency;
  - xii. Office of Management and Budget;
  - xiii. Office of Science and Technology Policy;
  - xiv. Office of the Deputy Assistant to the President for Environmental

- Policy;
- xv. Office of the Assistant to the President for Domestic Policy;
  - xvi. National Economic Council;
  - xvii. Council of Economic Advisers; and
  - xviii. such other Government officials as the President may designate.

The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

b. The Working Group shall:

1. Provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
2. Coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;
3. Assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;
4. Assist in coordinating data collection, required by this order;
5. Examine existing data and studies on environmental justice;
6. Hold public meetings as required in section 5-502(d) of this order; and
7. Develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

#### 1-103. Development of Agency Strategies

a. Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum:

1. Promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations;

2. Ensure greater public participation;
3. Improve research and data collection relating to the health of and environment of minority populations and low-income populations; and
4. Identify differential patterns of consumption of natural resources among minority populations and low-income populations.

In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

- b. Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.
- c. Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.
- d. Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.
- e. Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.
- f. Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.
- g. Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

#### 1-104. Reports to the President

Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies

described in section 1-103(e) of this order.

## Sec. 2-2. Federal Agency Responsibilities for Federal Programs

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

## Sec. 3-3. Research, Data Collection, and Analysis

### 3-301. Human Health and Environmental Research and Analysis

- a. Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.
- b. Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.
- c. Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

### 3-302. Human Health and Environmental Data Collection and Analysis

To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

- a. Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- b. In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and

other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

c. Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are:

1. Subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and
2. Expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

d. In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

#### Sec. 4-4. Subsistence Consumption of Fish and Wildlife

##### 4-401. Consumption Patterns

In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

##### 4-402. Guidance

Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

#### Sec. 5-5. Public Participation and Access to Information



- a. The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.
- b. Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.
- c. Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.
- d. The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

## Sec. 6-6. General Provisions

### 6-601. Responsibility for Agency Implementation

The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

### 6-602. Executive Order No. 12250

This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

### 6-603. Executive Order No. 12875

This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

### 6-604. Scope

For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human

health or the environment. Independent agencies are requested to comply with the provisions of this order.

#### 6-605. Petitions for Exemptions

The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

#### 6-606. Native American Programs

Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

#### 6-607. Costs

Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

#### 6-608. General

Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

#### 6-609. Judicial Review

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William Clinton  
The White House,  
February 11, 1994

***APPENDIX II***

***DoD Strategy on Environmental Justice***

# DEPARTMENT OF DEFENSE

## Strategy on Environmental Justice

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March 24, 1995

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Strategy On Environmental Justice  
Implementation Plan

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### SUMMARY REPORT

#### INTRODUCTION

On February 11, 1994, President Clinton issued an Executive Order entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The measure requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations.

The Department of Defense (DoD) has developed a strategy that identifies the major programs and areas of emphasis it believes can best meet the intent of the Executive Order, minimize any adverse effects on the human health and environment of minority and low-income populations, and carry out the defense mission. DoD's strategy is outlined in Section 2 of this document. The implementation plan outlined in Section 3 describes the specific steps DoD will take to execute this strategy.

DoD's strategy and implementation plan are designed to allow for change as DoD identifies new opportunities and initiatives and modifies or enhances existing or proposed initiatives. Aspects of the plan may change in response to new directions from the Administration and the Interagency Working Group on Environmental Justice (IWG) chaired by the Environmental Protection Agency (EPA). In addition, DoD plans to implement the Executive Order principally through its compliance with the provisions of the National Environmental Policy Act (NEPA).

DoD's strategy focuses on implementing institutional changes, rather than one-time projects, to ensure that a healthy and safe environment exists around DoD activities that are located in or near minority and low-income populations. To that end, DoD will operate in accordance with the following principles:

- Promote partnerships with all stakeholders
- Identify the impacts of DoD activities on minority and low-income populations
- Streamline government
- Improve the day-to-day operations of installations
- Foster nondiscrimination in DoD programs

Existing environmental and civil rights statutes provide opportunities to address environmental hazards and economic opportunities. DoD recognizes that application of existing statutory provisions is an important part of its efforts to ensure that its programs, policies, and activities do not have the effect of excluding persons from participating in, denying persons the benefits of, or subjecting persons to discrimination under such

programs because of their race, color, or national origin.

## INTERNAL ADMINISTRATIVE PROCESS

In the 12 months since the Executive Order was issued, DoD has undertaken and completed many actions to establish a decision-making infrastructure through which to implement provisions of the Executive Order:

DoD identified the Office of the Deputy Under Secretary of Defense (Environmental Security) to lead the development of the strategy and to oversee implementation provisions of the Executive Order. DoD also established a DoD-wide Committee on Environmental Justice (CEJ) to develop, help implement, and monitor DoD's environmental justice activities. The CEJ is made up of senior level staff who will guide the implementation of environmental justice within DoD. In addition, each of the DoD military departments and key defense agencies has identified an office that will execute the requirements and goals of the Executive Order within their department.

DoD established mechanisms for working with the IWG and has actively participated on the task force committees established to assist the IWG in implementing the provisions of the Executive Order. DoD co-chairs the IWG Task Force Committee on Outreach.

DoD will continue to build a foundation to support the integration of environmental justice into its programs, policies, and activities. Specific actions are:

DoD continue the CEJ as a formal forum for guiding the process for implementing the strategy .

DoD will evaluate its progress toward implementing the Executive Order on an annual basis, using the framework of the Defense Environmental Quality Annual Report to Congress to collect information and report progress.

DoD will establish an accountability system for identifying and monitoring environmental justice activities. DoD military departments, defense agencies, and defense field activities will hold periodic reviews to assess progress and share lessons learned. As part of their self-audits, each will conduct a review of its operations, activities, and land use to determine whether disproportionately high and adverse human health and environmental effects on minority and low-income populations living near the installation have been addressed.

## PROGRAMS, POLICIES, AND PLANNING PROCESSES UNDER REVISION

DoD will use NEPA as the primary mechanism to implement the provisions of the Executive Order. When appropriate, environmental assessments, environmental impact statements, and records of decision will evaluate the potential environmental effects (including human health, economic, and social) of its actions on minority and low-income populations. To encourage efforts to streamline government and eliminate duplication, DoD will coordinate with other Federal agencies to improve data collection and research needed to support environmental analysis.

DoD will strengthen the community relations plan (CRP) as a tool to understand the socioeconomic makeup of the populations in and around its operations. Installations will combine data gathered from interviews with members of the local community with information gathered from the U.S. Bureau of the Census and various databases maintained by the military departments, defense agencies, and other agencies such as the EPA and

local and tribal governments. Where this information does not exist, DoD will coordinate with other Federal, state, local, and tribal governments to develop the data.

DoD will continue to maintain its data exchange and information network, known as the Defense Environmental Network Information Exchange (DENIX), to encourage sharing of data among all DoD facilities and provide information electronically to other Federal, state, local, and tribal agencies. DoD will make the information available to the public, whenever practicable and appropriate.

DoD will enhance existing or, as appropriate, develop new site-specific study mechanisms to identify high risk populations or populations. As discussed earlier, DoD will revise and reissue DoD guidelines on implementing NEPA to ensure that environmental justice considerations are documented in the NEPA process.

DoD installations will, through periodic updates to their installation master plans, assess how their operations and activities affect the communities located near DoD facilities.

DoD installations will, prior to applying for a variance from any local environmental requirements, evaluate each request to determine if such a variance will have a disproportionately high or adverse human health and environmental effect on minority and low-income populations.

DoD will review and revise as appropriate, all policy documents addressing procedures for the sale and disposal of surplus and off-specification DoD materials and supplies. The review will focus on the provision of safeguards (such as verification of buyer responsibility) to prevent such material from having disproportionately high and adverse human health and environmental effects on minority and low-income populations.

DoD will administer environmental permitting, compliance, research, grant, and agreement programs to avoid, disproportionately high and adverse human health and environmental effects on minority and low-income populations.

DoD will support efforts to develop and implement a coordinated strategy to conduct health research. Where appropriate, the DoD will include diverse segments of the population, such as minority and low-income populations and workers who may be exposed to substantial environmental hazards, in the development of research proposals. DoD will encourage the participation of these groups in the development of its research strategies. DoD also will review, as part of the development of integrated natural resource management plans, any risks associated with the consumption of fish and wildlife and other food gathered on DoD installations.

DoD will integrate environmental justice training into education and outreach programs for appropriate DoD employees, including senior leaders. DoD will expand environmental and leadership training programs to ensure that DoD military personnel and civilian employees understand their obligation to address issues of environmental justice in their day-to-day activities.

DoD will continue efforts to enhance diversity in the membership of Restoration Advisory Boards (RAB). Guidelines issued in August 1994 require that each RAB reflect the diversity of the communities in which RABs operate.

DoD will improve existing outreach and communication systems to include environmental justice stakeholders. At a minimum, DoD installations will (1) provide translation of crucial public documents and conduct interpretation of hearings, (2) prepare documents using language that is non-technical, (3) ensure that document repositories are readily accessible to the public, (4) schedule meetings with the public at times and

places that are convenient to members of the community, and (5) increase the use of community organizations and non-traditional news organizations that may be primary sources of information for minority and low-income populations.

## PUBLIC PARTICIPATION AND OUTREACH PROCESSES

DoD recognizes that public involvement focuses on providing communities access to information on, and participation in, matters related to human health and the environment. To that end, DoD will continue to promote Restoration Advisory Boards (RAB) and Technical Review Committees (TRC) as forums for discussion about environmental cleanup activities at DoD. DoD also will develop new mechanisms to improve opportunities for minority and low income populations to participate in decision-making processes that affect them. In addition, DoD will continue to promote public participation during the NEPA process to address potential human health and environmental effects from proposed major DoD actions, and public involvement in the development of integrated natural resource management plans. DoD will enhance existing mechanisms, such as the Legacy Resources Management Program, to encourage diverse stakeholder participation in DoD activities that affect human health and the environment.

## MODEL PROJECTS AND PROGRAMS

DoD has begun an initiative that will develop case studies of Army installations located in areas targeted for potential environmental justice concerns. Through the leadership of the Army, DoD will use existing data and programs and data collected by other sources, to analyze environmental justice impacts in the BRAC program, public participation in the cleanup program, and environmental analysis for the NEPA program. The initiative also will include the development of training opportunities and course material that can be broadened for inclusion into DoD's training programs.

Under the Joint Land Use Studies program, DoD works with local communities to develop a plan for implementing land use recommendations around a military installation. The fundamental objective of the JLUS program is to protect community health, safety and welfare, and the military mission.

DoD has recently embarked on a program to post multilingual signs warning of potential environmental hazards in areas adjacent to cleanup sites. The Navy has taken the lead in this project to communicate possible risks associated with consuming fish and wildlife on DoD property undergoing environmental cleanup.

Restoration Advisory Boards (RABs) are the cornerstone of DoD efforts to expand community involvement in decisions about cleanup at military bases. By bringing together people who reflect the many diverse interests within the community, a RAB can help identify issues of concern and reduce potential communication problems that could result in needless delays. In addition to providing input on cleanup activities, each RAB acts as a liaison between the community and the base.

DoD is examining a proposal to develop a comprehensive Public Information and Outreach Strategic Guide that will provide specific guidance on all aspects of public information. The guide will focus on enhancing existing mechanisms, as well as developing new mechanisms for communicating with stakeholders. One proposed element takes advantage of the "information superhighway" to facilitate the exchange of information.

The Legacy Resources Management Program was created to assist DoD in balancing the use of its lands for military training and testing with the protection of natural and cultural resources. The Legacy Program supports projects that promote an understanding of, and an appreciation for, natural and cultural resources, as

well as promotes partnerships with Native American tribal governments.

