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FIGURE 10–10

APPENDIX A TO PART 650—PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

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ADVISORY COUNCIL ON HISTORIC PRESERVATION PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

PART 651—ENVIRONMENTAL EFFECTS 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 Policies.
651.6 Procedures.

Subpart B—National Environmental Policy Act (NEPA) and the Decision Process

651.7 Introduction.
651.8 Action requiring evaluation.
651.9 Environmental review categories.
651.10 Determining appropriate environmental documentation.
651.11 Classified actions.
651.12 Integration with Army planning.
651.13 Mitigation and monitoring.

Subpart C—Required Records and Documents

651.14 Introduction.
651.15 Optional documents.

Subpart D—Categorical Exclusions (CX)

651.16 Introduction.
651.17 Determining when to use a CX.
651.18 CX actions.
651.19 Modification of the CX list.

Subpart E—Environmental Assessment (EA)

651.20 Introduction.
651.21 Conditions requiring an EA.
651.22 Actions normally requiring an EA.
651.23 EA Components.
651.24 Decision process.
651.25 Public involvement.
651.26 Public availability.
651.27 Existing environmental assessments (EAs).

Subpart F—Environmental Impact Statement (EIS)

651.28 Introduction.
651.29 Conditions requiring an EIS.
651.30 Actions normally requiring an EIS.
651.31 Format of the EIS.
651.32 Steps in preparing and processing an EIS.
651.33 Existing EISs.
651.34 Major Army command (MACOM) processing of an EIS.

Subpart G—Public Involvement and the Scoping Process

651.35 Public involvement.
651.36 Scoping process.
651.37 Preliminary phase.
651.38 Public interaction phase.
651.39 The final phase.
651.40 Aids to information gathering.
651.41 Modifications of the scoping process.

Subpart H—Environmental Effects of Major Army Actions Abroad

651.42 Introduction.
651.43 Global commons.
651.44 Army policy on global commons and foreign nations.
651.45 Responsibilities.
651.46 Implementation guidance.

APPENDIX A PART 651—LIST OF CATEGORICAL EXCLUSIONS (CX)
APPENDIX B PART 651—REFERENCES
APPENDIX C PART 651—NATIONAL ENVIRONMENTAL POLICY ACT
APPENDIX D PART 651—CONTENTS OF THE ENVIRONMENTAL IMPACT STATEMENT (EIS)
APPENDIX E PART 651—COUNCIL FOR ENVIRONMENTAL QUALITY (CEQ) REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
APPENDIX F PART 651—IMPLEMENTING A MONITORING AND METHODOLOGY PROGRAM
APPENDIX G PART 651—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS
APPENDIX H PART 651—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES
APPENDIX I PART 651—GLOSSARY

AUTHORITY: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Council on Environmental Quality Regulations, 40 CFR parts 1500–1508, 43 FR 55978–56007, November 29, 1978, as amended at 51 FR 15625, April 25, 1986, and E.O. 12114.

SOURCE: 53 FR 46324, Nov. 16, 1988, unless otherwise noted.

Subpart A—Introduction

§ 651.1 Purpose.

This regulation sets forth policy, responsibilities, and procedures for integrating environmental considerations into Army planning and decision-making. It establishes a criteria for determining what Army actions are categorically excluded from requirements to prepare an Environmental Impact Statement (EIS) and lists applicable categorical exclusions (CX) in appendix A.

§ 651.2 References.

Required and related publications and referenced forms are listed in appendix B.

§ 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the Glossary.

§ 651.4 Responsibilities.

(a) The Secretary of the Army (SA) has designated the Assistant Secretary of the Army (Installations and Logistics (ASA (I&L)) to serve as the Army's responsible official for National Environmental Policy Act (NEPA) matters.

(b) The Chief of Engineers (COE) has the responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN–ZC), the Army Environmental Office is the Army Staff (ARSTAF) point of contact (POC) for environmental matters.

(c) The Assistant Chief of Engineers (ACE) will—

(1) Provide assistance to Army agencies in completing environmental analysis and documentation through identifying and quantifying environmental impacts and selecting impact mitigation techniques.

(2) In cases of multiple Army agency involvement, designate a single agency or lead office with responsibility for preparing and processing environmental documentation; assign Army lead agency responsibility in cases of non-Army agency involvement.

(3) Review and comment on Environmental Impact Statements (EISs) submitted by Army, other Department of Defense (DOD) components, and other Federal agencies.

(4) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and to ensure integration of environmental considerations into the decisionmaking process.

(5) Maintain liaison with the Office of Management and Budget, Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and other Federal, State, and local agencies on environmental policies that may affect the Army. This liaison assists in identifying and evaluating applicable regulatory policies for proposed actions.

(6) Maintain a current record from which access to EISs may be obtained from the proponent. Also, maintain a record of actions of national concern that resulted in a Finding of No Significant Impact (FNSI).

(7) Establish procedures for retention of EISs prepared by the Department of the Army (DA).

(8) Require the revision or preparation of environmental documents, as appropriate, to ensure adequate consideration of environmental impacts when a proponent has failed to do so.

(9) Comment on EISs within those areas of assigned staff responsibility and technical capability.

(10) Resolve issues in determining if a public hearing or public scoping meeting is appropriate for the proposed action and assign the responsibility to an appropriate office.

(d) Heads of Headquarters, Department of Army (HQDA) 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 environmental assessments (EAs) and/or EISs. Proponents (defined in the Glossary) may conduct their preparation in-house, through contract, or pursue indirect

preparation with the assistance of supporting U.S. Army Corps of Engineers (USACE) Districts.

(3) Initiate the preparation of necessary environmental documentation, assess proposed programs and projects to determine their environmental consequences, and initiate environmental documents for circulation and review along with other planning or decisionmaking documents. These documents include a completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folder, Integrated Program Summary, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate environmental documents with ARSTAF agencies.

(5) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(6) Assist in the review of environmental documents 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 Army Environmental Office.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation.

(9) Prepare and maintain a record of decision (ROD) on each EIS for which they are the staff proponent.

(e) The Assistant Secretary of the Army (Financial Management) will establish procedures to ensure compliance with requirements for environmental exhibits and displays of data in support of annual authorization requests.

(f) The Judge Advocate General will provide legal advice and assistance in interpreting NEPA and CEQ regulations. The Judge Advocate General will interface with the Army General Counsel, Corps of Engineers General Counsel, and the Department of Justice on NEPA related litigation.

(g) The Surgeon General is responsible for environmental review related to the health and welfare aspects of proposed EISs submitted to HQDA.

(h) The Chief of Public Affairs is the POC for media inquiries of national significance. The Chief will—

(1) Provide guidance on issuing public announcements such as FNSI, Notices of Intent (NOI), scoping procedures, Notices of Availability (NOA), and other public involvement activities.

(2) Review and coordinate planned announcements on actions of local or national interest with appropriate ARSTAF elements and the Assistant Secretary of Defense for Public Affairs (OASD (PA)).

(3) Provide public affairs guidance in conducting environmental programs.

(4) Be POC for media inquiries that are of national significance.

(5) Issue press releases that coincide with the publication of FNSIs, NOIs, and NOAs.

(i) The Chief of Legislative Liaison will notify members of Congress of impending EISs and EAs of national concern.

(j) Major Army command (MACOM) commanders, Chief, National Guard Bureau, and heads of agencies will—

(1) Monitor proposed actions and programs within their commands.

(2) Task the appropriate component with preparation of EAs and EISs and development of public involvement activities. Proponents may delegate authority to conduct their preparation in-house, through contract, or pursue indirect preparation with the assistance of supporting U.S. Army Corps Engineers Districts.

(3) Assure that appropriate environmental documentation is prepared and forwarded to the appropriate proponent.

(4) Apply policies and procedures set forth in this regulation to programs and actions within their command and staff responsibility.

(5) Initiate the preparation of necessary environmental documentation and assess the environmental consequences of proposed programs and projects.

(6) Circulate and review environmental documents at the same time with other planning or decisionmaking documents. These related documents include a completed DD Form 1391, Case Study and Justification Folder, Integrated Program Summary, and

other documents proposing or supporting proposed programs or projects.

(7) Coordinate appropriate environmental documents and public affairs initiatives with HQDA agencies and the Army Environmental Office.

(8) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(9) Assist in the review of environmental documents prepared by DOD and other Army or Federal agencies, as requested.

(10) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the Army Environmental Office.

(11) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation (See 40 CFR 1507.2.)

(12) Prepare and maintain a ROD on EISs for which they are the staff proponent.

(13) Develop public affairs initiatives, when appropriate, for actions requiring EAs and EISs.

