

NEPA Manual for Materiel Acquisition



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Department of the Army

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PREFACE

This manual is one of a set of four "how-to" manuals covering the integration of NEPA into Army activities. Their development and format were directed by the office of the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA[ES&OH]). Some consideration was given to reducing the number of manuals through consolidation. However, it was determined that the target audiences would be better served by preparing separate user-friendly manuals for each audience. This particular manual was prepared by the U.S. Army Environmental Center and is designed to assist the acquisition community. For consistency, the general NEPA sections of this manual and the other manuals are very similar. The titles of the other three manuals are:

- Base Realignment and Closure Manual for Compliance with the National Environmental Policy Act - September 1995
- NEPA Manual for Installation Operations and Training - June 1998
- Environmental Impact Analysis Manual for Off-Post Training and Deployment – August 1998

The content of this manual is based upon the latest information contained in the October 2000 draft version of DoD Regulation 5000.2R and in the draft AR 200-2 which was published in the September 7, 2000 Federal Register.

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ACRONYMS & ABBREVIATIONS

AAE	Army Acquisition Executive	BLS	U.S. Bureau of Labor Statistics
ACAT	Acquisition Category		
ACHP	Advisory Council on Historic Preservation	CAA	Clean Air Act
ACT	ASARC Coordination Team	CAAA	Clean Air Act Amendments of 1990
AHPA	Archaeological and Historic Preservation Act	CEQ	Council on Environmental Quality
AIRFA	American Indian Religious Freedom Act	CFR	Code of Federal Regulations
ALMC	Army Logistics Management College	COE	Corps of Engineers
ALRPS	Army Long-Range Planning System	CX	Categorical Exclusion
AMC	Army Materiel Command	DA	Department of the Army
APB	Acquisition Program Baseline	DAB	Defense Acquisition Board
APE	Area of Potential Effect	DASA (ESOH)	Deputy Assistant Secretary of the Army for Environmental, Safety, and Occupational Health.
AR	Army Regulation	Db	decibel
ARPA	Archaeological Resources Protection Act of 1979	DEIS	Draft Environmental Impact Statement
ARSTAF	Army Staff	DERP	Defense Environmental Restoration Program
AS	Acquisition Strategy	DoD	Department of Defense
ASARC	Army System Acquisition Review Council	DOPAA	Description of Proposed Action and Alternatives
AST	Above Ground Storage Tank	EA	Environmental Assessment
BEA	U.S. Bureau of Economic Analysis		

EBS	Environmental Baseline Survey	IPPD	Integrated Product and Process Development
EIS	Environmental Impact Statement	IPR	In-process Review
		IPT	Integrated Product Team
EPA	Environmental Protection Agency	Ldn	Average day-night sound level
ESA	Endangered Species Act	LRIP	Low Rate Initial Production
ESOH	Environmental, Safety, and Occupational Health	MACOM	Major Army Command
ETIS	Environmental Technical Information System	MAIS	Major Automated Information System
FIP	Federal Implementation Plan	MATDEV	Materiel Developer
FNSI	Finding of No Significant Impact	MCA	Military Construction, Army
FOC	Full Operating Capability	MDA	Milestone Decision Authority
FRP	Full Rate Production	MDAP	Major Defense Acquisition Program
FS	Feasibility Study	MFC	Memorandum for Correspondents
FSI	Forecast Significance of Impacts	MILCON	Military Construction
FWS	Fish and Wildlife Service	MNS	Mission Needs Statement
GIS	Geographic Information System	MOU	Memorandum of Understanding
HABS	Historic American Buildings Survey	MTOE	Modified Table of Organization and Equipment
HAER	Historic American Engineering Record	NAAQS	National Ambient Air Quality Standards
HAZMAT	Hazardous Materials	NAGPRA	Native American Graves Protection and Repatriation Act
HAZMIN	Hazardous Waste Minimization	NEPA	National Environmental Policy Act
HMMP	Hazardous Material Management Plan	NHPA	National Historic Preservation Act
IMC	Information for Members of Congress	NMFS	National Marine Fisheries Service
IOC	Initial Operating Capability	NOA	Notice of Availability

NOI	Notice of Intent	RTV SARA	Regional Threshold Values Superfund Amendments and Reauthorization Act
NPL	National Priorities List		
OB/OD	Open Burning/ Open Detonation	SHPO	State Historic Preservation Officer
OCLL	Office of the Congressional Legislative Liaison	SJA	Staff Judge Advocate
ODEP	Office of the Directorate of Environmental Programs	SUA	Special Use Airspace
OIPT	Overarching Integrated Product Team	TC	Training Circular
		TDA	Table of Distribution and Allowances
OPA	Office of the Chief of Public Affairs	TOE	Table of Organization and Equipment
ORD	Operational Requirements Document	USACE	U.S. Army Corps of Engineers
P ²	Pollution Prevention	WIPT	Working-level Integrated Product Team
PA	Programmatic Agreement		
PEA	Programmatic Environmental Assessment		
PEIS	Programmatic Environmental Impact Statement		
PESHE	Programmatic Environmental Safety and Health Evaluation		
PEO	Program Executive Officer		
POM	Program Objective Memorandum		
PM	Program/Project/Product Manager		
Qs & As	Questions and Answers		
RCRA	Resource Conservation and Recovery Act		
REC	Record of Environmental Consideration		
ROD	Record of Decision		
ROI	Region of Influence		

CHAPTER 1

INTRODUCTION AND OVERVIEW

1.1 Application of NEPA to Materiel Acquisition Activities

The Army recognizes environmental stewardship as an integral part of its mission. Army materiel acquisition activities, by their very nature, have the potential to directly and/or indirectly adversely affect the environment. Because of this potential for unintended environmental damage, the need to comply with environmental laws and policies, and the responsibilities inherent in good stewardship, Army acquisition managers and their staffs share a key responsibility for the protection of our environment. This responsibility includes incorporating environmental analyses into materiel development activities.

The National Environmental Policy Act (NEPA) of 1969, as amended, requires Federal agencies to consider and document the potential environmental effects associated with Federal actions conducted within the United States¹ that have the potential to significantly affect the human environment. The NEPA process, described later in this chapter, ensures that environmental factors are considered 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. As a Federal agency, the Army must comply with the requirements of NEPA, its implementing regulations, and other related Federal statutes and executive orders.

The primary objective of the materiel acquisition system is to acquire products and systems that satisfy the needs of the operational Army user in a timely manner at a cost-

¹ Territories and possessions of the United States to include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. NEPA also applies to action in the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia and the Republic of Palau.

effective price. All materiel programs, regardless of acquisition category, are required to be conducted in accordance with existing laws and environmental requirements. Acquisition activities include efforts in all of the normal program phases: Concept and Technology Development, System Development and Demonstration, Production and Deployment, and Operations and Support. The NEPA process enables a program to systematically examine potential adverse environmental effects occurring from all acquisition activities.

1.2 Purpose of the Manual

This manual provides advisory information for integrating the requirements of NEPA, DoDD 5000.1, DoDI 5000.2, DoD Regulation 5000.2-R and AR 200-2 , into the materiel acquisition process. The purpose of this information is to assist persons performing materiel acquisition functions including Program Executive Officers (PEOs), Deputies for System Acquisition (DSAs), and Program/Project/Product Managers (PMs) with the implementation of NEPA policies and procedures. Application of the information in this manual will help ensure the integration of environmental considerations into the decision-making process. It will also encourage and facilitate public involvement in decisions that directly affect the quality of the human environment. This manual is suitable for use by all materiel acquisition managers and staffs regardless of the source and complexity of the item or system being acquired. Throughout this manual, the terms PEO, and PM (here after referred to as the PM/PEO) are used to indicate either the PEO, DSA, or PM or other individuals performing PEO, DSA and PM type functions. When applying information contained in the manual, flexibility is necessary for the manager to be able to effectively manage specific programs and situations. Information in this manual may be tailored to specific acquisition organizations and activities to integrate NEPA considerations into decision-making for all programs.

1.3 What the Manual Covers

This manual provides comprehensive guidance and is divided into nine chapters:

Chapter 1 **Introduction and Overview.** Provides information about the manual as a whole, identifying the proponent and proponent responsibilities and interpretive background information on NEPA.

Chapter 2 **Integration of NEPA Considerations into Acquisition Planning.**

Describes how the NEPA process must be integrated early into the materiel acquisition process and the Programmatic Environmental Safety and Health Evaluation (PESHE).

Chapter 3 **Acquisition Category Considerations.** Describes NEPA requirements for the various materiel Acquisition Categories (ACATs).

Chapter 4 **Planning and Initiating a NEPA Analysis.** Describes the initial stages of the NEPA process and provides directions to properly characterize, frame, and focus NEPA analysis and documentation.

Chapter 5 **Categorical Exclusion and Record of Environmental Consideration.**

Describes the purpose of a Categorical Exclusion (CX) and Record of Environmental Consideration (REC) as a part of the NEPA process, including when and how to use them.

Chapter 6 **Environmental Assessment Preparation and Content.** Provides program-focused information and guidance on the Environmental Assessment (EA) process and format required by the Army under the President's Council on Environmental Quality (CEQ) regulations and AR 200-2.

Chapter 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 Army under the CEQ regulations and AR 200-2.

Chapter 8 **Other Special NEPA Considerations.** Provides specific guidance in subjects associated with preparing more effective and compliant NEPA analysis and documentation.

Chapter 9 **Application of the NEPA Process in the Acquisition Life Cycle.** Provides guidance for NEPA integration in each of the distinct acquisition phases and milestones.

1.4 Introduction to NEPA

NEPA is a public law that requires the identification and analysis of potential environmental impacts of certain Federal actions and alternatives before those actions are initiated. The law also contains specific requirements for informing and involving other Federal and State agencies and the public. NEPA requires a systematic interdisciplinary approach to analysis and the consideration of environmental factors in decision-making when planning or conducting Federal agency programs and projects.

NEPA's stated purposes 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 ecological systems and resources important to the Nation; and to establish a Council on Environmental Quality." (Section 2, National Environmental Policy Act, Public Law 91-190, 42 U.S.C. 4321-

4347, January 1, 1970, as amended by Public Law 94-52, July 3, 1975, and Public Law 94-83, August 9, 1975.)

The process for implementing the law is codified in the CEQ Regulations, 40 CFR Parts 1500-1508. The NEPA process does not replace the requirements of other environmental statutes and regulations. Rather it provides an analytical process wherein the provision of other environmental statutes and regulations can be addressed with other factors, providing the decision-maker with a more concise, comprehensive view of the issues affecting an upcoming decision.

1.5 NEPA and the Acquisition Community

There is a significant effort underway within the Department of Defense (DoD) to relieve the burden placed on the PM/PEO to reduce the number of mandatory policies, procedures, and practices that must be followed during the acquisition of weapons systems and other Army materiel. It is the intent of this manual to offer the PM/PEO (or the person performing those functions) the greatest possible flexibility in satisfying the overall goals of NEPA.

1.6 Propensity

Developing and executing a NEPA analysis to support a decision may require the participation of a number of staff and command elements within the Army and within the PM/PEO organizations. Participants must understand their responsibilities, and all must function as a team by maintaining a high degree of communication, interaction, and coordination, particularly when those responsibilities involve providing timely information, concurrence, or approval within an individual's or organization's area of expertise or responsibility. The responsible person, organization, or agency for an action,

is the "proponent." The responsibilities for "proponents" are outlined in this section. For a step-by-step discussion of participant involvement during the review, processing, and approval of EAs and EISs, refer to Chapters 6 and 7.

1.6.1 Proponent Identification

The NEPA process is triggered by proposals for Federal actions that may affect the environment. The proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. In general, the proponent is the lowest level decision-maker. The proponent will typically be responsible for funding and carrying out environmental analyses and preparing NEPA documentation.

It is important to identify the proponent early in the acquisition process and to make sure that the roles and responsibilities within the NEPA process are clearly understood. While the proponent organization may not directly conduct the required NEPA analysis, it must make sure that adequate resources and direction are provided to accomplish the NEPA process.

The PM/PEO will normally be the proponent for proposed materiel acquisition and development programs. However, there will frequently be other proponents for activities that support acquisition programs at various stages. For example, the installation/activity Facility Engineer may be the proponent for construction to provide facilities, infrastructure or test resources that will be used by PMs/PEOs to develop or test their systems.

For proposals involving a broad program with a number of lower-level program elements, the proponent organization with responsibility for the broader program would likely have overall NEPA responsibility. However, this responsibility may be delegated

or shared, depending on the relationship between the broader program and the program elements. The critical issue is not who performs the NEPA process. Rather, what is important is that the various organizations and decision-makers understand their respective roles and responsibilities so that appropriate environmental analyses will be an integral part of the system acquisition decision process. Early coordination by the PM/PEO within the acquisition chain and with installations/activities where program development/testing/fielding could occur will help ensure that all proponent organizations understand and perform their respective NEPA responsibilities.

1.6.2 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, environmental baseline surveys, cultural resource inventories, etc.), determining any public involvement requirements, and identifying funding sources for all associated mitigation costs. The proponent is also responsible for the content, accuracy, quality, and conclusions of the NEPA analysis.

To ensure complete compliance with NEPA and the associated regulations, the proponent must:

- Clearly define the proposed action and identify a range of reasonable alternatives (including the possibility of taking "no action"),
- Clearly explain the underlying purpose of and need for the action,
- Staff the documents through the review and approval process and ensure that all

review comments are properly addressed. Staffing the document should include all affected communities such as developmental centers, test facilities, manufacturing facilities, training sites, etc.,

- In some cases, make the final decision,
- Implement and sustain the proposed action,
- Fund, undertake, and track any mitigation measures committed to in the NEPA document to reduce or compensate for environmental damage when it cannot be avoided,
- List mitigation commitments as line items (or the equivalent) in the proponent's budget for proposal implementation,
- Include the public in the decision-making process, where appropriate.

The responsibilities described above remain with the proponent even if another organization or a contractor prepares the NEPA analysis and resulting documentation. When working with other DoD components or agencies, it is important for the proponent, early in the effort, to identify the responsible office, the decision-maker, and the signatory authority on any Finding of No Significant Impact (FNSI) or Record of Decision (ROD). See Chapters 6 and 7 for more information on FNSIs and RODs.

CHAPTER 2

INTEGRATION OF NEPA CONSIDERATIONS INTO ACQUISITION PLANNING

2.1 Introduction

Compliance with NEPA is required for all Army actions. Basic logic associated with NEPA in relation to a materiel acquisition program is the same as with all other Army actions. NEPA requires Federal agencies to consider the environmental consequences at every important stage of the decision-making process for all Federal actions. To be compliant with NEPA, those responsible for materiel system acquisition activities must ensure that adequate environmental information and alternatives are made available to the decision-maker and to the general public as early as possible and that the information is considered in making decisions. This shall occur before decisions are finalized and resulting actions are taken. Because of other overriding considerations, a particular chosen course of action may not always be the environmentally preferred alternative, but it must be selected with the knowledge that a more environmentally preferred alternative does, in fact, exist.

2.2 The Concept of Early Integration

Preliminary NEPA planning should begin during the development of the initial program Acquisition Strategy (AS). The AS evolves through an iterative process, serving as the principal long-range, event-driven plan that charts the course of an acquisition program over its entire life span. The AS should address environmental considerations along with technical, cost, management, contractual, logistical and other major considerations that

will influence the acquisition. (See Section 2.4., Programmatic Environmental, Safety, and Health Evaluation).

Management techniques for environmental awareness are similar to those used for other aspects of program management. Successful environmental management will identify potential environmental issues throughout the materiel life-cycle, perform detailed planning, implement actions necessary to resolve identified environmental issues, and quantify environmental consequences prior to decision-making.

Typically, the PM/PEO use an integrated, multidisciplinary approach to support the materiel development and acquisition effort. That process is sometimes referred to as a systems engineering approach and normally utilizes concurrent engineering, the concept of Integrated Product and Process Development (IPPD) and Integrated Product Teams (IPTs), to develop the end item and its associated processes. This systematic, interdisciplinary approach should always include consideration of the program's potential environmental effects. Just as with other disciplines, the early integration of environmental considerations into the systems engineering process is essential. Integrating NEPA into the process early facilitates the investigation of alternatives and the development of mitigating actions to counter any potentially harmful environmental effects. It also promotes early consideration of a broad range of potential environmental issues, thereby preventing or reducing unexpected costs and delays.

2.3 DoD and Army Requirements

This manual is intended to be used to complement the NEPA guidance provided by applicable directives and regulations. DoDD 5000.1 (*The Defense Acquisition System*), DoDI 5000.2 (*Operation of the Defense Acquisition System*), and AR 70-1 (*Army*

Acquisition Policy) states policy, assigns responsibility and establishes the management approach for DoD and Army materiel system acquisitions. AR 200-2 delineates responsibilities and provides guidance for NEPA compliance within the Army. DoD Regulation 5000.2-R (*Mandatory Procedures for Major Defense Acquisition Programs [MDAP]) and Major Automated Information System [MAIS] Acquisition Programs*) and DA Pamphlet 70-3 (*Army Acquisition Procedures*) provide the framework for effective integration of environmental considerations into the materiel acquisition process. Additional guidance is provided by DoDI 4715.9, *Environmental Planning and Analysis* (1996), and DoD 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*. DoD 6050.1 reinforces and enhances the guidance and procedures set forth in NEPA. For a further discussion of DoD 6050.7 see Section 2.6 of this manual.

A common misconception is that once an EA or EIS is completed in accordance with AR 200-2, the NEPA process for a materiel system acquisition is complete. The NEPA process is dynamic and continues throughout the entire program life-cycle. An EA or EIS cannot be completed and placed on a shelf. It must be regularly reviewed as the program progresses through its milestones and as details about materials, manufacturing, testing, fielding and disposal become better identified and established. As an acquisition program evolves and the program changes, new data may make it necessary to update the program's PESHE (See Section 2.4). In some cases it may be necessary to conduct additional analyses and/or to prepare a supplement to an existing EA or EIS. More specific information on EAs, EISs, and the NEPA process is provided in Chapters 6 and 7.

A second misconception is that an EA or EIS fulfills all of a materiel system acquisition program's environmental requirements. This is simply not true. It only fulfills the NEPA requirement. However, the analysis performed and data developed during the NEPA process is valuable for other purposes. The NEPA analysis and data are often used to support and assist the PM/PEO to successfully identify and carry out many of their other

environmental and non-environmental responsibilities. For example, actions which are developed to mitigate adverse environmental effects may support cost, schedule, and other program adjustments.

2.4 Programmatic Environmental, Safety, and Health Evaluation (PESHE)

DoD 5000.2-R requires the program's Acquisition Strategy include a PESHE. The PM/PEO shall prepare a PESHE document early in the program life-cycle (usually milestone B) and continually update it throughout the life of the system. The PESHE describes the PM/PEO's strategy for identifying and satisfying PESHE requirements and identifies how progress will be tracked. It serves as an input to support program decisions throughout the entire lifecycle. The PESHE evaluation must contain program information related to NEPA compliance, but it is not a substitute for NEPA compliance.

The PESHE evaluation includes five areas: NEPA, environmental compliance, system safety and health, hazardous materials, and pollution prevention. This manual focuses on the NEPA portion of the PESHE evaluation. However, since NEPA requires analysis of all potential effects on the human environment resulting from Federal actions, the NEPA analysis will necessarily include some discussion of the other four areas of the PESHE evaluation. Coordination of efforts in each of the five PESHE areas will enable PMs to effectively manage the PESHE evaluation in support of system development and avoid unnecessary duplication of effort.

Health and safety are two of the domains in the Manpower and Personnel Integration (MANPRINT) process, whose purpose is to influence system design to avoid adverse impacts on the user and reduce life cycle costs. However, the MANPRINT process does

not consider health and safety impacts to the general public from manufacture, testing, training, and operation of the system. The NEPA analysis should identify and discuss these potential impacts.

Federal laws, regulations, and Executive Orders require Federal agencies to manage hazardous materials and to practice pollution prevention. The PESHE should define the PMs strategy to comply with these requirements. NEPA analysis helps to identify these requirements and to assess the impacts that could result from the use of hazardous materials and the practices that could result in pollution, thus assisting the PM in evaluating and managing these areas.

Federal agencies must comply with numerous other environmental laws and regulations in carrying out their activities. Many of them require permits and/or consultation with regulatory and resource agencies before an activity with potential environmental impacts may proceed. Again, the NEPA analysis can assist the PM in identifying these requirements and to ensure that program activities are not at risk as a result of non-compliance. The PESHE provides a vehicle to define the PM's strategy for considering and incorporating environmental, health and safety concerns into the system engineering process and acquisition planning. As indicated, NEPA plays a critical role in development of the PESHE and strategy (Further information concerning preparation and use of the PESHE can be found in the document, *Programmatic PESHE Evaluation Guide*, available from the U.S. Army Environmental Center).

Early in the acquisition life-cycle the programmatic PESHE will probably not include completed NEPA analyses. In those instances, appropriate detailed life-cycle planning satisfies the environmental requirements. When appropriate, the PESHE must include a summary of planned, initiated, or completed NEPA analyses. Executive Summaries of completed analyses, along with a FNSI or ROD may fulfill this requirement. All formal

NEPA documents supporting the program and referenced in the programmatic PESHE must be available to the overarching IPT and Milestone Decision Authority (MDA) in a timely manner to support the program's major milestones and other key.

2.5 Acquisition Program NEPA Legal Ramifications

NEPA expresses the national policy to consider and, to the extent possible, protect the environment when conducting Federal actions. The Army mandates adherence to the requirements of NEPA and expects timely compliance as a priority. It is important that the PM/PEO understand that NEPA is a procedural act and does not require a particular outcome. That is to say, NEPA does not prohibit actions which may result in adverse effects to the environment, even though the elimination of adverse effects is a stated goal. NEPA only requires that the proponent evaluate the environmental consequences of a proposed action. It requires the decision-maker to consider a range of reasonable alternatives, identify and disclose any environmental impacts, and involve the public in the process. Meeting these three criteria is essential. While the act is a procedural law and contains no substantive requirements or criminal penalties, it may provide the basis of injunctive relief if the process is not followed. Additionally, a poorly prepared document may generate controversy, which increases the potential for litigation and injunction. This can also have very negative impacts on proposed projects. The normal impacts of NEPA-related disputes, litigation, and injunctions are program delays and increased costs.

NEPA is the primary environmental statute applicable to PM/PEOs in designing, testing, and implementing the development and acquisition of materiel systems. However, there are many other environmental statutes and implementing regulations, other than NEPA (e.g., Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Endangered Species Act, etc) which could affect both the development of a materiel system and how it

is fielded and used. Most of these laws and regulations have substantive as well as procedural requirements, and may provide fines or penalties if violated. Managers, as they design, develop and test materiel systems, must be aware of these requirements and ensure that the materiel developed can be appropriately used by military forces and user commands. Therefore, managers should, as required, seek available legal and environmental expertise to identify, clarify and understand the requirements of applicable statutes to the materiel they are developing and testing, and be aware of any potential penalties or sanctions associated with noncompliance.

2.6 Acquisition Program Activities Outside the United States

As has been previously stated, NEPA applies to Federal actions conducted within the United States, including its territories and possessions. However, protection of the environment, regardless of the location or the Army activity, is a priority. Executive Order 12114 (*Environmental Effects Abroad of Major Federal Actions*) requires each Federal agency to consider its actions for environmental effects abroad and to create guidelines to ensure that consideration. A detailed discussion of EO 12114 can be found in Section 8.11.1. DoD Directive 6050.7¹ and AR 200-2 defines policies and procedures to comply with Executive Order 12114.

¹ The Office of the Secretary of Defense is expected to replace DoD Directive 6050.7 with updated guidance contained in DoD Instruction 4715.XX, *Analyzing Defense Actions with the Potential for Significant Environmental Impacts Outside the United States*.

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CHAPTER 3

ACQUISITION CATEGORY CONSIDERATIONS

3.1 Introduction

Army materiel system acquisition programs are affordable programs designed to provide new or improved materiel capabilities in response to valid needs. Since they are Federal programs, any and all program decisions, which have the potential of significantly affecting the environment, are subject to the requirements of NEPA. Decisions made during the life cycle of a materiel acquisition program are numerous and varied.

3.1.1 Major Defense Acquisition Programs (MDAP)

All Army materiel system acquisition programs, except highly sensitive classified programs, are placed in one of four acquisition categories (ACAT) by the Undersecretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) and/or the Army Acquisition Executive (AAE). Figure 3-1 portrays the ACAT categories, program management, criteria, milestone review forum, and Milestone Decision Authority (MDA). ACAT 1D and IC programs are usually Major Defense Acquisition Programs (MDAP). MDAPs are programs that are so designated by USD(AT&L). MDAPs automatically become ACAT I programs regardless of their dollar value. It is unusual, but some ACAT I programs are not designated as MDAPs. Consequently, all MDAPs are ACAT I, but not all ACAT I programs are MDAPs. MDAPs are the most costly and important materiel system acquisition programs. They generally have a great deal of visibility in Congress and with the public. For ACAT 1D programs, Milestone Decision Authority is retained by

the USD(AT&L). For ACAT IC programs, the USD(AT&L) delegates the Milestone Decision Authority to the Military Component (Army, Navy, or Air Force). In the case of the Army, that individual is the AAE.