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## **STRATEGY ON ENVIRONMENTAL JUSTICE**

### **VISION**

DoD will integrate the President's policy on environmental justice into its mission by ensuring that its programs, policies, and activities with potential disproportionately high and adverse human health or environmental effects on minority and low-income populations are identified and addressed. Affected communities will be partners in the process to address these concerns; together, we will build a foundation that reflects an awareness and understanding of environmental justice issues. In addition, DoD will annually evaluate progress in implementing and maintaining compliance with the provisions of the Executive order.

### **GOAL 1: IMPLEMENTATION**

Establish a decision-making infrastructure to implement the provisions of the Executive Order.

#### *IDENTIFY AN INTERNAL ADMINISTRATIVE PROCESS FOR DEVELOPING THE STRATEGY*

Establish ODUSD(ES) as lead to staff strategy development and oversee implementation of the Executive Order. (Completed April 1994)

Establish a DoD-wide Committee on Environmental Justice under the Defense Environmental Security Council to coordinate and facilitate implementation of the Executive Order. (Completed May 1994)

Identify offices in each service branch that will execute the requirements and goals of the Executive Order. (Completed May 1994)

Coordinate with agency General Counsel and the DoD Office of Equal Employment Opportunity to review legal implications of the Executive Order. (Ongoing)

#### *ESTABLISH MECHANISMS FOR WORKING COOPERATIVELY WITH THE INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE (IWG)*

Select representatives from the DoD Committee on Environmental Justice to serve as members of the 10 Task Forces established to assist the IWG. (Completed May 1994)

Select representative from the DoD Committee on Environmental Justice to co-chair the Outreach Task Force Committee of the IWG. (Completed May 1994)

#### *IDENTIFY AN INTERNAL ADMINISTRATIVE PROCESS FOR MONITORING AND EVALUATING PROGRESS TOWARD IMPLEMENTING THE STRATEGY*

Complete a survey of DoD activities, studies, databases, agreements, and other information that could assist DoD and the IWG in meeting the goals of the Executive Order. (Completed June 1994)



Evaluate implementation progress on an annual basis, including the conduct of internal interviews and take all the steps necessary to monitor compliance with the Executive Order.

Identify and develop a schedule for implementing several specific projects to address particular concerns identified during the development of the strategy.

Establish an accountability system for identifying, tracking, and monitoring environmental justice activities.

Integrate environmental justice training into education and outreach programs for appropriate DoD employees, including senior leaders.

## **GOAL 2: HUMAN HEALTH AND ENVIRONMENTAL RESEARCH, DATA COLLECTION, AND ANALYSIS**

Identify populations and communities that may be exposed to disproportionately high and adverse human health or environmental effects caused by activities under DoD's U.S. jurisdiction.

Establish a strategy to gather existing demographic data within appropriate geographic areas.

Establish an information resource management strategy to maintain demographic data within appropriate geographic areas.

Enhance existing, or as appropriate, develop new site specific study mechanisms to identify high risk populations or communities.

Identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of DoD programs, policies and activities on minority and low-income populations at DoD U.S. sites and facilities.

Collect, maintain, and analyze information, whenever practicable and appropriate to assess and compare disproportionately high and adverse environmental and human health risks borne by populations identified by race, national origin, and income.

Conduct, whenever practicable and appropriate, a systematic review of DoD U.S. programs, policies and activities to identify activities that may have a disproportionately high and adverse environmental or human health effect on minority and low-income populations.

Assess DoD's methods for determining changes to existing or additions of new military operations and siting of facilities such as sanitary landfills and wastewater treatment plants.

Identify opportunities to avoid or mitigate disproportionately high and adverse human health and environmental impacts on minority and low income populations and identify and undertake new or existing model demonstration programs to reduce such effects.

Ensure that DoD programs and actions involving environmental permitting, compliance, research, grants, and agreements, are administered so as to identify and address, where appropriate, disproportionately high and adverse human health or environmental effects of DoD U.S. activities on minority and low-income populations.

Ensure that DoD environmental and human health research, whenever practicable and appropriate, includes diverse segments of the population

Evaluate current risk assessment methodologies as they relate to affected communities, including cumulative and multiple exposures and/or synergistic effects.

Review, and revise accordingly, guidance for appropriate inclusion of high risk populations in DoD's health-related research.

Identify the patterns of consumption for, and communicate the health risks to, populations who principally rely on fish and/or wildlife for subsistence at DoD U.S. installations

Assess the cumulative exposures affecting human health.

Assess the cumulative risks related to consumption of fish and/or wildlife.

### **GOAL 3: PUBLIC PARTICIPATION AND OUTREACH**

Improve opportunities for minority and low-income communities to participate in and have access to information on DoD policies and practices that affect human health and the environment.

Identify DoD stakeholder groups and their environmental justice concerns and interests.

Encourage stakeholder participation in the implementation of the Executive order. Improve existing outreach and communication systems to include Environmental Justice stakeholders.

Enhance existing, or as appropriate, develop new mechanisms to encourage stakeholder participation in DoD activities that affect human health and the environment.

Provide translation of crucial public documents and conduct interpretation of hearings, where practicable and appropriate. Communication should be clear and concise to facilitate comprehension.

### **GOAL 4: NONDISCRIMINATION TITLE VI**

Foster nondiscrimination in DoD-funded programs or activities that substantially affect human health or the environment as required by Title VI of the Civil Rights Act.

Review compliance with Title VI of the Civil Rights Act and develop adequate oversight to determine that programs and activities receiving DoD financial assistance that affect human health or the environment do not discriminate on the basis of race, color, or national origin.

### **GOAL 5: NATIONAL PERFORMANCE REVIEW**

Promote the principles set forth in the Report of the National Performance Review: *From Red Tape to Results: Creating a Government That Works Better and Costs Less*,<sup>2</sup> in the planning, development, and implementation of the provisions of the Executive Order.

Identify opportunities for interagency data collection, studies, and projects that could be used to meet the goals of Executive Order 12898.

Utilize the Defense Environmental Network and Information Exchange (DENIX) to share information with other Agencies.

Cooperate and work with other Federal agencies in the government-wide implementation of Executive Order 12898, to ensure efficient use of information data systems and to avoid duplication and waste of federal resources.

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## IMPLEMENTATION PLAN

### INTRODUCTION

On February 11, 1994, President Clinton issued an Executive Order entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The measure requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations.

The preceding strategy identifies the major programs and areas of emphasis where the Department of Defense (DoD) believes it can best meet the intent of the Executive Order, minimize any adverse effects on the human health and environment of minority and low-income populations, and carry out the defense mission. This implementation plan outlines the specific steps DoD will take to execute this strategy.

DoD considers this plan to be a living document. It is designed to allow for change as DoD identifies new opportunities and initiatives and modifies or enhances existing or proposed initiatives. Aspects of the plan may change in response to new directions from the Administration and the Interagency Working Group on Environmental Justice (IWG) chaired by the Environmental Protection Agency (EPA). In addition, DoD plans to implement the Executive Order principally through its compliance with the provisions of the National Environmental Policy Act (NEPA). As such, elements of this plan may change based on changes in regulations for implementing NEPA.

This plan focuses on implementing institutional changes, rather than one-time projects, to ensure that a healthy and safe environment exists around activities that are located in or near minority and low-income populations. To that end, DoD will operate in accordance with the following principles:

*Identify the impacts of DoD activities on minority and low-income populations:* DoD will use the NEPA process to assess the effects proposed actions may have on minority and low income populations. The NEPA requires DoD installations to collect and analyze data on the socioeconomic makeup of the populations that may be affected by proposed actions, as well as on any risks to human health or the environment posed by the proposed action.

*Streamline government:* In keeping with the spirit of the National Performance Review to reinvent government rather than create additional layers of bureaucracy, DoD will rely on its existing processes and programs to implement the strategy. In addition, DoD will encourage increased cooperation between

Federal agencies as key to reducing duplication and waste of Federal resources.

*Improve the day-to-day operations of installations:* DoD believes that there are many opportunities in and around military installations where DoD can increase its public participation efforts. Using RABs (for cleanup activities) and other similar groups (for non-cleanup activities), DoD installations will actively involve populations in decisions about base operations which may affect the human health and environment of the local community. Installations will take affirmative steps to include members of minority and low-income populations in planning initiatives that affect these groups.

*Foster nondiscrimination in DoD programs:* DoD recognizes that many existing laws, such as Title VI of the Civil Rights Act of 1964, provide opportunities to address environmental hazards in minority and low-income populations. DoD efforts in this area will focus on enforcement of basic provisions for non-discrimination in its programs. The following discussion corresponds to the goals outlined in Section 2.

## **GOAL 1 : IMPLEMENTATION**

DoD understands the importance of infusing an ethic of environmental justice throughout its day to day operations and activities. To that end, DoD will integrate principles of environmental justice into its programs, policies, and activities. Coupled with its goal to develop a highly qualified and well trained environmental work force, DoD sees education and training as the foundation for infusing this ethic into its environmental programs.

In the 12 months since the Executive Order was issued, DoD has undertaken and completed many actions to establish a decision-making infrastructure through which to implement provisions of the Executive Order:

DoD identified the Office of the Deputy Under Secretary of Defense (Environmental Security) to lead the development of the strategy and to oversee implementation provisions of the Executive Order. DoD also established a DoD-wide Committee on Environmental Justice (CEJ) under the Defense Environmental Security Council to develop, help implement, and monitor DoD's environmental justice activities. The CEJ is made up of senior level staff who will guide the implementation of DoD's strategy on environmental justice. In addition, each of the DoD military departments and key defense agencies has identified an office that will execute the requirements and goals of the Executive Order within its department.

The CEJ actively worked with the DoD General Counsel and the DoD Office of Equal Employment Opportunity to ensure that the strategy incorporated the legal requirements of the Executive Order.

DoD established mechanisms for working with the IWG and actively participated on the task force committees established to assist the IWG in implementing the provisions of the Executive Order. DoD co-chairs the IWG Task Force Committee on Outreach.

DoD participated in the first interagency Public Meeting on Environmental Justice held in Atlanta, Georgia, on January 20, 1995.

DoD will continue to build a foundation to support the integration of environmental justice into its programs, policies, and activities. It will continue the CEJ as a formal forum for guiding the implementation process. DoD will expand environmental and leadership training programs to ensure that DoD military personnel and civilian employees understand their obligation to address issues of

environmental justice in their day-to-day activities .

Key actions:

DoD will evaluate its progress toward implementing the Executive Order on an annual basis. Using the framework of the Defense Environmental Quality Annual Report to Congress to collect information and report progress, DoD will conduct internal reviews and take the steps necessary to monitor compliance with the Executive Order. The environmental quality report describes the achievements and initiatives in DoD's environmental quality programs for pollution prevention, conservation, technology, and education and training. The report is published in early spring each year and was developed to fulfill the requirements outlined in Executive Order 12856 and 10 U.S.C. Section 2706(b).

DoD will establish an accountability system for identifying and monitoring environmental justice activities. In general, accountability will be overseen through the environmental compliance review process discussed above. Specifically, DoD will identify military departments and key defense agencies that are leading or will lead the development and implementation of model projects and programs contained in the implementation plan. Each department or agency will hold periodic reviews to assess progress and share lessons learned. As part of their self-audits, DoD military departments, defense agencies, and defense field activities will conduct a review of installation operations, activities, and land use to determine whether disproportionately high and adverse human health and environmental effects on minority and low-income populations living near the installation have been addressed.