(k) Installation, activity, and unit commanders will accomplish responsibilities listed in paragraphs (j) (1) through (3), (5), (7), and (9) of this section.

§ 651.5 Policies.

(a) The DA will endeavor to ensure the wise use of natural resources on Army land. The DA will match military mission activities with the ecological compatibility of the land and natural resources in order to maintain resources for realistic training, while minimizing the adverse impact on the human and natural environment. Decisionmakers will be cognizant of, and responsible for, the impact of their decisions on cultural resources; soils, forests, rangelands, water and air quality, and fish and wildlife; as well as other natural resources under their stewardship. The DA will identify significant environmental effects of proposed programs and projects in adequate detail. These effects will be considered in the decision process along with technical, economic, and other necessary factors. DA will carry out the mission of national security in a manner consistent with NEPA and other applicable environmental standards, laws, and policies. DA will employ all practicable means consistent with other essential considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in sections 101 and 102 of NEPA. (See Appendix C.)

(b) Environmental considerations will be integrated into the decision-making process to ensure that—

(1) Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, while providing for the NEPA process to coincide with these decision points.

(2) Relevant environmental documents, comments, and responses accompany the proposal through the existing Army review and the decision-making process. The Army will integrate NEPA requirements with other planning and environmental review procedures required by law or Army practice so that review of environmental considerations is concurrent rather than consecutive.

(3) The alternatives considered are within the range of alternatives discussed in relevant environmental documents.

(c) Worldwide and long-range character of environmental problems will be recognized, and where consistent with national security requirements and United States (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 environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and subpart H of this regulation, an environmental planning and evaluation process will be incorporated into Army actions that may significantly affect global commons, environments of other nations, or any protected natural or ecological resources of global importance. (See subpart H.)

(d) Laws, other than NEPA, that require the Army to gain approval of other Federal, State, or local Government agencies before taking actions

that may have environmental consequences will be obeyed. However, compliance does not relieve the responsible official from preparing environmental impact analyses and processing necessary environmental documents. NEPA compliance is required unless existing law, applicable to a specific action or activity, prohibits, exempts, or makes compliance impossible.

(e) When appropriate, environmental documentation to consider operations security principles and procedures described in AR 530–1 will be reviewed and documented on the cover sheet or signature page.

§651.6 Procedures.

(a) The Assistant Chief of Engineers retains a copy of each draft and final EIS (Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS)) prepared by the Army. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The EIS is then deposited in the National Archives and Records Administration.

(b) DA agencies are encouraged to draw upon the special expertise that is available within the medical department, including the U.S. Army Environmental Hygiene Agency (AEHA), to identify and evaluate environmental health impacts.

(c) Military Construction Army/Military Construction ARNG (MCA/MCAR) funds may not be used for preparation of environmental documents. Operations and Maintenance/Operation and Maintenance, ARNG (OMA/OMAR) or other operating funds are the proper sources of funds for environmental document preparation.

(d) The proponent for federally funded ARNG actions is the National Guard Bureau (NGB) division in whose area of responsibility the action rests. For instance, National Guard Bureau-Installations Division (NGB-ARI) would be the proponent for proposed training activities. The NGB division proponent performs the actions described in this section with the States or territories affected by the proposed action.

(e) In specific cases, such as the construction of a water treatment facility or a flood control plan, the engineer could be the proponent. The engineer and/or his environmental management staff should advise proponents as to the format and technical data that must be considered in the environmental document. The engineer's environmental management staff is, however, responsible for reviewing each environmental document for compliance with NEPA and appropriate Army and/or ARNG regulations. No matter who prepares the environmental document, the proponent remains responsible for its content and conclusions.

(f) The decisionmaking process often subjects proposal decisions to review and/or approval by higher level authorities including HQDA proponent (defined in the Glossary); therefore, the review and approval of the environmental document follows the same channel of review and approval as that of the proposed action. This does not apply to federally funded ARNG actions since the NGB division, which is the proponent for such actions, is also the HQDA proponent.

Subpart B—National Environmental Policy Act (NEPA) and the Decision Process

§651.7 Introduction.

(a) NEPA establishes policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. (See appendix C for a copy of NEPA.) The CEQ issued regulations to implement the procedural provisions of NEPA and they are provided in appendix E. Implementing procedures to CEQ regulations are contained in DOD Directive 6050.1 (applicable in the continental United States (CONUS)) and DOD Directive 6050.7 (applicable outside the continental United States (OCONUS)).

(b) The NEPA process includes the systematic examination of possible and probable environmental consequences of implementing a proposed action. To be effective, integration of the NEPA process with other Army project planning will occur at the earliest possible time to ensure—

(1) Planning and decisionmaking reflect environmental values.

(2) Policies and goals of § 651.4 are implemented.

(3) Delays and potential conflicts later in the process are minimized.

(c) To achieve these actions, all Army decisionmaking that may have an impact on 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. (Pub. L. 91–190; sec. 102(2)(A)). This approach allows timely identification of environmental effects and values in sufficient detail for evaluation concurrently with economic, techical, and mission-related analyses at the earliest possible step in the decision process. When EAs or EISs are undertaken, the economic and social impacts will be included in the analysis of total environmental impacts. However, these secondary impacts, unaccompanied by physical environmental impacts, should not determine whether or not to prepare an environmental document.

(d) NEPA also requires the proponent of an action or project to identify and describe all reasonable alternatives to the proposed action or project. To assist in identifying reasonable alternatives, the proponent must consult appropriate Federal, State, and local agencies, and the general public.

(e) These procedures will assist the decisionmaker in selecting a preferred couse of action. They provide the relevant background information and subsequent analyses of the proposal's positive and negative environmental effects. The decisionmaker's written environmental evaluation is either a CX with a record of consideration (REC), an EA with a FNSI, or an EIS with a ROD. (See subpart C.)

§ 651.8 Action requiring evaluation.

(a) The types of projects or actions to evaluate for environmental impact include—

(1) Policies, regulations, and procedures (for example, Army regulations and circulars).

(2) New management and operational concepts and programs in areas such as logistics, research, development, test and evaluation, procurement, and personnel assignment.

(3) Projects (for example, facilities construction, research and development for weapons, vehicles, and other equipment).

(4) Activities (for example, individual and unit training, flight operations, overall operation of installation, or facility test and evaluation programs).

(5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.

(6) Materiel development, acquisition, and/or transition.

(7) Research and development in areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(8) Installation restoration projects undertaken pursuant to section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA). The National Oil and Hazardous Substances Contingency Plan (40 CFR part 300), implements the requirements of CERCLA/SARA, and describes a formal process, the feasibility study (FS).

(i) The FS provides substantive and procedural standards to ensure full consideration of environmental issues and alternatives, and an opportunity for the public to participate in evaluating environmental factors and alternatives before a final decision is made.

(ii) In most cases, when a FS is prepared in accordance with 40 CFR part 300, a second NEPA document is not required. As a matter of policy, the organization preparing the FS will ensure the document also complies with 40 CFR parts 1500 through 1508. The cover of the FS document and the subsequent ROD will contain the legend ''This document is intended to comply with the National Environmental Policy Act of 1969.'' All public notices announcing the availability of the FS will also note this intent. Installation Restoration Program actions in which an FS is not prepared in accordance with 40 CFR part 300 will require appropriate environmental documentation.

(9) Requests for special use airspace in accordance with AR 95–50 that require Federal Aviation Administration approval (new, renewal, or amendment).

(b) In addition to the above, certain activities supported by the Army through the following actions require proper environmental documentation:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government owned contractor operated industrial plants and section 801/802 Housing, Military Appropriations Act of 1984, construction, (via third-party contracting).

(2) Leases, easements, permits, licenses, certificates, or other entitlement for use (for example, grazing lease and grants of easement for highway right-of-way).

(3) 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 the proper environmental documentation is that of the non-Army requester. If required, the requester will provide information needed for the Army review. The Army reviews and approves all environmental documentation before approving the request.

§651.9 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 Army and must prohibit, exempt, or make impossible full compliance with NEPA (40 CFR 1500.6). (See §651.11 for security exemptions).

(b) *Emergencies*. (1) In the event of an emergency, the Army may need to take immediate actions that have environmental impacts, that may include immediate actions to promote national defense or security and actions necessary for the protection of life or property. In such cases the HQDA proponent will notify the Army Environmental Office, which in turn will notify the Office of the Assistant Secretary of the Army, Installations and Logistics (OASA (I&L)) who will coordinate with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L) regarding the emergency action. Time is of the essence so that OASA (I&L) may consult with the CEQ if necessary. A public affairs plan should be developed as soon as possible so that channels of communication remain open between the media, public, and the installation. In no event will Army delay an emergency action necessary for national defense, security, or preservation of human life or property to comply with this regulation or the CEQ regulations. State call-ups of ARNG during a natural disaster are excluded from this consultation requirement.