Program Category	Program Management	Primary Criteria (\$=FY00 constant)	Milestone Review Forum	Milestone Decision Authority
ACAT I				
ACAT ID	PEO/PM	More than \$365M RDTE More than \$2.190B Proc	DAB	USD(AT&L)
ACAT IC	PEO/PM	More than \$365M RDTE more than \$2.190B Proc	ASARC	AAE
ACAT II	PEO/PM CMD CDR/PM	more than \$140M RDTE more than \$660M Proc <i>or designated by AAE</i>	ASARC	AAE
ACAT III	PM	High visibility, special interest (includes AIS)	IPR	PEO/MAT CMD COMMANDER ¹
ACAT IV	Systems Manager or equivalent,	All other acquisition programs (includes AIS)	IPR	MAT CMD COMMANDER ¹

Source AR 70-1 (\$ revised from DoDI 5000.2)

¹MAT CMD COMMANDER is PEO equivalent level commander of a material development command. MDA authority may be further redelegated at the material command Commander's discretion no lower than a GO/SES level. Redelegation will be forwarded through channels to the ASARC Secretary (SALT-ZPA).

Figure 3-1
Army Materiel Acquisition Categories and Decision Authorities

3.1.2 Non-MDAP Programs

With the exception of highly sensitive classified programs, all programs not designated as MDAPs are referred to as non-MDAP programs. They differ in that they are less costly and often address less critical mission needs than MDAPs. Non-MDAP programs make up the bulk of Army materiel system acquisitions. These programs generally receive less high-level management attention than MDAPs. They are also more likely to be marginally funded. The requirement to consider materiel system environmental effects during the

decision-making process is the same as that for a MDAP. Consequently, the NEPA responsibilities of non-MDAP PM/PEOs do not differ substantially from their MDAP counterparts. However, the analysis and documentation may be less complex.

- ACAT II Programs. ACAT II programs are essentially the same as MDAPs with the major difference being their dollar value.
- ACAT III Programs. ACAT III programs are high-visibility programs that may either be managed by a materiel development command or through Army acquisition channels.
- ACAT IV Programs. ACAT IV include all other programs.

3.2 Program Milestone Decisions

The most significant decisions affecting a materiel acquisition program are its milestone decisions. Milestone decisions determine whether a program proceeds to the next phase, or continues in its present phase until identified shortcomings are corrected or is cancelled. In the context of NEPA, the individuals designated in the Program Management column of Figure 3-1 are the program proponents. They are not milestone decision-makers from a NEPA perspective since they cannot decide to continue, suspend, or cancel a program. The person identified in the MDA column decides whether a program will enter the next formal phase of the system acquisition process. Consequently, the MDA must, by law, include the program's environmental effects among the factors on which the decision is based.

3.3 Other ACAT I through IV Decisions

Program milestone decisions are only one type of decision made during the life cycle of a materiel acquisition program. Decisions on when and where to perform development, production, and testing are examples of other decisions which may be subject to the requirements of NEPA. All program decisions which have the potential to significantly affect the environment are subject to the requirements of NEPA. For non-milestone decisions, the decision-maker is usually the PEO, PM, or equivalent. Regardless of who the decision-maker is, he/she must, by law, include the program's environmental effects among the factors on which program decisions are based. Frequently such activities are covered by existing analyses. For example, if NEPA analysis to cover a category of testing at a range already exists, that analysis may cover the testing to be performed. Care must be taken to ensure that all program aspects are covered. If not, supplemental analysis may be required as the program matures or new information is discovered.

DoD Regulation 5000.2-R states that all programs, regardless of ACAT, must comply with the requirements of paragraph 5.2.9 *Environmental, Safety, and Health*, of that regulation. Similarly, all materiel acquisition programs, regardless of ACAT designation are subject to the requirements of NEPA.

3.4 Commercial and Non-Developmental Items

Testing, procurement, and use of commercial or non-developmental items does not exempt the PEO or PM from compliance with NEPA. Commercial or non-developmental items can often satisfy the requirements for specialized materiel at component or lower acquisition program category levels. In addition to usually being a less costly solution to a materiel need, such items often take substantially less time. Unless waived by statute, the

requirements of NEPA must be accomplished and become a part of the decision-making process. In many cases, the NEPA requirement for the adoption of commercial and non-developmental items can be satisfied with a Categorical Exclusion (CX). (CXs are discussed in Chapter 5 of this manual.)

A careful review of industrial and commercial data and selected component or product testing may yield information on potential adverse environmental consequences to assist in the NEPA analysis process. As with any analysis, appropriate mitigation actions may be revealed. If so, they should become a part of the NEPA documentation and as appropriate, should be included in the programmatic ESOH evaluation (PESHE) as defined in the Acquisition Strategy. Managers must also be cautious of planned military modifications which could negate conclusions reached from earlier data reviews and analyses.

3.5 Materiel System Upgrades and Modifications

Army materiel systems normally have a planned life expectancy of at least twenty years. Once fielded, it is not unusual for upgrades and modifications to extend the life expectancy well beyond that period of time. Managers of materiel systems that have been in the inventory for a number of years often face a dilemma in that the initial NEPA analysis and documentation for the system may be inadequate. When faced with this problem, it is important to remember that NEPA requires the decision-maker be informed about the environmental effects of the decision being made. It does not require going back and validating a decision that has been made previously.

While the NEPA analysis of upgrades and modifications of materiel systems is not intended to validate earlier decisions, it should evaluate the effects of making the upgrade or modification. This will normally require comparing the effects of the existing system, or

the status quo, versus an upgraded system. In such cases, maintaining the status quo would constitute the "No-Action Alternative" in the NEPA document (The No-Action Alternative is further discussed in Section 4.8). For many systems, particularly those that predate NEPA, there may not be sufficient environmental data on the existing system to make this comparison. In such cases, information on the environmental effects of the current system would need to be developed as part of the NEPA analysis of the No-Action Alternative. Where there is existing NEPA documentation for the current system, it could be summarized and referenced, avoiding the necessity of conducting a completely new analysis.

The effects on the environment, as a result of the changes proposed to the materiel system, must be evaluated for the balance of the system's remaining life. The upgrade or modification may have a detrimental, beneficial, or no effect on the environment. For example, if an ozone-depleting halon fire suppressant system is replaced by a non-ozone-depleting one, the net life-cycle effect of that change could be beneficial. Another example would be an effort to eliminate the use of dinitrotoluene (DNT) in the production of propellants. DNT is a suspected carcinogen and may result in other harmful health effects. Its use is highly regulated with regard to occupational health and safety, as well as environmental discharges from the facility. Prior study of the costs associated with the use of DNT has indicated there would be cost savings if propellant formulations were modified to eliminate the use of DNT. By identifying the costs of DNT-related activities specific to the modifications involved, Army decision-makers will be able to compare the environmental costs of different propellant formulations and, as a result, make appropriate cost/benefit decisions.

The following are examples of essential factors to examine:

- All of the *physical changes* to the materiel system or component and the resulting environmental effects must be known and considered. The disposition of anything removed is as important a consideration as the actual modification of the materiel system or the production and installation of the upgrade. In the fire suppression system example above, the halon would be turned-in and placed in the ODC reserve. It may one day require disposal. In the DNT example it is avoidance of the direct and indirect environmental effects and manufacturing costs associated with the use of DNT during the production of propellants.
- *Operational differences* must also be considered. How does the planned operation of the upgraded or modified materiel system compare with the normal operation of the non-modified or non-upgraded version? For example, will it operate in different locations or environments? Will the operating intensity increase, decrease, or stay the same? Will the modified materiel system create more, less, or the same quantity of pollutants? In other words, what is the net environmental effect, as a result of the modification or upgrade, for the balance of the equipment's operational life?
- Another important consideration is the *ultimate disposal* of the materiel system when it has reached the end of its useful life. What is the effect of the modification or upgrade on the system's ultimate disposal? Will the ultimate disposal of the system have a greater, lesser, or an unchanged effect on the environment as a result of being modified or upgraded?

- A possible additional benefit of the *extended life* of a materiel system through modification or upgrade is that the Army may not need to develop and produce a new system, thereby avoiding potential adverse environmental effects of a new development and production cycle.

CHAPTER 4

PLANNING AND INITIATING A NEPA ANALYSIS

The first step in planning and initiating an Army NEPA analysis is developing a clear "purpose and need". The proposed action and all alternatives must be responsive to this stated "purpose and need". The next step is mapping out, in general terms, what activities are to occur over time and organizing resources to accomplish the work. To ensure that adequate time and resources are allocated to the NEPA analysis, the proponent should:

- Ensure that there is a clear purpose and need for the action. As appropriate, the Army Operational Requirements Document (ORD) may serve as the basis for this definition;
- Make an initial decision on the appropriate level of analysis and resulting documentation;
- Develop a well-defined description of the proposed action and alternatives;
- After determining the extent of the analysis, the proponent can plan for the NEPA analysis to support program schedules and other requirements.

4.1 Selecting the Appropriate Level of Environmental Review and Documentation

NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.

The NEPA process begins with clear identification of the proposed action by the proponent. Consideration of the proposed action, its location(s), and its duration is essential when deciding the appropriate level of environmental analysis. Under procedures established in CEQ regulations and AR 200-2 there are three basic levels of

environmental analysis and resulting documentation: Categorical Exclusion (CX), Environmental Assessment (EA), and Environmental Impact Statement (EIS). 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. Early coordination by the proponent with the supporting Environmental Office is highly recommended to ensure initial selection of an appropriate level of analysis.

If the proposed action is categorically excluded, it does not require an EA or an EIS because it is included in a class of activities that the Army has determined does not have an individual or cumulative adverse effect on the environment. AR 200-2 contains the Army's list of categorically excluded actions. If the action is covered by a CX, the proponent should determine whether a Record of Environmental Consideration (REC) is required. Chapter 5 provides detailed guidance on determining when and how to use a CX and on preparing an appropriate REC.

If it is found that the proposed action is not categorically excluded, an initial determination should be made as to the potential significance of effects that could be expected from implementation of the action (See the discussion on the meaning of "significance" and examples of significance criteria in Section 4.11.2.). For those actions where significant effects are expected, an EIS should be prepared. For contemplated actions which will cause some effects or impacts but no significant effects are expected, an EA should be prepared. If it is determined through analysis that potentially significant effects could occur but can be adequately mitigated to less-than-significant levels, preparation of a mitigated EA/FNSI might be appropriate (refer to Section 6.7 for discussion on this topic).

Before beginning preparation of an EA or EIS, it is also important to determine if the action has already been adequately addressed in a pre-existing NEPA document. If it has, a REC that cites the existing document may be prepared. However, when evaluating and

deciding whether an action is addressed adequately in an existing NEPA document, the scope of the proposed action, associated activities, changes in regulatory requirements, or new technical information should be considered.

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 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, it 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. Whether or not a formal, written plan is developed, acquiring the information outlined is essential for the successful completion of an EA or EIS and for the avoidance of later challenges that may result in program delays.

- **Organizations, Roles, and Responsibilities.** In addition to identifying the name, address, and phone number for each organization's point(s) of contact, 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 the staffing process and signatory authorities for document approval. In specific 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.
- **Task Description and Schedule.** A work breakdown structure (or comparable management tool) may be developed and defined. 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, the timing of other public involvement activities such as public meetings, and completion dates.

- **Analysis Methodologies.** This section 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 addressed. For an EIS and sometimes an EA, definition of the region of influence for each environmental resource being analyzed is recommended.
- **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. Interaction with government officials and environmental agencies should be included in this section of the management plan.
- **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 4.7 and 4.8, 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 Army 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 cut" of the 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 comment and concurrence 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. It is essential that project planners provide clear and detailed data to those responsible for writing the DOPAA.

- **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 locations (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.

A management plan such as described 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. 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:

- Which personnel are available to accomplish the analysis and document preparation (i.e., in-house staff or contract support),
- Availability of the analysis and documentation team members and reviewers (i.e., consideration for participants being away 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.

4.3 Obtaining Analysis and Documentation Support

Environmental analyses and documentation can be prepared by any organization or team with the expertise to address all requirements adequately. They should never be prepared by a single person without input and consultation from appropriately knowledgeable persons from relevant scientific and technical disciplines. NEPA specifically requires that environmental analyses be prepared using an interdisciplinary approach that ensures integration of both the natural and social sciences (40 CFR 1502.6). Proponents often do not have the "in-house" expertise to adequately perform the required analysis and prepare the NEPA document. However, some Major Command (MACOM) environmental offices do have the relevant expertise or have access to it.

The proponent's staff may also need assistance from the appropriate supporting 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 being used. EISs and more complex EAs, often prepared with contractor support, should involve both the proponent and the supporting Environmental Office staff in preparing scopes of work, preparing the DOPAA, reviewing documents, and participating in comments, and participating in the public involvement process.

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 to complete the NEPA process. Failure to anticipate NEPA's procedural requirements and time lines can result in delays that adversely affect Army materiel programs 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 AR 200-2 impose certain mandatory steps and minimum review periods for specified aspects of the NEPA process that will affect all proposed actions. See AR 200-2 for more time-line specific information. As a practical matter, proponents should normally anticipate 3 months or more for preparation of an EA, and 12 months or more for preparation of an EIS. Where NEPA documentation is prepared by contractors, additional time might be required for completion of contract solicitation, award, and administration.

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, State Historic Preservation Office, etc.).

Chapters 6 and 7 include a detailed look at 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 Army regulations. It is the first opportunity in the NEPA process for informing interested parties why the Army 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? Where? For what objective?

In some cases, a proposed action might be defined by higher headquarters or an outside entity. An example of this is new equipment fielding or materiel systems changes within the Army 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, in a broad programmatic document, the statement "The purpose of the proposed action is to develop an adequate defense against enemy armored vehicles by un-armored forces" would be correct, whereas statements such as "the purpose is to design the XYZ anti-armor missile system and test it at test range A" or "The purpose is to comply with NEPA" would be inaccurate or misleading.¹ The statement of the purpose in a more direct action such as the construction of a new facility would simply be providing a facility for its specific use. 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 Army or other lead agency is proposing to act. Expression of the need for an action, such as "to provide defense against enemy armored forces for United States Army personnel and its allies" would be adequate. A need statement such as "Soviet-designed T-80 tanks and other armored vehicles are a potential threat on the modern battlefield to unarmored forces" would be inappropriate.

¹ Although not required by regulations, an explanation of why a NEPA project is being undertaken is often helpful. NEPA compliance requirements and similar explanatory information are best placed in the "Introduction" or "Background" paragraphs in the first section of a NEPA document.

The statement of the Army'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. It is inappropriate in most situations, however, to define the purpose and need so narrowly that only the preferred alternative would be analyzed. The preferred course of action generally represents only one means of meeting the purpose and need for an action. For example, if the purpose of a proposed action is to develop a directed energy defensive weapons system to engage artillery rockets and projectiles, and the need is to prevent collateral damage in populated areas while engaging incoming artillery targets, reasonable alternatives to the proposed action might include deep strikes of enemy launch areas, and developing kinetic kill defensive projectiles for current systems. The relocation of civilian personnel to another populated area would not, however, support the underlying purpose and need. Understanding the relationship between the purpose and need statement and the alternative actions proposed is of great importance since only those alternatives which truly support the Army's purpose and need for action are to be analyzed in a NEPA document.

4.6 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 AR 200-2 require use of the scoping process when preparing an EIS. Use of a formal or informal scoping process is optional under current Army NEPA regulations when preparing an EA, but in many cases has proven beneficial, particularly in conducting coordination and consultation meetings with regulatory, natural, and cultural resources agencies. As a minimum, some form of Army internal scoping should be used for EAs to ensure that the elements of the DOPAA are

accurate and complete, and that any environmental issues or controversies associated with the action are 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 general public help proponents to identify a wide variety of important matters affecting the NEPA process, including community concerns, regulatory, natural and cultural 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 sequencing of environmental reviews. AR 200-2 specifies Army guidance and requirements on the scoping process. Additional guidance and information on scoping and public involvement can also be obtained from CEQ guidance memorandums. One was published in the Federal Register (48 Fed.Reg. 34263 [1983]), contained in Appendix D.

4.7 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. 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, hazardous material/waste sources, etc.) 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 test 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:

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

Depending on the approach used to characterize the proposed action, some of these questions may only be fully answered by the description of the alternatives to implementing the proposed action (see Section 4.8).

Additionally, and as appropriate, the proposed action should also contain the following elements:

- **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.

- **New Construction or Modification Activities.** If the acquisition requires new production or testing facilities, estimates 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.
- **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.
- **Programmatic Concerns.** If the analysis is of a programmatic nature which covers the entire life cycle of a new weapons system, program activities involved in development, testing, deployment, operations and disposal should be analyzed.

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 includes all "connected actions" (if the action is dependent on or part of one or more other actions) and that it acknowledges 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.

In general, for construction, operational or production 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, testing scenarios, should be used as necessary to fully explain the details of the proposed action. In addition, Army-required procedures and mitigation measures, if already planned as part of the proposed action, should be described, along with other mitigation 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, or avoiding areas with archaeological sites).

4.8 Determining Alternatives

Alternatives represent the various ways the Army can fulfill the purpose and need which would be fulfilled by initiating the 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 that are identified and selected as appropriate for analysis must be addressed throughout the document. Generally, the range of reasonable alternatives is broader and the number of alternatives to be analyzed is greater in an EIS than in an EA. CEQ regulations (40 CFR 1502.14) recognize the following three types of alternatives:

- **No Action Alternative.** 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 two 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 (maintain the status quo). A second type of situation involves proposals for new materiel projects. "No action" would mean that the proposed activity would not take place, and as appropriate, existing materiel would remain in place. In accordance with CEQ and Army regulations, analysis of the "no action" alternative is required in all Army EAs and EISs.

- **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 "ripe" for decision. The application of selection or screening criteria (e.g., time constraints, specific technology availability, and budget constraints) can sometimes help in narrowing the range of reasonable alternatives. An alternative may be considered reasonable even if it is outside the legal jurisdiction of the Army. A potential conflict with local, state, or Federal law, however, does not necessarily render an alternative unreasonable, although such conflicts must be considered. For some Army proposals, a very large number of reasonable alternatives might exist. In these situations, the NEPA analysis need only evaluate alternatives representative of the full range of reasonable alternatives.

DoD Regulation 5000.2-R requires that, as part of the Cost as an Independent Variable (CAIV) process, an analysis of alternatives be prepared and considered at early milestone decision reviews. Cost, schedule and performance trade-offs within the trade space may be made without MDA approval. Trade-offs outside the trade space require approval by the MDA and ORD approval authority. The trade-offs should begin early in the program. The analysis of alternatives is intended to assist in identifying and evaluating reasonable alternatives. The NEPA analysis performed early in the system life-cycle should consider the environmental effects and potential mitigations relating to all of the alternatives being considered. This should coincide with development and consideration of alternatives through the CAIV process. The NEPA analysis may further assist the decision-maker in determining issues to be considered in cost/performance tradeoff analyses. NEPA analyses will often identify materials or practices that could cause environmental harm, requiring costly cleanup or system changes later in the system life-cycle. Environmental issues, such as management and disposal of hazardous materials or

wastes during the manufacturing process or at the end of a system's life cycle, should be considered in developing the cost estimates in tradeoff studies.

Tradeoff studies are performed throughout the development process to integrate and balance decisions regarding cost-schedule-performance. As a formal decision analysis method, tradeoff studies are often used to solve any complex problem where there is more than one selection criteria. They also provide documented rationale supporting the decision that is made. The cost associated with the protection of the environment for each alternative should be considered with all other program costs. It should be a component of the trade-off study selection and the weighting criteria that is utilized during the comparison and decision process.

Mitigation Measures Not Included in the Proposed Action. CEQ Regulations (1508.20) describe a mitigation as:

1. Avoiding the impact altogether by not taking a certain action or parts of an 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 affected 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.

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.

A major 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 (see Section 4.2) 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. Identification of the full range of reasonable alternatives is a particularly important part of the scoping process. The range of alternatives should not be fully developed prior to scoping. 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.

4.9 Identifying Issues for Analysis

Issues to be considered in NEPA analyses are derived from an understanding of those environmental resources and resource components which would affect and would be affected by the proposed action or an alternative, if it were 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.

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. 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 Army 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 (see Section 4.9), an Affected Environment description (also referred to as the environmental baseline) can be prepared for the area(s) that could potentially be affected by the Army'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 what 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 the Region of Influence (ROI),² and the general time frame for which effects are likely to occur. Each resource area presented in the Affected Environment description should have its own distinct ROI, which can be explained in text or delineated on a map. However, an option for describing several of the more common resource areas (e.g., land use, soils, and vegetation) is to use one study area boundary (e.g., test area or installation boundary or a designated circle around the project site) that encompasses the potential effects for all of them. This can help to simplify the process of delineating individual ROIs, particularly in the early stages of the analysis when the definition of the proposed action might still be changing, and can also provide a standard 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 and air quality, will typically have ROIs much larger in area (e.g., a metropolitan area or regional airshed) than the ROIs 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 (see Section 4.11.1 of this manual).

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

² Although the term ROI is often exclusively associated with socioeconomic impact assessment, it can be applied to all resources as long as use of the term and its extent for different resource areas are clearly explained. Otherwise, another similarly applicable and consistently applied term should be used in its place (e.g., zone of influence or affected area).

does 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 life-cycle NEPA studies and typically applies to future land use, socioeconomic, infrastructure, and transportation conditions.

Much of the existing baseline data can usually be obtained through coordination with the supporting Environmental Office, other Army offices, and outside agencies. 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 are 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. Some installations have developed or are in the process of developing extensive environmental databases, usually in the form of automated geographic information systems (GIS), to define existing baseline conditions at specific locations. These can be very useful when analyzing test activities on a host installation. 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.

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 impacts; 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 test facility and access roads.
- **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 effects related to induced changes in the pattern of land use, population density and growth rate, and related effects on air and water resources as well as 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 more 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 non-federal) or person undertakes such other actions" (40 CFR 1508.7). Because of

extensive outside influences, cumulative effects are the most difficult to analyze, and the analysis is frequently more subjective than objective.

When identifying direct, indirect, and cumulative effects, consideration 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 radar construction project or the demilitarization and disposal of a weapons system. Long-term effects are generally those which would occur over the operational life of the project, such as those which might result from toxic emissions during equipment operation.

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). (See Sections 6.4 and 7.6 of this manual for a discussion of EA and EIS content, respectively.) 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 6.4 and 7.6 of this manual provide detailed descriptions of resource areas typically included in Army 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 of this manual) need be discussed. The following list outlines some alternatives with conditions or consequences that could be considered significant effects:

- **Land Use.** An alternative that would conflict with adopted plans and goals of the community or that could result in a substantial alteration of the present or planned land use of an area. An alternative that would result in substantial new development or prevent such development elsewhere.
- **Aesthetics and Visual Resources.** An alternative that would obscure or result 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 that would result in substantially higher air pollutant emissions or cause air quality standards to be exceeded.
- **Noise.** An alternative that 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.** An alternative that would result in an increased geologic hazard or a change in the availability of a geologic resource. Such geologic and soil hazards would include, but would not be limited to, seismic vibration, land subsidence, and slope instability.
- **Water Resources.** An alternative that would result in a reduction in the quantity or quality of water resources for existing or potential future uses. An alternative that would result in expected demand for potable water to exceed the capacity of the

potable water system. An alternative that would cause substantial flooding or erosion, subject people or property to flooding or erosion, or adversely affect a significant body of water, such as a stream or lake.

- **Biological Resources.** An alternative that 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 nonsensitive species) that could affect the abundance or diversity of that species beyond normal variability. The measurable degradation of sensitive habitats, particularly wetlands.
- **Cultural Resources.** An alternative that would degrade the site for future study, if it would result in unauthorized artifact collecting or vandalism of identified important sites; would modify or demolish a historic building or environmental setting; or that would promote neglect, resulting in resource deterioration or destruction, audio or visual intrusion, or decreased access to traditional Native American resources. Impact assessment for cultural resources focuses on those properties which are listed in or are considered eligible for the National Register of Historic Places or are National Historic Landmarks, as well as resources that are considered sensitive by Native American groups.
- **Human Health and Safety.** An alternative that would expose personnel to unexploded ordnance without proper protection or Explosive Ordnance Disposal (EOD) support. An alternative that would result in environmental health or safety risks, specifically to soldiers.
- **Socioeconomics.** An alternative that would alter substantially 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. An alternative would disproportionately affect minority or low-income populations. An alternative that would create a need for new or increased fire or police protection, or medical services, beyond the current capability of the local community. 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 occur with natural or physical environmental effects from the same proposed action will all of these effects be analyzed as part of the NEPA process.

Additionally two executive orders which are designed to protect specific segments of the population must be taken into consideration. These are: EO 12898 -*Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*; EO 13045 - *Protection of Children from Environmental Health Risks and Safety Risks*. Compliance with these two Executive Orders are discussed in detail in Chapter 8 of this manual.

- **Infrastructure.** An alternative that would increase demand over capacity, requiring a substantial system expansion, or would result in substantial system deterioration over the current condition. For instance, an alternative that 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, or place burdens on existing utilities.
- **Hazardous and Toxic Materials Wastes.** An alternative that 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.

Some additional 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 should be reviewed closely to determine whether there would be significant impacts.
- **Knowledge of Applicable Court Cases.** Findings in court cases involving NEPA analyses 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 advice should be obtained from the appropriate office providing legal support for the proponent.
- **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. Also, if the action will create public perceptions, founded or unfounded, that adverse effects will result from the project.
- **Other Considerations.** Specific unique characteristics of the action might influence the determination of significance. The advice and judgment of installation/command environmental personnel, natural or cultural resource agency staff, and knowledgeable contractors, as well as established guidelines, prove to be helpful information sources when determining significance.