DoD will integrate environmental justice training into education and outreach programs for appropriate DoD employees, including senior leaders. To that end, DoD will develop a curriculum outline about environmental justice for incorporation into all DoD environmental training programs and appropriate DoD senior leadership courses. To ensure consistency in training between the various military departments and defense agencies, DoD will use the Inter Service Environmental Education Review Board (ISEERB) which was established in 1994 to integrate disparate DoD environmental education and training programs into a single school system that eliminates duplication and improves the quality of courses. To further expand awareness of environmental justice, DoD will create and disseminate to its military personnel and civilian employees a video that discusses issues of environmental justice and communicates DoD policy on environmental justice.

## **GOAL 2: HUMAN HEALTH AND ENVIRONMENTAL DATA COLLECTION, ANALYSIS, AND RESEARCH**

Model Projects/Programs

### *ENVIRONMENTAL EQUITY PROJECT*

The Department of Defense (DoD) has begun an initiative that will develop case studies of Army installations located in areas targeted for potential environmental justice concerns. Through the leadership of the Army, DoD will use existing data and programs, such as the Army's Economic Impact Forecast System and EPA databases, to provide a basis for analysis of environmental justice issues. The project also will examine data collected by other sources, including historically black colleges. The Army will use the data to analyze environmental justice impacts in the BRAC program, public participation in the cleanup program, and environmental analysis for NEPA. The initiative also will include the development of training opportunities and course material that can be broadened for inclusion into DoD's training program. DoD recognizes that a

consistent and fully integrated approach to data management is key to assessing the impacts of its operations on local populations. To that end, DoD will use NEPA as the primary mechanism to implement the provisions of the Executive Order. When appropriate, environmental assessments, environmental impact statements, and records of decision will evaluate the potential environmental effects (including human health, economic, and social) of its actions on minority and low-income populations. To streamline government and eliminate duplication, DoD will coordinate with other Federal agencies to improve the data collection and research needed to support environmental analysis. To support that effort, DoD strongly encourages the effective use of existing databases and, if necessary, the development of new national databases.

DoD has identified three areas in which to address issues related to data collection, analysis, and research: (1) identifying minority and low-income populations that may be affected by DoD programs, (2) identifying and addressing programs that may affect minority and low-income populations, and (3) ensuring that environmental research reflects the diversity of populations.

*IDENTIFY POPULATIONS AND POPULATIONS THAT MAY BE EXPOSED TO DISPROPORTIONATELY HIGH AND ADVERSE HUMAN HEALTH AND ENVIRONMENTAL EFFECTS CAUSED BY ACTIVITIES UNDER DOD'S U.S. JURISDICTION.*

Key to the NEPA process will be the identification of minority and low-income populations. DoD installations will strengthen the community relations plan (CRP) as a tool to understand the socioeconomic makeup of the populations in and around their operations. Installations will combine data gathered from interviews with members of the local community with data gathered from the U.S. Bureau of the Census and various databases maintained by the military departments, defense agencies, and other agencies such as the EPA and local and tribal governments. Where this information does not exist, DoD will coordinate with other Federal, state, local, and tribal governments to develop the information.

At a minimum, DoD military departments, defense agencies, and defense field activities will determine whether proposed actions will affect the environment and human health of minority and low-income populations. For those installations for which a potential impact has been identified, DoD proponents will develop data for any proposed major action that is subject to the provisions of NEPA or to the reporting requirements under the Emergency Planning and Community Right-To-Know Act.

Key actions:

DoD military departments, defense agencies, and defense field activities will coordinate with other Federal agencies and state, local, and tribal governments to compile or develop demographic and socioeconomic data with respect to race, national origin, income level, and other appropriate information, as necessary. DoD proponents will use this information to assess whether any proposed action may have disproportionately high and adverse human health and environmental effects on minority or low-income populations. To the extent practicable, DoD will undertake these assessments during the NEPA or community planning processes.

DoD will continue to maintain its data exchange and information network, known as the Defense Environmental Network Information Exchange (DENIX), to encourage sharing of data among all DoD facilities and provide information electronically to other Federal, state, local, and tribal agencies. DoD will make the information available to the public, whenever practicable and appropriate.

DoD will enhance existing or, as appropriate, develop new site-specific study mechanisms to identify high

risk populations or populations. As discussed earlier, DoD will revise and reissue DoD guidelines on implementing NEPA to ensure that environmental justice considerations are documented in the NEPA process.

*IDENTIFY AND ADDRESS, AS APPROPRIATE, DOD PROGRAMS, POLICIES AND ACTIVITIES THAT MAY HAVE DISPROPORTIONATELY HIGH AND ADVERSE HUMAN HEALTH AND ENVIRONMENTAL EFFECTS ON MINORITY AND LOW INCOME POPULATIONS AT DOD U.S. SITES AND FACILITIES.*

DoD's primary means for addressing any disproportionately high and adverse human health and environmental effects on minority and low-income populations at DoD sites and facilities will be implemented in connection with the NEPA process. All major federal actions are subject to the NEPA process which involves assessing any potential effects to the physical and human environment. In documents prepared under NEPA, DoD will discuss the impacts of its proposed actions on minority and low-income populations.

Another means for addressing environmental justice concerns is through the master plans prepared by each installation. In preparing the master plans, DoD installations will assess how their operations and activities affect the communities located near DoD installations. During periodic updates to the master plans, the installations will evaluate whether there are any adverse impacts of its operations or activities on any minority or low-income populations with respect to human health and the physical environment.

Key actions:

In the development of NEPA documents or installation master plans, DoD military departments, defense agencies, and defense field activities will collect, maintain, and analyze information for assessing whether these activities or proposed actions have disproportionately high and adverse environmental and human health effects on minority or low-income populations. For example, DoD military departments, defense agencies, and defense field activities will use the NEPA process when determining changes to existing, or additions of, new military operations and the siting of facilities such as sanitary landfills and wastewater treatment plants. Model Projects/Programs

*JOINT LAND USE STUDIES PROGRAM (JLUS)*

Under the JLUS program, DoD works with local populations to develop a plan for implementing recommendations for land use around a military installation. The fundamental objective of the JLUS is to protect community health, safety and welfare, and the military mission.

Public involvement is an essential part of this process. The JLUS program was developed in 1985 to provide technical and financial incentives for local communities to help resolve potential conflicts between DoD mission objectives and community growth patterns. DoD military departments, defense agencies, and defense field activities also will identify opportunities to avoid or mitigate disproportionately high and adverse human health and environmental impacts on minority and low income populations and identify and undertake new or existing model demonstration programs to reduce such effects. For example, installations will, prior to applying for a variance from any local environmental requirements, evaluate each request to determine if such a variance will have a disproportionately high or adverse human health and environmental effect on minority and low-income populations. Similarly, DoD will review and revise as appropriate, all policy documents addressing procedures for the sale and disposal of surplus and off-specification DoD materials and supplies. The review will focus on the provision of safeguards (such as verification of buyer responsibility) to prevent

such material from having disproportionately high and adverse human health and environmental effects on minority and low-income populations.

DoD military departments, defense agencies, and defense field activities involved with environmental permitting, compliance, research, grants, and agreements, will identify and address, where appropriate, disproportionately high and adverse human health and environmental effects of these actions on minority and low-income populations. The DoD proponent will administer environmental permitting and compliance programs to avoid, whenever practicable and appropriate, disproportionately high and adverse human health and environmental effects on minority and low income populations.

*ENSURE THAT DOD ENVIRONMENTAL AND HUMAN HEALTH RESEARCH, WHENEVER PRACTICABLE AND APPROPRIATE, INCLUDES DIVERSE SEGMENTS OF THE POPULATION AT HIGH RISK FROM ENVIRONMENTAL HAZARDS, SUCH AS MINORITY POPULATIONS, LOW-INCOME POPULATIONS, AND WORKERS WHO MAY BE EXPOSED TO SUBSTANTIAL ENVIRONMENTAL HAZARDS.*

Model Projects/Programs

#### *ENVIRONMENTAL WARNING SIGNS*

The Department of Defense has recently embarked on a program to post multi-lingual signs warning of potential environmental hazards in areas adjacent to cleanup sites. The Navy has taken the lead in this project to communicate possible risks of consuming fish and wildlife on property undergoing environmental cleanup. One program posts signs along the shoreline of Hunters Point Naval Shipyard in San Francisco, CA, in four languages: English, Spanish, Vietnamese, and Chinese. Specifically the signs warn against the consumption of shellfish taken from the waters in the area, as well as warn against potential environmental hazards in the area. DoD's principal proponents for conducting environmental and human health research are: (1) the Office of the Assistant Director of Defense, Research, and Engineering, which is responsible for coordinating research and development programs DoD-wide; (2) the Office of the Assistant Secretary of Defense for Health Affairs, which is responsible for DoD health policies, programs, and activities; and (3) the counterpart agencies within the Military Departments, including the Army Center for Health Promotion and Preventive Medicine, Navy Environmental Health Center, and the Air Force Office of the Surgeon General. In addition, DoD works with the Agency for Toxic Substances and Disease Registry (ATSDR) under a cooperative agreement to determine the risks to human health and the physical environment that might arise from DoD activities.

DoD recognizes that health research provides an opportunity for Federal, state, local, and tribal governments to work together to eliminate duplication and reduce costs. DoD will support efforts to develop and implement a coordinated strategy on health research. Where appropriate, the DoD proponents identified above will include diverse segments of the population, such as minority and low-income populations and workers who may be exposed to substantial environmental hazards, in the development of research proposals. DoD will encourage the participation of these groups in the development of its research strategies. DoD also will review, as part of the development of integrated natural resource management plans, the risks associated with the consumption of fish, wildlife, and other food gathered on DoD installations.

Key actions:

DoD health research proponents will evaluate current risk assessment methodologies as they relate to affected populations, including cumulative and multiple exposures and/or synergistic effects.



DoD health research proponents will develop guidance to include high risk populations in DoD's health-related research.

For DoD installations and activities located in areas where populations rely on fish and or wildlife for subsistence, the respective proponents will:

Consider, during the NEPA process or the development of integrated natural resource management plans, the cumulative exposures and risks related to different patterns of consumption of fish and/or wildlife and the impact of DoD operations on fish and/or wildlife.

Communicate to affected populations the risks associated with differential patterns of consumption of fish and/or wildlife. DoD will broaden efforts to post environmental warning signs in English, as well as in other languages appropriate for the community in which the signs will be posted.

### **GOAL 3: PUBLIC PARTICIPATION AND OUTREACH**

Model Projects/Programs

#### *RESTORATION ADVISORY BOARDS (RAB)*

RABs are the cornerstone of DoD efforts to expand community involvement in decisions about cleanup at military bases. By bringing together people who reflect the many diverse interests within the community, a RAB can help identify issues of concern and reduce potential communication problems that could result in needless delays. In addition to providing input on cleanup activities, each RAB acts as a liaison between the community and the base. DoD recognizes that public involvement focuses on providing communities access to information on, and participation in, matters related to human health and the environment. To that end, DoD will continue to promote Restoration Advisory Boards (RAB) and Technical Review Committees (TRC) as forums for discussion about environmental cleanup activities at DoD installations. RABs are a recent addition to DoD's efforts to provide opportunities for communities to provide input into cleanup activities at military installations. Guidelines issued in August 1994 require that each RAB reflect the diversity of the communities in which RABs operate.

DoD also will develop new mechanisms to improve opportunities for minority and low-income populations to participate in decision-making processes that affect them. In addition, DoD will continue to promote public participation during the NEPA process to address potential human health and environmental effects that may result from proposed major DoD actions. DoD will encourage public involvement in the development of integrated natural resource management plans.