(2) These notifications apply only to actions necessary to control immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) After action reports may be required at the discretion of the OASA (I&L).

(c) *Categorical exclusions (CX)*. These actions (subpart D and appendix A) normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a significant effect on the human environment. Qualification for a CX is described in subpart D of this regulation.

(d) *Environmental assessment (EA)*. (See section for actions normally requiring an EA.)

(1) If the proposed action is adequately covered within an existing EA or EIS, prepare a REC to that effect. (See Figure 1).

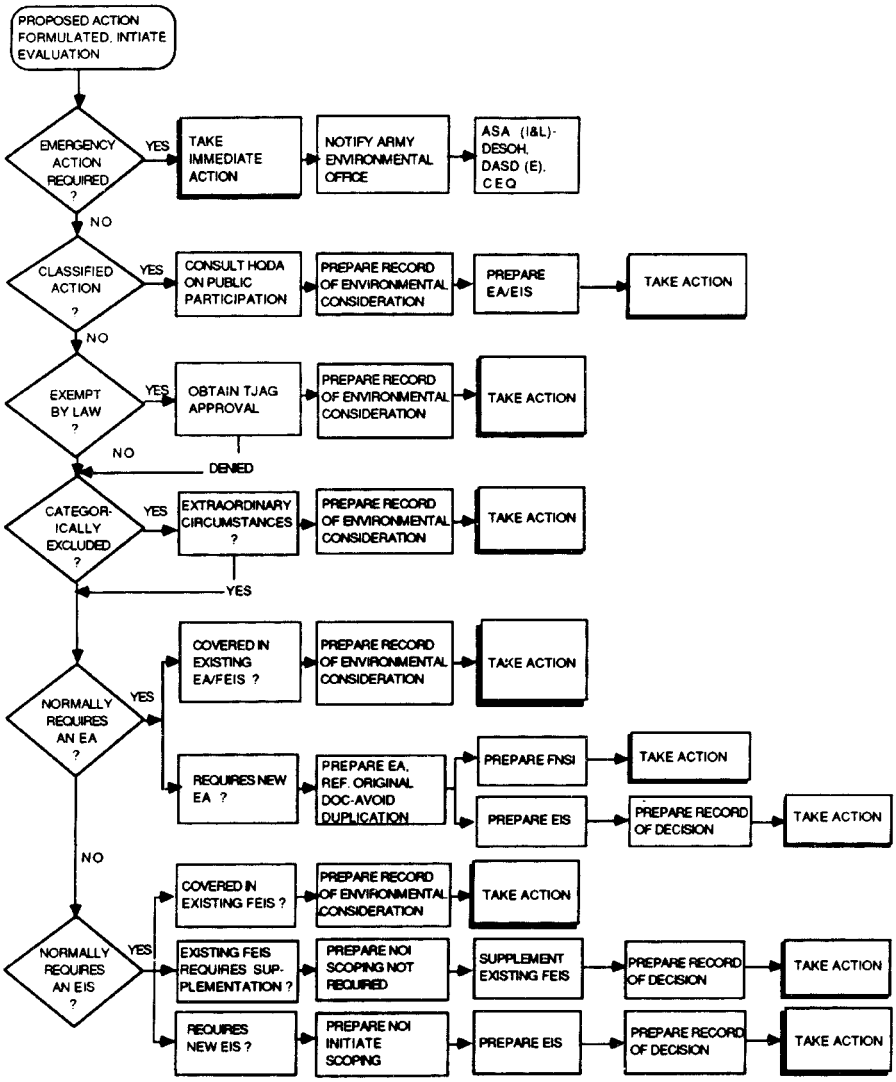

Figure 1. Flow chart summarizing process for determination of document requirements

(2) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, prepare a new environmental document that considers the new, modified, or missing information. Incorporate by reference, existing documents and publish the conclusion (FNSI or NOI).

(3) If the proposed action is not covered adequately in any existing EA or EIS, or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

(e) *Environmental Impact Statement (EIS).* (See §651.30 for actions normally requiring an EIS.)

(1) If it is determined that the action is covered adequately in a previously filed FEIS, the REC must so state, citing the applicable FEIS by name and date. The REC is then attached to the proponent's record copy of that FEIS. As a general rule, a FEIS older than 3 years cannot be used in this manner, but must be supplemented.

(2) If the proposed action is within the scope of an existing FEIS, but was not covered in that document or not covered adequately, then the proponent must prepared supplemental documentation to that FEIS.

(3) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

§651.10 Determining appropriate environmental documentation.

(a) The flowchart shown in Figure 1 summarizes the process for determining documentation requirements.

(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 its own record keeping for RECs and RODs. (See 40 CFR 1506.3 for procedures to follow when adopting other documents.)

(c) When an existing adequate EA or EIS is used in lieu of preparation of a new document, the REC should state the document title, date, and where it may be reviewed.

§651.11 Classified actions.

(a) For public dissemination of environmental documents containing classified information, AR 380–5 will be followed.

(b) Classified facts will be separated from unclassified facts and conclusions related to the proposed action. Unclassified portions of the action may then be processed routinely in accordance with this regulation. Classified portions will be kept separate for reviewers and decisionmakers with need-to-know as defined in AR 380–5 and (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess and document the environmental effects of the proposed action. The HQDA proponent, in coordination with the Army Environmental Office and the Deputy Chief of Staff for Intelligence, Security Division (DAMI–CIS), may select a review team. The team may be drawn from the Army agency or office not connected with the proponent agency, or from agencies outside the Army. The review team's purpose is to provide an external review of classified environmental documents.

§651.12 Integration with Army planning.

(a) *Early integration.* The Army goal to integrate environmental reviews concurrently with other Army planning and decisionmaking actions avoids delays in mission accomplishments. To achieve this goal, proponents should provide complete environmental documents for early inclusion with any recommendation or report to decisionmakers (Master Plan, Natural Resource Management Plan, Remedial Investigation, FS, etc.). The same documents will be forwarded to the planners, designers, and/or implementers so that recommendations and mitigations on which the decision was based may be carried out.

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in ensuring that environmental values are integrated in the planning and decision processes. It is important to remember that next to the project itself, a properly prepared EIS may require the longest time to complete.

(1) Categorical exclusions (CX). When a proposed action is categorically excluded from further environmental review (subpart D and appendix A), the proponent may proceed immediately with that action.

(2) Findings of no significant impact (FNSI).

(i) If the proposed action is one of national concern, is unprecedented, or normally requires an EIS, the proponent will make the EA and FNSI available for public review 30 or more days prior to making a final decision.

A news release is required to publicize the availability of the FNSI. If the action is of national significance, a simultaneous announcement that includes publication in the FEDERAL REGISTER (FR) must be made by HQDA.

(ii) For proposed actions referred to in paragraph (b)(2)(i) of this section, the proponent must allow a 30-day period for public comment between the time that the FNSI is publicized (40 CFR 1506.6(b)) and the time the proposed action begins. In those cases where the 30 day wait jeopardizes the project, the additional comment period provides no public benefit, and none of the conditions of paragraph (b)(2)(i) apply, the period may be shortened with MACOM approval. In no circumstances should the public comment period for an EA/FNSI be less than 15 days.

(iii) A deadline and POC must be included for receipt of comments in the FNSI and the news release.

(3) Environmental Impact Statements (EIS). The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. A NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. (Failure to deliver a 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 DEISs (40 CFR 1506.(c)(2)).

(iii) Not less than 90 days total for public availability of the DEIS and FEIS 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) The entire EIS process could require more than 1 year. (See Figure 2.) Thus, it is important that the process begin as soon as the project is conceptualized and that the proponent coordinate with all staff elements who may have a role to play in the NEPA process. Most of this time is taken by the preparation of the DEIS and the revision and response to comments to prepare the 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. Figure 2 indicates typical and required time periods for EISs.