4.11.3 Describing Effects

In describing potential effects that may 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 radar tower construction on the ozone layer), it should be ignored unless a specific public comment demands an answer. Additionally the absence of analysis may create a false public perception or uncertainty.
- 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 also 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, and the level or extent of irreversibility of or recoverability from an impact.
- One purpose of an EA is to determine whether significant impacts will result from an action. However, this determination will usually be made in the Finding of No Significant Impact (FNSI) after analysis has been completed, or by a decision to prepare an EIS. Little is usually accomplished by making conclusions regarding significance of environmental impacts in the analytical portion of an EA or EIS. There is often disagreement among experts and laymen alike as to what is significant. Consequently, it is generally better to analytically discuss the environmental effects of an action (i.e. destruction of so much habitat or wetlands, or discussion of numerical increases in noise, or air and water pollution), without trying to characterize each

impact as significant or not. Only in very clear cases is it usually very helpful to draw conclusions about significance in the analytical portion of the EA or EIS.

- 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 when there are instances of incomplete or unavailable data, or when 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 give undue weight to trivial matters, based solely on local interest or opposition. Public controversy over environmental effects will normally warrant additional scrutiny.
- Conduct impact analyses to discriminate among individual alternatives. Do not present a single maximum potential effects estimate that obscures differences between alternatives.
- Balance the description of potentially severe impacts with a discussion of 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 and used to support the analysis and documentation. It is essentially the Army's file as it relates to the action, and can become the backup data used in court proceedings to validate the NEPA process and support the Army's decision.

Three points should be followed in assembling the Administrative Record. First, the administrative record, by definition, is everything that the decision-maker considered and relied upon in reaching a final decision. Second, the administrative record should exclude any documents that reflect the deliberative process of the agency (e.g. draft documents and analyses) and any attorney/client communications. Third, the administrative record should be maintained for a minimum of six years after completion of the action to correspond to the general statute of limitations under the Administrative Procedures Act (APA).

The preparer should organize the data and information composing the record as a current, accessible file which is indexed by topic to the extent practicable. The Administrative Record should be limited to information that is releasable under the Freedom of Information Act. A complete Administrative Record should include project-related information within the possession of the proponent and/or lead agency (and any contractor), and also identify any other reference materials used in preparing the document but which were 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, 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. Additional

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, sewage, 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. Should the legal sufficiency of a NEPA document be challenged, the time allowed for assembling and providing the Administrative Record for review is usually quite short.

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CHAPTER 5**CATEGORICAL EXCLUSION
AND RECORD OF ENVIRONMENTAL
CONSIDERATION**

5.1 Categorical Exclusion

A Categorical Exclusion (CX), is a category of actions adopted by a Federal agency which 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 may 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 should 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. AR 200-2 contains the Army's list of categorically excluded actions. Any proposed changes or modifications to exclusions listed must be submitted to the Department of the Army, Assistant Chief of Staff for Installation Management, Office of the Director of Environmental Programs. If additional CXs are approved, they are published in the *Federal Register*.

5.1.1 Determining when to use a CX

Proponents should 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 test facility footprint, size, use of certain materials and

propellants, and duration of project. Based on this review, a CX may be used to exclude a proposed action from further environmental analysis and documentation. AR 200-2 also specifies when use of a CX must be supported by a Record of Environmental Consideration (REC). For a proponent to be able to use a CX, three conditions must be met: (1) The action is not being segmented, or broken into smaller parts to avoid the appearance of significance of the total proposed action; (2) The action does not involve extraordinary circumstances as defined in Section 5.1.2, and (3) The proposed action conforms to one of the CXs that are described in AR 200-2. If no CX is clearly applicable to the action, an EA or EIS must be prepared to assess potential effects.

5.1.2 Extraordinary Circumstances

In deciding whether a proposed action can be categorically excluded, proponents must determine if "extraordinary circumstances" apply. When an action which normally would be categorically excluded could, nonetheless, potentially have a significant effect on the human environment, extraordinary circumstances are said to exist and application of a CX to the proposed action is not allowed. An EA or an EIS must be prepared. Extraordinary circumstances are described in AR 200-2 and are summarized below:

- Potential to significantly affect public health, safety or the environment
- Possible significant direct or indirect cumulative effects
- Imposition of uncertain or unique environmental risks
- Greater scope or size than is normal for this category action
- Reportable releases of hazardous or toxic substances
- Discharge of petroleum, oils, and lubricants
- Generation of noise which impacts noise sensitive land use areas, both on and off post

- Air emissions exceeding de-minimis levels
- Potential violation of any Federal, state or local environmental laws
- Unresolved effects on environmentally sensitive resources
- Effects on the environment that are likely to be highly controversial
- Effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial
- Actions that establish precedents for future actions that have significant effects
- Actions that have the potential to degrade, even slightly, already existing poor environmental conditions
- Introduction/employment of unproven technologies

5.1.3 Avoiding Misuse of CXs

In considering the use of CXs, 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 Section 8-5, Sequencing and Segmentation). 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 (under Section 106 of the National Historic Preservation Act) and U.S. Fish and Wildlife Service (under the Endangered Species Act).

5.2 Record of Environmental Consideration

A REC is a signed statement that is often 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 AR 200-2). Although a REC is required for these CXs, RECs can also be used to document the use of other CXs, if so desired. In this way the proponent can maintain a record of the decision to use a CX. 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 should 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. The REC should be signed by the proponent for the action. A suggested format for a REC is presented in Figure 5-1. Variation from this format is acceptable provided basic information and approvals are included in any modified document. Once a REC is complete, the project office keeps the documentation on file for a reasonable time following completion of the proposal, which can take up to several years.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

To: *(Environmental Officer)*

From: *(Proponent)*

Date:

Project Title:

Brief Description of the Proposed Action:

Anticipated date and/or duration of proposed action: *(Month/Year)*

Reason for using record of environmental consideration (choose one):

a. Adequately covered in an (EA/EIS) entitled *(name)*, *(dated)*. The EA/EIS may be reviewed at *(location)*.

OR,

Is categorically excluded under the provisions of CX _____ AR 200-2, (and no extraordinary circumstances exist as defined in AR-200), because:

(Date)

(Project Proponent)

(Date)

(Environmental Coordinator)

(Date)

(Legal Office)

Figure 5-1
Suggested Format for a Record of Environmental Consideration

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CHAPTER 6**ENVIRONMENTAL
ASSESSMENT PREPARATION
AND CONTENT**

6.1 Introduction

This chapter is intended to guide Army materiel acquisition proponents and document preparers through the EA process by establishing a greater level of consistency in the preparation of Army EAs. It focuses on the preparation of an EA and provides detailed information needed to develop the analysis and subsequent document.

The EA format used by the Army is based on the CEQ's regulations and on guidance contained in AR 200-2. The CEQ's regulations provide for a considerable degree of agency flexibility in the EA analysis and documentation process. Although flexibility has allowed the Army 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. Army wide participants in the NEPA process have indicated that a more structured, standardized format would greatly facilitate document preparation, training of new personnel, and document review and approval.

Many of the same environmental resource areas and methodologies 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). If it is determined during the preparation of an EA that the action will likely have significant impact, the proponent should prepare a Notice of Intent to prepare an EIS, publish it in the Federal Register, and incorporate existing analyses into the expanded EIS

process. 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 4.12 of this manual) to provide legally acceptable proof that appropriate resource issues were considered and the potential for significant environmental effects was evaluated.

6.2 EA Time Line

Depending on the complexity of the proposed action, the EA process can take 3 to 9 months, although many have been completed in less time. Army 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 5-month time frame is provided in Table 6-1 as an example of how the EA process is organized. This schedule assumes that the action is not controversial and does not have national interest. The milestone events indicated must occur regardless of the schedule. Actions proposed by a PM, MACOM, HQDA, or by organizations outside the Army 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.

When the FNSI has been completed, the proponent must make it available for a minimum 30-day public review period. Although the FNSI is a "stand-alone" legal document, it should be included with the Final EA when provided to the public or decision-maker. No action, other than planning on the proposal, may be taken during the public review period. Unless comments, which would cause the analysis to be reopened, are received within the 30-day public review period, the proposal may be initiated. Proponents have the discretion to increase the 30-day review period, if circumstances deem this appropriate. Adequate public review and involvement is the key, not satisfying the pre-determined time limit.

6.3 Document Development

To complete an EA successfully, the proponent must have a basic understanding of the major components of the document. AR 200-2 identifies nine major components of an EA: (1) review and approval page; (2) purpose and need for the proposed action; (3) proposed action; (4) alternatives considered; (5) affected environment; (6) environmental consequences; (7) conclusions or findings; and (8) listing of preparers and agencies and persons consulted; (9) references.

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. The document should be sufficiently detailed and descriptive to indicate that the relevant and probable effects were identified, quantified and analyzed, and determined to be significant or not. 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.

Preparers will need to determine the most effective way to organize the EA. In most cases, it may be best to organize the material sequentially. In most cases, however, it may be more effective to discuss the proposed action and alternatives as a single section, as is exemplified in Section 6.4. It may be advantageous to combine sections in some other way, if it would contribute to clarify or reduce unnecessary repetition. EAs do not need to be detailed and lengthy if the effects are not likely to be significant. The EA should be sufficiently detailed and descriptive to indicate that the relevant and probable effects were identified, quantified and analyzed and determined not to be significant. The information they contain should be presented as clearly and concisely as possible. Since 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 that can be easily interpreted by the public should be provided. Appendices should be used to support the main components of the EA, as appropriate.

Table 6-1. Sample Time Line for an Environmental Assessment
(Actual time line would be EA dependent)

Milestone	Calendar Days from Project Initiation
Initiate Project	0
Hold Kickoff Meeting	10
Complete Draft Description of Proposed Action and Alternatives (DOPAA)	25
Complete Initial Coordination/Consultation with Appropriate Outside Agencies (i.e. Federal, state, and local)	40
Complete Draft EA/Begin Staffing within Installation	60
Complete Staffing of Draft EA	80
Complete Final EA and Draft FNSI (if applicable)/Begin Staffing	100
Complete Staffing and Approval of Final EA and Draft FNSI	115
Publish and Distribute Final EA and Draft FNSI	130
End 30-day Public Review Period	160
Initiate Action	161

Whenever possible, technical editors should review the document to ensure accuracy, consistency, and readability. The latest draft version of AR 200-2 indicates that EAs should be no longer than 25 pages in length. Army policy requires that EAs 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 Content of an EA

A detailed outline for an Army EA is provided in the boxed text that follows. It is recommended that this format be used as a model in the development of Army EAs. It is an interpretation, not a reinvention, of how Army and CEQ regulations are to be implemented. There might be situations where this format is not fully suited to addressing a particular Army action (e.g., where unique technical, public involvement, or decision-making requirements exist), in which case some variation in format is appropriate. Preparers should consult other sections of this manual 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 Army 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 Army, MACOM, or program office logo as appropriate. 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 formal). The cover should be of a heavier paper stock than the text pages.

Inside the Cover

The inside of the document cover should provide an outline of the document's major sections. This item is not required but is recommended for longer, more complex EAs as a quick reference to its sections.

Lead Agency Page and Related Pages

These are usually the first one or two pages of the document. They introduce the EA and present important information about the document, including lead agency; cooperating agencies (if any); name and location(s) of the action; an abstract describing the proposed action and alternatives along with identifying the issues and resources analyzed in the document; points of contact for further information; and information on the availability of the document and any formal comment or review periods. Organized the same way for an EA or EIS, these pages also include the name, title, and office name for each key person responsible for preparing, reviewing, and approving the document. For formal documents, signature lines are added for these individuals on the same page or on a separate page. Figures 6-1, 6-2, and 6-3 show examples of lead agency, signature and documentation pages.

Table of Contents

The Table of Contents for an EA should provide the section number and exact title of each document section (beginning with the Table of Contents itself through to the very end of the document), 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.

ENVIRONMENTAL ASSESSMENT

LEAD AGENCY: U.S. Army Space and Missile Defense Command

TITLE OF PROPOSED ACTION: Tactical High Energy Laser (THEL) Advanced Concept Technology Demonstration (ACTD) Environmental Assessment (Unclassified).

AFFECTED JURISDICTION: Cities of Redondo Beach, El Segundo and San Juan Capistrano, California; City of Boulder, Colorado; City of Pittsburgh, Pennsylvania; White Sands Missile Range, New Mexico.

PREPARED BY: EDAW Inc., Huntsville, AL for Space and Missile Defense Command

RECOMMENDED FOR APPROVAL BY: Mr. I Larry Chamberlain., Program Manager THEL Program Office

APPROVED BY: P.R. Cleburne, Lieutenant General, U.S. Army, Commanding Officer

ABSTRACT: The EA documents the results of an analysis of the potential for and magnitude of impacts from the development of the THEL Advanced Concept Technology Demonstration (ACTD) system. This would include the production, assembly, field integration and testing, operational test and evaluation, and modification for additional assessments. Subsystem assembly and testing would occur at facilities in Redondo Beach and San Juan Capistrano, California. Field testing and integration of the THEL ACTD system would occur at White Sands Missile Range (WSMR), New Mexico. Four or fewer THEL units would be produced during the life of the project. Testing, including up to approximately 1,300 target launches and testing lasing, would occur at WSMR over the next 5 years. Approximately 380 target launches would occur in the first 9 months of testing at WSMR.

The locations and activities of the THEL ACTD system development and testing have been evaluated in this EA. The proposed locations were selected because of their ongoing or past work for similar programs.

The EA analyzes the environmental consequences of the proposed action and alternatives. The areas of environmental consideration are air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and waste, health and safety, infrastructure, land use, noise, and water resources. No significant impacts have been identified. No cumulative impacts are expected.

REVIEW COMMENT DEADLINE: Public comments must be received within 30 days from the publishing date of this document. Public comments may be provided to:

U.S. Army Space and Missile Defense
ATTN: SMDC-EN-V, W. Scott Hancock
P.O. Box 1500
Huntsville, AL 35802-3801

Figure 6-1. Example of a Lead Agency Page for an EA

**ENVIRONMENTAL ASSESSMENT
TACTICAL HIGH ENERGY LASER
ADVANCED CONCEPT TECHNICAL DEMONSTRATION**

Reviewed by:

J. Larry Chamberlain
Program Manager
TSCSV Program Office

Recommended for Approval by:

John P. Jones
LTC, EN
Deputy Chief of Staff,
Installations, and
Environment

Approved by:

Pat R. Cleburne
Lieutenant General, U.S. Army
Commanding
U.S. Army Space and Missile
Defense Command

Figure 6-2. Example of a Signature Page for an EA

UNCLASSIFIED

SECURITY CLASSIFICATION OF THIS PAGE

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
1a. REPORT SECURITY CLASSIFICATION UNCLASSIFIED			1b. RESTRICTIVE MARKINGS		
2a. SECURITY CLASSIFICATION AUTHORITY			3. DISTRIBUTION/AVAILABILITY OF REPORT On Request; Distribution F		
2b. DECLASSIFICATION/DOWNGRADING SCHEDULE					
4. PERFORMING ORGANIZATION REPORT NUMBER(S)			5. MONITORING ORGANIZATION REPORT NUMBER(S)		
6a. NAME OF PERFORMING ORGANIZATION U.S. Army Space and Strategic Defense Command		6b. OFFICE SYMBOL (If applicable) CSSD-EN-V	7a. NAME OF MONITORING ORGANIZATION		
6c. ADDRESS (City, State, and ZIP Code) P.O. Box 1500 Huntsville, Alabama 35807-3801			7b. ADDRESS (City, State, and ZIP Code)		
8a. NAME OF FUNDING/SPONSORING ORGANIZATION Ballistic Missile Defense Organization		8b. OFFICE SYMBOL (If applicable) GST	9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER		
8c. ADDRESS (City, State, and ZIP Code) The Pentagon, Room 1E180 Washington, DC 20301-7100			10. SOURCE OF FUNDING NUMBERS		
			PROGRAM ELEMENT NO.	PROJECT NO.	TASK NO.
					WORK UNIT ACCESSION NO.
11. TITLE (Include Security Classification) Theater Missile Defense Extended Test Range Draft Environmental Impact Statement (Unclassified)					
12. PERSONAL AUTHOR(S) Theater Missile Defense Extended Test Range Draft Environmental Impact Statement Team, Mr. Dennis R. Gallien, Chairman					
13a. TYPE OF REPORT		13b. TIME COVERED FROM _____ TO _____		14. DATE OF REPORT (Year, Month, Day) January 1994	
				15. PAGE COUNT 992	
16. SUPPLEMENTARY NOTATION					
17. COSATI CODES			18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number)		
FIELD GROUP SUB-GROUP			Draft Environmental Impact Statement, Theater Missile Defense Extended Test Range		
19. ABSTRACT (Continue on reverse if necessary and identify by block number)					
The proposed action is to conduct extended range tests of target missiles, defensive missiles, and sensor systems at one or more of four alternative test range areas. The tests would involve target and defensive missile launches from existing test ranges and from off-range locations. Potential off-range launch locations may include land areas and sea-based platforms. Missile-to-missile intercepts would occur over existing test range areas or over open sea areas. Approximately 100 flight tests could occur during the period 1994 to 2000, from more than one off-range location, and potentially from more than one test range area. Alternative locations for conducting these missile flight tests and intercepts, which are evaluated in the Theater Missile Defense Extended Test Range Draft Environmental Impact Statement, are White Sands Missile Range, New Mexico; Eglin Air Force Base, Florida; Western Range, California; and Kwajalein Missile Range, U.S. Army Kwajalein Atoll, Republic of the Marshall Islands. The Draft Environmental Impact Statement addresses, to the extent possible, the potential environmental impacts that would result from test site modifications, launch preparation requirements, missile flights along the proposed flight paths, and intercepts of targets over existing ranges or open sea areas. Environmental resource topics evaluated include air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials/waste, health and safety, land use, noise, socioeconomics, infrastructure and transportation, and water resources. The potential for cumulative effects for each of these areas has also been addressed.					
20. DISTRIBUTION/AVAILABILITY OF ABSTRACT ☒ UNCLASSIFIED/UNLIMITED ☐ SAME AS RPT. ☐ DTIC USERS				21. ABSTRACT SECURITY CLASSIFICATION Unclassified	
22a. NAME OF RESPONSIBLE INDIVIDUAL Mr. Dennis R. Gallien			22b. TELEPHONE (Include Area Code) (205) 955-3887		22c. OFFICE SYMBOL CSSD-EN-V

DD Form 1473, JUN 86

Previous editions are obsolete

SECURITY CLASSIFICATION OF THIS PAGE
UNCLASSIFIED

**Figure 6-3 Example of a Documentation Page
(DD Form 1473 for an EA)**

Section 1.0: Purpose of and Need for the Proposed Action

1.1 Introduction

This section briefly identifies the proposed action, the responsible agency(ies) involved, and 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 of this manual. 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 EA, along with identifying the resources that were evaluated.

Section 2.0: Description of the Proposed Action and Alternatives

2.1 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 program requirements. No program cost information should be included. Note that alternatives to the proposed action must be described in Section 2.2 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 guidance on defining the proposed action, see Section 4.7 in this manual.

2.2 Description of Alternatives

This section also describes how the alternative actions and/or alternative sites were identified, including the application of selection or screening criteria¹; 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 may not be considered reasonable include but are not limited to the following: outside the scope; irrelevant to

¹ The screening criteria for developing alternatives may include time constraints, specific facility criteria, budget constraints, and others. Alternatives that are selected as a result of the use of screening criteria must be carried throughout the document.

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 4.8 of this manual.

2.3 Alternatives to the Proposed Action

In this section, each alternative to the proposed action should be identified and described under separate subsection numbers (i.e., Sections 2.3.1, 2.3.2, etc., depending on the number of alternatives to be analyzed). It is unnecessary, however, to identify which alternative is the Army's preferred alternative in the EA. Identifying the preferred alternative is usually best reserved for the FNSI since it represents the decision document.

In cases where the proposed action described in Section 2.1 itself represents a fully developed alternative (typically the preferred alternative), the type of information presented in Section 2.3 for each alternative action should be similar in detail. If the information describing the proposed action in Section 2.1 is to serve as a general foundation from which there is more than one alternative means for its implementation (e.g., alternative locations 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 is to be implemented. For further information on this approach and in describing alternatives, see Sections 4.7 and 4.8 of this manual.

2.4 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 4.8 of this manual provides further information on interpreting this alternative.

Section 3.0: 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 activity area(s).

Only those environmental resources and resource parameters which could potentially be affected by the action, or are of public concern, should be included in the Affected Environment description and analyzed under Environmental Consequences (Section 4.0 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 and concern for that resource and the issues it presents. If a particular resource is to be excluded from discussion altogether, an explanation of 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). Further guidance on describing the Affected Environment is provided in Chapter 4 of this manual.

3.1 Location Description

The purpose of this section is to provide a general overview of the affected site's environmental setting. The types of information that should be briefly described are as follows:

- Geographic setting of the affected area(s)
- Ongoing mission(s) and/or primary activities in the area(s)
- General landscape of the area
- General climatic conditions

3.2 Land Use

The following landscape and land use conditions should be described as appropriate:

- Land use/land cover within the area(s) and surrounding area
- Building function and general architecture, as appropriate
- 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
- Installation Master Plans

3.3 Aesthetics and Visual Resources

Information in this section should describe, as appropriate:

- Landscape character
- Unique natural and man-made features of the landscape
- Location of public lands, Federally protected areas, and other visually sensitive areas
- Local plans and policies regulating visual resources

3.4 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 project area
- Compliance with Federal and State Implementation Plans
- Basis of air conformity determination 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).

3.5 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 area
- Noise monitoring results
- Federal, State, and local noise standards
- Land use compatibility

3.6 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 farmlands
- Mineral resources and mineral rights

3.7 Water Resources

This section should describe the following for surface water and groundwater conditions, as appropriate:

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

3.8 Biological Resources

This section should include appropriate information on local fauna, flora, and habitats, including:

- Species commonly found in the project area
- 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 project area

- Aquatic and terrestrial ecosystem types (e.g., forests, wetlands, and fields) found in the project area 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., wildlife suppression)
- Coordination with the appropriate state office for environmental resources and U.S. Fish and Wildlife Service

3.9 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 appropriate State Historic Preservation Officer
- Government –to-Government coordination with Native American tribes as appropriate
- Programmatic agreements with the state

3.10 Human Health and Safety

(Refer to the system specific Health Hazard Assessment or the Safety Assessment Report, where appropriate to minimize duplication of effort) Information in this section should describe, as appropriate:

- Public and occupational health and safety
- Exposures to toxic, hazardous, and radioactive materials and wastes
- Hazardous areas containing unexploded ordnance
- Explosive safety quantity distances and other ordnance-related safety zones
- Aviation safety
- Safety Standard Operating Procedures
- Abnormally high incidence of diseases and birth defects in the local population
- Protection of children

3.11 Socioeconomics

To describe baseline sociologic and economic conditions, the following elements should be discussed, as appropriate:

- Demographics
- Regional employment and economic activity

- Area salaries and local expenditures
- Housing
- Schools
- Medical facilities
- Shops and services
- Recreation facilities
- Environmental justice
- Executive Order 13045 (Protection of Children)

3.12 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 stream generation

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

- Roadways and traffic on and off the project area(s)
- Rail access and service to the area(s)
- Air operations at the area(s) and associated airspace use

3.13 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
- Above ground and underground storage tanks
- Pollution prevention programs and plans

Section 4.0: 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 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 in Section 4.11 of this manual.

Along with describing the effects, measures planned to mitigate adverse effects (e.g., minimizing vehicular traffic to prevent accelerated erosion during missile debris recovery, fencing around radar and launch areas to protect wildlife) 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 AR 200-2). 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 4.0 is presented in the following sample outline for land use and for aesthetics and visual 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 Section 2.0 of this EA outline. When evaluating the no action alternative, it is important to remember that adverse effects sometimes do occur under this alternative.

4.1 Land Use

4.1.1 Effects of the Proposed Action

4.1.2 Effects of Alternative(s) to the Proposed Action

4.1.3 Effects of the No Action Alternative

4.2 Aesthetics and Visual Resources

4.2.1 Effects of the Proposed Action

4.2.2 Effects of Alternative(s) to the Proposed Action

4.2.3 Effects of the No Action Alternative

4.3 through 4.12 (for each of the remaining resources to be included, use the same format as above.

4.13 Cumulative Effects

This section discusses the relevant cumulative effects on those resources affected by the proposed action and alternatives. Refer to Section 8.8 of this manual for further discussions on cumulative effects.

4.14 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 lists the overall effects for each of the alternatives. Two different example formats for matrices are presented in Figures 6-4 and 6-5. When the first format 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 very important that such qualifiers be carefully explained and interpreted on the matrix or within the text of this section.

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

Section 5.0: 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 6.0: 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 those individuals outside the proponent's office are listed here.

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: List of Preparers

The format for listing the preparers is explained in AR 200-2. The preparers selected should be diverse enough to ensure a multidisciplinary approach to the environmental and socioeconomic analysis.

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:

- Supporting technical data and methodologies (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 Officer) that pertain to environmentally sensitive resources, cultural resources, and related issues.

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 in attainment for all NAAQS except for localized exceedances of PM ₁₀ .	No effect on compliance with national standards.	No effect on compliance with national standards.
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.

Figure 6-4
Sample of An Alternatives Comparison Matrix

Resource Area	No Action	Alternative 1	Alternative 2	Alternative 3
Land Use				
Aesthetic and Visual Resources				
Air Quality				
Noise				
Water Resources				
Geology and Soils				
Infrastructure				
Hazardous and Toxic Materials/Wastes				
Biological Resources				
Cultural Resources				

Legend

 No Effect	 Minor Adverse Effect	 Long-term Effect
 Beneficial Effect	 Major Adverse Effect	 Short-term Effect

Figure 6-5
Sample of an Alternatives Comparison Matrix Using Symbols

6.5 Alternative Formats for an EA

In addition to the standard EA format presented in Section 6.4 (referred to as Format 1), an alternative format is available for use in Army 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 3.0 (Affected Environment) and 4.0 (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. Sample Outline Using Format 2

4.0	Environmental Conditions and Consequences
4.1	Location Description
4.2	LandUse
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	Aesthetics and Visual Resources
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.