DoD will enhance existing mechanisms, such as the Legacy Resources Management Program, to encourage diverse stakeholder participation in DoD activities that affect human health and the environment. The Legacy program, of which public awareness and education is a major component, promotes an understanding of, and access to, significant natural, cultural, and historical resources.

Model Projects/Programs

#### *COMPREHENSIVE PUBLIC INFORMATION AND OUTREACH STRATEGIC GUIDE (Proposed)*

The Department of Defense is examining a proposal to develop a comprehensive Public Information and Outreach Strategic Guide that will provide specific guidance on all aspects of public information. The guide, to be developed primarily for use by DoD installations, will focus on enhancing existing mechanisms to encourage stakeholder participation but also includes the development of new mechanisms to broaden communication to all stakeholders.

One element of the proposed strategy takes advantage of the "information superhighway" to seek input from, and keep stakeholders informed of, DoD activities. Other elements include the:

Design and creation of an on-line network linking DoD and such environmental justice stakeholders as historically black colleges and universities and Native American colleges

Design and development of an "on demand telefax" capability to provide virtual real-time telefaxed responses to stakeholders

Key actions:

DoD will identify DoD stakeholder groups and their environmental justice concerns and interests. For example, for those DoD installations for which a community relations plan (CRP) is required, each installation will strengthen its plan by identifying all stakeholders, particularly minority and low-income populations.

DoD will enhance existing or, as appropriate, develop new mechanisms to encourage stakeholder participation in DoD activities that affect human health and the environment. DoD will continue to encourage stakeholder participation in RABs and similar groups.

DoD will improve existing outreach and communication systems to include environmental justice stakeholders. At a minimum, DoD will provide translation of crucial public documents and conduct interpretation of hearings, where practicable and appropriate. Documents will be written for the target audience. Each should be clear and concise, using language that is non technical and illustrative to facilitate comprehension. DoD installations will ensure that document repositories are readily accessible to the public and schedule meetings with the public at times and places that are convenient to members of the community. In addition, installations will increase their use of community organizations and non-traditional news organizations that may be primary sources of information for minority and low-income populations. These expanded outreach efforts will include churches, community centers, tribal governments, schools, and other organizations that serve minority and low-income populations.

#### **GOAL 4: NONDISCRIMINATION(TITLE VI)**

Existing environmental and civil rights statutes provide opportunities to address environmental hazards in minority and low-income populations. DoD recognizes that application of existing statutory provisions is an important part of its efforts to ensure that its programs, policies, and activities do not have the effect of excluding persons from participating in, denying persons the benefits of, or subjecting persons to discrimination under such programs because of their race, color, or national origin. In accordance with DoD Directive 5500.1, Nondiscrimination in Federally Assisted Programs, DoD will foster nondiscrimination in its programs or activities that substantially affect human health or the environment.

Key action:

Review compliance with Title VI of the Civil Rights Act to confirm that programs and activities receiving DoD financial assistance that affect human health or the environment do not discriminate on the basis of race, color, or national origin.

Model Projects/Programs

#### *LEGACY RESOURCES MANAGEMENT PROGRAM*

The Legacy Program was created in November 1990 to assist DoD in balancing the intensive use of its lands for military training and testing with the protection of natural and cultural resources. The Legacy Program supports projects that promote an understanding of, and an appreciation for, natural and cultural resources, as well as promote partnerships with Native American tribal governments.

Review compliance with Title VI of the Civil Rights Act to confirm that programs and activities receiving DoD financial assistance that affect human health or the environment do not discriminate on the basis of race, color, or national origin.

#### **GOAL 5: NATIONAL PERFORMANCE REVIEW**

The National Performance Review (NPR) was an intensive six-month study of the Federal government conducted in 1993 that had as its goal: moving from red tape to results to create a government that works better and costs less. A key element of the recommendations of the NPR focuses on Federal agencies working in cooperation to provide consistent direction and avoid duplication and waste of Federal resources. To that end, DoD will identify opportunities where it can work with other Federal agencies to collect data, conduct studies, and implement projects that can be used to meet the goals of the Executive Order. DoD will promote the principles set forth in the Report of the National Performance Review: *From Red Tape to Results: Creating a Government That Works Better and Costs Less*, in the planning, development, and implementation of the provisions of the Executive Order.

Key actions:

Identify opportunities for interagency data collection, studies, and projects that could be used to meet the goals of the Executive Order.

Expand and broaden access to the Defense Environmental Network and Information Exchange (DENIX) to encourage sharing of information with other agencies.

Cooperate and work with other Federal agencies in the government-wide implementation of Executive Order, to ensure efficient use of information data systems and to avoid duplication and waste of Federal resources.

***APPENDIX JJ***

***DoD Public Participation Checklist on Environmental Justice***

## **Environmental Justice Public Participation Checklist**

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The following checklist was developed by the Department of Defense from information received from the nineteen federal agencies involved in implementation of Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The checklist was finalized and approved by the Interagency Working Group and the National Environmental Justice Advisory Council.

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### **Revised 1/13/95**

1. Ensure that the agency's public participation policies are consistent with the requirements of the Freedom of Information Act, the Emergency Planning and Community Right to Know Act, and the National Environmental Policy Act.
2. Obtain senior management support to ensure that the agency's policies and activities are modified to ensure early, effective, and meaningful public participation, especially with regard to Environmental Justice stakeholders. Identify internal stakeholders and establish partnering relationships.
3. Use the following guiding principles in setting up all public meetings:
  - Maintain honesty and integrity throughout the process
  - Recognize community/indigenous knowledge
  - Encourage active community participation
  - Utilize cross-cultural formats and exchanges
4. Identify external Environmental Justice stakeholders and provide opportunities to offer input into decisions that may impact their health, property values, and lifestyles. Consider at a minimum individuals from the following organizations as appropriate:
  - Environmental Organizations
  - Business and Trade Organizations
  - Civic/Public Interest Groups
  - Grassroots/Community-based Organizations
  - Congress
  - Federal Agencies
  - Homeowner and Resident Organizations
  - International Organizations
  - Labor Unions
  - Local and State Government
  - Media/Press
  - Indigenous People
  - Tribal Governments
  - Industry
  - White House
  - Religious Groups
  - Universities and Schools

5. Identify key individuals who can represent various stakeholder interests. Learn as much as possible about the stakeholders and their concerns through personal consultation, phone, or written contacts. Ensure that information gathering techniques include modifications for minority and low-income communities, for example, consider language/cultural barriers, technical background, literacy, access to respondent, privacy issues, and preferred types of communications.
6. Solicit stakeholder involvement early in the policymaking process, beginning in the planning and development stages and continuing through implementation and oversight.
7. Develop co-sponsoring/co-planning relationships with community organizations, providing resources for their needs.
8. Establish a central point of contact within the Federal agency to assist in information dissemination, resolve problems, and to serve as a visible and accessible advocate of the public's right to know about issues that affect health or environment.
9. Regionalize materials to insure cultural sensitivity and relevance. Make information readily accessible (handicap access, Braille, etc.) and understandable. Unabridged documents should be placed in repositories. Executive summaries/fact sheets should be prepared in layman's language. Whenever practicable and appropriate, translate targeted documents for limited English-speaking populations.
10. Make information available in a timely manner. Environmental Justice stakeholders should be viewed as full partners and agency customers. They should be provided with information at the same time it is submitted for formal review to state, tribal and/or Federal regulatory agencies.
11. Ensure that personnel at all levels in the agency clearly understand policies for transmitting information to Environmental Justice stakeholders in a timely, accessible, and understandable fashion.
12. Establish site-specific community advisory boards where there is sufficient and sustained interest. To determine whether there is sufficient and sustained interest, at a minimum, review correspondence files, review media coverage, conduct interviews with local community members and advertise in local newspapers. Ensure that the community representation includes all aspects and diversity of the population. Organize a member selection panel. Solicit nominations from the community. Consider providing administrative and technical support to the community advisory board.
13. Schedule meetings and/or public hearings to make them accessible and user-friendly for Environmental Justice stakeholders. Consider time frames that do not conflict with work schedules, rush hours, dinner hours, and other community commitments that may decrease attendance. Consider locations and facilities that are local, convenient, and which represent neutral turf. Ensure that the facility meets the Americans with Disabilities Act statements for equal access. Provide assistance for hearing impaired individuals. Whenever practical and appropriate provide translators for limited-English speaking communities. Advertise the meeting and its proposed agenda in a timely manner in the print and electronic media. Provide a phone number and/or address for communities to find out about pending meetings, issues, enter concerns, to seek participation, or alter meeting agenda. Create an atmosphere of equal participation (avoid a Apanel of experts@ or Ahead table@). A two-day meeting is suggested with the first day reserved for community planning and education. Organize meetings to provide an open exchange of ideas and enough time to consider issues of community concern. Consider the use of a neutral

facilitator who is sensitive and trained in environmental justice issues. Ensure that minutes of the meeting are publicly available. Develop a mechanism to provide communities with feedback after meetings occur on actions being considered.

14. Consider other vehicles to increase participation of Environmental Justice stakeholders including:

- Posters and Exhibits
- Participation in Civic and Community Activities
- Public Database and Bulletin Boards
- Surveys
- Telephone Hotlines
- Training and Education Programs, Workshops, and Materials

15. Be sure that trainers have a good understanding of the subject matter both technical and administrative. The trainers are the ambassadors of this program. If they do not understand - no one will.

16. Diversity in the workplace: whenever practicable be sure that those individuals that are the decision makers reflect the intent of the Executive Order and come from diverse backgrounds, especially those of a community the agency will have extensive interaction with.

17. After holding a public forum in a community, establish a procedure to follow up with concrete actions to address the communities' concerns. This will help to establish credibility for your agency as having an action role in the federal government.

18. Promote interagency coordination to ensure that the most far reaching aspects of environmental justice are sufficiently addressed in a timely manner. Environmental problems do not occur along departmental lines. Therefore, solutions require many agencies and other stakeholders to work together efficiently and effectively.

19. Educate stakeholders about all aspects of environmental justice (functions, roles, jurisdiction, structure, and enforcement).

20. Ensure that research projects identify environmental justice issues and needs in communities, and how to meet those needs through the responsible agencies.

21. Establish interagency working groups (at all levels) to address and coordinate issues of environmental justice.

22. Provide information to communities about the government's role as it pertains to short term and long term economic and environmental needs and health effects.

23. Train staff to support inter- and intra-agency coordination, and make them aware of the resources needed for such coordination.

24. Provide agency staff who are trained in cultural, linguistic, and community outreach techniques.

25. Hold workshops, seminars, and other meetings to develop partnerships between agencies, workers, and community groups. (Ensure mechanisms are in place to ensure that partnerships can be implemented via

cooperative agreements, etc.).

26. Provide effective outreach, education and communications. Findings should be shared with community members with an emphasis on being sensitive and respectful to race, ethnicity, gender, language, and culture.

27. Design and implement education efforts tailored to specific communities and problems. Increase the involvement of ethnic caucuses, religious groups, the press, and legislative staff in resolution of Environmental Justice issues.

28. Assure active participation of affected communities in the decision making process for outreach, education, training, and communities programs - including representation on advisory councils and review committees.

29. Encourage federal and state governments to Reinvent government@ - overhaul the bureaucratic in favor of community responsiveness.

30. Link environmental issues to local economic issues to increase level of interest.

31. Use local businesses for environmental cleanup or other related activities.

32. Utilize, as appropriate, Historically Black Colleges and Universities (HBCU) and Minority Institutes (MI), Hispanic Serving Colleges and Universities (HSCU), and Indian Centers to network and form community links that they can provide.