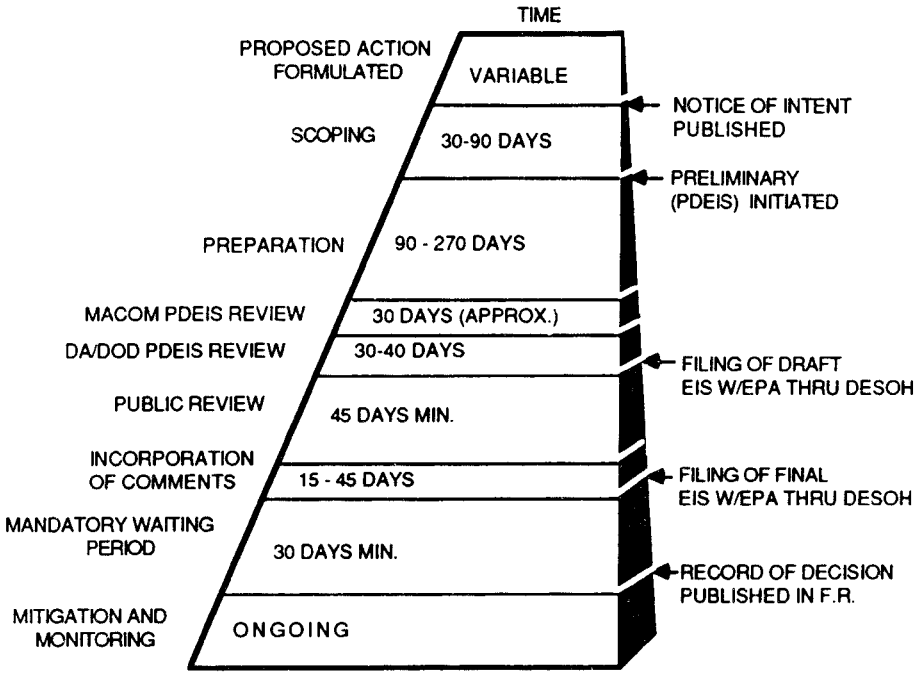

Figure 2. Time involved for preparing and processing an Environmental Impact Statement (EIS)

(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to write programmatic environmental analyses when such programs are being considered for general application (40 CFR 1502.4(c), 1502.20 and 1508.23). This will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), it need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action. This subsequent document will state where the earlier document is available.

(2) An example would be the assessment of a proposed major weapon system program. Development of an overall programmatic EIS or EA for the life cycle of the system is recommended. Tiered EAs and EISs, as appropriate, would evaluate specific subphases such as testing, production, development, use, and ultimate disposal.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS preparation, the proponent initiates the scoping process. (See subpart G for procedures and actions to be taken during the scoping process.) 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 the 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 environmental documents.

(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.

(3) The proponent may incorporate scoping in the public involvement or environmental review process other than that required for an EIS. If so, a significant reduction in the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Environmental analyses and documentation required by this regulation will be integrated as much as practical with other environmental reviews, laws, and executive orders (40 CFR 1502.25) and—

(1) Environmental analysis and documentation required by various State laws.

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

(3) Permitting and licensing procedures required by Federal and State law. For instance, the Clean Air Act, as amended (42 U.S.C. 57401 *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 125 *et seq.*).

(4) Installation and Army Master Planning functions and plans.

(5) Installation management plans, particularly those that deal directly with the environment. These include the Natural Resource Management Plans (Fish and Wildlife Management Plan, Forest Management Plan, and Range Improvement or Maintenance Plan).

(6) Stationing and installation planning, force development planning, and materiel acquisition planning.

(7) Installation Compatible Use Zone (ICUZ) program.

(8) Hazardous waste management plans.

(9) Historic Preservation Plan as required by AR 420–40.

(10) Intergovernmental coordination as required by AR 210–10.

(11) Asbestos Management Plans.

(f) *Relations with local and regional agencies.* (1) Installation, agency, or activity environmental officers or planners should establish planning relations with other agencies. These agencies include the staffs of adjacent local governments and State agencies. This will promote cooperation and resolution of mutual land use and environment-related problems.

(2) Preparation of a Memorandum of Understanding is desirable for promoting cooperation and coordination. This memorandum will 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, including those designated by AR 210–10. Thus, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies of the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 651.13 Mitigation and monitoring.

(a) Identification in environmental documents. Only those mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified in environmental documentation (EA, FNSI, or EIS). Measures that the proponent implements as part of the selected action will be included in the environmental documentation. Mitigation measures that appear practicable, but unobtainable within expected resources or that some other agency (including non-Army agencies) should perform, will be identified as such in the environmental document. ''Practicable'' measures include, among others, actions that appear capable of being accomplished. Complete development or

testing of the exact means of performing the action may not have occurred.

(b) Consideration throughout the National Environmental Policy Act (NEPA) process. Consider mitigation throughout the NEPA process. When an EIS or EIS Supplement is prepared, the ROD will state specific mitigation measures taken to reduce or avoid the selected action's adverse environmental effects. For EAs, the FNSI will state, when applicable, the appropriate mitigation measures that will be implemented. The proponent must ensure such mitigation measures become a project line item in the proposal budget. Mitigations that are committed to in an EA, but that are eventually not funded, must lead to reevaluation of the project and the significance of its impacts. In addition, the FNSI will state those practicable mitigation measures that have not been adopted. (40 CFR 1505.2(c)).

(c) Assistance from cooperating non-Army agencies. Proponents may request assistance with mitigation when appropriate. Whether it is appropriate to request assistance is determined by whether the requesting agency—

(1) Was a cooperating agency during preparation of an environmental document, or

(2) Has the technology, expertise, time, funds, or familiarity with project or local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(d) Implementing the decision.

(1) The proponent agency or other appropriate cooperating agency will implement mitigation and other conditions established in the EA or EIS or during its review, and committed as part of the FNSI or the ROD.

(2) Legal documents implementing the action (contracts, permits, grants, and so forth) 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.

(3) A monitoring and enforcement program will be adopted and summarized in the ROD where applicable for any mitigation. (See appendix F for guidelines on implementing such a program.) Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action is an important case (40 CFR 1505.3) may depend on such factors as the following:

(i) 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).

(ii) Cases when the outcome of the mitigation measure is uncertain (for example, new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases when 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 in coordination with the appropriate Federal, State or local agency responsible for each particular program must be made.

(v) The proponent will respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted.

Subpart C—Required Records and Documents

§651.14 Introduction.

The following records and documents are required:

(a) *Record of Environmental Consideration (REC).* The REC describes the proposed action and anticipated timeframe, identifies the proponent, and explains why further environmental analysis and documentation is not required. It is a signed statement to be submitted with project documentation. It is used when the proposed action is exempt from the requirements of NEPA, or has been adequately assessed in existing documents and determined not to be environmentally significant.

A REC is also used to document the use of those CX that require such records. (See Figure 3 for format.)

Record of Environmental Consideration (REC)

To: (Environmental Officer)
From: (Proponent)
Project title:
Breif description:

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

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

a. Adequantely 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. Format for record of environmental consideration (REC)

(b) *Environmental assessment (EA).* An EA is a document that—

(1) Briefly provides the decisionmaker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(2) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(3) Facilitates preparation of a required EIS.

(4) Includes brief discussions of the need for the proposed action, alternatives to the proposed actions (NEPA, section 102(2)(e)) (see appendix C), proposed and alternative actions environmental impacts, and a listing of persons and agencies consulted. (See subpart E for requirements.)

(c) *Finding of no significant impact (FNSI).* A FNSI is a document that briefly states why an action will not significantly affect the environment, thus voiding the requirement for an EIS. The FNSI will include a summary of the conclusions of the EA and will note any environmental documents related to it. If the EA is attached, the FNSI need not repeat any of the EA's discussion, but may incorporate it by reference. A FNSI is always signed by the decisionmaker. (See § 651.24 for processing.)

(d) *Notice of intent (NOI).* An NOI is a public notice that an EIS will be prepared and considered. The NOI will briefly—

(1) Describe the proposed and alternative actions.

(2) Describe the proposed scoping process, including whether, when, and where any public meetings will be held.

(3) State the name and address of the POC who can answer questions on the proposed action and its EIS. (See §§ 651.32(a), 651.34(a), and 651.37 for application.)

(e) *Environmental impact statement (EIS).* An EIS is a detailed written statement required by NEPA for major Federal actions with significant environmental effects (42 U.S.C. 4321, section 102(2)(c). (See appendix C.) (See subpart F for requirements.)

(f) *Life cycle environmental document (LCED).* The LCED is intended to be a programmatic assessment that addresses the known and reasonably foreseeable environmental impacts of a proposed item/system during all phases of development, production, use, and ultimate disposal of the item/system. The LCED may be in the form of an EA or an EIS, and must be supplemental to address additional significant environmental impacts as conditions change. The LCED will be prepared by the DA proponent/developer (or program manager) and is most frequently used within the materiel research, development, and acquisition community.