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. Format 2 is particularly useful when

applied to EAs that are exceptionally long or address multiple locations. Army proponents should consider the applicability of Format 2 when determining the best approach for organizing their EAs.

6.6 Finding of No Significant Impact

The FNSI is a separate, brief, formal document (usually two or three 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 FNSI is presented as Appendix L to this manual.

As a minimum, the FNSI will provide the following information:

- Summary of the EA, or have the EA attached if it is brief
- Listing of other relevant environmental documents that are being or have been prepared which assisted in the decision-making process
- Complete name of the action
- Description of the decision and the reason(s) why the proposed action will not significantly affect the environment
- Short discussion of anticipated environmental effects
- Summary of mitigation commitments, if any
- Clearly state that an EIS will not be prepared
- References to any other documents which assisted in making the decision
- Deadline and POC for further information or receipt of public comments

The approval and signature authority for FNSIs is the appropriate decision-maker.

Unless exempted for security reasons, the FNSI and Final EA *must* be made available for a minimum 30-day public review period prior to making a final decision, and public notification must include a press 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*.

The proponent is not required to respond to public comments on the Final EA and FNSI, but it is advisable to provide some form of response (by means of a letter, phone call, or meeting) for substantive comments made after the end of the 30-day period. Unless comments received convince the decision-maker that further analysis and documentation are required, the proposal may be initiated. Substantive public controversy on the environmental effects of the proposed action could suggest the need to prepare an EIS to resolve issues (see 40 CFR 1508.27(b)(4) in Appendix B in this manual).

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 proposes to proceed to an EIS, the project office should contact the PEO or MACOM Commander to coordinate initiation of the EIS process.

Completed EAs and FNSIs and supporting administrative records must be retained by the proponent's office for a minimum of six years. Copies of final EA's will be forwarded to HQDA, ACSIM attn: ODEP for retention in the Army NEPA library. The ACSIM shall forward a copy to the Defense Technical Information Center (DTIC).

6.7 Mitigated EA/FNSI

A mitigated EA/FNSI may be produced when, during preparation of an EA, preparers begin to suspect that the action might cause significant environmental effects. If preparers can show that the potential effects can be reduced to less than-significant levels through

the addition of appropriate mitigation measures, the mitigated EA/FNSI may be completed and an EIS need not be prepared. Preparation of a mitigated EA/FNSI typically requires less time and money than preparation of an EIS. For a mitigated EA/FNSI to be considered legally adequate, however, the EA must show 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 and alternative descriptions in the early sections of the EA, and should also be referred to or described in the accompanying FNSI. In addition, the mitigation measures to which a proponent committed within an EA must be included in project funding commitments. Otherwise, there would not be adequate assurance that the mitigations would be performed and the FNSI may not be supportable (Further discussion on mitigation measures and commitments to mitigation are provided in Section 8.9 of this manual).

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

CHAPTER 7**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 Chapter 6, many of the same environmental resource areas and methodologies that apply to the analysis and documentation for an EIS also apply to EAs. Much of the guidance that is applicable to an EA is repeated here as a "one-stop convenience" to users preparing EISs. This chapter is intended to guide Army proponents and document preparers through the EIS process by establishing a greater level of consistency in the preparation of Army EISs. It provides the detailed information needed to develop this type of analysis and document.

The EIS format used by the Army is based on the CEQ regulations and guidance contained in AR 200-2. The CEQ regulations provide for a considerable degree of agency flexibility in the EIS analysis and documentation process. Although flexibility has allowed the Army 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. Army 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 Army proposed actions requiring detailed NEPA analysis result in the preparation of EAs, certain proposals will require the Army to prepare an EIS. The EIS process is generally more formal and rigorous than that for an EA. The EIS process also entails more formal coordination and more extensive public involvement. Table 7-1 lists major differences between EAs and EISs prepared by the Army.

Table 7-1
Major Differences Between an EA and an EIS

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

7.3 EIS Time Line

Depending on the complexity of the proposed action, the time required to complete and process an EIS can range from 12 to 24 months or more.¹ Army policy is for proponents

¹ A focused assessment of an uncomplicated action involving few issues or resources can sometimes be completed more quickly. However, the review and approval process can significantly influence the actual time line. In addition, the time period for certain stages of the EIS process cannot be reduced because of mandatory time requirements (e.g., minimum 45 day public comment period for the DEIS).

to establish a schedule that will ensure that the document is completed in a timely and cost-effective manner. A schedule for an approximate 17-month time frame is provided in Table 7-2 as an example of how the EIS process is organized. This time line assumes that there is no need for prolonged or extraordinary research or special studies. The milestone events indicated must occur regardless of the schedule. Several factors can cause a NEPA document schedule to change dramatically, including slippage in review times, additional review cycles, lack of available baseline data, and changes in elements of the DOPAA.

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 Army's proposal and to express their views on the process and on issues to be addressed, should be held.

The Coordinating DEIS and Coordinating FEIS both require an approximate 30-day review at PEO and/or MACOM level. The Preliminary DEIS and Preliminary FEIS are then sent to HQDA for review and comment. Approximately 30 to 40 days is needed for each of these HQDA reviews. The DEIS and FEIS are later forwarded to HQDA for final review prior to their release to the public. The amount of time required by HQDA to concur with each of these documents can vary from several days to several weeks.

The DEIS must be made available for no less than a 45-day public comment period, during which time at least one public hearing should be held. A NOA published in the *Federal Register* and similar notices published in local newspapers initiates the comment period.

Table 7-2 Sample Time Line for an EIS

Milestone	Calendar Days from Project Initiation
Initiate Project	0
Hold Kickoff Meeting	10
Complete Public Affairs Plan	25
Complete Draft Description of Proposed Action and Alternatives	35
Publish NOI in Federal Register. Begin Public Scoping Period	60
Hold Public Scoping Meeting(s)	75
Complete Initial Coordination/Consultation with Appropriate Outside Agencies (i.e. Federal, state, and local)	80
End Public Scoping Period	90
Complete Coordinating DEIS/Begin Staffing within Project Office and MACOM	150
Complete Staffing of Coordinating DEIS	180
Complete Preliminary DEIS/Begin Staffing within HQDA	200
Complete Staffing and Approval of Preliminary DEIS with HQDA	240
Publish and Distribute DEIS to EPA and Public	260
Publish NOA for DEIS in Federal Register/Begin Public Comment Period	267
Hold Public Meeting(s)	290
End 45-day Public Comment Period	312
Complete Coordinating FEIS/Begin Staffing within Project Office and MACOM	365
Complete Staffing of Coordinating FEIS	395
Complete Preliminary FEIS/Begin Staffing within HQDA	410
Complete Staffing and Approval of Preliminary FEIS with HQDA	440
Publish and Distribute FEIS to EPA and Public	460
Publish NOA for the FEIS in Federal Register/Begin Public Review Period	467
End 30-day Public Review Period	497
Sign ROD/Issue Public Notices/Initiate Action	498

With the release of the FEIS, a 30-day (minimum) public review period is required before the ROD can be signed and made available to the public. Following the signed approval and publication of the ROD in the *Federal Register*, the action may begin.

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. Alternatives to the proposed action will be developed/refined in response to public comment obtained through the scoping process. 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 Army'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 Army who can address questions on the proposal and the EIS process (It is recommended that a phone number and FAX 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 will minimize confusion and help to generate more meaningful comments. 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

To develop an EIS successfully, the proponent must have a basic understanding of the major components of the document. AR 200-2 identifies 11 required components of an EIS: (1) cover sheet, (2) summary, (3) table of contents, (4) purpose of and need for the proposed action, (5) alternatives considered, including the proposed action and no action alternative, (6) affected environment, (7) environmental and socioeconomic consequences, (8) list of preparers, (9) distribution list, (10) index, and (11) appendices.

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. Army preparers should follow 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,
- Review by technical editor.

Preparers will need to determine the most effective way to organize the EIS. In most cases, it may be best to organize the material sequentially. In most cases, however, it may be more effective to discuss the proposed action and alternatives as a single section, as is illustrated

in Section 7.6. It may be advantageous to combine sections in some other way, if it would contribute to clarify or reduce unnecessary repetition.

EISs should be presented as clearly and concisely as possible. Since the audience is often not technically versed in all subject areas, the document 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. Army policy requires that EISs 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 the FEIS should not exceed 150 pages, although proposals of unusual scope or complexity can require up to 300 pages (40 CFR 1502.7). To conserve paper, DEISs and FEISs should be printed double-sided.

7.6 Content of an EIS

A detailed outline for an Army EIS is provided in the following boxed text. It is recommended that this format be used as a model in the development of Army EISs for acquisition activities. It is an interpretation, not a reinvention, of how Army and CEQ NEPA regulations are to be implemented. For most sections of an EIS, the content is generally the same as that in an EA (see Section 6.4). 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. In addition, the Army does not use Format 2 for EISs (see Section 6.5). Preparers should consult other sections of this manual 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.

Preparers should review AR 200-2 for EIS content as well as the following pages of this section. Ultimately, the extent of detail provided is dependent upon the specific EIS.

Format and Content of an Army 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 Army, MACOM, or program office logo, as appropriate. 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. This item is not required but is recommended as a quick reference to sections for the reader.

Lead Agency Page and Related Pages

These are usually the first one or two pages of the document. They introduce the EIS and present important information about the document, including lead agency; cooperating agencies (if any); name and location(s) of the action; an abstract describing the proposed action and alternatives, and identifying the issues and resources analyzed in the document; points of contact for further information; and information on the availability of the document and any formal comment or review periods (40 CFR 1502.1). Organized the same way for an EA and an EIS, these pages also include the name, title, and office name, for each key person responsible for preparing, reviewing, and approving the document. For final documents, signature lines are added for these individuals on the same page or as a separate page. Figures 7-1, 7-2, and 7-3 show examples of lead agency, signature and documentation pages.

LEAD AGENCY: U.S. Army Space and Strategic Defense Command COOPERATING
AGENCY: Ballistic Missile Defense Organization

TITLE OF THE PROPOSED ACTIONS: Provide additional test range facilities and support services at U.S. Army Kwajalein Atoll (USAKA) in support of the Missile Defense Act of 1991 and adopt environmental standards and procedures that are appropriate to the unique environment and special circumstances at USAKA.

AFFECTED JURISDICTION: US Army Kwajalein Atoll, Republic of the Marshall Islands

ADDITIONAL INFORMATION: U.S. Army Space and Strategic Defense Commander
SMDC-EN-V (Dr. Silas Casey)
P.O. Box 1500
Huntsville, Alabama 35807

PROPONENT: Albert S. Johnston
Colonel
Commander
U.S. Army Kwajalein Atoll

APPROVED BY: Benjamin J. Prentiss
Lieutenant General
Commander
U.S. Army Space and
Defense Command

Daniel D. Ruggles
Lieutenant General
Director
Ballistic Missile Strategic
Defense Organization

DOCUMENT DESIGNATION: Final Supplemental Environmental Impact Statement (SEIS)

ABSTRACT: Two Proposed Actions are examined. The purpose of the first is to provide additional testing facilities and support services at USAKA in support of the Missile Defense Act of 1991. The purpose of the second Proposed Action is to adopt environmental standards and procedures that are appropriate to the unique environment at USAKA and the special relationship between the U.S. and the Republic of the Marshall Islands, in accordance with the Compact of Free Association.

Figure 7-1 Example of a Lead Agency Page for an EIS

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 that are required to mitigate 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 contain 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 known) 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, a summary matrix that shows the overall effects for each of the alternatives should be included. Two different example formats for matrices are presented in Figure 7-4 and 7-5. When the first format is used, the information should be as quantifiable as possible. If the second matrix is used, in which impact levels are represented using qualifiers in the form of symbols, it is very important that such qualifiers be carefully explained and interpreted on the matrix or within 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 can be published as 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 lead agency page.

Table of Contents

The Table of Contents for an EIS should provide the section number and exact title of each document section (beginning with the Table of Contents itself through to the very end of the document), 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.

ENVIRONMENTAL IMPACT STATEMENT
FOR PROPOSED TEST RANGE ACTIVITIES AT THE
UNITED STATES ARMY KWAJALEIN ATOLL

Reviewed by:

Albert S. Johnston
Colonel
Commander
U.S. Army Kwajalein Atoll

Approved by:

Benjamin I Prentiss
Lieutenant General
Commander
U.S. Army Space and Strategic Defense Command

Daniel D. Ruggles
Lieutenant General
Director
Ballistic Missile Defense
Organization

Figure 7-2 Example of a Signature Page for an EIS

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188			
1a. REPORT SECURITY CLASSIFICATION Unclassified				1b. RESTRICTIVE MARKINGS			
2a. SECURITY CLASSIFICATION AUTHORITY				3. DISTRIBUTION/AVAILABILITY OF REPORT Further dissemination only as directed by the U.S. Army Space and Strategic Defense Command, 22 July 1996.			
2b. DECLASSIFICATION/DOWNGRADING SCHEDULE							
4. PERFORMING ORGANIZATION REPORT NUMBER(S)				5. MONITORING ORGANIZATION REPORT NUMBER(S)			
6a. NAME OF PERFORMING ORGANIZATION U.S. Army Space and Missile Defense Command		6b. OFFICE SYMBOL (If applicable) SMDC-EN-V		7a. NAME OF MONITORING ORGANIZATION			
6c. ADDRESS (City, State, and ZIP Code) P.O. Box 1500 Huntsville, Alabama 35807-3801				7b. ADDRESS (City, State, and ZIP Code)			
8a. NAME OF FUNDING/SPONSORING ORGANIZATION		8b. OFFICE SYMBOL (If applicable)		9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER			
8c. ADDRESS (City, State, and ZIP Code)				10. SOURCE OF FUNDING NUMBERS			
				PROGRAM ELEMENT NO.		PROJECT NO.	
				TASK NO.		WORK UNIT ACCESSION NO.	
11. TITLE (Include Security Classification) Tactical High Energy Laser Environmental Assessment (Unclassified)							
12. PERSONAL AUTHOR(S)							
13a. TYPE OF REPORT Preliminary Final		13b. TIME COVERED FROM _____ TO _____		14. DATE OF REPORT (Year, Month, Day) 1998 March 4		15. PAGE COUNT 213	
16. SUPPLEMENTARY NOTATION							
17. COSATI CODES			18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number) Environmental Assessment (EA)				
FIELD	GROUP	SUB-GROUP					
19. ABSTRACT (Continue on reverse if necessary and identify by block number) This EA documents the results of an analysis of the potential for and magnitude of impacts from the development of the THEL Advanced Concept Technology Demonstrator (ACTD) system. This would include the production, assembly, field integration and testing, operational test and evaluation, and modification for additional assessments. Field testing and integration of the THEL ACTD system would occur at White Sands Missile Range (WSMR), New Mexico. Four or fewer THEL units would be produced during the life of the project. Testing, including up to approximately 1,300 target launches and test lasing, would occur at WSMR over the next 5 years. Approximately 380 target launches would occur in the first 9 months of testing at WSMR. The location and activities for the THEL ACTD system development and testing have been evaluated in this EA. The proposed locations were selected because of their ongoing or past work for similar programs. The EA analyzes the environmental consequences of the proposed action and alternatives. The areas of environmental consideration are air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and waste, health and safety, infrastructure, land use, noise, and water resources. No significant impacts have been identified. No cumulative impacts are expected.							
20. DISTRIBUTION/AVAILABILITY OF ABSTRACT ☒ UNCLASSIFIED/UNLIMITED ☐ SAME AS RPT. ☐ DTIC USERS				21. ABSTRACT SECURITY CLASSIFICATION			
22a. NAME OF RESPONSIBLE INDIVIDUAL Mr. David Hasley				22b. TELEPHONE (Include Area Code) (205) 955-4170		22c. OFFICE SYMBOL	

DD Form 1473, JUN 86 Previous editions are obsolete SECURITY CLASSIFICATION OF THIS PAGE UNCLASSIFIED

**Figure 7-3 Example of a Documentation Page
(DD Form 1473) for an EIS**

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 or 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 in attainment for all NAAQS except for localized exceedances of PM ₁₀ .	No effect on compliance with national standards.	No effect on compliance with national standards.
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.

Figure 7-4
Sample of An Alternatives Comparison Matrix

Resource Area	No Action	Alternative 1	Alternative 2	Alternative 3
Land Use				
Aesthetic and Visual Resources				
Air Quality				
Noise				
Water Resources				
Geology and Soils				
Infrastructure				
Hazardous and Toxic Materials/Wastes				
Biological Resources				
Cultural Resources				

Legend

 No Effect



Minor Adverse Effect



Long-term

Beneficial Effect



Major Adverse Effect



Short-term
Effect

Figure 7-5
Sample of an Alternatives Comparison Matrix Using Symbols

Section 1.0: Purpose of and Need for the Proposed Action

1.1 Introduction

This section briefly identifies the proposed action, the responsible agency(ies) involved, and 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 of this manual. 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 that were evaluated.

1.4 Public Participation

For the DEIS, this section should identify the public involvement activities that have occurred (scoping period, meetings, newsletters, etc.) 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 should briefly summarize 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(s) analyzed in the EIS, and briefly summarize how they are related to the proposed action.

Section 2.0: Description of the Proposed Action and Alternatives

This section provides a description of the proposed action. It should include such details as location considerations, numbers of personnel involved, and program requirements. No program cost information should be included. 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 4.7 of this manual.

2.1 Alternatives Considered

This section describes how the alternative actions and/or alternative sites were identified, including the application of selection or screening criteria, and lists the reasonable alternatives that were considered for further evaluation, including the "no action" alternative. Further information on identifying and describing alternatives is provided in section 4.8 of this manual.

2.2 Alternatives to the Proposed Action

In this section, each alternative to the proposed action including the preferred alternative (if known), should be identified and described under separate subsection numbers (i.e., Sections 2.2.1, 2.2.2, etc., depending on the number of alternatives to be analyzed). It is a requirement that the preferred alternative 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 2.2 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 is more than one alternative means for its implementation (e.g., alternative locations to construct and operate a new facility), the alternative descriptions presented here should build on that earlier information by providing more specific, unique details on how and where each alternative action is to be implemented. For further information on this approach and in describing alternatives, see Sections 4.6 and 4.7 of this manual.

2.3 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 4.8 of this manual provides further information on interpreting this alternative.

2.4 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 are 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.

The screening criteria for developing alternatives may include time constraints, specific facility criteria, budget constraints, and others. Alternatives that are selected as a result of the use of screening criteria must be carried throughout the document.

Section 3.0: 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) were implemented. It represents the "as is" or "before the action" conditions (sometimes referred to as "baseline conditions") at the activity area(s) or other locations.

Only those environmental resources and resource parameters which could potentially 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 and concern for that resource and the issues it presents. If a particular resource is to be 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).

Further guidance on describing the Affected Environment is provided in Chapter 4 of this manual.

3.1 Location Description

The purpose of this section is to provide a general overview of the affected site's environmental setting. The types of information that should be briefly described are as follows:

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

3.2 Land Use

The following landscape and land use conditions should describe, as appropriate:

- Land use/land cover within the area(s) and surrounding area
- Building function and general architecture, as appropriate
- 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
- Installation Master Plans

3.3 Aesthetics and Visual Resources

Information in this section should describe, as appropriate:

- Landscape character
- Unique natural and man-made features of the landscape
- Location of public lands, Federally protected areas, and other visually sensitive areas
- Local plans and policies regulating visual resources

3.4 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/non-attainment areas
- Sensitive receptors on and off the project area
- Compliance with Federal and State Implementation Plans
- Basis of air conformity determination 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)

3.5 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 area
- Noise monitoring results
- Federal, state and local standards
- Land use compatibility for specific discussions on identifying noise zones

3.6 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 farmlands
- Mineral resources and mineral rights

3.7 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

3.8 Biological Resources

This section should include appropriate information on local fauna, flora, and habitats, including:

- Species commonly found in the area
- 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 project area
- Aquatic and terrestrial ecosystem types (e.g., forests, wetlands, and fields) found in the project area and their regional importance (if any)
- Special habitat areas (e.g., used by nesting or over-wintering species)
- Vegetation and wildlife management plans and practices (e.g., wildfire suppression)
- Coordination with the appropriate state office for environmental resources and U.S. Fish and Wildlife Service.

3.9 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 appropriate State Historic Preservation Officer
- Programmatic agreements with the state

3.10 Human Health and Safety

Refer to the system specific Health Hazard Assessment or the Safety Assessment Report, where appropriate, to minimize duplication of effort. Information in this section should describe, as appropriate:

- Public and occupational health and safety
- Exposures to toxic, hazardous, and radioactive materials and wastes
- Hazardous areas containing unexploded ordnance
- Explosive safety quantity-distances and other ordnance-related safety zones
- Aviation safety
- Safety Standard Operating Procedures
- Abnormally high incidence of diseases and birth defects in the local population
- Protection of children

3.11 Socioeconomics

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

- Demographics
- Regional employment and economic activity
- Area salaries and local expenditures
- Housing
- Schools
- Medical facilities
- Shops and services
- Recreation facilities
- Environmental justice
- Protection of Children

3.12 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 area(s)
- Rail access and service to the area(s)
- Air operations at the area(s) and associated airspace use

3.13 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 4.0: Environmental and Socioeconomic Consequences

This section forms the scientific and analytic basis for the comparison of alternatives². It identifies the direct, indirect, and cumulative effects of the proposed action and alternatives presented in Section 2.0 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. Further guidance on identifying and describing potential effects is provided in Section 4.11 of this manual.

Along with describing the 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

² When multiple alternatives are considered, each one should be analyzed and discussed in a separate subsection under each resource area.

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 AR 200-2). 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(1)). 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 4.0 is presented in the following sample outline for land use and for aesthetics and visual resources. Each resource section from the Affected Environment section (cultural resources, noise, water resources, etc.) should be numbered separately, and the resource sequence should correspond to the sequence 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 of this EIS outline. When evaluating the no action alternative, it is important to remember that impacts sometimes do occur under this alternative.

4.1 Land Use

4.1.1 Effects of the Proposed Action

4.1.2 Effects of Alternative(s) to the Proposed Action

4.1.3 Effects of the No Action Alternative

4.2 Aesthetics and Visual Resources

4.2.1 Effects of the Proposed Action

4.2.2 Effects of Alternative(s) to the Proposed Action

4.2.3 Effects of the No Action Alternative

4.3 through 4.12 (for each of the remaining resources to be included, use the same format as above)

4.13 Cumulative Effects

This section discusses the relevant cumulative effects on those resources affected by the proposed action and alternatives. Refer to Sections 8.8 of this manual for further discussions on cumulative effects.

4.14 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 Figures 7-4 and 7-5. When the first format is used, the information should be as quantifiable as possible. If the second format is used, in which impact levels are represented using qualifiers in the form of symbols, it is important that such qualifiers be carefully explained and interpreted on the matrix or within the text of this section.

4.15 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).

4.16 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 with poor insulation and 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 (thus, reduced air emissions from the installation's power plant), and a reduction in potential adverse human health effects. Conversely, vegetation removal and surface grading for a new firing range may, in the long term, result in the permanent loss of sensitive species native to that area.

4.17 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 5.0: References

The References section should provide bibliographical information for sources cited in the text of the EIS. Draft documents should be cited only if those 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 6.0: List of Preparers

The preparers selected should be diverse enough to ensure a multidisciplinary approach to the environmental and socioeconomic analysis.

Section 7.0: 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 able to assist the proponent in developing this list. The FEIS list typically consists of the same relative to their geographic area or particular interests, as well as requests obtained during the scoping process. The program environmental coordinator and Public Affairs Office should identify agencies, officials, and special interest groups that received the DEIS, along with those individuals who commented on the DEIS and/or requested a copy of the FEIS.

Section 8.0: 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 9.0: Glossary

This section provides a list of definitions for technical terms used in the EIS.

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, whether or not a response was received. Normally, only those individuals outside the Proponent's organization are listed here.

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 as follows:

- Supporting technical data and methodologies (e.g., air emissions monitoring data, archaeological 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.
- Public comments and responses (Refer to section 8.4 of this manual for guidance on this topic. If this appendix becomes too large, it may be made into 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 on standard letter-size paper.

7.7 Responding to Comments

DEISs must be made available for a 45-day (minimum) public comment period. Substantive public comments received, in the form of letters, faxes, e-mail and so forth, or a summary thereof can be presented in an appendix to the FEIS, along with responses to those comments. Replies should make reference to those portions of the EIS which 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.

As part of the NEPA process management plan discussed in Chapter 4 of this manual, or as part of a separate public affairs plan if one is prepared early in the EIS process, the development of procedures for handling comments received and for developing responses to the comments is recommended. When a large number 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 be addressed. Substantive comments received are generally staffed with the proponent and/or lead agency, the Public Affairs Office, and others, as necessary, for the development of responses (Refer to 40 CFR 1503.4 for further information on responding to public comments).