33. Utilize, as appropriate, local expertise for technical and science reviews.

34. Previous to conducting the first agency meeting, form an agenda with the assistance of community and agency representatives.

35. Provide "open microphone" format during meetings to allow community members to ask questions and identify issues from the community.



***APPENDIX KK***

***CEQ Guidance on Pollution Prevention***

# EXECUTIVE OFFICE OF THE PRESIDENT

## Council on Environmental Quality

**AGENCY:** Council on Environmental Quality, Executive Office of the President

**ACTION:** Information only--Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act

**SUMMARY:** This memorandum provides guidance to the federal agencies on incorporating pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and evaluating and reporting those efforts in documents prepared pursuant to the National Environmental Policy Act.

**FOR FURTHER INFORMATION CONTACT:** Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20503. Telephone: 202/395-5754.

**SUPPLEMENTARY INFORMATION:**

### MEMORANDUM

**TO:** Heads of Federal Departments and Agencies

**FROM:** Michael R. Deland

**SUBJECT:** Pollution Prevention and the National Environmental Policy Act

**DATE:** January 12, 1993

#### Introduction

Although substantial improvements in environmental quality have been made in the last 20 years by focusing federal energies and federal dollars on pollution abatement and on cleaning up pollution once it has occurred, achieving similar improvements in the future will require that polluters and regulators focus more of their efforts on pollution prevention. For example, reducing non-point source pollution--such as runoff from agricultural lands and urban roadways--and addressing cross-media environmental problems--such as the solid waste disposal problem posed by the sludge created in the abatement of air and water pollution--may not be possible with "end-of-the-pipe" solutions. Pollution prevention techniques seek to reduce the amount and/or toxicity of pollutants being generated. In addition, such techniques promote increased efficiency in the use of raw materials and in conservation of natural resources and can be a more cost-effective means of controlling pollution than does direct regulation. Many strategies have been developed and used to reduce pollution and protect resources, including using fewer toxic inputs, redesigning products, altering manufacturing and maintenance processes, and conserving energy.

This memorandum seeks to encourage all federal departments and agencies, in furtherance of their

responsibilities under the National Environmental Policy Act (NEPA), to incorporate pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and to evaluate and report those efforts, as appropriate, in documents prepared pursuant to NEPA.

## **Background**

NEPA provides a longstanding umbrella for a renewed emphasis on pollution prevention in all federal activities. Indeed, NEPA's very purpose is "to promote efforts which will prevent or eliminate damage to the environment...." 42 USC 4321.

Section 101 of NEPA contains Congress' express recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment" and declaration of the policy of the federal government "to use all practicable means and measures...to create and maintain conditions under which man and nature can exist in productive harmony...." 42 USC 4331(a). In order to carry out this environmental policy, Congress required all agencies of the federal government to act to preserve, protect, and enhance the environment. See 42 USC 4331(b).

Further, Section 102 of NEPA requires the federal agencies to document the consideration of environmental values in their decisionmaking in "detailed statements" known as environmental impact statements (EIS). 42 USC 4332(2)(C)). As the United States Supreme Court has noted, the "sweeping policy goals announced in 101 of NEPA are thus realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

The very premise of NEPA's policy goals, and the thrust for implementation of those goals in the federal government through the EIS process, is to avoid, minimize, or compensate for adverse environmental impacts before an action is taken. Virtually the entire structure of NEPA compliance has been designed by CEQ with the goal of preventing, eliminating, or minimizing environmental degradation. Thus, compliance with the goals and procedural requirements of NEPA, thoughtfully and fully implemented, can contribute to the reduction of pollution from federal projects, and from projects funded, licensed, or approved by federal agencies.

## **Defining Pollution Prevention**

CEQ defines and uses the term "pollution prevention" broadly. In keeping with NEPA and the CEQ regulations implementing the procedural provisions of the statute, CEQ is not seeking to limit agency discretion in choosing a particular course of action, but rather is providing direction on the incorporation of pollution prevention considerations into agency planning and decisionmaking.

"Pollution prevention" as used in this guidance includes, and is not limited to, reducing or eliminating hazardous or other polluting inputs, which can contribute to both point and non-point source pollution; modifying manufacturing, maintenance, or other industrial practices; modifying product designs; recycling (especially in-process, closed loop recycling); preventing the disposal and transfer of pollution from one media to another; and increasing energy efficiency and conservation. Pollution prevention can be implemented at any stage--input, use or generation, and treatment--and may involve any technique--process modification, waste stream segregation, inventory control, good housekeeping or best management practices, employee training, recycling, and substitution. Indeed, any reasonable mechanism which successfully avoids, prevents, or reduces pollutant discharges or emissions other than by the traditional method of treating pollution at the discharge end of a pipe or a stack should, for purposes of this guidance, be considered

pollution prevention.

## **Federal Agency Responsibilities**

Pursuant to the policy goals found in NEPA Section 101 and the procedural requirements found in NEPA Section 102 and in the CEQ regulations, the federal departments and agencies should take every opportunity to include pollution prevention considerations in the early planning and decisionmaking processes for their actions, and, where appropriate, should document those considerations in any EISs or environmental assessments (EA) prepared for those actions. In this context, federal actions encompass policies and projects initiated by a federal agency itself, as well as activities initiated by a non-federal entity which need federal funding or approval. Federal agencies are encouraged to consult EPA's Pollution Prevention Information Clearinghouse which can serve as a source of innovative ideas for reducing pollution.

### **1. Federal Policies, Projects, and Procurements**

The federal government develops and implements a wide variety of policies, legislation, rules, and regulations; designs, constructs, and operates its own facilities; owns and manages millions of acres of public lands; and has a substantial role as a purchaser and consumer of commercial goods and services--all of these activities provide tremendous opportunities for pollution prevention which the federal agencies should grasp to the fullest extent practicable. Indeed, some agencies have already begun their own creative pollution prevention initiatives:

#### *Land Management*

The United States Forest Service has instituted best management practices on several national forests. These practices include leaving slash and downed logs in harvest units, maintaining wide buffer zones around streams, and encouraging biological diversity by mimicking historic burn patterns and other natural processes in timber sale design and layout. The beneficial effects have been a reduction in erosion, creation of fish and wildlife habitat, and the elimination of the need to burn debris after logging--in other words, a reduction of air and water pollution.

The National Park Service and the Bureau of Reclamation have implemented integrated pest management programs which minimize or eliminate the use of pesticides. In addition, in some parks storm water runoffs from parking lots have been eliminated by replacing asphalt with the use of a "geo-block" system (interlocking concrete blocks with openings for grass plantings). The lot is mowed as a lawn but has the structural strength to support vehicles.

The Tennessee Valley Authority (TVA) has developed a transmission line right-of-way maintenance program which requires buffer zones around sensitive areas for herbicide applications and use of herbicides which have soil retention properties which allow less frequent treatment and better control. TVA is also testing whole tree chipping to clear rights-of-way in a single pass application, allowing for construction vehicle access but reducing the need for access roads with the nonpoint source pollution associated with leveling, drainage, or compaction. In addition, TVA is using more steel transmission line poles to replace traditional wooden poles which have been treated with chemicals.

For construction projects it undertakes, the Department of Veterans Affairs discusses in NEPA documents and implements pollution prevention measures such as oil separation in storm water drainage of parking structures, soil erosion and sedimentation controls, and the use of recycled asphalt.

### *Office Programs*

Many agencies, including the Department of Agriculture's Economic Research Service and Soil Conservation Service, Department of the Army, Department of the Interior, Consumer Product Safety Commission, and Tennessee Valley Authority, have implemented pollution prevention initiatives in their daily office activities. These initiatives embrace recycling programs covering items such as paper products (e.g., white paper, newsprint, cardboard), aluminum, waste oil, batteries, tires, and scrap metal; procurement and use of "environmentally safe" products and products with recycled material content (e.g., batteries, tires, cement mixed with fly ash and recycled oil, plastic picnic tables); purchase and use of alternative-fueled vehicles in agency fleets; and encouragement of carpooling with employee education programs and locator assistance.

In planning the relocation of its headquarters, the Consumer Product Safety Commission (CPSC) is considering only buildings located within walking distance of the subway system as possible sites. By conveniently siting its headquarters facility, CPSC expects to triple the number of employees relying on public transportation for commuting and to substantially increase the number of agency visitors using public transportation for attendance at agency meetings or events.

### *Waste Reduction*

The Department of Energy (DOE) has instituted an aggressive waste minimization program which has produced substantial results. DOE's nuclear facilities have reduced the sizes of radiological control areas in order to reduce low-level radioactive waste. Other facilities have scrap metal segregation programs which reduce solid waste and allow useable material to be sold and recycled. DOE facilities also are replacing solvents and cleaners containing hazardous materials with less or non-toxic materials.

The Department of the Army has a similar waste reduction program and is vigorously pursuing source reduction changes to industrial processes to eliminate toxic chemical usage that ultimately generates hazardous wastes. The Army's program includes material substitution techniques as well as alternative application technologies. For example, in an EIS and subsequent record of decision for proposed actions on Kwajalein Atoll, the Army committed to segregate solvents from waste oils in the Kwajalein power plant which will prevent continual contamination of large quantities of used engine oil with solvents. Oil recycling equipment will also be installed on power plant diesel generators allowing reuse of waste oil.

The Federal Aviation Administration (FAA) has also implemented a waste minimization program designed to eliminate or reduce the amount and toxicity of wastes generated by all National Airspace System facilities. This program includes using chemical life extenders and recycling additives to reduce the quantity and frequency of wastes generated at FAA facilities and providing chlorofluorocarbon (CFC) recycling equipment to each sector in the FAA to that CFCs used in industrial chillers, refrigeration equipment, and air conditioning units can be recaptured, recycled, and reused.

### *Inventory Control*

DOE is improving procurement and inventory control of chemicals and control of materials entering radiologically controlled areas. This can minimize or prevent non-radioactive waste from entering a radioactive waste stream, thus reducing the amount of low-level waste needing disposal.

In two laboratories operated by the Consumer Product Safety Commission, pollution prevention is being practiced by limiting quantities of potentially hazardous materials on hand.

The Tennessee Valley Authority's nuclear program has established a chemical traffic control program to control the use and disposal of hazardous materials. As a result of the program, hazardous materials are being replaced by less hazardous alternatives and use of hazardous chemicals and products has been reduced by 66%.

## **2. Federal Approvals**

In addition to initiating their own policies and projects, federal agencies provide funding in the form of loans, contracts, and grants and/or issue licenses, permits, and other approvals for projects initiated by private parties and state and local government agencies. As with their own projects and consistent with their statutory authorities, federal agencies could urge private applicants to include pollution prevention considerations into the siting, design, construction, and operation of privately owned and operated projects. These considerations could then be included in the NEPA documentation prepared for the federally-funded or federally-approved project, and any pollution prevention commitments made by the applicant would be monitored and enforced by the agency. Thus, using their existing regulatory authority, federal agencies can effectively promote pollution prevention throughout the private sector. Below are some existing examples of incorporation of pollution prevention into federal approvals:

The Nuclear Regulatory Commission has required licensees to perform mitigation measures during nuclear power plant construction. These measures include controlling drainage by means of ditches, berms, and sedimentation basins; prompt revegetation to control erosion; and stockpiling and reusing topsoil. Similarly, mitigation measures required during the construction of transmission facilities include the removal of vegetation by cutting and trimming rather than bulldozing and avoiding multiple stream crossings, wet areas, and areas with steep slopes and highly erodible soils. The mitigation conditions in licenses serve to prevent pollution from soil erosion and to minimize waste from construction.