(g) *Record of Decision (ROD).* A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS. Nevertheless, the ROD is not considered to be an environmental document since the decision considers other factors in addition to environmental issues. (See §651.32(i) for application.)

§651.15 Optional documents.

The following additional documents may assist in the implementation of this regulation. These documents are optional, but their use is encouraged.

(a) *Environmental planning guide.* Prepared prior to or at the outset of a major program concept exploration. It is a concise (for example, 10-page) document intended for use by the program planners and designers. It provides guidelines and supporting rationale by which planners and designers could prevent, avoid, or minimize adverse environmental effects through environmentally sensitive design and planning. Through appropriate language in the scope of work, contractors can be encouraged or required to use such an environmental planning guide.

(b) *Environmental planning record.* This records the progress and process of environmental considerations throughout a given program's development. Ideally, it is a document that is written when the program commences. There is no set form; it may be a journal with periodic entries, a file of memoranda, trip reports, and so forth. This document is a visible track record of how environmental factors have actually been considered and incorporated throughout the planning process. Through appropriate language in the scope of work, contractors can be encouraged or required to prepare an environmental planning record, or parts thereof.

(c) *Environmental monitoring report.* This 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.

Subpart D—Categorical Exclusions (CX)

§651.16 Introduction.

(a) The use of CX is intended to reduce paperwork and delay and eliminate unnecessary EA and EIS preparation. CX is defined in the Glossary.

(b) The following criteria will be used to determine those categories of actions that normally do not require either an EIS or EA:

(1) Minimal or no individual or cumulative effect on environmental quality.

(2) No environmentally controversial change to existing environmental conditions.

(3) Similarity to actions previously examined and found to meet the above criteria.

§651.17 Determining when to use a CX.

In order to use the CX provision, the proponent must take the following actions:

(a) Determine whether the proposal is encompassed by one of the categories not normally requiring the preparation of an EA or EIS. (See appendix A.)

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having an impact on the human environment that would require an EA or EIS. These circumstances include—

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, of already existing poor environmental conditions. Also, initiation of degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species and their habitats, archaeological materials, historical places, or other protected resources.

(5) Use of hazardous or toxic substances that may come in contact with the surrounding natural environment. Nevertheless, a categorical exclusion exists for use of hazardous and toxic substances under adequately controlled conditions within established laboratory buildings that are designed for, and in compliance with, regulatory standards. Adequately controlled conditions includes complying with AR 385–10 and all other applicable Army safety and preventive medicine regulations for the processing of hazardous and toxic substances, and complying with the Resource Conservation and Recovery Act (RCRA) for their disposal.

(6) Proposed actions affecting areas of critical environmental concern. These include, but are not limited to, prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers, floodplains, or wild and scenic river areas.

(c) Determine whether all the screening criteria in appendix A are true for the proposal.

(d) If the proposed action qualifies for one of the CX, no analytical environmental document is necessary. However, if a REC (Figure 3) is required by the CX listing in appendix A, a REC will be completed and signed by the proponent. Consultation between the proponent and the installation environmental coordinator is required.

§ 651.18 CX actions.

Types of actions that normally qualify for CX are listed in appendix A.

§ 651.19 Modification of the CX list.

The Army list of CXs is subject to continual review and modification. Send, for review, requested additional modifications to the Army Environmental Office. 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 by the Army Environmental Office. This provides an opportunity for public review and comment.

Subpart E—Environmental Assessment (EA)

§ 651.20 Introduction.

An EA is made to determine the extent of environmental impacts of a project and decide whether or not those impacts are significant. It is not required for actions that are subject to categorical exclusion or exclusion from environmental review by law. (See 40 CFR 1508.9.) The EA is described in § 651.14(b).

§ 651.21 Conditions requiring an EA.

An EA is required when the proposed action has the potential for—

(a) Cumulative impact on environmental quality when combining effects of other actions or when the proposed action is of lengthy duration.

(b) Release of harmful radiation or hazardous/toxic chemicals into the environment.

(c) Violation of pollution abatement Standards.

(d) Some harm to culturally or ecologically sensitive areas.

§ 651.22 Actions normally requiring an EA.

The following actions normally require an EA:

(a) Special field training exercise or test activity on Army land of a nature or magnitude not within the annual installation training cycle.

(b) Military construction, including contracts for off-post construction.

(c) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program.

(d) Changes to established installation land use that generates impacts on the environment.

(e) Proposed changes in doctrine or policy that may have a potential environmental impact.

(40 CFR 1508.18 (*b*) (1)).

(f) Repair or alteration projects affecting historically significant structures, archaeological sites, or places on, or meeting, the criteria for nomination to the National Register of Historic Places.

(g) Acquisition or alteration of, or space for, a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(h) Actions that could potentially cause soil erosion, affect prime or unique farmland, wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, or wild and scenic rivers.

(i) New weapon systems development and acquisition, including the materiel acquisition, transition, and release processess.

(j) Development of installation master plan.

(k) Development of natural resource management plans (land, forest, fish, and wildlife).

(l) Proposals that may lead to the excessing of Army real property.

(m) Actions that take place in, or adversely affect, wildlife refuges.

(n) Proposals for energy conversion through forest harvest.

(o) Field activities on land not controlled by the military. This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground 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.

(p) An action with local or regional effects on energy availability.

(q) An activity that affects any species on, or proposed for, the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species. Also, activities affecting any species on an applicable State or territorial list of threatened or endangered species.

(r) Production of hazardous or toxic materials.

(s) Installation restoration projects undertaken in response to the CERCLA. (See §651.8(a)(8) for a full discussion of the integration of NEPA and CERCLA/SARA.)

(t) Operations and Maintenance/Army National Guard projects that will impact environmental quality.

(u) Site specific deployment of life cycle systems meeting the threshold criteria for requiring an EA.

(v) Special field training excercises or test activities off Army or DOD property that extend into the national airspace (45 meters above ground level).

(w) Changes to established airspace use that generates impacts on the environment or socioeconomic systems, or creates a hazard to nonparticipants.

§651.23 EA components.

(a) The EA will be the responsibility of the proponent. The Army Environmental Office will advise and assist in the preparation of the EA. In the case of United States Army Reserve (USAR) environmental documentation, the supporting installation facility engineer is responsible for ensuring proper environmental documentation is prepared and will comply with the provisions of AR 140–475. The EA will include brief discussions of—

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) The alternatives considered (always including the ''no action'' alternative).

(4) Affected environment (baseline conditions).

(5) Environmental consequences of the proposed action and the alternatives.

(6) Listing of agencies and persons consulted.

(7) The conclusion, or finding, on whether the environmental impacts are significant. If the finding is that there are no significant impacts, a FNSI will be published. If the finding is that impacts are potentially significant, the EA should state that a NOI will be published leading to preparation of an EIS.

(b) The EA, the FNSI, and all other appropriate planning documents will be provided to the appropriate decisionmaker for review and consideration. The signature page for the EA and FNSI package will be signed by the decisionmaker to indicate his or her review and approval.

§ 651.24 Decision process.

Every EA results in a FNSI or a NOI to prepare an EIS. Initiation of a NOI to prepare an EIS should occur at any time in the decision process when significant effects are determined.

(a) The FNSI is a separate document (40 CFR 1508.13) that briefly presents reasons why an action will not have a significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI will contain a summary of the EA or have the EA attached. If the EA is attached, the FNSI may incorporate it by reference, thus avoiding duplication of discussion. The FNSI will reference other relevant environmental documents that are being or have been prepared. The FNSI must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments. (See § 651.35.)

(b) The FNSI should not exceed two typewritten pages in length.

(c) The FNSI will be made available to the public prior to initiation of the proposed action, unless it is excluded on a security basis. (See § 651.11 for security exclusions.) FNSIs that have national interest should be submitted with the proposed press release through command channels to Deputy of Environment, Safety, and Occupational Health (DESOH) for approval and subsequent publication in the FR. FNSIs having national interest will be coordinated with Office of the Chief of Public Affairs (OCPA). Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(d) For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) and § 651.12(b)(2) of this regulation. Distribution of the FNSI (30 days prior to intitiation of the proposed action) should include any agencies, organizations, and individuals who have expressed interest in the project and others whom the proponent and preparers (defined in the Glossary) deem appropriate.

§ 651.25 Public involvement.

(a) Environmental agencies, applicants, and the public should be involved to the extent practical in the preparation of an EA. When considering the extent practicable of public interaction (40 CFR 1501.4(*b*)), some of the factors to be weighed are—

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest.

(3) Urgency of the proposal.

(4) Any relevant questions of national security classification.

(b) See § 651.35 for additional public involvement information.