7.8 Review of EISs by the U.S. Environmental Protection Agency

As described earlier in this manual, all DEISs and FEISs must be filed with the EPA. Under Section 309 of the Clean Air Act (42 U.S.C. 7609), EPA has the authority to review and comment on EISs and to notify 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 determine independently 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 analyses 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 defer 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

Rating Categories	Follow-Up on DEIS Comment Letter
LO	None
ECA, 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

7.9 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 Army in reaching its decision. It identifies the major issues and considerations, documents the decision, and identifies necessary steps (mitigation measures) to lessen the effects on the environment. Final approval and signature of the ROD may occur no sooner than 30 days following publication of the NOA for the FEIS in the *Federal Register*. The ROD, or Notice of Availability of the ROD, is then published in the *Federal Register*, and similar notices are published in local newspapers. In accordance with AR 200-2, 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).
- Discussion of all factors, including any environmental, economic, and technical factors, that were considered by the Army in making a decision.
- Discussion of how considerations of those functions entered into the final decision.
- Description of mitigation measures to be implemented, a summary of any monitoring and

enforcement programs 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.²

It is important to note that the alternative selected in the ROD can be the proponent's original proposed action, one of the alternative actions, or a mix of the alternatives that were analyzed in the EIS. Public comment on the ROD is not required; however, it is Army policy to receive and be responsive to public concerns regarding Army actions. The ROD is signed by the decision-maker

Completed FEISs and RODs and supporting administrative records must be retained by the proponent's office for a minimum of six years. Copies of final FEIS's will be forwarded to HQDA, ACSIM attn: ODEP for retention in the Army NEPA library. The ACSIM shall forward a copy to the Defense Technical Information Center (DTIC).

² 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. Therefore, only those mitigation measures which will be implemented should be listed in the ROD.

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CHAPTER 8**OTHER SPECIAL NEPA
CONSIDERATIONS**

8.1 Introduction

A select number of special environmental planning considerations and concepts are integral to better understanding of effective NEPA and key acquisition management practices. Comprehension and implementation of these concepts will facilitate smoother compliance with statutory requirements, and hopefully will preclude schedule and budgetary impacts to the acquisition of Army materiel. These considerations are discussed in this chapter, even though, some information may have been presented, in less detail, in earlier chapters.

8.2 Programmatic Environmental Assessments and Environmental Impact Statements

Because of the evolutionary and developmental nature of materiel acquisition management, many of the design, testing, manufacturing, fielding and operation, and demilitarization and disposal aspects of a particular system may not be well established until the program fully matures. Accordingly, effective acquisition management often requires that NEPA analysis be performed in a two-step approach to reflect this programmatic uncertainty early in the program life-cycle.

First, an analysis known as a "Programmatic" Environmental Assessment or Environmental Impact Statement can be utilized. Programmatic NEPA analysis provides a programmatic overview or "global" analysis. Programmatic NEPA documents are prepared on an area, subject, and/or topic basis; or for broad Federal actions that include a number of phases or individual actions. In the case of broad Federal actions, the lead agency may evaluate the proposal based on common geographic locations, similarities of activities, or stages of development. For example, an Army requirement for a new prime mover could consider both tracked and wheeled vehicles, with a number of different power assemblies, and a range of test locations. As the program matures, the design of the prime mover and test requirements would be narrowed. However, at the initiation of the program, a Programmatic NEPA analysis could be initiated that would evaluate the general environmental impacts of the development of a conceptual prime mover at a number of test locations. As an alternative, a Programmatic NEPA document that analyzed the full range of Army transportation needs and activities could be performed. This approach would provide a comprehensive "umbrella" of NEPA coverage. This Programmatic NEPA documentation should provide the PM with sufficient information so that he can initially assess the environmental consequences of various courses of action when making decisions and allocating program resources.

Second, as will be presented in Chapter 9 (see Figure 9-1), increasingly more detailed and updated NEPA documentation can be prepared as a materiel program progresses. As decisions are made, alternatives are eliminated, and specific geographic sites are chosen, more focused NEPA documentation can be prepared. The Programmatic NEPA analysis can continue to provide NEPA coverage for the entire program, while subsequent NEPA analysis can be more narrowly focused. In the example provided above, when specific prime mover design configuration and associated test locations are identified,

comprehensive, focused NEPA documentation would be prepared to analyze downstream requirements such as specific tests and initial fielding considerations.

8.3 Tiering

"Tiering" refers to the use of broad, general NEPA analyses to support the preparation of a more detailed environmental analysis. An example of tiering was previously discussed in Section 8-2. In this case the coverage of general materiel acquisition matters can be performed in broad Programmatic EAs and/or EISs prepared at the commencement of the program. Subsequently, as the program becomes better defined, more focused environmental analysis can be performed, incorporating by reference the general discussions of the earlier Programmatic NEPA document, and concentrating solely on the issues specific to the new analysis.

Tiering is appropriate when the environmental analysis flows from a general program, plan, or policy NEPA document to environmental analysis performed in a NEPA document of lesser scope, which is site- or component-specific. Additionally, tiering can flow from an earlier NEPA document to a later NEPA document, so that environmental issues which require consideration can be comprehensively evaluated, while environmental issues which have already been determined to be insignificant can be deferred from redundant and unnecessary analysis.

PMs are encouraged to tier from their Programmatic NEPA documents to eliminate repetitive discussion of the same issues, and to focus on the actual environmental issues requiring a decision. When an adequate Programmatic NEPA document has been prepared, the subsequent NEPA analysis need only summarize the issues discussed in the Programmatic EA/EIS by incorporating through reference of the earlier analysis. This permits the subsequent NEPA analysis to focus upon the environmental issues specific to the subsequent proposed action and alternatives. When tiering is utilized, the tiered

NEPA document must be clearly referenced, and should be made available for public review and comment in conjunction with the subsequent NEPA analysis.

8.4 Public Involvement

Public involvement is a central regulatory-mandated tenet of NEPA. "Federal agencies shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment" (40 CFR 1500.2[d]). In the case of an EIS, a specific process is delineated as described in Chapter 7. However, public involvement is essential in both EAs and EISs. In RECs public involvement is desirable in some situations.

The requirement for public involvement recognizes that all potentially affected parties should be involved whenever performing environmental planning, consultation, and analysis. This requirement should be met at the very beginning of the NEPA analysis and documentation process by developing a plan to include all affected parties. This plan should include the following:

- Information disseminated to local communities through such means as news releases to local media, announcements to citizens groups, and agency letters at each acquisition phase or milestone (more frequently if needed) of a major, high-visibility undertaking.
- Coordination of each phase or milestone (more frequently if needed) of any major undertaking with representatives of local government agencies.
- Encouragement of public comments, as appropriate, and open communication channels throughout the process.

- Control of the public involvement process by agency or command Public Affairs Officers.
- As discussed in Section 4.6, "The Scoping Process", involvement of public agencies with specialized expertise or regulatory authority relating to proposed actions is essential throughout the NEPA process.

8.5 Sequencing and Segmentation

Splitting an action into several smaller actions and analyzing them individually is called “segmenting.” CEQ regulations require that related or connected actions (i.e., actions with a common purpose, timing, effects, or location) be analyzed in a single document (40 CFR 1502.4(c) and 1508.25). 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 single missile launch when the intent of the overall action is to conduct a series of developmental flight tests. Similarly, it would not be acceptable to analyze separately the fielding of a new battle tank at one training post, when the overall plan is to field the system at multiple installations.

Certain “interim” actions, on the other hand, are a form of “sequencing,” which is permissible. 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/FONSI). 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.

8.6 Selecting and Analyzing Reasonable Alternatives

The identification and analysis of reasonable alternatives is a requirement of NEPA:

"Federal agencies shall to the fullest extent possible...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"

(40 CFR 150.2[e]). An alternative is another means of fulfilling the purpose and need of the action. The PM should study, develop, describe and document appropriate alternatives to the proposed course of action. Normally this can be accomplished by simply integrating environmental considerations into the program's normal examination of alternative courses of action by using environmental analysis results as input to the decision. NEPA analysis

should review the proposed action, the no-action alternative, and all reasonable alternatives to the proposed action, and should provide input to the decision.

The PM, during the formulation of alternatives, should rigorously explore and objectively evaluate a range of reasonable alternatives realizing that the NEPA documentation should provide evidence that reasonable alternatives were considered. Alternatives should never, under any circumstance, be slanted or influenced to limit the course of action to a single preferred option. Alternatives should not be automatically rejected or discarded without at least a cursory evaluation. For alternatives which are deemed unreasonable and eliminated from further analysis, the reasons for this determination should be briefly discussed. These reasons should be based upon objective requirements to fulfill the need and purpose of the acquisition. For example, a subjective statement such as "The Smith Test Range is not adequate to perform prototype howitzer live fire testing" is not acceptable. A more objective and comprehensive statement would be "The prototype howitzer live fire testing requires a minimum range of 36 kilometers. Because the maximum range of the Smith Test Range is 30 kilometers, the Smith Test Range is not adequate to perform live fire testing." During the formulation and analysis of alternatives, the PM should establish objective parameters required to fulfill design, testing, manufacturing, and disposal. As an example of such parameters, a prototype howitzer might have the following requirements for a range for live fire testing:

- Firing Fan and Distance Requirement
- Trajectory - Air space
- Instrumentation Coverage
- Logistical Supportability
- Public Health and Safety
- Security
- Environmental

- Political Considerations
- Cost and Schedule

Similar analytical requirements should be established as a means of evaluation for all acquisition projects. During the formulation of alternatives, the PM may also review reasonable alternatives that are not within the jurisdiction of the lead agency.

The no action alternative for acquisition programs is normally the continuation of the status quo. In other words, the no-action alternative assumes that the proposed action or other alternative actions would not be implemented, and that the current situation continues. The no-action alternative may not necessarily be more beneficial from an environmental standpoint. For example, a currently fielded military vehicle may have a history of fuel leaks, high fuel consumption, and excessive air emissions. The development of a new military vehicle could eliminate these sources of pollution. Once viable alternatives have been chosen, the NEPA documentation should:

- Clearly identify the proposed action and alternatives, and devote substantial equivalent treatment to each alternative so that the NEPA analysis can adequately evaluate their comparative merits from an environmental standpoint.
- Include a no-action alternative, and devote substantial treatment to the no action alternative so that the NEPA analysis can adequately evaluate the no action alternative against the other alternatives from an environmental standpoint.

8.7 Region of Influence

For each environmental media (e.g. noise, public health and safety, infrastructure, socioeconomic, air emissions) to be analyzed in the Affected Environment section of a

NEPA document (as previously described in Section 4.10), a Region of Influence (ROI) should be established. The ROI is defined as "The geographic area within which a Federal action, program, or activity may cause changes in the natural or manmade environment." The term ROI suggests not only direct or immediate effects, but also indirect and cumulative effects over a region, or extended geographic area. The ROI may be different for each environmental media. For example, the size of the "Visual and Aesthetics" ROI for the construction of a prototype rocket test launch facility might well be smaller than the size of the "Noise" ROI for rocket launches conducted from this new facility, since the noise may affect a far greater area than the area within which the launch facility can be viewed.

The ROI must be established to evaluate the full range of effects for each environmental media. For example, if a new manufacturing facility were to open at a remote site, and all traffic would have to travel on a single highway, the ROI would extend along the entire length of the highway over which there was increased traffic flow.

8.8 Environmental Effects Analysis

There are three types of environmental effects: direct, indirect, and cumulative. NEPA documentation must include an analysis of all three types of environmental effects.

Direct Effects are caused directly by the action, and occur at the same time and place as the action. From a materiel acquisition standpoint, an example of a direct effect would be the release of air emissions from the flight test of a new rocket motor. Direct effects are typically the most obvious to ascertain, their analysis is usually more objective, and they are the simplest to assess.

Indirect Effects are caused by the action, but may occur later in time, or be farther removed in distance from the action. However, they are still reasonably foreseeable. Indirect effects may include 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. An example of an indirect effect from a materiel acquisition standpoint would involve the opening of a new, large production facility in a small community. Although the production facility itself might not have any direct effects on the environment, the influx of relocating workers and their families could overwhelm the local school system. This effect on the capacity of the community school system is an example of an indirect effect. Indirect effects are not as apparent as direct effects, and their evaluation may depend more upon subjective rather than objective factors.

Cumulative Effects result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal, State, or local) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. As previously mentioned, if a new radar system were to be operated in conjunction with other tactical systems, the collective air emissions from vehicle and generator exhaust could result in a significant environmental impact, even though the individual units operating on their own would cause only a minor environmental impact. This is an example of a cumulative effect, and the comprehensive air emissions should receive NEPA analysis under the framework of a single environmental document. Similarly, if the new radar system were to be operated nearby a privately-owned factory or heavily-traveled public highway, the increase in air emissions caused by the testing of the radar should be evaluated in conjunction with the air emissions of the private factory or public highway, even though the radar acquisition manager has no influence or control over the factory or highway. Because of the extensive outside factors which can influence cumulative effects, these are the most difficult to analyze, and the analysis may frequently be more subjective than objective. An adequate analysis of cumulative effects requires a

comprehensive knowledge of the affected environment. Beyond the immediately impacted environment, all possible influences on the various environmental media must be known and understood. To fulfill this requirement, the ROI must be adequately established and sufficiently researched. Both public and private plans and future activities within the ROI must be identified and quantified. Because of the inherent complexity in accurately analyzing cumulative effects, these effects are most often inadequately assessed, leaving the program susceptible to legal challenge, and possible schedule delays and/or budget impacts. Additional information on this subject is available in CEQ publication "Considering Cumulative Effects Under the National Environmental Policy Act, " (January 1997).

8.9 Mitigation

Following the environmental analysis as described in Section 8.8, environmental impacts are identified and appropriate mitigations are established. Mitigations are established to avoid or minimize environmental harm from the alternative(s) selected. Mitigations could include, but are not necessarily limited to:

- Avoiding the impact altogether by not taking a certain action or part(s) of an action. As an example of this mitigation, the decision might be made to test a prototype tactical missile at a certain test location without a live warhead to avoid a noise environmental impact to surrounding communities.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation. For example, testing of a new helicopter at a certain test location might only be done during normal working hours to preclude a noise impact to surrounding communities.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected

environment. For example, if environmental analysis determined that testing of prototype heavy vehicles on public roads could damage the road surface, a mitigation would be to resurface the road following the conclusion of such testing, thereby removing the impact.

- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. An example of this is continually utilizing impermeable barriers and spill control measures for testing activities which have a high potential for fuel spills.
- Compensating for the impact by replacing or providing substitute resources or environments. For example, if construction of a new facility would result in the destruction of wetlands, new wetlands of equal or greater ecological value could be constructed at a different location.
- Avoiding or minimizing an impact through pre-activity inspections and/or surveys, and siting or scheduling of test activities. For example, performing archaeological and biological surveys prior to test facility construction, so that any cultural or biological resources could be located, identified, and avoided.

In those cases where actions are necessary for compliance with other Federal laws is required, any additional environmental requirements should be clearly stated in conjunction with the mitigations (e.g. obtaining an air permit from a State, or a wetlands permit from the U.S. Army Corps of Engineers).

When mitigations are identified, they should be clearly and comprehensively discussed. The Federal agent(s) responsible for funding, implementation, and verification must be identified. Additionally, a monitoring and enforcement program must be established. This monitoring and enforcement plan shall clearly identify the mitigation; the agency responsible for funding; the agency responsible for implementation; the schedule for implementation of the mitigation; whether or not monitoring or verification will be required; the agency responsible for monitoring/verification; and how often inspections are

to be conducted (in the case of routine, recurring, and/or procedural mitigations). Any coordination with other agencies (e.g. reports to state or local government agencies), public notification requirements, or other mitigation-generated requirements should be described and discussed in the NEPA document.

8.10 Integration with other Federal Laws

To the fullest extent possible, PMs shall prepare NEPA documentation concurrently with and integrated with other environmental surveys, studies, and analyses required by other Federal environmental laws and executive orders. Such laws include, but are not limited to:

- The Fish and Wildlife Coordination Act
- The National Historic Preservation Act
- The Clean Air Act
- The Clean Water Act
- The Endangered Species Act
- The Pollution Prevention Act
- The Coastal Zone Management Act
- The Solid Waste Disposal Act
- Waste Reduction Act

For example, the prime power unit for a prototype radar could produce sufficient air emissions to require an air permit to be prepared for its operation during field testing, in accordance with the Federal Clean Air Act or similar state statutes. This action would have to be completed in addition to the appropriate NEPA documentation and should be accomplished concurrently if possible.

8.11 Complying with Executive Orders

Four Executive Orders (EOs) have been issued in recent years which require that materiel acquisition managers pay particular attention to certain areas during NEPA documentation. These orders carry the full weight of Federal regulations. These EOs are: EO 12114 - *Environmental Effects Abroad of Major Federal Actions*; EO 12898 - *Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*; EO 13007 - *Indian Sacred Sites*; and EO 13045 - *Protection of Children from Environmental Health Risks and Safety Risks*. These EOs are described in the following sections.

8.11.1 Executive Order 12114 Environmental Effects Abroad of Major Federal Actions

The vast majority of materiel acquisition activities typically occurs in the United States or its territories. However, there will be some instances where projects may be jointly conducted with other nations, or where testing is conducted outside the United States. These requirements do not apply to the sale or transfer of arms to foreign nations. The requirements of the regulations and directives previously cited apply to Army acquisition activities which:

- Occur in the "Global Commons." These are areas outside the jurisdiction of any nation, such as the broad ocean areas and Antarctica.
- Significantly harm the environment of a foreign nation that is not involved in the action. The focus of this is on the geographic location of the environmental harm and not the

location of the action.

- Significantly harm the environment of a foreign nation because they provide to that nation a physical project or product that produces an emission or effluent that is prohibited or regulated in the United States.

Acquisition managers may use four types of environmental documents when accounting for the actions listed above.

- Environmental Assessment - The purpose of an environmental assessment is to assist decision-makers in determining whether an action significantly harms the environment of the Global Commons. It will be made available to the public in the United States upon request.
- Environmental Impact Statement - This is prepared when it is determined that an action significantly harms the environment of the Global Commons. Public hearings are not required, but should be considered if there is the appearance of infringement on the sovereignty of another nation. Although not required, consideration should be given to make environmental documentation available to foreign governments through the State Department.
- Environmental Study - This is a bilateral or multilateral study relevant to the proposed action. It can be prepared by the United States and one or more foreign nations, or by an international body of which the United States is a member. This may be best suited with actions that provide strictly regulated or prohibited products or projects to a foreign nation and actions that affect a protected global resource.
- Environmental Review - This is a unilateral review of pertinent environmental issues prepared by one or more agencies of the United States. The Environmental Review may be uniquely suitable to actions that affect the environment of a nation not involved in the undertaking.

Environmental studies and reviews should have the same basic content as an EA or EIS, but the format is very flexible to meet the needs of the preparers. All communications with foreign governments concerning these documents and other formal arrangements are required to be coordinated with the Department of State.

Studies and Reviews, if unclassified, are to be made available to the Department of State, and other interested Federal agencies, and to the public in the United States on request. Foreign governments also may be informed of the Studies and Reviews and furnished copies. No distribution is required prior to the final version, or prior to taking the action associated with the document.

A copy of Executive Order 12114 is presented as Appendix H to this manual

8.11.2 Executive Order 12898 - Environmental Justice

On February 11, 1994 the President signed Executive Order No.12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*. The objective of this Executive Order is that "...each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing ...disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...."(Section 1-101 of Executive Order 12898). A copy of Executive Order 12898 is presented as Appendix I in this manual.

DoD has stated its intention to implement this Executive Order principally through compliance with NEPA. Involvement of affected minority and low income populations in the public process is essential to comply with this Executive Order. PMs should identify minority and low-income populations that may be affected by their programs and,

whenever practicable and appropriate, include in their environmental analyses and research an emphasis on 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). NEPA environmental analysis should include:

- Identification of populations that may be exposed to disproportionately high and adverse human health and environmental effects caused by DoD activities within the U.S.
- Identification and assessment, as appropriate, of DoD programs, policies, and activities that may have disproportionately high and adverse human health and environmental effects on minority and low income populations at or near DoD U.S. sites and facilities.
- All Acquisition NEPA documentation should include a brief section focused upon compliance with the Environmental Justice Executive Order, and should clearly state that this Executive Order has been taken into consideration during formulation of the Affected Environment section, and conduct of the environmental analysis.

8.11.3 Executive Order 13007 - Indian Sacred Sites

This Executive Order was designed to ensure that Federal actions do not have an adverse effect on the access or physical integrity of Native American sacred sites. NEPA analysis will take into account whether the proposed action or alternatives: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners (2) avoid adversely affecting the physical integrity of such sacred sites, (3) and where appropriate, agencies shall maintain the confidentiality of specific locations of sacred sites.

Under EO 13007, the program manager, where practicable, will ensure reasonable notice

is provided of proposed actions that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

Department of Defense *American Indian and Alaska Native Policy*" (October 20 1998), sets guidelines for compliance with EO 13007 and establishing Government-to-Government relations with Native American and Native Alaskan tribes. A copy of Executive Order 13007 is presented as Appendix J to this manual.

8.11.4 Executive Order 13045 - 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 which 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) they 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 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 or safety risks. A copy of Executive Order 13045 is presented as Appendix K to this manual.

Historically, children have been present as residents and visitors at Army installations and test ranges where development activities take place. Children may also live near or have

access to facilities where manufacturing takes place. On such occasions, Army managers have a responsibility 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 impacts of the proposed action and alternatives.

8.12 Interagency Disputes

In the event that during an Army materiel acquisition environmental analysis process, an unresolvable dispute arises with another Federal agency, the agencies will submit their respective positions to the CEQ for ultimate resolution. In some cases a referring agency may feel an action will cause unsatisfactory environmental effects. Part 1504 of the CEQ regulations for implementing NEPA clearly identifies the procedures to the Council for disagreements between a referring agency and a lead agency. All efforts should be taken to resolve differences before a formal referral to the CEQ is pursued. This includes early informal coordination with the CEQ by both agencies, as necessary and appropriate.

8.13 Budgeting for NEPA Analysis, Documentation, and Mitigations

Performing NEPA analysis and the preparation of NEPA documentation can be costly. It is incumbent on the PEO and PM to plan and budget for the required analyses and documentation. The early integration of environmental planning helps the PEO and PM anticipate the extent and type of analysis and resulting documentation required.

- DoD Regulation 5000.2-R requires the PM/PEO to prepare a PESHE document early in the program life-cycle (usually Milestone B). The programmatic ESH evaluation looks at the entire life-cycle of a materiel acquisition program and, as a result, it is an excellent source of information for estimating the extent of the analysis anticipated and the type of documentation required over the entire life-cycle.
- Once an estimate of the requirement is developed, the PM can utilize historical experience from other acquisitions to develop a budget. Comparison with several recent cases is an excellent technique and it can improve the accuracy of the estimate. In the interest of accuracy, it is important to select cases of similar magnitude that adequately fulfilled their NEPA responsibilities.

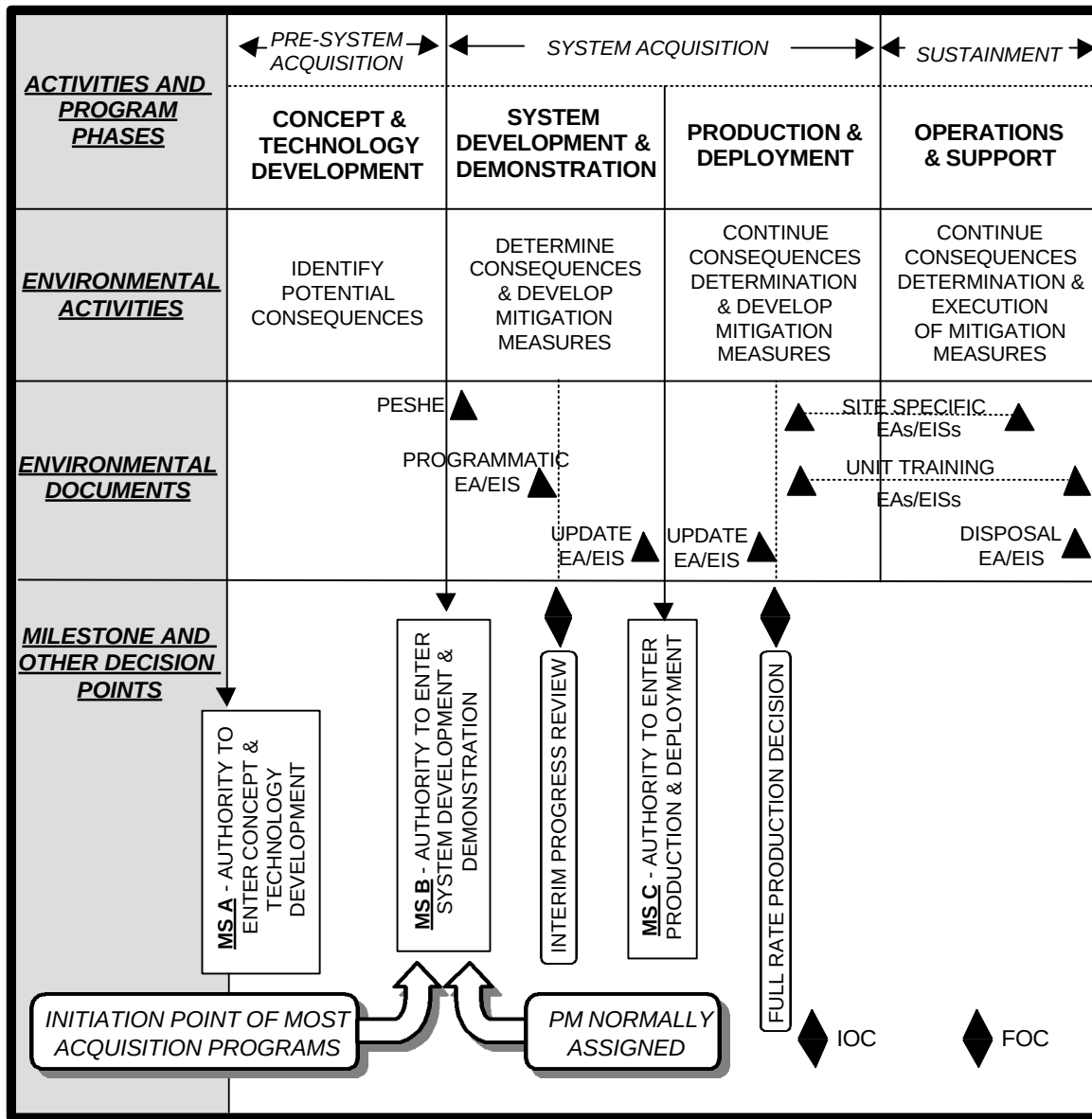
CHAPTER 9

APPLICATION OF THE NEPA PROCESS IN THE ACQUISITION LIFE CYCLE

9.1 Introduction

This chapter describes the relationships between the NEPA process and the different phases of the acquisition life cycle. It also highlights a number of acquisition-related issues, and identifies related roles and responsibilities for acquisition managers. The acquisition life cycle consists of all acquisition activities from program initiation to eventual disposal. Figure 9-1 illustrates the program phases, milestones, and other decision points of the acquisition process, as prescribed by DoDI 5000.2. Each of the phases and milestone points will be discussed later in this chapter, along with a discussion of the relevant activities that normally occur during each one.