In the implementation of its programs, the Department of Agriculture encourages farmers to follow management practices designed to reduce the environmental impacts of farming. Such practices include using biological pest controls and integrated pest management to reduce the toxicity and application of pesticides, controlling nutrient loadings by installing buffer strips around streams and replacing inorganic fertilizers with animal manures, and reducing soil erosion through modified tillage and irrigation practices. Further, encouraging the construction of structures such as waste storage pits, terraces, irrigation water conveyances or pipelines, and lined or grassed waterways reduces runoff and percolation of chemicals into the groundwater.

The Department of Transportation's Maritime Administration is conducting research on a Shipboard Piloting Expert System. If installed on vessels, this system would provide a navigation and pilotage assistance capability which would instantly provide warnings to a ship master or pilot of pending hazards and recommended changes in vessel heading to circumvent the hazard. The system could prevent tanker collisions or groundings which cause catastrophic releases of pollutants.

The Department of the Interior's Minerals Management Service (MMS) prepares EISs which examine the effects of potential outer continental shelf (OCS) oil exploration on the environment and the various mitigation measures that may be needed to minimize such effects. Some pollution prevention measures which are analyzed in these EISs and which have been adopted for specific lease sales include measures designed to minimize the effects of drilling fluids discharge, waste disposal, oil spills, and air emissions. For example, MMS requires OCS operations to use curbs, gutters, drip pans, and drains on drilling platforms and rig decks

to collect contaminants such as oil which may be recycled.

### **Incorporating Pollution Prevention into NEPA Documents**

NEPA and the CEQ regulations establish a mechanism for building environmental considerations into federal decisionmaking. Specifically, the regulations require federal agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." 40 CFR 1501.2. This mechanism can be used to incorporate pollution prevention in the early planning stages of a proposal.

In addition, prior to preparation of an EIS, the federal agency proposing the action is required to conduct a scoping process during which the public and other federal agencies are able to participate in discussions concerning the scope of issues to be addressed in the EIS. See 40 CFR 1501.7. Including pollution prevention as an issue in the scoping process would encourage those outside the federal agency to provide insights into pollution prevention technologies which might be available for use in connection with the proposal or its possible alternatives.

Pollution prevention should also be an important component of mitigation of the adverse impacts of a federal action. To the extent practicable, pollution prevention considerations should be included in the proposed action and in the reasonable alternatives to the proposal, and should be addressed in the environmental consequences section of the EIS. See 40 CFR 1502.14(f), 1502.16(h), and 1508.20.

Finally, when an agency reaches a decision on an action for which an EIS was completed, a public record of decision must be prepared which provides information on the alternatives considered and the factors weighed in the decisionmaking process. Specifically, the agency must state whether all practicable means to avoid or minimize environmental harm were adopted, and if not, why they were not. A monitoring and enforcement program must be adopted if appropriate for mitigation. See 40 CFR 1505.2(c). These requirements for the record of decision and for monitoring and enforcement could be an effective means to inform the public of the extent to which pollution prevention is included in a decision and to outline how pollution prevention measures will be implemented.

A discussion of pollution prevention may also be appropriate in an EA. While an EA is designed to be a brief discussion of the environmental impacts of a particular proposal, the preparer could also include suitable pollution prevention techniques as a means to lessen any adverse impacts identified. See 40 CFR 1508.9. Pollution prevention measures which contribute to an agency's finding of no significant impact must be carried out by the agency or made part of a permit or funding determination.

### **Conclusion**

Pollution prevention can provide both environmental and economic benefits, and CEQ encourages federal agencies to consider pollution prevention principles in their planning and decisionmaking processes in accordance with the policy goals of NEPA Section 101 and to include such considerations in documents prepared pursuant to NEPA Section 102, as appropriate. In its role as a regulator, a policymaker, a manager of federal lands, a grantor of federal funds, a consumer, and an operator of federal facilities which can create pollution, the federal government is in a position to help lead the nation's efforts to prevent pollution before it is created. The federal agencies should act now to develop and incorporate pollution prevention considerations in the full range of their activities.

David B. Struhs  
Chief of Staff

Billing Code: 3125-01-M

For a discussion of such strategies and activities, see the Council on Environmental Quality's 20th Environmental Quality report, at 215-257 (1989); 21st Environmental Quality report, at 79-133 (1990); and 22<sup>nd</sup> Environmental Quality report, at 151-158 (1991). It should be noted that EPA, in accordance with the Pollution Prevention Act of 1990 (Pub. L. No. 101-508, 6601 et seq.), uses a different definition, one which describes pollution prevention in terms of source reduction and other practices which reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources or the protection of natural resources by conservation. "Source reduction" is defined as any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal and which reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. Under Section 309 of the Clean Air Act (42 USC 7609), EPA is directed to review and comment on all major federal actions, including construction projects, proposed legislation, and proposed regulations. In addition, the Pollution Prevention Act of 1990 directs EPA to encourage source reduction practices in other federal agencies. EPA is using this authority to identify opportunities for pollution prevention in the federal agencies and to suggest how pollution prevention concepts can be addressed by the agencies in their EISs and incorporated into the wide range of government activities. As a guidance document, this memorandum does not impose any new legal requirements on the agencies and does not require any changes to be made to any existing agency environmental regulations.



***APPENDIX LL***

***Sample Farmland Conversion Impact Rating Form  
(Form AD-1006)***



***APPENDIX MM***

***Executive Order 13045, Protection of Children***

[Federal Register: April 23, 1997 (Volume 62, Number 78)]

## **Executive Order 13045--Protection of Children From Environmental Health Risks and Safety Risks**

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Executive Order 13045 of April 21, 1997

Protection of Children From Environmental Health Risks and Safety Risks

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

### Section 1. Policy.

1-101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children's neurological, immunological, digestive, and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate, and consistent with the agency's mission, each Federal agency:

(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and

(b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

1-102. Each independent regulatory agency is encouraged to participate in the implementation of this order and comply with its provisions.

### Sec. 2. Definitions. The following definitions shall apply to this order.

2-201. "Federal agency" means any authority of the United States that is an agency under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies under 44 U.S.C. 3502(5). For purposes of this order, "military departments," as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-202. "Covered regulatory action" means any substantive action in a rulemaking, initiated after the date of this order or for which a Notice of Proposed Rulemaking is published 1 year after the date of this order, that is likely to result in a rule that may:

(a) be "economically significant" under Executive Order 12866 (a rulemaking that has an annual effect on the economy of \$100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities); and

(b) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.

2-203. "Environmental health risks and safety risks" mean risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breath, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).

### Sec. 3. Task Force on Environmental Health Risks and Safety Risks to Children.

3-301. There is hereby established the Task Force on Environmental Health Risks and Safety Risks to Children ("Task Force").

3-302. The Task Force will report to the President in consultation with the Domestic Policy Council, the National Science and Technology Council, the Council on Environmental Quality, and the Office of Management and Budget (OMB).

3-303. Membership. The Task Force shall be composed of the:

- (a) Secretary of Health and Human Services, who shall serve as a Co-Chair of the Council;
- (b) Administrator of the Environmental Protection Agency, who shall serve as a Co-Chair of the Council;
- (c) Secretary of Education;
- (d) Secretary of Labor;
- (e) Attorney General;
- (f) Secretary of Energy;
- (g) Secretary of Housing and Urban Development;
- (h) Secretary of Agriculture;
- (i) Secretary of Transportation;
- (j) Director of the Office of Management and Budget;
- (k) Chair of the Council on Environmental Quality;
- (l) Chair of the Consumer Product Safety Commission;
- (m) Assistant to the President for Economic Policy;
- (n) Assistant to the President for Domestic Policy;
- (o) Assistant to the President and Director of the Office of Science and Technology Policy;
- (p) Chair of the Council of Economic Advisers; and
- (q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Members of the Task Force may delegate their responsibilities under this order to subordinates.

3-304. Functions. The Task Force shall recommend to the President Federal strategies for children's environmental health and safety, within the limits of the Administration's budget, to include the following elements:

- (a) statements of principles, general policy, and targeted annual priorities to guide the Federal approach to achieving the goals of this order;
- (b) a coordinated research agenda for the Federal Government, including steps to implement the review of research databases described in section 4 of this order;
- (c) recommendations for appropriate partnerships among Federal, State, local, and tribal governments and the private, academic, and nonprofit sectors;
- (d) proposals to enhance public outreach and communication to assist families in evaluating risks to children and in making informed consumer choices;
- (e) an identification of high-priority initiatives that the Federal Government has undertaken or will undertake in advancing protection of children's environmental health and safety; and
- (f) a statement regarding the desirability of new legislation to fulfill or promote the purposes of this order.

3-305. The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, cabinet agencies and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency's programs and activities. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The Office of Science and Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3-306. The Task Force shall exist for a period of 4 years from the first meeting. At least 6 months prior to the expiration of that period, the member agencies shall assess the need for continuation of the Task Force or its functions, and make appropriate recommendations to the President.

#### Sec. 4. Research Coordination and Integration.

4-401. Within 6 months of the date of this order, the Task Force shall develop or direct to be developed a review of existing and planned data resources and a proposed plan for ensuring that researchers and Federal research agencies have access to information on all research conducted or funded by the Federal Government that is related to adverse health risks in children resulting from exposure to environmental health risks or safety risks. The National Science and Technology Council shall review the plan.

4-402. The plan shall promote the sharing of information on academic and private research. It shall include recommendations to encourage that such data, to the extent permitted by law, is available to the public, the scientific and academic communities, and all Federal agencies.

#### Sec. 5. Agency Environmental Health Risk or Safety Risk Regulations.

5-501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

(a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

5-502. In emergency situations, or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule any rulemaking proceedings so as to permit sufficient time for completing the analysis required by this section.

5-503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public, to the extent permitted by law.

#### Sec. 6. Interagency Forum on Child and Family Statistics.

6-601. The Director of the OMB ("Director") shall convene an Interagency Forum on Child and Family Statistics ("Forum"), which will include representatives from the appropriate Federal statistics and research agencies. The Forum shall produce an annual compendium ("Report") of the most important indicators of the well-being of the Nation's children.

6-602. The Forum shall determine the indicators to be included in each Report and identify the sources of data to be used for each indicator. The Forum shall provide an ongoing review of Federal collection and dissemination of data on children and families, and shall make recommendations to improve the coverage and coordination of data collection and to reduce duplication and overlap.

6-603. The Report shall be published by the Forum in collaboration with the National Institute of Child Health and Human Development. The Forum shall present the first annual Report to the President, through the Director, by July 31, 1997. The Report shall be submitted annually thereafter, using the most recently available data.

#### Sec. 7. General Provisions.

7-701. This order is intended only for internal management of the executive branch. This order is not intended, and should not be construed to create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7-702. Executive Order 12606 of September 2, 1987 is revoked.

(Presidential Sig.)  
THE WHITE HOUSE,  
April 21, 1997

***APPENDIX NN***  
***Sample Press Release***



DEPARTMENT OF THE ARMY  
OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D. C. 20310

MEMORANDUM FOR CORRESPONDENTS

The Department of the Army announced today the availability of the Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) for Proposed Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, Calif.

The proposed action is to maximize training opportunities for military units that use Camp Roberts. Military units need to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available for them to train for their assigned missions.

This FEIS/EIR analyzes the proposed action, two alternatives, and the no-action alternative. The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the level from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: the M1 Abrams series of tanks would replace the M60 series tanks; Bradley Fighting Vehicles would replace the M113 series armored personnel carriers; the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers; and the AH-64 series Apache helicopters would replace the Cobra helicopters. Range modernization would be composed of both upgrading existing ranges and constructing new ranges.