§ 651.26 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries is encouraged. Operating hours of the chosen depository should extend beyond normal business hours.

§ 651.27 Existing environmental assessments (EAs).

EAs are dynamic documents. To ensure that the setting, actions, and effects described remain substantially accurate, the proponent or installation environmental officer will periodically review existing documentation (environmental impact assessment (EIA) or (EA)) as an action continues. Preparation of a new environmental document is necessary if substantive changes have occurred.

Subpart F—Environmental Impact Statement (EIS)

§651.28 Introduction.

An EIS is a public document with a primary purpose of ensuring that NEPA policies and goals are incorporated early into the programs and actions of Federal agencies. An EIS is required to provide a full and fair discussion of significant environmental impacts. Along with other project documentation, the EIS provides a basis for informed decisionmaking. Further, it allows public review and comment on the proposal.

§651.29 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 or archaeological resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Have significant adverse effect on properties listed or meeting the criteria for listing in the National Register of Historic Places, or the National Register of Natural Landmarks. (The National Park Service, U.S. Department of the Interior maintains the National Register.)

(d) Cause a significant impact to prime and unique farm lands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

(e) Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

(f) Significantly affect a species or habitat listed or proposed for listing on the Federal list of endangered or threatened species.

(g) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(h) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(i) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials that may have significant environmental impact.

§651.30 Actions normally requiring an EIS.

The following actions normally require an EIS:

(a) Significant expansion of a military facility, such as a depot, munitions plant, or major training 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) The life cycle development of new material such as weapon systems that requires the construction and operation of new fixed facilities or the significant commitment of natural resources.

(e) Land acquisition, leasing or other actions that may lead to significant changes in land use.

(f) Continental United States (CONUS) realignment or stationing of a brigade or larger table of organization and equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic with no significant biophysical environmental impact).

(g) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(h) Major changes in the mission of facilities either affecting areas of critical environmental concern or causing significant environmental impact.

§651.31 Format of the EIS.

(a) The EIS must contain the following:

(1) Cover sheet.

(2) Summary.

(3) Table of contents.

(4) Purpose of and need for the action.

(5) Alternatives considered, including proposed action.

(6) Affected environmental (baseline conditions).

(7) Environmental and socioeconomic consequences.

(8) List of preparers.

(9) Distribution list.

(10) Index.

(11) Appendixes (if any).

(b) The content of each section is discussed in greater detail in appendix D.

§ 651.32 Steps in preparing and processing an EIS.

(a) *Notice of intent (NOI).* (1) Prior to preparing an EIS (see Figure 4), a 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 Office of Legislative Liaison (OCLL) will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) Forward the NOI and the proposed press release to the HQDA proponent for coordination prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (Army Environmental Office, OCLL, and OCPA). The DESOH is the only person authorized to release an NOI to the FR for publication. A cover letter similar to Figure 5 will accompany the NOI. An example NOI is at Figure 6. The NOI initiates the scoping process; therefore, provide adequate response time for those wishing to comment on the NOI or participate in the scoping process. Subpart G discusses public participation requirements and options.

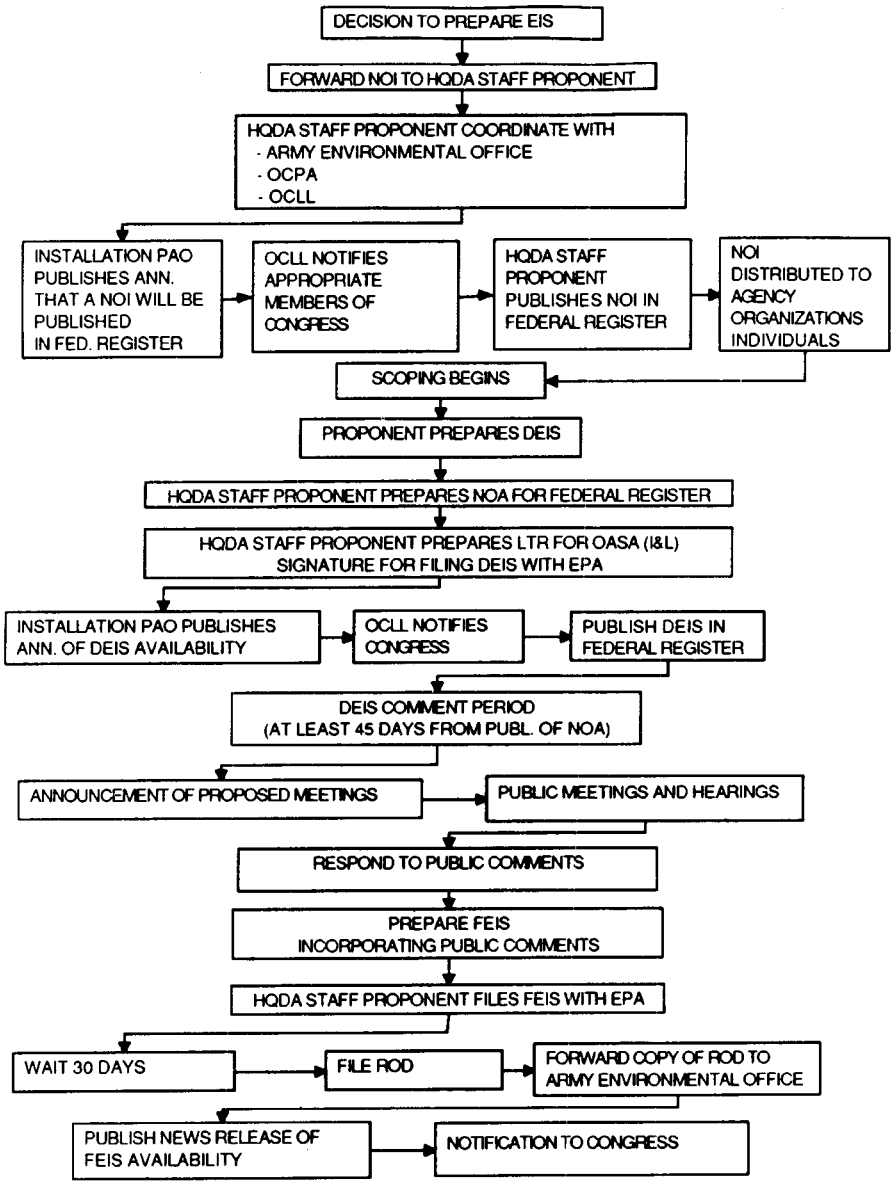

Figure 4. Steps in preparing and processing an Environmental Impact Statement (EIS)

Director
Office of the Federal Register
National Archives and Records Administration
Washington, DC 20408

Dear Sir:

The attached Notice of Intent is submitted for publication in the Notice Section of the FEDERAL REGISTER.

Please publish this Notice of Intent in the earliest edition of the FEDERAL REGISTER possible. This notice is required for the Department of Army to perform its military mission and comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

Please bill this to charge code 3710–08–M.

Sincerely

Lewis D. Walker
Deputy for Environment,
Safety and Occupational Health
OASA (I&L)

1 encl. (3 copies)

cc: HQDA (SAIL–DESOH)
HQDA ( )
HQDA (Staff Proponent)

---

3 Originals must be signed
The charge code 3710–08–M must appear in the letter.

Figure 5. Sample Notice of Intent (NOI) transmittal letter.

3710–08–M

Department of the Army

Notice of Intent (NOI)

To prepare a Draft Environmental Impact Statement (DEIS) for proposed barracks construction, at Ft. Jefferson, CA.

Agency: DOD, U.S. Army, Ft. Jefferson, California.

Summary: Proposed Action: A series of three barracks are proposed for construction at Ft. Jefferson, California in order to provide adequate housing for bachelor enlisted personnel assigned to the installation. These facilities are proposed to replace existing substandard facilities for personnel who currently live in expensive rental units within the community or in inadequate quarters on the installation. The inadequate quarters are deficient in seismic design and do not meet DOD standards for privacy, space, or security. The requirements for these projects are not the result of new or expanded missions. The location of the proposed barracks is between M and N Streets on Wisconsin Avenue.

Alternative

a. No Action
b. Rehabilitation of existing facilities
c. Alternate site locations

Scoping Process: Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the environment. Individuals or organizations may participate in the scoping process by written comment or by attending a scoping meeting to be held on May 23, 1989, 8 PM, at the Norwood Avenue Elementary School, 123 Norwood Avenue. Written comments may be forwarded to: Commander, U.S. Army Engineer School, Attention: Director of Facilities Engineering, Fort Jefferson, California. Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered in the DEIS. Questions regarding this proposal may contact Ms. Jane McIntyre, (900) 555–9876.