In order to exit a particular phase and proceed to the next phase, an acquisition program must pass through a decision point known as a Milestone Review. The System Development and Demonstration, and the Production and Deployment Phases also have sub-phase reviews (e.g. Full Rate Production Review and Decision). These sub-phase reviews are less strenuous than a Milestone Review. The decision to pass from one phase or sub-phase to the next is made by the Milestone Decision Authority (MDA). As depicted in Figure 9-1, NEPA analysis and documentation (including EAs and EISs) at appropriate points in the acquisition process effectively and efficiently assimilates environmental considerations into acquisition decisions. It is important to understand that NEPA analyses are conducted in support of the **next phase or sub-phase** of the acquisition program, not the current one. The NEPA document and supporting analysis must be completed prior to the decision and made available to the decision-maker. The



Note: The level of NEPA documentation required (i.e., REC, EA, or EIS) for each acquisition program and program phase will vary, depending on the environmental issues and concerns that need to be addressed.

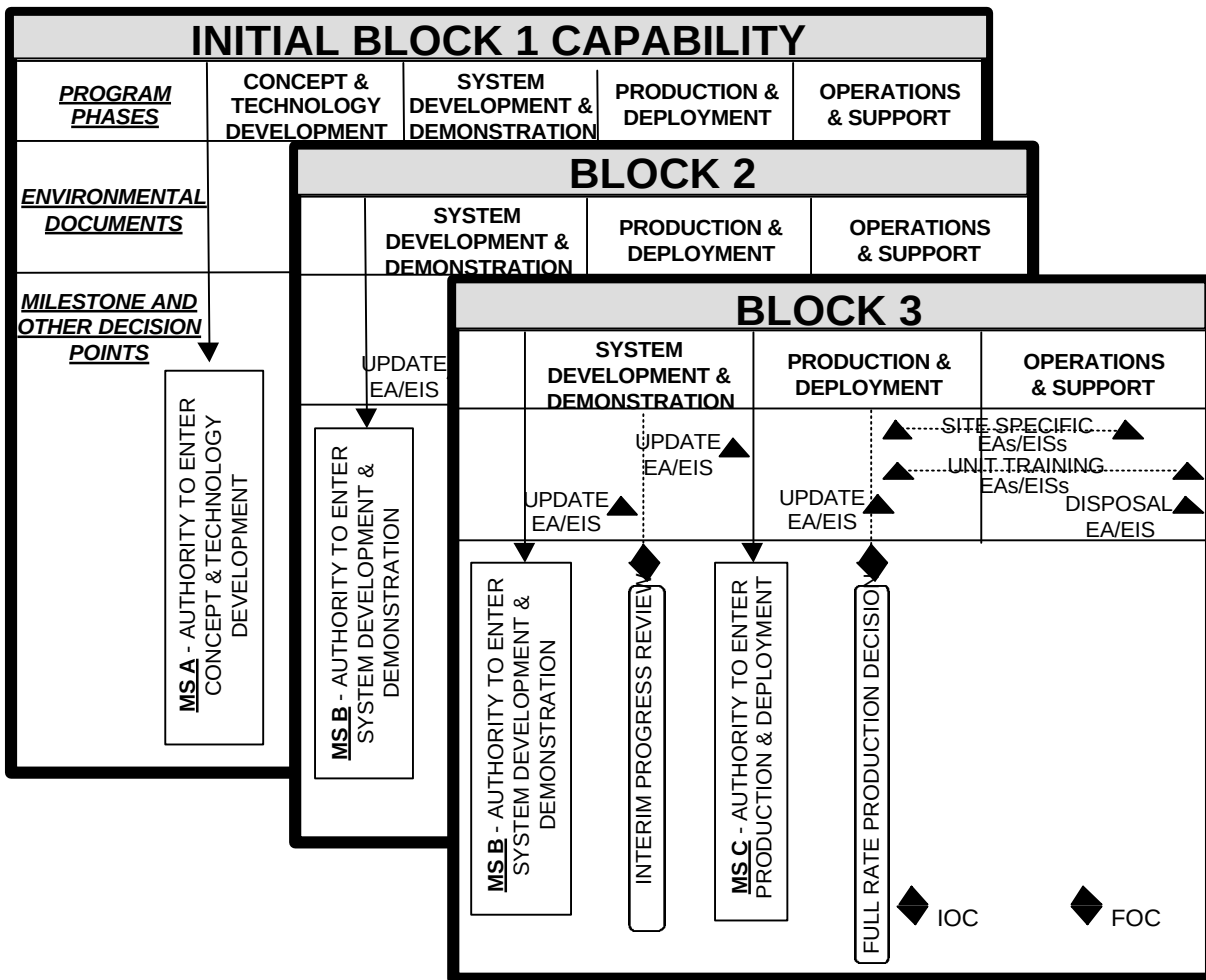
Figure 9-1 Typical Acquisition Program Activities

PM should include his strategy for accomplishing NEPA requirements in the Support Strategy Section of the Acquisition Strategy. The PM should also indicate those activities (such as system fielding) where users/support installations will be primarily responsible for meeting NEPA analysis requirements.

Figure 9-1 shows the NEPA process relationship for a traditional single step-to-full-system capability program. However, this figure also can represent the **initial block** of an evolutionary-full-system capability. The evolutionary approach to development was introduced in the October 2000 revision of the DoD 5000 Series and is the preferred approach. Using this new approach, where in system acquisition and sustainment phases are typically repeated (Figure 9-2), materiel users receive **two or more incremental blocks** of increasing capability until full system capability is reached. It is designed to put initial blocks of operating capability in the hands of the user in a relatively short period of time. Each follow-on block may take additional months or years to complete, and require new or updated (supplemental) NEPA analyses at key decision points.

The DoD 5000 Series describes both single step and evolutionary methods of acquiring systems. The application of NEPA to acquisition programs is often more complex than its application to other types of Army actions. This complexity stems from the nature of the acquisition management system/model, which provides a logical means to progressively translate broad mission needs, often over many years, into well-defined system-specific requirements, and ultimately, into effective, suitable and survivable weapon systems.

Responsibility for conducting and documenting acquisition program NEPA analyses varies from program to program and from phase to phase. It is unlikely that any meaningful program NEPA analysis is possible prior to program initiation because very few specifics are known. Milestone B is the point where most acquisition programs are initiated. NEPA-related activities prior to program initiation are usually the responsibility



Note: Ultimate capability delivered to the user is divided into two or more blocks depending on overall requirement and program parameters

Figure 9-2 Evolutionary Approach To Full System Capability

of the Combat Developer (CBTDEV) and the Federally funded laboratories or other DoD activities (e.g., AMC Commodity Commands, USASMDC, PEOs, PMs, etc.) responsible for funding development of the desired technologies. Federally funded research performed by educational institutions and private companies and laboratories is not excluded from the requirements of NEPA. The CBTDEV should include language in the Mission Need Statement (MNS) which emphasizes the need to minimize the materiel solution's adverse environmental effects. As the Operational Requirements Document (ORD) is developed during the System Development and Demonstration Phase, and reviewed in later phases, it is also the responsibility of the CBTDEV to further refine the environmental language and considerations first developed for the MNS.

Normally, the Materiel Developer (MATDEV) assumes responsibility for most NEPA activities after program initiation, usually Milestone B. It should be noted that Milestone B is often the point where a PM is assigned. On occasion, activities (e.g., developmental tests) that follow program initiation are covered by existing NEPA documents, such as in a complete test range wide EIS. Responsibility to ensure that these activities (i.e., the aforementioned tests) are fully covered by a NEPA analysis, and are considered while making the decision, remains with the PM.

The MATDEV PM is responsible for analyzing the entire acquisition program life cycle. The NEPA document prepared early on in the System Development and Demonstration Phase must include a programmatic analysis of everything that is known about system development and demonstration activities, fielding and deployment, operation, training, and ultimate disposal. As described in Chapter 8, the preparation of a programmatic (life-cycle) NEPA analysis will allow follow-on, site-specific analyses to be simplified through tiering, and help to avoid the potential problem of segmenting program actions.

Later, after the Full Rate Production Decision, NEPA analysis responsibility for fielding a weapon system normally resides with the receiving command, installation, and/or unit. This transition of NEPA responsibility applies to a single-step acquisition program (Figure 9-1), as well as to each individual block of an evolutionary weapon system approach (Figure 9-2). In each case, the MATDEV PM should provide applicable NEPA documents (e.g., generic system deployment environmental analyses) and other supporting information to receiving commands and installations for their use in analyzing and documenting system fielding activities.

At the end of the program's life cycle, in preparation for system disposal, NEPA responsibility will likely fall on the designated materiel manager at either the MATDEV or owning commands. Who has responsibility for system disposal will vary depending on the type of materiel (including any critical environmental issues associated with it), the quantity of materiel, and location of the materiel. Designation of such responsibilities should be identified early on by the MATDEV in their development of system demilitarization and disposal plans.

Acquisition managers should generally adhere to the process described above. However, they must tailor their program, whenever appropriate, to satisfy individual program needs. A "one-size-fits-all programs" approach to acquisition NEPA compliance is not realistic. Individual programs should tailor life-cycle supplemental and tiered NEPA analysis in accordance with their specific acquisition strategy.

9.2 Milestone A - Approval to Enter the Concept and Technology Development Phase

At Milestone A, a decision is made to study program alternative concepts to satisfy the mission need, and funding is provided to enter the Concept and Technology Development

phase. This normally does not constitute the initiation of an acquisition program, but rather, is generally the initiation of a science and/or technology program. Under normal circumstances, there is not an assigned PM.

9.3 Concept and Technology Development Phase

The Concept and Technology Development phase explores materiel concept alternatives and available technologies to satisfy the mission need; defines the most promising concepts; develops supporting analyses and information; develops a proposed acquisition strategy; and develops initial program objectives for cost, schedule, and performance for the most promising system concept(s).

Alternative concepts and technologies are identified which could potentially fulfill and satisfy an identified mission need. It is desirable that the set of alternative concepts identified are environmentally diverse enough to provide alternative solutions which avoid or minimize adverse environmental effects. For example, if it is assumed that lead-based propellants will be used, the Army may be locked into an undesirable environmental position. A more desirable position would also include the consideration of non-lead based propellants. It should be noted, that even though activities during the Concept and Technology Development phase are not normally part of a formal acquisition program, they are not necessarily exempt from the requirements of NEPA. In particular, those activities associated with testing should be reviewed to determine if a NEPA analysis is required.

This phase normally culminates with a decision to initiate an acquisition program (Milestone B). By Milestone B, a preliminary understanding of the magnitude of the environmental considerations associated with each concept to be studied should be known.

9.4 Milestone B - Approval to Enter the System Development and Demonstration Phase

At Milestone B, a determination is made that a new acquisition program is warranted and an Acquisition Program Baseline (APB) is established consisting of the initial program cost, schedule, and performance thresholds and objectives. Of the alternatives studied in the Concept and Technology phase, the most promising alternative(s) is/are selected to continue into the System Development and Demonstration phase. This is the initiation point for most acquisition programs and the normal point where a PM is assigned. DoDI 5000.2 requires the development of a program NEPA schedule in support of a Milestone B decision. The Instruction also requires that full funding be in place.

If the Evolution to Full Capability model is followed (Figure 9-2), the second and subsequent blocks usually are initiated by Milestone B decisions as well. Follow-on blocks proceed through the same process as the initial block. Each follow-on block will normally need updated (supplemental) or tiered NEPA analyses and documentation.

9.5 System Development and Demonstration Phase

Early in the System Development and Demonstration phase, the PM must complete the initial Programmatic Environmental, Safety, and Occupational Health Evaluation (PESHE). At this point, it is likely that the PESHE will have information voids. Since the PESHE covers the entire system life-cycle, subsequent phases may not be completely defined. These shortcomings will be overcome later on by PESHE updates as the program progresses and more is known about life-cycle activities. The PM must ensure that other program documentation and decisions include consideration of any associated environmental impacts and/or mitigations.

A key consideration for PMs early in the development process is to assess considerations of the environmental impacts of operation of Army materiel systems in the field. It is critical to identify and consider the potential effects of fielding, operation, and ultimately disposing of systems early in their system development. As programs proceed, opportunities for adjusting the system design to accommodate environmental concerns become more and more limited.

During System Development and Demonstration, the system proponent (normally the PM) uses the systems engineering process to define sub-system requirements; develop prototypes; explore alternative designs; evaluate risks to cost, schedule, and performance; and develop system specifications. The design specifications must consider environmental requirements, and reflect the PESHE analysis. Systems engineering is the process that drives the technical development of a weapon system and determines the system's environmental "footprint." Environmental engineering, one of the disciplines managed by systems engineering, is fundamental to minimizing resulting environmental impacts. The Support Strategy portion of a program's Acquisition Strategy provides guidance to the systems engineering process. The PESHE should also contain a comprehensive strategy to implement the hazardous materials and pollution prevention (P²) programs. If this strategy is effectively applied to the systems engineering process, implementation of the NEPA process will likely be less complicated.

During the System Development and Demonstration phase, system attributes and characteristics are developed and identified. A number of lower-level system design alternatives may be evaluated and long-lasting decisions may be made. Decisions made during the System Development and Demonstration phase will eliminate many future system options. NEPA analyses of alternatives considered should be performed to support these decisions. It is important to remember that whenever decisions are being made that may have significant environmental impacts, NEPA analyses must be conducted to support those decisions, regardless of the acquisition phase. It is important

that, as issues are identified, evaluated, and resolved, environmental issues are also identified and become part of the decision-making process. System Development and Demonstration phase activities will often involve evaluations regarding potential use of hazardous materials and production of hazardous wastes, environmental risks, and environmental life-cycle costs. System Development and Demonstration phase activities also involve drafting a Hazardous Materials Management Plan (HMMP) and a plan for NEPA analysis for later life-cycle activities, such as testing, manufacturing, fielding and disposal. Reviews are accomplished through Working Level and Overarching IPTs which address critical issues and establish exit or "pass" criteria for milestone decisions.

Normally, formal NEPA analysis and documentation efforts commence after the System Development and Demonstration phase approval with the initiation of a programmatic environmental analysis covering the potential environmental impacts of each alternative throughout the system life-cycle. In all cases, a programmatic environmental analysis must be completed by the Interim Progress Review and Decision (see Figure 9-1). This review, by the Milestone Decision Authority (MDA), is a mid-phase determination to move from system development to system demonstration. The programmatic environmental analysis, which is the proponent's responsibility, may take the form of either an EA or an EIS, depending on whether significant environmental impacts and/or public controversy would be expected. There are many unknowns in an acquisition program at this stage, but the life-cycle analysis should be performed in as much detail as the available information allows, addressing the nature of the system itself. Expected impacts related to testing, development, production, fielding, operation, and disposal known at the time, should be included. The programmatic analysis that is developed in this phase will normally be supplemented or tiered from during later program phases.

Impacts that are site-specific, or new information on activities which will occur during later phases of the acquisition process, should be addressed in supplemental or tiered NEPA analysis. These supplemental documents must then incorporate the characteristics of potential fielding sites, or other decisions made in the later stages of the acquisition

process. See Sections 8.2 and 8.3 of this manual for further details on programmatic analyses and tiering, respectively.

During the System Development and Demonstration phase, the IPTs and the project office should continue P² efforts that were initiated earlier. As a minimum, potential environmental consequences and appropriate mitigation measures must be identified during this phase. The NEPA process, P² efforts, and other environmental studies should be mutually supportive to avoid duplication of effort.

As noted in Section 2.2 of this manual, NEPA planning should begin during initial development of the Acquisition Strategy (AS). Analysis under NEPA has an independent legal requirement, but is also one of the areas included in the PESHE specified by DoD 5000.2-R. The PESHE evaluation's strategies, plans, and status are a component of the Support Strategy section of the AS. The PESHE evaluation addresses a program's life-cycle plans and status concerning NEPA. NEPA analysis will normally evaluate all environmental impacts, including hazardous materials/waste and health and safety issues.

Regardless of the approach utilized, it is extremely important that appropriate IPTs be kept informed of the known relevant facts associated with the life-cycle of each basic system concept. The IPTs should ensure that enough information is known about the project so that potential "show-stopper" issues are, to the extent possible, avoided in later phases. The IPTs must closely coordinate and share information to determine whether decisions made at this point may result in significant environmental impacts.

9.6 Milestone C - Production and Deployment Approval

At Milestone C, a determination is made whether the program warrants continuation, and the APB, with associated program cost and schedule, is refined. A favorable Milestone C

decision is the commitment to produce, deploy, and support the system. The system design is complete and manufacturing plans have been approved, consequently, opportunities for reducing environmental effects are greatly reduced. Once the design is finalized, retrofitting the system to mitigate environmental impacts becomes very expensive. The MDA must re-confirm that the potential environmental consequences of the program have been analyzed and that appropriate mitigation measures have been developed. As a result of refining and completing the development of potential environmental consequences and appropriate mitigation measures, the programmatic analysis previously prepared and updated will normally need to be updated or supplemented. This can be accomplished by tiering, or in some cases, undertaking completely new analyses as appropriate. An updated schedule for completion of all anticipated NEPA activities is a DoDI 5000.2 requirement for a Milestone C decision.

Although fielding decisions are the responsibility of the Department of the Army, the MATDEV and installation commanders have some responsibilities to ensure NEPA requirements for fielding are fully satisfied. Prior to the fielding decision(s), the PM (or other appropriate materiel developer office) is responsible to ensure that the life-cycle programmatic analysis, or other appropriate analyses, adequately reflects potential impacts in a generic sense when exact fielding sites are not yet known.

The Materiel Developer should provide any pertinent NEPA analysis and supporting documentation to the receiving commands to facilitate their preparation of any site-specific required NEPA analysis. Funding for site-specific fielding/deployment NEPA analyses are the receiving command's/installation's responsibility.

9.7 Production and Deployment Phase

Production and Deployment phase efforts establish a stable and efficient production and support base, achieve operational capability, and establish a training capability for the remainder of the system life-cycle.

A major environmental function of the project office during the Production and Deployment phase is to monitor the mitigation activities as defined in the programmatic and lower tiered NEPA analysis documents to ensure the mitigations are being carried out. They must also ensure that procedures for the ultimate demilitarization and disposal of the materiel system are finalized and that no new environmental effects are created which would require mitigation.

During the first portion of the Production and Deployment phase a number of activities are undertaken. They include Low Rate Initial Production (LRIP), Operational and Live Fire Test and Evaluation, and the establishment of a Full Rate Production (FRP) capability. This portion of the Production and Deployment phase ends with a FRP Review and Decision by the MDA. The program's NEPA analysis and documentation must be evaluated to determine if supplementation or tiering is required to support the decision. It is likely that some further analysis will be required because of design changes and more knowledge of the system and its use.

9.8 Operations and Support Phase

The Operations and Support Phase overlaps with material fieldings and begins after initial systems have been fielded. A major NEPA-related responsibility of the project office or designated materiel management office during this phase is the auditing and monitoring of the mitigation measures outlined in earlier environmental documentation.

During deployment, the focus of many environmental-related issues will shift from the PM to the gaining organization. Deployment of the system may require construction of storage, maintenance, training, or other facilities. Cleaning, maintaining, fielding, storing, etc., will cause environmental issues that must be dealt with during deployment and operation of the system. Deployment and operational NEPA analyses and other site-specific environmental requirements normally are the responsibility of the receiving command and installation.

An organization equipped with the acquired materiel system may need to train with the equipment in order to gain and maintain their operational and combat proficiency. In such instances, site-specific NEPA and other training-related environmental requirements also must be addressed and satisfied by the unit being trained, the organization providing the training, and/or the installation where the training takes place.

9.9 Modifications

Major modification approvals are utilized as required. System upgrades and modifications are discussed in Section 3.5 of this manual. The MDA determines whether or not a system upgrade or major modification is warranted. Once a determination has been made as to when the system upgrade or modification will begin, the PM or other designated materiel manager must revise the acquisition baseline. System modifications may be driven by a desire to modify equipment produced during earlier blocks to make their capabilities match the equipment produced in later blocks.

The project office will need to be involved in any major upgrade or modification to the system. The upgrade or modification should be evaluated by the project office for environmental impacts, compliance, and P² concerns. Based on the scope of the modification, a decision must be made regarding the need to prepare or update NEPA

documentation. Once the acquisition baseline has been identified for the upgrade or modification, the project office will need to carry out activities described previously for all the acquisition phases in the modification effort.

9.10 Demilitarization and Disposal

Demilitarization and disposal usually occurs during or after completion of the operational and support phase. Small quantities of any materiel system may require demilitarization and disposal during the operational and support phase because it may be rendered economically unrepairable due to accidents and/or major breakdowns. Unless sold as foreign military sales, the balance of the materiel system will be demilitarized and disposed of when it is no longer needed by the operational force.

Demilitarization will be accomplished according to procedures, which are normally developed early in the Production and Deployment phase. The designated materiel manager must ensure that materiel is demilitarized and disposed of in a manner that minimizes DoD's liability due to environmental, safety, security, and health issues. The time between initial deployment and demilitarization and disposal may exceed twenty years. Consequently, demilitarization procedures must be kept current with all regulatory and technological changes that occur over time.

The environmental consequences of system demilitarization and disposal activities must be analyzed and, in all likelihood, a NEPA analysis will be required for system closeout. The depth and span of NEPA analysis to be undertaken will vary with the critical environmental issues surrounding system disposal. Special attention should be directed to hazardous materials disposition and, as appropriate, pollution concerns.

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TITLE 42 -- 42 U.S.C.

THE PUBLIC HEALTH AND WELFARE

Chapter 55 -- National Environmental Policy

Sec.4321 -- Congressional Declaration of Purpose

The purposes of this chapter 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.

Pollution Prosecution

Pub.L.101-593, title II, Nov. 16, 1990, 104 Stat.2962, provided that:

Sec.201 -- Short Title.

"This title may be cited as the 'Pollution Prosecution Act of 1990'.

Sec.202 -- EPA Office of Criminal Investigation.

"(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office --

- "(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;
- "(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;
- "(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;
- "(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;
- "(5) beginning October 1, 1995, is not less than 200.

"(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

"(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. or a career reserve position as defined in 3132(A) of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

Sec.203 -- Civil Investigators.

"The Administrator, as soon as practicable following the date of the enactment of this Act (Nov. 16, 1990), but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

Sec.204 -- National Training Institute.

"The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

Sec.205 -- Authorization.

"For the purposes of carrying out the provisions of this Act (probably should be "this title"), there is authorized to be appropriated to the Environmental Protection Agency \$13,000,000 for fiscal year 1991, \$18,000,000 for fiscal year 1992, \$20,000,000 for fiscal year 1993, \$26,000,000 for fiscal year 1994, and \$33,000,000 for fiscal year 1995."

Subchapter I -- Policies and Goals

Sec.4331 -- Congressional Declaration of National Environmental Policy

(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 chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent 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 esthetically 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.4332 -- Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts

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 chapter, 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 decisionmaking 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 subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking 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, 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

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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 chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. (1)

Note 1: So in original. The period probably should be a semicolon.

(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 subchapter II of this chapter.

Sec.4333 -- Conformity of Administrative Procedures to National Environmental Policy

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 chapter 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 chapter.

Sec.4334 -- Other Statutory Obligations of Agencies

Nothing in section 4332 or 4333 of this title 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.4335 -- Efforts Supplemental to Existing Authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

Subchapter II -- Council on Environmental Quality

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Sec.4341 -- Reports to Congress; Recommendations for Legislation

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.4342 -- Establishment; Membership; Chairman; Appointments

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 subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, 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.4343 -- Employment of Personnel, Experts and Consultants

- (a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. 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 chapter, in accordance with section 3109 of title 5 (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.4344 -- Duties and Functions

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 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 subchapter I of this chapter, 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 subchapter I of this chapter 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.4345 -- Consultation with Citizens Advisory Committee on Environmental Quality and Other Representatives

In exercising its powers, functions, and duties under this chapter, the Council shall --

- (1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 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.4346 -- Tenure and Compensation of Members

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 U.S.C.5313). The other members of the Council shall be compensated at the rate provided for Level IV or (2) the Executive Schedule Pay Rates (5 U.S.C.5315).

Note 2: So in original. Probably should be "of".

Sec.4346a -- Travel Reimbursement by Private Organizations and Federal, State, and Local Governments

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.4346b -- Expenditures in Support of International Activities

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.4347 -- Authorization of Appropriations

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.

COUNCIL ON ENVIRONMENTAL QUALITY REGULATION

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 deemphasize 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

Sec.