In addition to the proposed action, the FEIS/EIR evaluates three other alternatives: No-Action, New Equipment Utilization and Range Modernization Program, and Peak Training Use of Camp Roberts/Fort Hunter Liggett.

The No-Action Alternative provides the environmental baseline with which the proposed action and alternatives can be compared. Under the No-Action Alternative, existing training exercises would not change. Under the New Equipment Utilization and Range Modernization Program Alternative, the new equipment would be fielded and the range modernization program would be implemented. Under the Peak Training Use of Camp Roberts/Fort Hunter Liggett the larger-than-normal combined forces training activities would be split between Camp Roberts and Fort Hunter Liggett.

A 45-day public review and comment period was provided for the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR). Two public hearings were held in San Luis Obispo and Paso Robles on the DEIS/EIR after the Notice of Availability was published. After the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS/EIR to constitute the FEIS/EIR. After a 30-day waiting period on the FEIS/EIR, a Record of Decision will be published.

Copies of the FEIS/EIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy of the FEIS/EIR by request.

For further information contact: Lt.Col. William Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, Calif. 93451-5000; telephone (805) 238-8207.

DEPARTMENT OF THE ARMY  
OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D. C. 20310

MEMORANDUM FOR CORRESPONDENTS

A Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) on final site selection and authorization for construction of a Multi-Purpose Range Complex - Heavy (MPRC-H) at the Camp Shelby Training Site, Mississippi, was published today in the Federal Register.

The SEIS will supplement the Final Environmental Impact Statement (FEIS) for military training use of National Forest lands at Camp Shelby.

The SEIS will document additional sites evaluated by the Department of Army, National Guard Bureau, as co-lead agency with the U. S. Department of Agriculture's Forest Service, for consideration in selection of a final site location and disclose new information relevant to environmental concerns having a bearing on the proposed action.

The MPRC-H is a standard Army gunnery range which has three maneuver avenues with two course roads per avenue. Only non-dud producing ammunition will be fired within the target array. The range has a maximum of 270 targets which can be engaged with either live-fire or the Multiple Integrated Laser Engagement System (MILES). The proposed range facility would allow armor and mechanized infantry units to fulfill all their gunnery requirements on an annual basis. The proposed range supports collective training at the small unit level (platoon level).

Environmental impacts to be addressed in the SEIS include those affecting air quality, noise, physical setting, natural resources, land use, water resources, cultural resources, and social and economic resources.

Prior to the completion of the Draft SEIS, a public meeting will be conducted at a location near the Camp Shelby Training Site. Public notice of the meeting will be made announcing the specific date, time and location at least 15 days prior to the meeting. The purpose of the meeting is to receive public input

on the Draft SEIS, review potential impacts and issues that should be included in the SEIS, and identify other coordination or permit requirements associated with the proposal.

Questions or comments regarding the scope of the environmental analysis should be directed to Lieutenant Colonel Parker Hills, Public Affairs Office, Mississippi Military Department, 1410 Riverside Drive, Jackson, Mississippi 39202, telephone (601) 973-6271; or Mr. Jeff Long, Forest Environmental Coordinator, National Forests in Mississippi, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965-5525.

-END-

***APPENDIX OO***

***Public Notices***

(R601)

**PUBLIC NOTICE  
IOWA ARMY NATIONAL GUARD  
INVITATION TO COMMENT  
ON THE PROPOSED FORCE MODERNIZATION OF THE 1-113TH CAVALRY  
SQUADRON, IOWA ARMY NATIONAL GUARD**

The National Guard Bureau, Washington, DC, and the Iowa Army National Guard are proposing the force modernization of the 1-113th Cavalry Squadron, to include the fielding of M-1 Abrams Main Battle Tanks and associated equipment in replacement of M60 tanks for the 1-113th Cavalry Squadron. Up to fourteen of the M1 tanks would be stationed at Camp Dodge Military Reservation, Johnston, Iowa, to replace nine M60 tanks currently on site. Up to two additional tanks would be located at selected armory sites in the state.

An analysis of the environmental impacts of this proposal is presented in an Environmental Assessment (EA), which is available for public review and comment. Copies may be reviewed at the Iowa Army National Guard Facilities and Construction Office, Building B-61, Camp Dodge, 7700 Northwest Beaver Drive, Johnston, Iowa 50131-1902, during normal business hours. The EA will also be available for review at the Johnston Public Library, 6221 Merle Hay Road, Johnston, IA 50131. Library hours are 10 a.m. to 8 p.m. Monday through Thursday; 10 a.m. to 5 p.m. Friday and Saturday. This assessment will be available from February 19 to March 20, 1996.

Written public comment concerning this proposal is invited, and will be received until March 20, 1996. Comments should be addressed to Headquarters, Iowa National Guard, Attention: Public Affairs Officer, 7700 Northwest Beaver Drive, Johnston, Iowa 50131-1902.

Questions may be directed to Lieutenant Colonel Robert C. King, Public Affairs Officer, Headquarters, Iowa National Guard, (515) 252-4582.

**(R076)—NOTICE OF AVAILABILITY  
ENVIRONMENTAL ASSESSMENT**

**Availability of the Draft Environmental Assessment for "The Stationing and Training of One Additional Cavalry Troop and One-Half of a Headquarters Troop at Camp Dodge, Johnston, Iowa"**

**Agency: Iowa Army National Guard - Iowa Department of Public Defense.**

**Action: Notice of Availability of the Draft Environmental Assessment covering the proposed addition of troops and equipment at Camp Dodge, Johnston, Iowa.**

- 1. The Iowa Army National Guard has prepared an Environmental Assessment to address the proposed stationing of an additional cavalry troop and one-half of a headquarters troop at Camp Dodge, Johnston, Iowa.**
- 2. The Draft Environmental Assessment explores alternatives to the proposed actions with an impact analysis of the preferred alternative.**
- 3. The Draft document is now available for public review and comment. Copies can be obtained at: Iowa Army National Guard, Bldg. A8, Camp Dodge, 7700 Northwest Beaver Drive, Johnston, Iowa 50131-1902. Telephone requests should be directed to Curt Madsen at (515) 242-5557 during business hours (8 a.m. - 4:30 p.m.). The document will also be available for review at the Johnston Public Library, Johnston, Iowa 50131.**
- 4. Comments for consideration by the Iowa Army National Guard in the final document should be provided in writing to: Headquarters, Iowa National Guard, Attention: Public Affairs Officer, 7790 Northwest Beaver Drive, Johnston, Iowa 50131-1902. The draft document will have a 30 day comment period. The end of the comment period will be March 10, 1993. Written substantive comments received at the above address within the review period will be addressed.**

***APPENDIX PP***

***Samples of Documents included in an NOI Package***



DEPARTMENT OF THE ARMY  
OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D.C. 20310

INFORMATION FOR MEMBERS OF CONGRESS

The Department of the Army will soon announce the availability of the Final Environmental Impact Statement/ Environmental Impact Report (FEIS/EIR) for Camp Roberts Army National Guard Training Site, California.

The FEIS/EIR analyzes the proposed action, two alternatives, and the no action alternative. The proposed action consists of three components: combined forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program. The purpose of the proposed action is to maximize training opportunities. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: the M1 Abrams series of tanks would replace the M60 series tanks; Bradley Fighting Vehicles would replace the M113 series armored personnel carriers; the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers; and the AH-64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

The No Action Alternative provides the environmental baseline with which the proposed action and alternatives can be compared. Under the No Action Alternative, existing training exercises would not change. Under the New Equipment Utilization

and Range Modernization Program Alternative, the new equipment would be fielded and the range modernization program would be implemented. Under the Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative, the larger-than-normal combined-forces training activities would be split between Camp Roberts and Fort Hunter Liggett.

There was a 45-day public review and comment period for the DEIS/EIR. Two public hearings were held on the Draft EIS/EIR on June 11, 1996, in San Luis Obispo and Paso Robles, California. After the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the Draft EIS/EIR to constitute the FEIS/EIR. After a 30-day waiting period on the FEIS/EIR, a Record of Decision will be published.

Copies of the FEIS/EIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy of the FEIS/EIR by contacting LTC William R. Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, CA 93451-5000; telephone (805) 238-8207.

For further information contact, Major Brad J. Jorgensen, EIS Project Officer, Army National Guard Bureau, Arlington, VA 22204-1382; telephone (703) 607-7986.

PROVIDED BY:  
Office, Chief of Legislative Liaison

DEPARTMENT OF THE ARMY  
OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D.C. 20310

**INFORMATION FOR MEMBERS OF CONGRESS**

The Department of the Army will publish a Notice of Intent (NOI) to prepare a Supplement to the Camp Shelby Environmental Impact Statement (EIS) for construction of the Multi-Purpose Range Complex - Heavy (MPRC-H) at Camp Shelby Training Site (CSTS), Camp Shelby, Mississippi.

The Supplemental Environmental Impact Statement (SEIS) will analyze environmental considerations and impacts of the various alternatives for the proposed projects, which are no action, construct the MPRC-H on 6FS 3 (located northeast of Range 41), construct the MPRC-H on 6FS 4 (located north of Range 41), and construct the MPRC-H on Range 41. Environmental impacts to be addressed include those affecting air quality, noise, physical setting, natural resources, land use, water resources, cultural resources, and social and economic resources.

A public meeting will be conducted near CSTS. Public notice of this action, as well as a local press release, will announce the specific date, time and location at least 15 days prior to the meeting. The purpose of the public meeting is to (1) receive public input on the Draft SEIS; (2) review potential impacts and issues that should be included in the SEIS; and (3) identify other coordination or permit requirements associated with the proposal. Questions or comments regarding the scope of the environmental analysis should be directed to: Lieutenant Colonel Parker Hills, Public Affairs Office, Mississippi Military Department, 1410 Riverside Drive, Jackson, Mississippi 39202, or by telephone at (601) 973-6349; or Mr. Jeff Long, Forest Environmental Coordinator, National Forests in Mississippi, 100 West Capitol St., Suite 1141, Jackson, Mississippi 39269, or by telephone at (601) 965-5525.

For further information, contact Major John Phillippe at (703) 607-7968.

**PROVIDED BY:**  
Office, Chief of Legislative Liaison

DEPARTMENT OF THE ARMY  
OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D.C. 20310

**INFORMATION FOR MEMBERS OF CONGRESS**

The Department of the Army will soon announce the availability of the Final Environmental Impact Statement (FEIS) for Proposed Expansion at the Western Army National Guard Aviation Training Site (WAATS), Marana, Arizona.

Expansions to existing training areas and facilities at the WAATS are for the purposes of enhancing readiness and training of National Guard aviation units, improving training safety, constructing facilities to meet training demands and complying with environmental requirements. This document addresses the environmental impacts of the proposed actions, reasonable alternatives and the impact upon Guard readiness of taking no action.

The proposed action and each alternative action consist of three essential components: (1) increase in the size of the original Tactical Flight Training Area, improve training, enhance training safety, allow limited ground training, and reduce noise and environmental impacts; (2) increase the number of helicopter gunnery training operations through construction of new ranges or modification to existing ranges; and (3) construction of new facilities for housing, training, maintenance and to comply with changing environmental requirements.

There was a 45-day public review and comment period for the Draft EIS. The Draft EIS was distributed to Federal, state and local agencies, interested groups and participants in the scoping process. The Arizona National Guard conducted six public hearings to discuss concerns and comments on the Draft EIS. Individuals not currently on the mailing list may obtain a copy of the FEIS by contacting Lieutenant Colonel Richard Murphy, Deputy Commander, Western Army National Guard Aviation Training Site, Building 145-500, Pinal Air Park, Marana, Arizona 85653-9598, or by calling (520) 682-4590.