Lewis D. Walker
Deputy for Environment,
Safety and Occupational Health
OASA (I&L)

Figure 6. Sample Notice of Intent (NOI)

(b) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent, if necessary, will contact appropriate Federal, 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 State ARNG actions that have any Federal funding, the National Guard Bureau (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.* If determined that Army is the lead agency, the proponent will begin the scoping process described in §651.36. Portions of the scoping process may take place prior to publication of the NOI.

(d) *Draft Environmental Impact Statement (DEIS) preparation and processing.*

(1) Preliminary DEIS (PDEIS). Based on information obtained and decisions made during the scoping process, the proponent will prepare the PDEIS. Forward 15 copies of the PDEIS to the HQDA proponent for circulation to OASA (I&L), Office of the Assistant Chief of Engineers (OACE), Office of the Judge Advocate General (OTJAG), Office of the Surgeon General (OTSG), Office of the Chief of Public Affairs (OCPA), and other interested offices for review and comment. The PDEIS is then returned to the preparer for revision as required and printing of the DEIS for filing.

(2) DEIS. The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review (see paragraph (d)(1) of this section for distribution list) and those for filing with 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 prepare the FR NOA, the proposed news release, and the EPA filing letter for signature of the DESOH. When the DEIS has been formally approved by the DESOH, the HQDA proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneous to, 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.

(e) *Public review of DEIS.* (1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the NOA in the FR. If the statement is unusually long, circulate a summary with an attached list of locations where review of the entire DEIS may take place (for example, local public libraries).

(2) However, EIS distribution must include the following:

(i) 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.

(ii) The applicant, if any.

(iii) Any person, organization, or agency requesting the entire environmental impact statement.

(3) Hold public meetings or hearings on the DEIS 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.

(f) *Response to comments.* Incorporate responses to comments in the DEIS by modification of the text and/or written explanation. Where possible, group similar comments for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(g) *Prepare Final Environmental Impact Statement (FEIS).* If the changes in the DEIS are exclusively factual corrections, prepare and circulate only an errata sheet containing DEIS comments, responses, and changes. Nevertheless, the entire document and new cover sheet will be filed with EPA (40 CFR

1503.4(c)). If broader modifications are necessary, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is essentially the same as the process outlined for the DEIS transmittal. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the EIS. Also, distribution to commenting agencies and the public must occur prior to, or simultaneously with, filing the NOA for the EIS with EPA. There is no need to invite public comment during the 30 day post-filing waiting period. (40 CFR 1503.1(b).)

(h) *Decision.* Make no decision on a proposed action until 30 days after EPA has published the NOA of the FEIS in the FR, or 90 days after the NOA of the DEIS, whichever is later. EPA publishes NOAs weekly. Those NOAs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(i) *Record of decision (ROD).* When a decision is made, the decisionmaker will prepare a ROD (40 CFR 1505.2 and 1505.3) which will become a part of the environmental documentation presented for the final decision. Forward a copy of the signed ROD to the Army Environmental Office. The ROD will—

(1) State the decision.

(2) Identify all alternatives considered by the Army in reaching its decision, specifying the preferred alternatives as well as the environmental alternatives, if they are not the same. The Army may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.

(3) 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.

(4) State how those considerations entered into the final decision.

(5) 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. A monitoring and enforcement program will be adopted and summarized for any mitigation. (See appendix F.)

(j) *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.

(k) *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.

(l) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent (See appendix F.) The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action.

(m) *Implementing the decision.* The Army may provide for monitoring to assure that its decisions are carried out and should do so in controversial cases or environmentally sensitive areas. (See appendix F.) Mitigation and other conditions established in the EIS or during its review, and comment as part of the decision, 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) Condition funding of actions on mitigation.

(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.

(n) *Supplemental EIS (SEIS).* SEISs (40 CFR 1502.9(c)) are processed in the

same way as draft and final EISs. Scoping is not required for an SEIS.

§651.33 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 regulation. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3.

§651.34 Major Army command (MACOM) processing of an EIS.

In certain cases where the scope of the EIS is limited, the HQDA proponent may authorize a MACOM to process an EIS.

(a) *NOI.* When the NOI is forwarded to the HQDA proponent (§651.32(a)(2)), the proponent may determine that the MACOM should accomplish EIS processing. The HQDA proponent will consult with the Army Environmental Office, who will gain approval from DESOH. Proponent will return the NOI with any comments and a letter authorizing the MACOM to process the EIS in accordance with the guidance in this chapter. The MACOM is responsible for preparing the NOI, proposed news release, and a transmittal letter as described in Figure 5, and for forwarding that material to the Army Environmental Office. After a review to ensure acceptability of the document, the OASA (I&L) will forward the NOI to the FR.

(b) *PDEIS.* When the PDEIS is staffed at the unit Headquarters, copies will be provided for concurrent review to the following HQDA elements to ensure that HQDA interposes no objection: JALS–RL, OGC, OCPA, OCLL, DASG–PSP–E, the Army Environmental Office, and the HQDA proponent.

(c) *Filing the EIS.* The unclassified portions of the DEIS and FEIS will be filed with the EPA Federal Activities Office by forwarding five copies with a transmittal letter as described in Figure 7. An additional five copies will be sent to the applicable EPA regional office for its review of the proposed action. One copy will be forwarded to Office of the Secretary of Defense (OSD) (Figure 8). Distribution of HQDA EIS copies will follow that of the PDEIS list. (See paragraph (b) of this section.) Copies will be coordinated for Congressional delegations and committees with the HQDA (OCLL) to meet Congressional notification procedures. Remaining distribution is for interested governors, Federal agency headquarters, national environmental organizations, regional, State and local agencies and organizations, and interested private citizens. The proponent is responsible for developing the distribution list; advice is available from the Army Environmental Office. A NOA may be published in the FR by forwarding the notice, a proposed news release, and a transmittal letter by the same method used for the NOI (See paragraph (a) of this section.)

(d) *ROD.* At the time of decision, a ROD will be prepared. (40 CFR 1505.2 and 1505.3.) A copy of the ROD will be provided to the Army Environmental Office.

Director
Office of Federal Activities
U.S. Environmental Protection Agency
Room 2119, West Tower
Waterside Mall
Washington, DC 20460

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement (DEIS), Proposal to Construct Barracks at Fort Jefferson, California.

These copies are forwarded for filing in accordance with the Council on Environmental Quality regulations for implement the provisions of the National Environmental Policy Act (40 CFR part 1500–1508).

Lewis D. Walker
Deputy for Environment,
Safety and Occupational Health
OASA (I&L)

1 Enclosure (5 copies)

DEISs and the accompanying NOA reaching EPA by noon Friday will be published in the FEDERAL REGISTER the following Friday. Failure to deliver documents to EPA by Friday noon will result in an additional 1 week delay.

Figure 7. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Environmental Protection Agency (EPA).

MEMORANDUM FOR: Secretary of Defense, Production and Logistics (P&L), Washington, DC 20301

SUBJECT: Availability of Draft Environmental Impact Statement

In accordance with Department of Defense Directive 6050.1, Environmental Considerations in DOD Actions, attached is one (1) copy of the Draft Environmental Impact Statement (DEIS), Proposal to Construct Barracks at Fort Jefferson, California.

Lewis D. Walker
Deputy for Environment,
Safety and Occupational Health
OASA (I&L)

1 Enclosure
as

Figure 8. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Office of the Secretary of Defense (OSD)

Subpart G—Public Involvement and the Scoping Process

§ 651.35 Public involvement.

(a) The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially affected parties will be involved, when practical, whenever developing environmental documentation. This requirement can be met at the very beginning of the environmental analysis and documentation process by developing a plan to include all affected parties. (See also AR 360–5.) The plan will 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.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) 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 U.S. General Services Administration (GSA)).

(4) 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.

(5) 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).

(6) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures by which participation may be solicited include the following:

(1) 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.

(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 of a above.

(g) Public surveys or polls to identify public opinion of a proposed action will be performed. (AR 335–15, chapter 10).

§651.36 Scoping process.

(a) Introduction. The scoping process, required for EIS preparation (40 CFR 1501.7), should aid the proponent in determining the scope and significant issues related to the proposed action. The process requires appropriate public participation immediately following publishing the NOI in the FR. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical.

(b) Scoping procedures. Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in §§651.37, 651.38, and 651.39, respectively.

§651.37 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 as appropriate in the NOIs. The proponent will—

(a) In the NOI, identify the significant issues to be analyzed in the EIS.

(b) 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.

(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.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including—

(1) The scoping process itself.