- 1501.1 Purpose.
- 1501.2 Apply NEPA early in the process.
- 1501.3 When to prepare an environmental assessment.
- 1501.4 Whether to prepare an environmental impact statement.
- 1501.5 Lead agencies.
- 1501.6 Cooperating agencies.
- 1501.7 Scoping.
- 1501.8 Time limits.

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 deemphasizing 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 decisionmaking 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 decisionmaking.

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) In 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 decisionmaking 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.
- (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

Sec.

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- 1502.25 Environmental review and consultation requirements.

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 decisionmakers 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:

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- (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 decisionmaker.
- (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 decisionmaking.
- (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 decisionmaking 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 decisionmakers 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 decisionmaker 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:

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- (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.

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(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 leadtime 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).

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(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

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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-
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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 basinwide 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.

CEQ FORTY MOST ASKED QUESTIONS

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, commentors 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.]

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 microficheing 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 EISs. 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.** Must (EAs) and FONSI 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. 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. 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.

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 Scoping Guidance

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IV. Brief Points For Applicants

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 gage 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 view. The innovative approach to scoping in the regulations is that the process is open to the public and state and local averments, 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 in 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 limits 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 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 cements 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 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 issues 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 proposal 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 some 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 impacts, 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 comments. 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 scoping stage. The fact that you are willing to discuss openly a proposal before you have committed substantial resources to it will often enhance the chances 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 other's 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 grandstanding substitutes for substantive comments. Many agencies resort to a formal hearing-type format to maintain control, and this can cause resentments among participants who came 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 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 scoping process could be the same Federal Register notice. And because the notice of intent must be published anyway, the scoping notice would be essentially free. But use of the Federal Register 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 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 individually. 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 notices 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 offers 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 informal meetings in mall 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 number 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 members 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 its 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 of the methods described above. The discussion groups are then to return to the large meeting to report on the results of their ranking. 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 "de-emphasize" 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 complained that the timesavings 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 special 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 de-emphasized 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 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 post-scoping 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 EIS 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 a 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 two 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 or 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 so that sane 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. Videotape 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 same 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 cannon 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 reported 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 of the 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 here 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) for all but exceptional cases, in other agencies you must go to regional offices for scoping comments and commitments (e.g., EPA, Fish and Wildlife Service, Water and Power Resources 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 and 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

alternative 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 and 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 one 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, 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. Sane agencies have found themselves in a tactical crossfire 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 wherever 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, whom the affected parties are, and where accommodations can be made. Scoping is an ideal meeting place for all the interest groups if your proposal are, who the affected parties 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 negotiations with the affected parties.

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.

GUIDANCE ON POLLUTION PREVENTION AND NEPA

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 so 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 shipmaster 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 22nd 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.



Federal Register

**Thursday,
September 7, 2000**

Part II

Department of Defense

Department of the Army

**32 CFR Part 651
Environmental Analysis of Army Actions;
Proposed Rule**

DEPARTMENT OF DEFENSE**Department of the Army****32 CFR Part 651**

[Army Reg. 200–2]

Environmental Analysis of Army Actions**AGENCY:** Department of the Army, DoD**ACTION:** Notice of proposed rule.

SUMMARY: The Department of the Army hereby gives notice that it is adopting revised policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) Code of Federal Regulations (CFR) (40 CFR parts 1500–1508). 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 regulation, 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 proposed 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.

DATES: Submit comments on or before November 6, 2000.

ADDRESSES: Army Environmental Policy Institute, 101 Marietta Street, Suite 3120, Atlanta, GA 30303–2716. Comments or requests for changes may be submitted on a Department of Defense Form 2028, Recommended Changes to Publications and Blank Forms.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Webster, Army Environmental Policy Institute (404) 880–6707.

SUPPLEMENTARY INFORMATION:**Background**

This proposed rule revises policies and responsibilities for assessing the effect of Army actions (32 CFR part 651). The last major revision of this regulation was previously published in 53 FR 46324, November 16, 1988. Since that time, initiatives such as the National Performance Review have tended to streamline the Federal Government through decentralization, reduction and simplification of regulations.

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 the proposed regulation under the Regulatory Flexibility Act. It has been certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

This regulation 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 proposed rule is issued with respect to the National Environmental Policy Act of 1969 and therefore establishes Army's responsibilities for the early integration of environmental consideration into planning and decision-making. This proposal should not impact the provisions of Executive Order 12630 or the Private Property Rights Act.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The proposed 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 proposal will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies. The proposal 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 proposed 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 proposed 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 proposed rule is issued with respect to existing environmental guidelines and laws. Therefore, the proposed rule should not directly impact this executive order.

Unfunded Mandates Act

This proposal 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 regulation 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

Environmental impact statements, Environmental protection, Foreign relations, Natural resources.

Dated: July 27, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

For the reasons as set forth in the preamble, 32 CFR Part 651 is proposed to be 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

- 651.9 Introduction.
- 651.10 Actions requiring environmental analysis.
- 651.11 Environmental review categories.
- 651.12 Determining appropriate level of NEPA analysis.
- 651.13 Classified actions.
- 651.14 Integration with Army planning.
- 651.15 Mitigation and monitoring.
- 651.16 Cumulative impacts.
- 651.17 Environmental justice.

Subpart C—Records and Documents

- 651.18 Introduction.
- 651.19 Record of Environmental Consideration.
- 651.20 Environmental Assessment.
- 651.21 Finding of No Significant Impact.
- 651.22 Notice of Intent.
- 651.23 Environmental Impact Statement.
- 651.24 Supplemental EAs and Supplemental EISs.
- 651.25 Notice of Availability.
- 651.26 Record of Decision.
- 651.27 Programmatic NEPA analyses.

Subpart D—Categorical Exclusions

- 651.28 Introduction.
- 651.29 Determining when to use a CX (screening criteria).
- 651.30 CX actions.
- 651.31 Modification of the CX list.

Subpart E—Environmental Assessment

- 651.32 Introduction.

- 651.33 Actions normally requiring an EA.
- 651.34 EA components.
- 651.35 Decision process.
- 651.36 Public involvement.
- 651.37 Public availability.
- 651.38 Existing environmental assessments.
- 651.39 Significance.

Subpart F—Environmental Impact Statement

- 651.40 Introduction.
- 651.41 Conditions requiring an EIS.
- 651.42 Actions normally requiring an EIS.
- 651.43 Format of the EIS.
- 651.44 Incomplete information.
- 651.45 Steps in preparing and processing an EIS.
- 651.46 Existing EISs.

Subpart G—Public Involvement and the Scoping Process

- 651.47 Public involvement.
- 651.48 Scoping process.
- 651.49 Preliminary phase.
- 651.50 Public interaction phase.
- 651.51 The final phase.
- 651.52 Aids to information gathering.
- 651.53 Modifications of the scoping process.

Subpart H—Environmental Effects of Major Army Action Abroad

- 651.54 Introduction.
- 651.55 Categorical exclusions.
- 651.56 Responsibilities.
- Appendix A to Part 651—References
- Appendix B to Part 651—Categorical Exclusions
- Appendix C to Part 651—Mitigation and Monitoring
- Appendix D to Part 651—Public Participation Plan
- Appendix E to Part 651—Content of the Environmental Impact Statement
- Appendix F to Part 651—Glossary

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 Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) for Army actions, and must be read in conjunction with it.

(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).

§ 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.* ASA(I&E) 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) 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, 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 (AAPPSSO) 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 regulation 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 regulation.

(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 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) Support and defend Army NEPA requirements, if requested, through the Environmental Program Requirements (EPR) process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Identify Army-wide NEPA requirements and shortfalls through analysis of Army programming and execution data, and develop and execute programs and initiatives to address them.

(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.

(iii) Drafting of the formal response from ASA(I&E) to the MACOM, varying from project to project (based upon the technical issues involved, the degree of public interest, the possibility of controversy, and other project-specific considerations).

(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) Assist Headquarters proponents to fund 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).

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

(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 requirements for environmental exhibits and displays

of data 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 or 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 appropriate proponent 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 and plans the preparation of necessary NEPA documentation.

(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 EAs and EISs with the Office of the DEP (ODEP).

(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 irretrievable 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 regulation 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 Regional Support Commands; and Director, National Guard Bureau—Army Reserve (NGB-ARE) (Installation Commanders.* Installation Commanders; Commanders of U.S. Army Reserve Regional Support Commands; and Director, National Guard Bureau—Army Reserve (NGB-ARE) (Installation Commanders will:

(1) Establish an installation (organizational) 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 PM to coordinate and manage the installation'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 EISs and EAs through the MACOM to ODEP.

(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 seriously considered.

(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 environmental analyses 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 offerers.

(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 § 651.13(a). 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 draft and final EISs and Records of Decision (RODs) to ODEP for forwarding 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 § 651.13(e).

(10) Identify and establish partnerships with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a resource that might be impacted. These partnerships 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) U.S. Army COE Civil Works 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 Native American 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 unfunded mitigations to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unfunded 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 § 651.13 (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. Documents and transmittal packages will be acted upon within 14 calendar days of receipt by the subject office. 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 regulation. 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 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 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 projects implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) will not require separate NEPA analysis as long as the effort is conducted in a manner that incorporates NEPA requirements. If the following conditions are not met, additional or separate NEPA analyses and documentation will be required. This will require that:

(1) Prior to analysis and evaluation, full and open public participation will be facilitated to elicit views regarding alternative remedies and to frame the

issues to be addressed in the analyses (the scope of the study);

(2) Proposed and alternative remedies, including the No Action alternative, will be addressed evaluating the significance of impacts, including off-site effects, resulting from alternative remediation processes; and

(3) The resulting document, such as the Feasibility Study (FS) or Engineering Evaluation/Cost Analysis (EE/CA), will be circulated for public review and comment. This review will require a minimum of 30 days and consideration of public comments prior to a decision being made. This analysis must be performed by an interdisciplinary team and must address impacts on the human and natural environment.

(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 a process, not a document and is, thus, not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this regulation 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 operational 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, 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)), 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 who, what, where, when, and how the document will be prepared. 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 being processed. After initial scoping, it is released to the public for review and comment (for example, a draft FNSI/EA or draft EIS). This document will be complete and accurate prior to public release. 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(e).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45(a)(1), (d)(1), (d)(2), (g), and (i), respectively. 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 final EAs and EISs will be forwarded to ODEP for cataloging and retention in the Army NEPA library. The ACSIM shall retain a copy of each draft EIS (DEIS) until such time as the final EIS (FEIS) is approved. The FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACS(IM) 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 § 651.13(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 all reasonable alternatives to 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 often consults 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 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; and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan.

(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) Requests for 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.

(m) Actions taken in response to the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Recovery and Compensation Act (CERCLA) (see § 651.5(1)).

§ 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 may need to take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property. In such cases, 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 Environmental Security (DUSD(ES)) 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 regulation or the CEQ regulations. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this consultation 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. Any actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA (see § 651.29).

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (§ 651.11(a) through (c)) 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 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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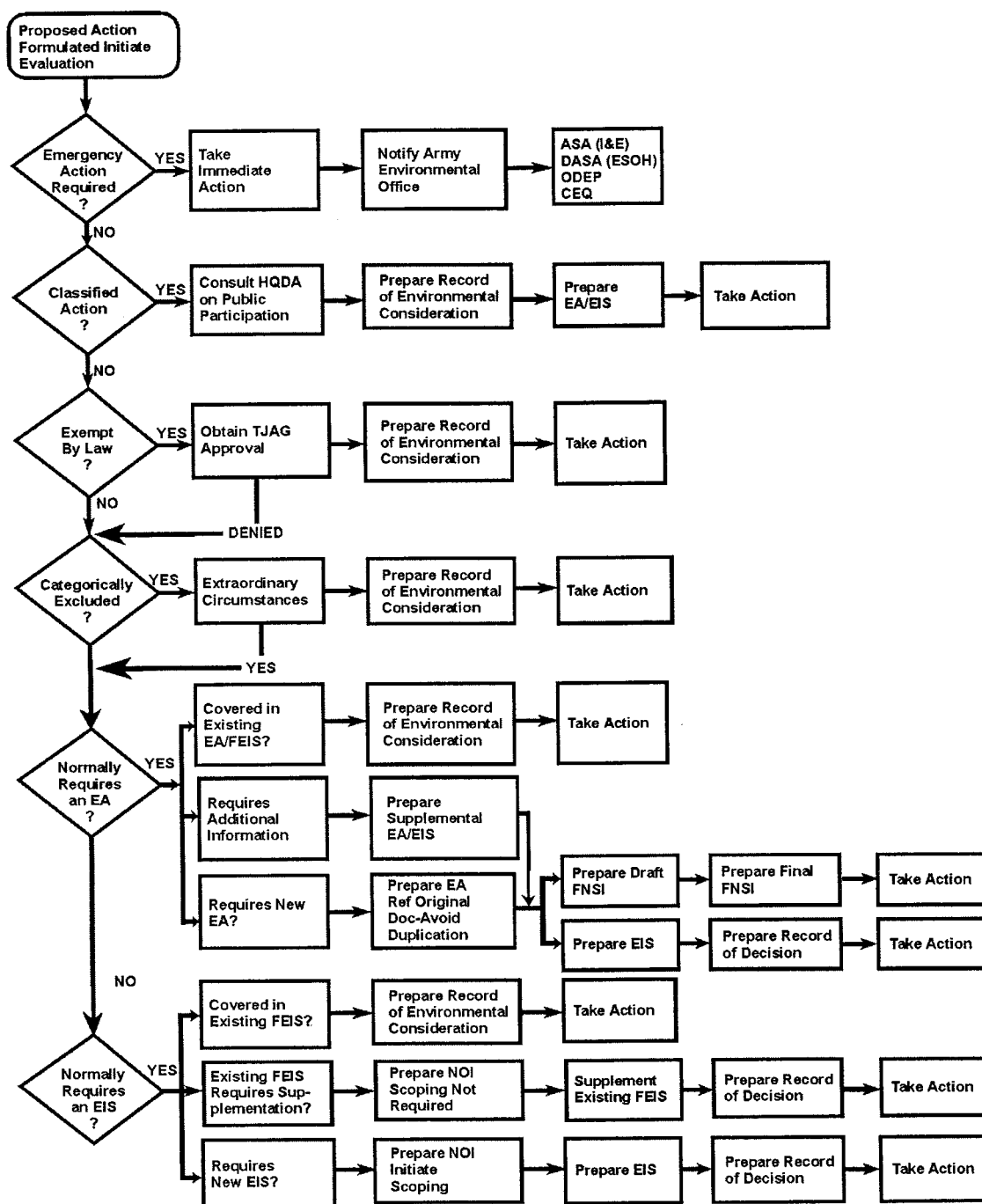


Figure 1. Flow chart summarizing process for determination of document requirements.

(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). 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 retain record keeping for RECs and RODs.

§ 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 regulation. 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.

§ 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 plan for completing NEPA analysis to support any recommendation or report to decision makers prior to the decision. 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 discussion of minor issues to help focus analyses.

(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 at 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.¹

(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 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, 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 period, as specified in Figure 2, the proponent may sign the FNSI and take immediate action, unless sufficient public comments are received to

¹ 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 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 § 651.14(c).

warrant more time for their resolution.
Figure 2 follows:

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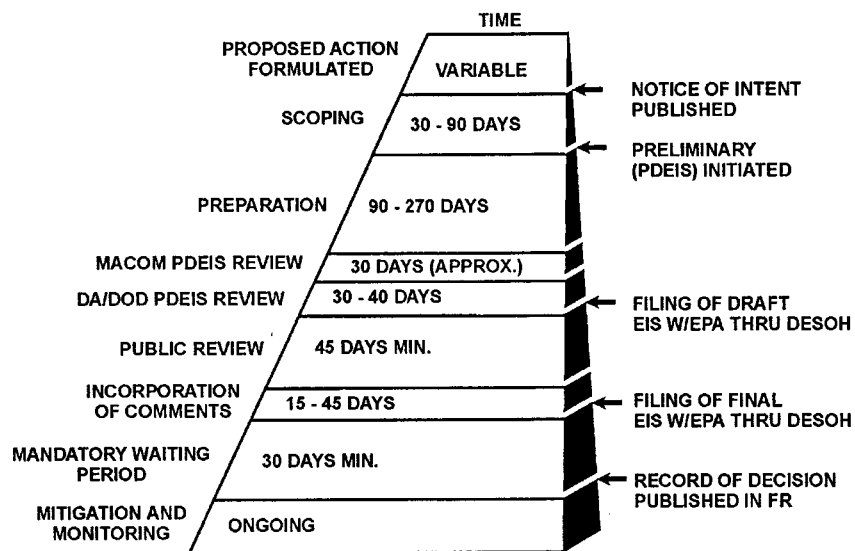


Figure 2. Time involved for preparing and processing an environmental impact statement.

(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 § 651.14(a)). 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 for receipt of comments 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 1506.6(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 1506.10(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. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. 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.² This subsequent 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

² 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 identified in a programmatic EA or EIS prepared by the MATDEV.

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.

(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) DODD 4700.4, Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).

(22) AR 200-3, Natural Resources—Land, Forest, and Wildlife Management.

(23) Environmental analysis and documentation required by various state laws.

(24) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(25) Any permitting and licensing procedures required by federal and state law.

(26) Any installation and Army master planning functions and plans.

(27) Any installation management plans, particularly those that deal directly with the environment.

(28) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(29) Environmental Noise Management Program.

(30) Hazardous waste management plans.

(31) Integrated Cultural Resource Management Plan as required by AR 200-4.

(32) Asbestos Management Plans.

(33) Integrated Natural Resource Management Plans.

(34) Environmental Baseline Surveys.

(35) 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.

(36) 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.

(37) 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 environmental, social, or economic 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 EISs and RODs.

(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 mitigations that reduce impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigations 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 these identified mitigations do not occur, potentially significant environmental effects are implied, and the proponent must publish an NOI and prepare an EIS.

(d) Mitigation measures that appear practical, but unobtainable within expected resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis. 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) Mitigations determined to be impractical must still be considered, including those to be accomplished by other agencies. The proponent must

coordinate with these agencies so that they can plan to obtain the necessary manpower and funds. Mitigations that were considered but rejected 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 the 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 1505.2c) 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. 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 (§ 651.15(b)).

(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.

(a) Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and

Low-Income Populations, February 11, 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.

(b) The Executive Order requires the proponent to:

(1) Identify minority populations and low-income populations or communities.

(2) Assess effects the proposed action may have on these populations and communities. This assessment should include input from local citizens (for example, existing advisory groups, community groups and leaders, etc.).

(3) Determine if these impacts are disproportionate.

(c) If a disproportionate impact is detected, the proponent will identify possible mitigation measures.

(d) Affected low income communities and minority communities must be included in the public participation aspects of NEPA, including scoping. In

such cases, proactive efforts must be made to incorporate minority or low-income populations into the public participation requirements of NEPA. Environmental Justice (EJ) considerations must be considered in all Army EAs and EISs.

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. The following records and documents are required:

§ 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:

BILLING CODE 3710-08-P

Record of Environmental Consideration (REC)	
To: (Environmental Officer)	
From: (Proponent)	
Project title:	
Brief description:	
Anticipated date and/or duration of proposed action: (Month/year)	
Reason for using record of environmental consideration (choose one):	
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	

Date	Project Proponent

Date	Installation Environmental Coordinator
Variation from this format is acceptable provided basic information and approvals are included in any modified document.	

Figure 3. Suggested format for Record of Environmental Consideration.

§ 651.20 Environmental Assessment.

An Environmental Assessment (EA) is intended to assist agency planning and decision-making. 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 no more than 20 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 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)³ of EISs.

§ 651.26 Record of Decision.

The Record of Decision (ROD) is a concise public document summarizing

³ 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.

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(i)) for application). The ROD must identify mitigations which were important in supporting decisions and ensure that appropriate monitoring procedures are implemented (see § 651.15 for application).

§ 651.27 Programmatic NEPA analyses.

Programmatic NEPA 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 (CX) 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) Potential to adversely affect public health, safety, or the environment.

(2) Possible substantial, direct, indirect, or cumulative impacts.

(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) Discharge 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 Record of Non-applicability (RONA) determination shows air emissions exceed de minimis levels leading to a formal Clean Air Act conformity determination.

(8) Potential to violate 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 § 651.29(c).

(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 precedence (or makes decisions in principle) for future or subsequent actions that may have a future significant effect.

(13) Potential for degradation, while slight, 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 may impact "environmentally sensitive" resources, a CX cannot be used. 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. 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 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 regulation. 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) EAs as short as 20 pages may be adequate to meet the requirements of this regulation, 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 complex enough to 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 precedence (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 natural resources supporting new materiel.

§ 651.34 EA components.

EAs should be no longer than 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 (Figure 3 in § 651.9) 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, or his designee will approve and sign the EA and FNSI documents.

(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 § 651.34) (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. If an action is not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5(g).

§ 651.39 Significance.

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

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

(c) The proponent should use appropriate methods to identify and ascertain the "significance" of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available

to the public, is encouraged.⁴ In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

Subpart F—Environmental Impact Statement

§ 651.40 Introduction.

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

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

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 "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 Army 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 will 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 simultaneous 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 simultaneous 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.

(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 of 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 are as follows:

BILLING CODE 3710-08-P

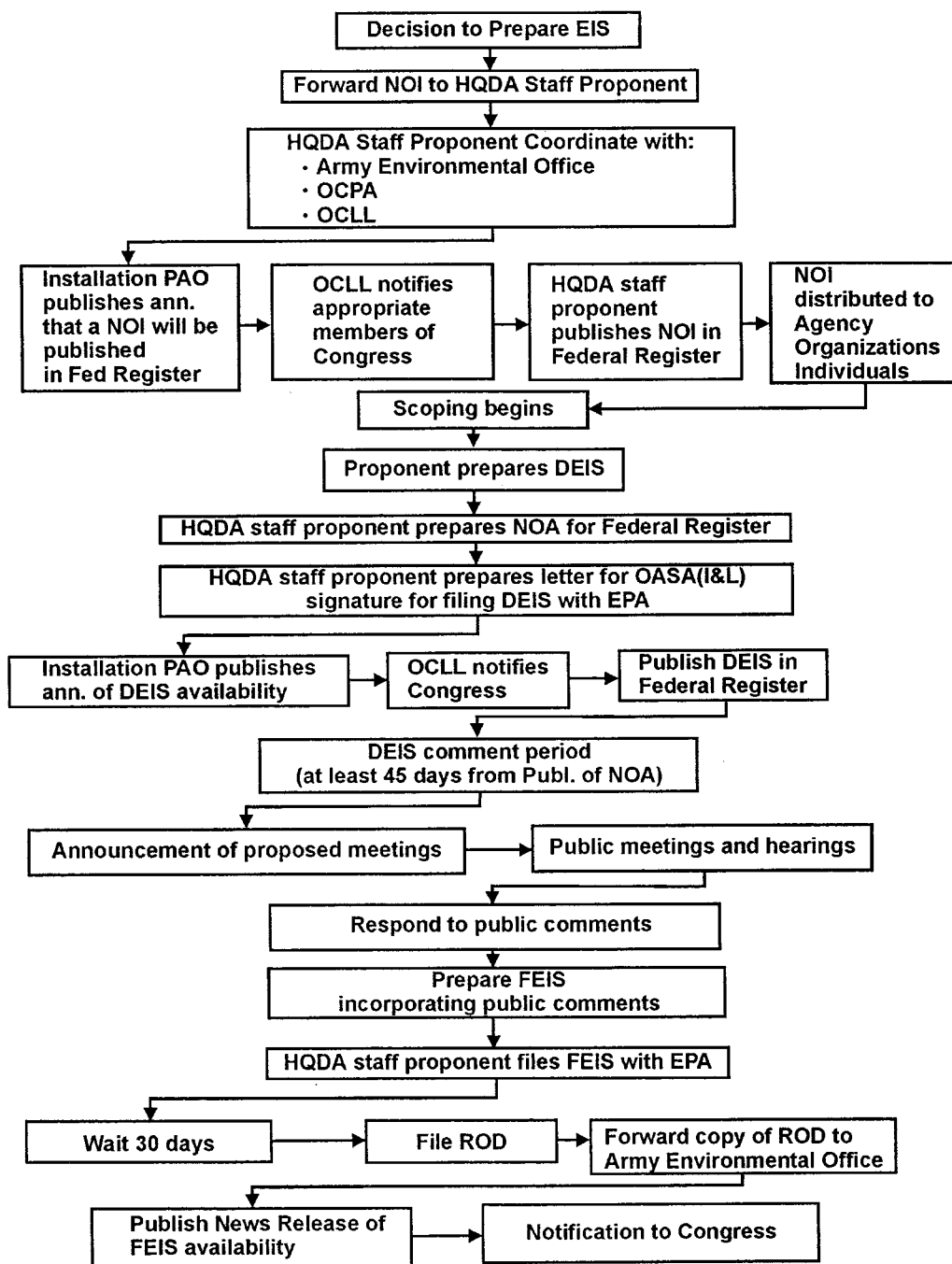


Figure 4. Steps in preparing and processing an environmental impact statement.



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,

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

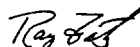

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

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
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.

A handwritten signature in black ink, appearing to read "Ray Fatz", is positioned above the typed name.

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

Subpart G—Public Involvement and the Scoping Process**§ 651.47 Public involvement.**

(a) Public involvement is required for all EISs, and is strongly encouraged, as a matter of Army policy, 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 (at least monthly) 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 Presidential 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 can:

(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 decision-making process.

(c) Scoping is a mechanism to 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) 01, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.249, 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 § 651.47, § 651.40, and § 651.49 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 1501.5–6).

(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 decision-making 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 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 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 § 654.14(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(ES) 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 6050.1

Environmental Effects in the United States of Department of Defense Actions.