For further information contact, Major Brad J. Jorgensen, EIS Project Officer, Army National Guard Bureau, Arlington, VA 22204-1382; telephone (703) 607-7986.

**PROVIDED BY:**  
Office, Chief of Legislative Liaison

## QUESTIONS AND ANSWERS

**Q1. Why is the proposed action, which includes utilizing new equipment, a range modernization program, as well as conducting a peak training period, being considered for Camp Roberts?**

**A1.** Most units of the California Army National Guard (CA ARNG) conduct their annual training at Camp Roberts. This is due to several factors including its proximity to units located in both northern and southern California; the availability of over 30,000 acres of maneuver, live-fire, and aviation training lands; and the number of training resources available to soldiers. Camp Roberts also contains a Mobilization and Training Equipment Site (MATES) where tracked and wheeled vehicles are stored for use by incoming units.

Modern equipment is being fielded to military units to maintain their state of readiness. Units training at Camp Roberts require the opportunity to practice with this equipment. Soldiers must also maintain proficiency on various weapons systems by firing on standardized ranges. However, many of the existing ranges do not presently meet Army Training Circular 25-8 standards for range design. Lastly, large scale training exercises may be necessary to fulfill future mission requirements. The goal of the EIS/EIR is to evaluate the potential for environmental impacts from each of the components of the proposed action and alternatives, and identify mitigation (when available), to reduce the severity of those impacts.

**Q2. Will noise increase if the proposed action is implemented?**

**A2.** Several types of weapons systems are proposed to be replaced under the proposed action. The replacement for the M110 series howitzer, the multiple rocket launch system, will not be fired at Camp Roberts. The noise generated from the Bradley Fighting Vehicle will continue to be very localized like the existing M113. The replacement of M60 tanks with M1 series tanks may change the blast levels only slightly. The M60 tank has an 105 mm cannon. However, the M1 series tank can be fitted with either a 105 mm or 120 mm cannon. The blast noise contour for the 120 mm would be larger than that of the 105 mm cannon, but the area of increase is not very large and is not anticipated to impact any noise-sensitive receptors. The noise contours for aircraft are contained within the installation boundaries and no changes are anticipated to those boundaries. The AH-64 Apache helicopters are slightly quieter than the Cobra helicopters they are replacing.

The proposed action also includes a component to conduct a peak training event no more than once per year. However, the use of weapons that generate blast noise on a daily basis would not increase because of existing firing limitations at the ranges related primarily to safety.

Peak noise from small arms ranges will only change slightly at the northern end of the impact area with construction of the MK-19 range and southern end from the multipurpose machine gun range. In all cases, zone III (greater than 104 db) is contained within the installation boundaries and only a small portion of a new zone II (87-104 db) at MK-19 range extends beyond the facility boundaries onto farmland.

**Q3. Will aircraft operations change under the proposal?**

**A3. No.** Aviation training operations, including nighttime and low-altitude flying activities, will not change under the proposal.

**Q4. Generation of dust is a major concern in the area. In fact, the air basins encompassing Camp Roberts have been designated as non-attainment for PM10. What will be done to control dust from the proposed action?**

**A4.** Several measures have been incorporated into the proposed range construction projects to reduce the temporary dust that may be generated during their construction. Mitigation measures in the range construction program include watering all active construction sites, prohibiting grading operations during winds greater than 30 mph, using organic biodegradable stabilizers on inactive construction areas, covering inactive storage piles, and hydroseeding disturbed lands. These measures will help but not eliminate the PM10 impacts from the proposed action.

The new equipment will be replaced on almost a one-to-one basis, therefore, no substantial increase in PM10 is anticipated. The combined-forces training component would occur no more than once per year for only a 2 week period, limiting the length of time PM10 may be a problem. However, no mitigation is available to reduce the PM10 emissions to a less-than-significant level.

**Q5. Have cultural resources been found at Camp Roberts? What will be done to protect the resources if they're discovered?**

**A5. Yes, but the final determination of eligibility for National Register of Historic Places has not been conducted by the State Historic Preservation Officer (SHPO). To date, sixteen historic properties (15 archeological sites and one building) have been identified as potentially eligible for recommendation to the SHPO for listing on the National Register of Historic Places. Protection of these resources may include development of a Programmatic Agreement, site avoidance and monitoring, data recovery excavation. Final determination of eligibility and protection requirements will be made in consultation with the SHPO.**

**Q6. There is a lot of training at Camp Roberts that involves tracked vehicles and other ground disturbing activities. What does the National Guard plan to do to protect the natural resources?**

**A6. Camp Roberts participates in the Integrated Training Area Management (ITAM) Program, which is conducted under the sponsorship of the National Guard Bureau. The ITAM Program has been in effect since 1991. The purpose of the ITAM Program is to address environmental concerns on National Guard training sites proactively to maintain realistic training conditions while protecting natural resources. The program consists of four elements:**

- b Land Condition Trend Analysis (LCTA),**
- b Environmental Awareness (EA),**
- b Land Rehabilitation and Maintenance (LRAM), and**
- b Training Requirements Integration (TRI).**

The LCTA component of ITAM involves inventorying the natural resources and monitoring field plots to evaluate trends in the condition of those resources. Data have been collected from more than 80 LCTA plots at Camp Roberts for 2-3 years (the later plots were established to better evaluate potential grazing impacts). The data collected from the plots and various inventories (e.g., flora, terrestrial and aquatic fauna) are maintained in a Geographic Information System (GIS) database. The data in the GIS database are also used to analyze trends in land use capabilities and develop map products to effectively manage natural resources.

The EA component of ITAM is used to educate soldiers and their leaders on the importance of environmental stewardship and help them to understand how to minimize impacts while accomplishing their training mission. Camp Roberts uses a written environmental information package, video support, in-briefing sessions, and regulatory programs to ensure soldiers are aware of the policies protecting sensitive environmental resources. Knowledge gained through the EA component is integrated into training operation orders used by soldiers conducting training exercises.

The LRAM component identifies, evaluates, and carries out erosion control strategies. Land rehabilitation projects are designed and carried out as funding becomes available. Data produced from the LCTA plots are used to identify future needs. The TRI element integrates the data generated from LCTA and LRAM elements with future planning and scheduling of training activities.

**Q7. Was the maximum number of troops publicized during the scoping meeting held during November 1994? (changed from 40,000 to 10,600)**

**A7. No.** The maximum peak training level that was evaluated in the DEIS/DEIR is 10,600 soldiers, 960 wheeled vehicles, 490 tracked vehicles, and 36 aircraft. The 40,000 people that were reported during the scoping meetings was in error. In addition, under the proposed action, the peak of 10,600 would be reached for only a few days, and occur no more than once per year.

**Q8. Will the CA ARNG continue to use Fort Hunter Liggett if the proposed action is selected?**

**A8. Yes.** Fort Hunter Liggett provides CA ARNG units the opportunity to use a number of ranges that are not available at Camp Roberts. Fort Hunter Liggett can also support a greater number of troops because of its size (approximately 165,000 acres) in relationship to Camp Roberts (42,784 acres). Large expanses of open space are available at Fort Hunter Liggett for mechanized field maneuvers for brigade-size training exercises. A tank trail connects the two installations, allowing efficient movement by soldiers using both installations, without significant impacts to adjacent public uses. An alternative (The Peak Training Use of Camp Roberts/Fort Hunter Liggett Alternative) was included in the DEIS/DEIR to examine the potential impacts from conducting a larger than normal level of training utilizing both Camp Roberts and Fort Hunter Liggett. Regardless of the alternative selected, CA ARNG will continue to utilize Fort Hunter Liggett for training activities.



**Q9. Was a public meeting held on the Draft EIS/EIR? How was the community notified about it?**

**A9.** We held an agency/public meeting in San Luis Obispo and a public meeting in Paso Robles on 11 June 1996. Notification of the dates, times, and locations for those meetings was made through local media (e.g., newspapers, community service announcements, etc.), notification of individuals, organizations, and agencies on the mailing list (developed during scoping for the DEIS/DEIR), and posting of flyers in adjacent public areas.

**Q10. How can the public obtain a copy or review the Final EIS/EIR?**

**A10.** A copy of the FEIS/FEIR and other public documents can be reviewed at Paso Robles Library , 800 12th Street, Paso Robles, Calif. 93446, 805/237-3870. Copies of the FEIS/FEIR will be distributed to all persons on the mailing list. A copy of the FEIS/FEIR can also be obtained by contacting Lt.Col. William Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, Calif. 93451-5000, 805/238-8207.

## QUESTIONS AND ANSWERS

Notice of Intent to Prepare a Supplement to the Camp Shelby Environmental Impact Statement (SEIS) at Camp Shelby Training Site, Camp Shelby, Mississippi

**Q1. Why is the Multi Purpose Range Complex - Heavy (MPRC-H) needed at Camp Shelby Training Site (CSTS)?**

**A1. The MPRC-H supports collective training at the small unit level. The lack of an MPRC-H at Camp Shelby was noted in the Department of Defense (DoD) response to a Government Accounting Office (GAO) report. The lack of an MPRC-H is mentioned as a training shortfall. This complex allows for maneuver and gunnery (non-dud producing) on the same range. The lack of availability of this range certainly has a detrimental effect on the readiness of the units involved.**

**Q2. Why is a Supplement to the Camp Shelby Environmental Impact Statement being prepared?**

**A2. The supplemental EIS documents additional sites evaluated by both agencies for consideration in selection of a final site location and discloses new information relevant to environmental concerns having a bearing on the proposed action. The supplemental EIS will serve to satisfy National Environmental Policy Act disclosure requirements to support the decisions made by each agency.**

**Q3. What commitment to the environment is being made at CSTS?**

**A3. The National Guard Bureau, Mississippi Military Department, and the U.S. Forest Service are committed to good stewardship of the environment at Camp Shelby Training Site.**

**Q4. Will the SEIS examine the noise situation as related to CSTS?**

**A4. The SEIS process will analyze noise produced by military training as related to the adjacent human populations. CSTS currently conducts annual noise monitoring as stated in the Special Use Permit. Noise monitoring will continue in subsequent years with attention placed on the MPRC-H. Noise complaints are recorded and investigated.**

**Q5. Will any threatened or endangered species be affected by the proposed action?**

**A5. The gopher tortoise and Louisiana quillwort have been intensely surveyed in each of the proposed locations for the MPRC-H. The U.S. Forest Service and Mississippi Military**

Department in conjunction with the U.S. Fish and Wildlife Service will evaluate potential impacts to threatened and endangered species from the proposed MPRC-H.

**Q6. Will user access to the De Soto National Forest be impacted?**

**A6. User access to National Forest System lands is an important issue concerning the proposed MPRC-H. A principal user conflict, raised in previous public comment, is access for hunting game species such as: deer, squirrel, and turkey. The estimated area and frequency of closure to other users of National Forest lands will be evaluated.**

**Q7. Will the SEIS analyze the ecologic and economic impacts to the long leaf pine ecosystem?**

**A7. An emerging forest management issue is the restoration of the historic longleaf pine ecosystem. The analysis will include the acreage of longleaf pine stands that would be converted to an open condition or otherwise impacted by project implementation. Conversion of forest land to an open condition would impact federal revenue otherwise generated by timber production. This revenue is used by counties containing National Forest lands for funding of schools and roads.**

**Q8. Will water quality be addressed in the SEIS?**

**A8. The SEIS process consists of environmental categories that include physical setting, natural resources, and land use within the project boundaries. Water quality is currently monitored on Camp Shelby to help determine the impact of training and differentiate between natural sediment transport and that produced as a result of training activities.**