DODD 6050.7

Environmental Effects Abroad of Major Department of Defense Actions.

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 Populations 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 Law 86–797, 74 Stat. 1052

The Sikes Act

Public Law 91–190, 83 Stat. 852

National Environmental Policy Act of 1969

Public Law 101–601, 104 Stat. 3048

Native American Graves Protection and Repatriation Act

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 Historic Preservation Act

Public Law 89–665, 80 Stat. 915

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

Note. CFRs may be found in your legal office or law library. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20401.

36 CFR Part 800

Advisory Council on Historic Preservation

40 CFR Part 302

Designation, Reportable Quantities, and Notification.

40 CFR Parts 1500–1508

Council on Environmental Quality.

Section III—Prescribed Forms

This section contains no entries.

Section IV—Referenced Forms

DD Form 1391

Military Construction Project Data.

DA Form 2028

Recommended Changes to Publications and Blank Forms.

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 coordinator (EC), 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. This also includes 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 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 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 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 U.S. Army COE's 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 (part 15, DODI 5000.2), 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).

(7) Acquisition of land for restoration of off-post contamination, in accordance with CERCLA (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.) except depot maintenance of military equipment, which is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles.

(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 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.

(4) Development/operational testing and demonstrations of new equipment at a government or commercial facility where the

tests are conducted in conjunction with normal development or operational activities that have been previously assessed in an Army document pertaining to those operations.

(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 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, MACOM environmental office, the ODEP, COE research laboratories, Huntsville Division, military assistance offices in certain COE districts, and the Department of Defense (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) COE District Geotechnical Staff.
- (5) Ecology:
 - (i) Installation Environmental Specialist.
 - (ii) Installation Wildlife Officer.
 - (iii) Installation Forester.
 - (iv) Installation Natural Resource Committee.
 - (v) COE District Environmental Staff.
- (6) Energy/Resource Conservation:
 - Installation Environmental Specialist.
- (7) Health and Safety:
 - (i) Installation Preventive Medicine Officer.
 - (ii) Installation Safety Officer.
 - (iii) Installation Hospital.
 - (iv) Installation Mental Hygiene or Psychiatry Officer.
 - (v) Chaplain's Office.
- (8) Historic/Archaeological Resources:
 - (i) Installation Environmental Specialist.

- (ii) Installation Historian or Architect.
- (iii) COE District Archaeologist.
- (9) Land Use Impacts:
 - (i) Installation Master Planner.
 - (ii) COE District Community Planners.
- (10) Socioeconomics:
 - (i) Personnel Office.
 - (ii) Public Information Officer.
 - (iii) COE District Economic Planning Staff.
- (11) Water Quality:
 - (i) Installation Environmental Specialist.
 - (ii) Installation Preventive Medicine Officer.
 - (iii) COE 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 COE). 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 reseeding, 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 very limited scope. This contract 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 paragraph (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 1501.5-6).

(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 regulation. Length should be determined by potential environmental issues, not project size. The EIS should be no longer than 200 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 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.

(iv) 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

A AE

Army Acquisition Executive

A APPSO

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)

CBTDEV

Combat Developer

CDNL

C-Weighted Day-Night Levels

CEQ

Council on Environmental Quality

CERCLA

Comprehensive Environmental Response Compensation and Liability Act

CFR

Code of Federal Regulations

COE

Corps of Engineers

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

DTIC

Defense Technical Information Center

DTLOMS

Doctrine, Training, Leader Development, Organization, Materiel, and Soldier

DUSD(ES)

Deputy Under Secretary of Defense for Environmental Security

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

EICS

Environmental Impact Computer System

EIFS

Economic Impact Forecast System

EIS	MFA	ORD
Environmental Impact Statement	Materiel Fielding Agreement	Operating Requirements Document
EJ	MFP	OSD
Environmental Justice	Materiel Fielding Plan	Office of the Secretary of Defense
EOD	MILCON	OSG
Explosive Ordnance Demolition	Military Construction	Office of the Surgeon General
EPA	MNS	PAO
Environmental Protection Agency	Mission Needs Statement	Public Affairs Officer
EPR	MOA	PCB
Environmental Program Requirements	Memorandum of Agreement	Polychlorinated Biphenyls
EQCC	MOU	PDEIS
Environmental Quality Control Committee	Memorandum of Understanding	Preliminary Draft Environmental Impact Statement
ESH	NAGPRA	PEO
Environment, Safety, and Health	Native American Graves Protection and Repatriation Act	Program Executive Officer
FAA	NEPA	PM
Federal Aviation Administration	National Environmental Policy Act	Program Manager
FEIS	NGB	POC
Final Environmental Impact Statement	National Guard Bureau	Point of Contact
FNSI	NHPA	POL
Finding of No Significant Impact	National Historic Preservation Act	Petroleum, Oils, and Lubricants
FR	NOA	PPBES
Federal Register	Notice of Availability	Program Planning and Budget Execution System
FS	NOI	RCRA
Feasibility Study	Notice of Intent	Resource Conservation and Recovery Act
FTP	NPR	RDT&E
Full-Time Permanent	National Performance Review	Research, Development, Test, and Evaluation
GC	NRC	REC
General Counsel	Nuclear Regulatory Commission	Record of Environmental Consideration
GOCO	NWR	ROD
Government-Owned, Contractor-Operated	Notice of Availability of Weekly Receipts (EPA)	Record of Decision
GSA	OASD(PA)	RONA
General Services Administration	Office of the Assistant Secretary of Defense for Public Affairs	Record of Non-Applicability
HQDA	OCLL	RSC
Headquarters, Department of the Army	Office of the Chief of Legislative Liaison	Regional Support Command
ICRMP	OCA	S&T
Integrated Cultural Resources Management Plan	Office of the Chief of Public Affairs	Science and Technology
ICT	ODEP	SA
Integrated Concept Team	Office of the Director of Environmental Programs	Secretary of the Army
INRMP	OFS	SARA
Integrated Natural Resources Management Plan	Officer Foundation Standards	Superfund Amendments and Reauthorization Act
IPT	OGC	SASO
Integrated Process Team	Office of General Counsel	Stability and Support Operations
ISCP	OIPT	SOFA
Installation Spill Contingency Plan	Overarching Integrated Process Team	Status of Forces Agreement
ISR	OMA	SPCCP
Installation Status Report	Operations and Maintenance Army	Spill Prevention Control and Countermeasure Plan
ITAM	OMANG	TDP
Integrated Training Area Management	Operations and Maintenance Army National Guard	Technical Data Package
LCED	OMAR	TDY
Life Cycle Environmental Documentation	Operations and Maintenance Army Reserve	Temporary Duty
MACOM	OOTW	TEMP
Major Army Command	Operations Other Than War	Test and Evaluation Master Plan
MATDEV	OPSEC	TJAG
Materiel Developer	Operations Security	The Judge Advocate General
MDA		
Milestone Decision Authority		

TOE

Table of Organization Equipment

TRADOC

U.S. Army Training and Doctrine Command

USACHPPM

U.S. Army Center for Health Promotion and Preventive Medicine

USAEC

U.S. Army Environmental Center

U.S.C.

United States Code

Section II—Terms

Categorical Exclusion

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.

Environmental (or National Environmental Policy Act) Analysis

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.

Foreign Government

A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.

Foreign Nations

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.

Global Commons

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.

Headquarters, Department of the Army Proponent

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.

Major Federal Action

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.

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. The proponent may or may not be the preparer.

(2) In general, the proponent is the lowest level decision maker. It 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

An action, program, or project that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods of any day; cause interference with the reasonable peaceful enjoyment of property or use of property; create an interference with visual or auditory amenities; limit multiple use management programs for an area; cause danger to the health, safety, or welfare of human life; or cause irreparable harm to animal or plant life in an area. Significant beneficial effects also do occur and must be addressed if applicable. (See 40 CFR 1508.27.)

[FR Doc. 00–19470 Filed 9–6–00; 8:45 am]

BILLING CODE 3710–08–P

Executive Order 12114

Environmental effects abroad of major Federal actions

Source: The provisions of Executive Order 12114 of Jan. 4, 1979, appear at 44 FR 1957, 3 CFR, 1979 Comp., p. 356, unless otherwise noted.

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

1-1. *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 herefrom 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 authority 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 agreement 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 on 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 or 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)(i);
- (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 meaningfully 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 sensitivities 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 Impacts.* 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.

EXECUTIVE ORDER 12898

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

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: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) 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.

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.

- a. 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.
- b. 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.
- c. Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.
- d. 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.
- e. 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.
- f. 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.

1. 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.
2. Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.
3. 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.

1. 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.
2. 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.
3. 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.
4. 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 J. CLINTON
THE WHITE HOUSE,
February 11, 1994.

EXECUTIVE ORDER 13007

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites.

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Section 2. Procedures.

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things,

(i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;

(ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and

(iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Section 3.

Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final

agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551[13]).

Section 4.

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 any party against the United States, its agencies officers, or any person.

WILLIAM J. CLINTON
THE WHITE HOUSE,
May 24, 1996.

EXECUTIVE ORDER 13045

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 breathe, 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.

William J. Clinton
THE WHITE HOUSE,
April 21, 1997.

DEPARTMENT OF THE ARMY
Deputy Chief of Staff for Operations

FINDING OF NO SIGNIFICANT IMPACT (FNSI)

Fielding of "Generator, Smoke, Motorized:
For Dual Purpose Unit, M56" and the
"Generator, Smoke Mechanical: Mechanized
Smoke Obscurant System M58"

1. The findings and conclusions reached in this document are based on a thorough review of the impacts and analyses considered and disclosed in the Programmatic Environmental Assessment (PEA) attached to this FNSI and the results of the public comment period inviting comment on drafts of the PEA and FNSI. The PEA, including its data, analyses and conclusions are incorporated by reference.

2. PROPOSED ACTION: The Army proposes to release the M56 and M58 units to Army installations across the Nation for use in visual and infrared training. Fielding will occur over a ten-year period, commencing in 1998 and continuing through 2008 at 14 active Army installations and several Army National Guard installations. The M56 and M58 units are capable of emitting fog oil for visual obscuration, an existing capability subject to independent pre-existing environmental analysis, and graphite flakes for infrared obscuration on the battlefield.

3. ALTERNATIVES TO THE PROPOSED ACTION: The Army considered three alternatives to the proposed action: (1) the limited use alternative, restricting use of the units to training with fog oil with no emission of graphite flakes; (2) the consolidated training sites alternative, limiting fielding of the units to a smaller number of installations with less sensitive environmental issues of concern; and, (3) the no action alternative, prohibiting fielding of the systems for training at sites in the United States.

a. The proposed action is the preferred course of action as it squarely meets the purpose and need for developing an obscurant system that can be used in training to save lives in battle.

b. The limited use alternative minimally meets the purposes and need for the proposed action as it allows fielding of the systems for training in the field. Training realism, however, is compromised since the infrared module cannot be operated to emit graphite flakes. The system's use in training cannot be maximized, and effectiveness on the battlefield could be compromised.

c. The consolidated training sites alternative would meet the purpose and need for development of the obscurant system, but training flexibility would be limited. Maximum training opportunities would be compromised.

4. ENVIRONMENTAL CONSEQUENCES: The decision to field the M56 and M58 systems will not present direct impacts on the human environment. The decision is programmatic in nature. Secondary impacts to the human environment will occur if individual installations decide to use the graphite module in training exercises. The PEA discloses the general types of impacts and effects on all relevant aspects of the human environment that will likely result from use of the graphite module in training. See PEA, pp. 55-65. Receiving installations will be required to supplement the PEA with site-specific analyses in which they consider the intensity of impacts associated with the emission of graphite flakes into the local environment. They will also gather data and perform analyses necessary to satisfy applicable Federal, State and local compliance requirements. In particular, receiving installations will: (a) consult with the United States Fish and Wildlife Service when it is determined that use of the M58 or M56 units may effect a federally listed Threatened or Endangered Species; and, (b) ensure that increased emissions of criteria air pollutants do not exceed applicable Federal, State or permit standards or limitations.

5. PUBLIC PARTICIPATION: the Army released drafts of both the PEA and FONSI to the public for a thirty (30) day review and comment period. The Army notified the public of the availability of the draft PEA and FONSI through publication of a notice in the Federal Register. The Army received no comments from members of the public.

6. CONCLUSION: I have thoroughly reviewed the attached PEA, proposed action, alternatives to the proposed action, and the associated environmental effects of each. Additionally, my review of the public comment process has revealed no new or significant environmental effects or issues of concern. Based on this review and consideration of all relevant factors, I have determined that neither the proposed action nor any alternative to the proposed action will have significant impacts on the human environment.

7. DECISION TO PROCEED: In view of the foregoing finding, I have decided to proceed, without further review or comment, with implementation of the proposed action. The proposed action directly meets the purpose and need for development of the M56 and M58 units, maximizes training opportunities, and ultimately provides better protection for our soldiers on the battlefield. Notice of the availability of this FONSI and the final PEA shall be published in the Federal Register.

PATRICIA L. NILO
Colonel
Chief, Chemical and NBC
Defense Division

RECORD OF DECISION

STRATEGIC TARGET SYSTEM PROGRAM

INTRODUCTION

Pursuant to Council on Environmental Quality regulations implementing the National Environmental Policy Act, this document records the Strategic Defense Initiative Organization (SDIO) decision to implement the Strategic Target System program at the Kauai Test Facility (KTF) located on the Pacific Missile Range Facility (PMRF), Kauai, Hawaii.

The PMRF has been used for fleet training operations and for research and development activities. In addition PMRF launch facilities are used to launch test flights of tactical missiles and other projectiles. The KTF has been the site of more than 300 rocket launches since the facility was first established for that purpose in 1962. The PMRF has launched approximately 800 rockets and targets during the same period. The proposed action will increase these activities by four launches each year over the next ten years.

The Environmental Impact Statement (EIS) for the Strategic Target System was prepared by the U.S. Army Strategic Defense Command (USASDC) acting as lead agency. The SDIO, the U.S. Navy and the U.S. Department of Energy served as cooperating agencies. The Final EIS was filed with the Environmental Protection Agency and a Notice of Availability was published in the Federal Register on May 22, 1992.

Based on the findings of the EIS, a mitigation plan has been developed which, when fully executed, will avoid or reduce to nonsignificant levels environmental impacts resulting from implementation of the Proposed Action. The SDIO is firmly committed to full execution of this mitigation plan which is summarized in this document and incorporated by reference.

ALTERNATIVES

Alternative launch sites and launch vehicles were considered but were not carried forward for analysis. The alternative launch sites considered were U.S. Army Kwajalein Atoll, Republic of the Marshall Islands; Wake Island; Johnston Island; Midway Island; Guam; Poker Flat Research Range, AK; floating barges; fixed ocean platforms; Vandenberg Air Force Base, CA; and White

Sands Missile Range, NM. Alternative launch vehicles considered were the Castor IV, Minuteman I and II, Minuteman III, Poseidon, Pegasus, Taurus, an augmented Strategic Target System vehicle, and several hybrid vehicle configurations. The alternative launch sites and alternative launch vehicles were eliminated because they did not meet operational and safety criteria or because they were excluded by treaty limitations.

The Strategic Target System EIS analyzed two alternatives: No-Action and the Proposed Action. The No-Action Alternative would continue the development of the Global Protection Against Limited Strikes program but without the ability provided by the Strategic Target System program to gather critical actual flight test data. No shipments of boosters or liquid propellants would take place. There would be no assembly or checkout of a launch vehicle. The Strategic Target System vehicle would not be launched. No range safety operations or upgrades would occur. No safety zone or easement would be established.

The Proposed Action is to launch Strategic Target System vehicles with nonnuclear payloads (experiments and test objects) from KTF on a suborbital trajectory. These flights would conclude within range of the sensing and tracking stations at U.S. Army Kwajalein Atoll (USAKA) in the Marshall Islands to support data gathering and other SDI research and development activities. The Proposed Action includes constructing flight support facilities and establishing land use controls around the launch site. Including the first two demonstration launches, a maximum of four launches per year would take place over a 10-year period.

IMPACTS/MITIGATIONS

The EIS demonstrates that the potential environmental impacts of the Strategic Target System can be avoided or reduced to nonsignificant levels by mitigation measures taken as part of the Proposed Action. A number of modifications were made to the program in response to public concern. Discretionary mitigations described in the EIS could even further modify the program to provide additional mitigation. The Proposed Action, including the adopted mitigations, will incorporate all practicable means to avoid or minimize all environmental harm. Impacts and mitigation measures are summarized below.

- a. GEOLOGY AND SOILS. New construction will take place at previously disturbed sites. The soil in these areas has already been leveled and stabilized. Soil studies performed to support the EIS found no evidence of contamination from the Strategic Target System type of solid-fuel components from previous launches over many years. Nonetheless, additional post-launch soil samples will be taken to

validate these findings.

- b. **WATER RESOURCES.** Water sampling performed to support the EIS showed no evidence that surface water or groundwater has been affected by past launches. Booster motor emission rates, dispersion rates for those emissions, and the expected wind velocities are such that no measurable change is expected to occur in the quality of surface water. Dispersion models predict that no emission byproducts will reach island drinking supplies. Additional post-launch water samples will be taken to verify booster emission deposition is not significant.
- c. **AIR QUALITY.** The air quality impacts of Strategic Target System launches have been studied extensively using two dispersion models.

These studies indicate that airborne pollutants from either a normal launch or a terminated launch would not endanger public health or cause significant environmental impacts. Nor would the amount of contaminants from the Strategic Target System program contribute measurably to the depletion of stratospheric ozone. Since no significant impacts were identified, and consistent with previous study results, no halon substitute will be used. However, the Army will continue to monitor investigations into alternative fluids to Freon 114B2 (halon 2402) and the Strategic Target System will comply with the Clean Air Act and all implementing regulations.

Consideration was given to restricting launches to times when wind speeds are greater than one meter per second, but in light of the EIS analysis comparing modeling results with accepted standards and coupled with mission needs, this restriction will not be applied. However, air samples will be collected during the first demonstration launch to validate the accuracy of the models and to evaluate compliance with federal and state standards.

- d. **BIOLOGICAL RESOURCES.** Construction will remove only 0.2 hectares of weedy ground cover from an area that is regularly mowed. The continuing presence of sensitive plant species after many years of launch activity suggests that emissions from Strategic Target System launches will not have any significant impact on adder's tongue fern and other rare plant species. Impacts from construction will be mitigated by avoiding plants or relocating them to protected locations.

Trees and other vegetation on the dune adjacent to the launch pad could be ignited

during a launch. To minimize potential for damage the Army will install a portable blast deflector shield at the launch pad perimeter. In addition, any dead brush will be cleared from around the launch pad without affecting the dune. Nearby vegetation will be sprayed with water prior to a launch to further reduce the chance of fire. As in all similar launches, a fire crew will stand by.

As with soils, vegetation studies performed to support the EIS found no evidence of contamination from the Strategic Target System type of solid-fuel components due to previous launches over many years. Additional post-launch vegetation samples will be taken to verify that booster emission deposition is not significant.

The Newell's shearwater is a federally listed threatened species that may fly over PMRF at night, mainly between April and November. Reflection from outdoor lighting could disorient the birds. Lighting approved by the U.S. Fish and Wildlife Service will be installed to minimize reflection.

The likelihood of debris from a spent booster or terminated launch striking a humpback whale or monk seal is remote. If humpback whales or monk seals are sighted in the safety zone or launch hazard area, the launch will be delayed until the areas are clear. Beach surveys will be conducted prior to any activity that might otherwise interfere with green sea turtle nesting areas and any nesting areas found will be avoided.

- e. CULTURAL RESOURCES. New construction will not affect the Nohili Dune. Where construction is planned south of the dunes, ground-penetrating radar will be used to scan the subsurface. An archaeologist will be on-site during ground-disturbing activities. Any human remains that might be discovered or inadvertently disturbed will be treated in accordance with the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act. Analysis of human remains would be nondestructive and would be conducted on Kauai. Cultural resources could be affected by an on-pad mishap or early flight termination. Measures to protect cultural resources will include installation of a portable blast deflector shield, spraying vegetation with water to reduce the risk of ignition, and using spray nozzles rather than a directed stream to avoid erosion and to prevent possible destruction or exposure of cultural resources that may be present in the dunes. If any burning should occur, archaeological surveys would be conducted.

No impacts to cultural resources are expected from transporting liquid propellant to PMRF. Prior to landing craft crossing the beach, an additional cultural resource survey will be undertaken. If any cultural resources are noted, these areas will be avoided during transport. An archaeologist will be present during transport activities.

- f. **LAND USE.** Public access to a small portion of the beaches fronting PMRF will be restricted for about 56 days a year. Because recreational use at this location is low and many other beaches are accessible, closure at this location is not considered significant. To insure public safety, 20 minutes before each scheduled launch, portions of the adjacent sugar cane fields and Polihale State Park would be verified clear of people. Up to three hours before a scheduled launch, PMRF personnel will begin to advise people within these areas of their need to leave to allow the area to be verified clear 20 minutes prior to launch. The PMRF will notify the State of Hawaii and Kekaha Sugar Company authorities at least seven days prior to a scheduled launch when clearance of the area is required. The waters offshore will be cleared prior to each scheduled launch.

Consideration was given to limiting launches to late night or early morning, but was rejected because of mission requirements and the absence of significant impacts without this measure.

- g. **NOISE.** Noise levels from the Strategic Target System booster will be substantially less than the Strypi booster that has been launched more than 20 times from PMRF and KTF without known public concern. The noise level will be high during liftoff but will last only a few seconds. The predicted peak noise level at liftoff reaching the nearest off-base housing is estimated to be well within standard acceptable limits.

Noise will also be monitored during the first demonstration launch to validate the accuracy of the noise model.

- h. **HAZARDOUS MATERIALS AND WASTE.** Hazardous materials and wastes generated by Strategic Target System activities will not exceed existing capabilities at PMRF for handling and disposal in accordance with the strict federal regulations currently in force. Hazardous materials will be transported by the safest available routes in containers approved by the U.S. Department of Transportation (DOT). Fueling operations will be conducted in accordance with the already strict

procedures in place at KTF.

- i. **PUBLIC HEALTH AND SAFETY.** An overwater safety zone and a Ground Hazard Area have been established to protect workers and the public.

Liquid hydrazine will be transported in a container approved by the DOT. No more than 55 gallons will be shipped at one time. The preferred method will be by military, exclusive-use cargo aircraft. An alternate method will be by commercial cargo vessel from the continental U.S. to Oahu or Port Allen and transfer by landing craft to the beach at PMRF.

Liquid nitrogen tetroxide will be transported in a container approved by the DOT. No more than 55 gallons will be shipped at a time. If a waiver can be obtained from DOT, the preferred method will be on a military, exclusive-use cargo aircraft. If a waiver cannot be obtained, the preferred method will be by a commercial cargo vessel from the continental U.S. to Oahu or Port Allen and transfer by landing craft to the beach at PMRF.

No liquid propellant will be transported over public roads on Kauai except during emergency situations as directed by the Harbor Master. Any such transport will be in complete coordination with State and local officials and employ DOT approved procedures.

- j. **VISUAL RESOURCES.** The appearance of Strategic Target System program facilities is not significant when measured against existing buildings and structures on the launch pad and within KTF. No significant removal of vegetation is planned, and fire protection will be provided during launches by wetting adjacent vegetation and placing fire fighting crews on standby. These measures should ensure that no impact to visual resources will occur.

DECISION

The increment of environmental harm which could occur with the Proposed Action is very small. The analysis in the EIS indicates that the No-Action Alternative is the environmentally preferred alternative. I am convinced that the mitigations described here and in the EIS will avoid all potential environmental impacts from the Proposed Action or reduce them to not significant levels.

There are compelling economic and technical reasons for selecting the Proposed Action. First, the Strategic Target System uses primarily existing components and is capable of delivering the necessary payloads without extensive modifications. Second, performance of Strategic Target System boosters is well known, ensuring that these important experiments are conducted reliably and safely. This not only ensures the public's health and safety, but minimizes the chance of failed experiments that would result in additional costs. Moreover, a decision other than the Proposed Action would result in serious delays in the development of the National Ballistic Missile Defense System as directed by Congress in the Missile Defense Act of 1991. This would not only increase costs of the target delivery system, but would also tremendously increase costs associated with the ballistic missile defense systems which are to be developed using these targets and the data gained from these experiments.

There are also strong national policy reasons for the selection of the Proposed Action over the No-Action alternative. The President has directed SDIO to develop sufficient information to demonstrate the feasibility of an anti-ballistic missile system. Congress has passed the Missile Defense Act of 1991, which directs SDIO to develop for deployment a limited ballistic missile defense system by fiscal year 1996 or by the earliest date that the technology is available. In order to accomplish this mandate, SDIO needs the data which will be obtained by conducting the Strategic Target System flights. No other available course of action will provide this data. The test program described in the Proposed Action is needed to satisfy the mandate of the President and Congress.

After a careful review of the EIS and consideration of national policy, technical and economic constraints, I have decided to carry out the Strategic Target System program as described in the Proposed Action. Arriving at this decision, I was not unmindful of other concerns expressed by the public, including those relating to Native Hawaiians and to the "Spirit of Kauai". This decision is contingent upon the implementation of mitigations described in this Record of Decision.

MONITORING AND ENFORCEMENT

I ask the Commanding General, USASDC to monitor the first launch in accordance with Army Regulation 200-2, Appendix F and at least annually, report to me on the continuing implementation of the mitigations directed above.

In regard to Strategic Target System test activities and the contracts to support them, I direct the

USASDC to monitor the test activities to ensure that government contractors and personnel are adhering strictly to the environmental standards and controls described in the EIS and ordered in this Record of Decision.