(2) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(3) Preparation of DEISs and FEISs.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(g) 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 regulation, including scoping.

§ 651.38 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 Army Environmental Office.

(b) In addition to the affected parties identified above, 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 directly use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, if any area where impacts are foreseen is not already represented among the other scoping participants.

(c) In all cases, provide the participants 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, use general descriptions of the probable environmental effect. Also include 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 may begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and whom to contact to receive preliminary information. The purpose of the scoping meeting is to be an informal public meeting. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can proceed.

(e) Starting with the above information, 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 to the contrary, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors from detailed consideration.

§651.39 The final phase.

(a) The scope used in the preparation of DEIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(1) The scope and the significant issues for detailed analysis in the EIS (40 CFR 1501.7(a)(2)). To determine the scope of EISs, the proponent will consider three types of actions, alternatives, and impacts.

(2) The three actions (other than unconnected single actions) are as follows:

(i) Connected actions, 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 taken previously or simultaneously, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions, when viewed with other proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions, that have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography, 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.

(3) The three alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(4) The three types of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(5) Indentification and elimination from detailed study of issues that are not significant or have been covered by prior environmental review. This narrows the discussion of these issues to a brief presentation of why they will not have a significant effect on the human environment. It may also provide a reference to their coverage elsewhere. (40 CFR 1501.7(a)(3)).

(6) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement. (40 CFR 1501.7(a)(4)).

(7) Indication of any public EAs and other 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)).

(8) 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) As part of the scoping process the lead agency may—

(1) Set time limits, as provided in §651.12(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits to the EIS in accordance with the CEQ regulations that emphasize conciseness.

(c) 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 on request. Any conflicts on issues of a scientific or technical nature that arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or preparers of the document will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§651.40 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 its own determinations on scope for use during preparation of the DEIS.

§ 651.41 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 EIS, if desired. The proponent may use the above procedures or may develop modified procedures at his or her discretion.

Subpart H—Environmental Effects of Major Army Actions Abroad

§ 651.42 Introduction.

Protection of the environment is an Army priority, no matter where the installation is located. The Army is committed to pursuing an active role in addressing environmental quality issues in our relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This subpart assigns responsibilities for review of environmental effects abroad of major Army actions. It is a requirement of E. O. 12114, ''Environmental Effects Abroad of Major Federal Actions,'' dated 4 January 1979. This chapter applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

§ 651.43 Global commons.

Environmental effects of actions that affect the global commons require environmental analyses and documentation. (See enclosures 1 and 2 of DOD Directive 6050.7) (Appendices G and H.) These relate to environmental effects abroad of major military actions.

§ 651.44 Army policy in global commons and foreign nations.

(a) Act with care in the global commons. All the nations of the world share the stewardship of these areas. Take account of environmental considerations when acting in the global commons in accordance with the procedures set out in Appendix G.

(b) Act with care within the jurisdiction of a foreign nation. Respect treaty obligations and the sovereignty of other nations. Exercise restraint in applying U.S. laws within foreign nations unless Congress has expressly provided otherwise. Evaluate environmental considerations in accordance with Appendix H when the prepared action could affect the environment of a foreign nation.

(c) Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments. Consult with the Department of State regarding use of additional exemptions from this directive as specified in Appendix H. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)).

§ 651.45 Responsibilities.

(a) Army agencies that control actions abroad (as defined within the limitations of Status of Forces Agreements) will—

(1) Ensure that regulations and other major policy issuances receive a review by the Army Environmental Office for consistency with E.O. 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA Strategy, Plans and Policy Directorate-Politico-Military Division (DAMO–SSM) on significant or sensitive actions or decisions affecting relations with other nations.

(3) Prepare and consider environmental documents for proposed actions required by this regulation.

(4) Ensure that regulations and other policies which affect global commons are subject to review for consistency with this regulation.

(5) Designate a single POC for matters regarding this regulation.

(b) The Assistant Secretary of the Army, Installation and Logistics (ASA (I&L)) will—

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L)) on matters concerning E.O. 12114, DOD Directive 6050.7, and this regulation.

(3) Coordinate actions with other Secretariat offices as appropriate.

(c) The Chief of Engineers will—

(1) Serve as ARSTAF proponent for implementation of E.O. 12114, DOD Directive 6050.7, and this regulation.

(2) Apply in planning and executing overseas construction activities where appropriate in light of applicable statutes and SOFAs.

(d) Deputy Chief of Staff for Organizations and Plans (DCSOPS) will—

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by E.O. 12114 into Army plans and activities. Emphasis is on those 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 Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)) on significant or sensitive actions affecting relations with another nation.

(e) The Judge Advocate General (TJAG), in coordination with the Office of the General Counsel, will provide advice and assistance concerning the requirements of E.O. 12114 and DOD Directive 6050.7.

(f) The Chief of Public Affairs (CPA) will provide advice and assistance on public affairs as necessary.

§ 651.46 Implementation guidance.

(a) Environmental documents prepared under the provisions of this chapter should use the format for such documents found in Appendixes G and H. Otherwise, use a format appropriate in light of the applicable statutes and SOFAs.

(b) Submit nominations for inclusions in the list of CX through DAMO–SSM to the Army Environmental Office.

APPENDIX A TO PART 651—LIST OF CATEGORICAL EXCLUSIONS (CX)

Section I: Categorical exclusions (CX)

A–1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

A–2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations that differ substantively from those in effect on surrounding non-Army lands.

A–3. Recreation and welfare activities not involving off-road recreational vehicle management.

A–4. Commissary and Post Exchange (PX) operations, except where hazardous material is stored or disposed.

A–5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities, to include the layaway of facilities, except when requiring application or disposal of hazardous or contaminated materials.

A–6. Routine procurement of goods and services, including rotine utility services.

A–7. Construction that does not significantly alter land use, provided the operation of the project when completed would not of itself have a significant environmental impact; this includes grants to private lessees for similar construction. (REC required.)

A–8. Simulated war games and other tactical and logistical exercises without troops.

A–9. Training entirely of an administrative or classroom nature.

A–10. Storage of materials, other than ammunition, explosives, pyrotechnics, nuclear, and other hazardous or toxic materials.

A–11. Operations conducted by established laboratories within enclosed facilities where—

a. All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing Federal, State, local laws, and regulations.

b. No animals that must be captured from the wild are used as research subjects, excluding reintroduction projects. (REC required.)

A–12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or maintenance activities so that the tests produce only incremental impacts, if any and provided that the training and maintenance activities have

been adequately assessed, where required, in other Army environmental documents. (REC required.)

A–13. Routine movement of personnel; routine handling and distribution of nonhazardous and hazardous materials in conformance with DA, EPA, Department of Transportation, and State regulations.

A–14. Reductions and realignments of civilian or military personnel that: (1) Fall below the thresholds for reportable actions as prescribed by statute; (2) will not result in the abandonment of facilities or disruption of environmental, surety (e.g., chemical, nuclear, or ammunition safeguards), or sanitation services (e.g., shutdown of a water treatment plant); and (3) will not otherwise require an EA or an EIS to implement (e.g., new construction to accommodate realigned personnel or major demolition activities). (REC required.)

A–15. Conversion of commercial activities (CA) to contract performance of services from in-house performance under the provisions of DOD Directive 4100.15.

A–16. 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.

A–17. Acquisition, installation, and operation of utility and communication systems, data processing, cable and similar electronic equipment that use existing rights of way, easements, distribution systems, and facilities.

A–18. Activities that identify or grant permits to identify, the state of the existing environment (for example, inspections, surveys, and investigations) without alteration of that environment or capture of wild animals.

A–19. Deployment of military units on a temporary duty (TDY) basis where existing facilities are used and the activities to be performed have no significant impact on the environment. (REC required.)

A–20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical, telephone, and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar public utility and transportation uses. (REC required.)

A–21 Grants of leases, licenses, and permits to use existing Army controlled property for non-Army activities, provided there is an existing land-use plan that has been environmentally assessed and the activity will be consistent with that plan. (REC required.)

A–22. Grants of consent agreements to use a Government-owned easement in a manner consistent with existing Army use of the easement; disposal of excess easement areas to the underlying fee owner. (REC required.)

A–23. Grants of licenses for the operation of telephone, gas, water, electricity, community television antenna, and other distribution systems normally considered as public utilities. (REC required.)

A–24. Transfer of real property administrative control within the Army, to another military department, or other Federal agency, including the return of public domain lands to the Department of Interior and reporting of property available for outgranting; and grants of leases, licenses, permits, and easements for use of excess or surplus property without significant changes in land use. (REC required.)

A–25. Disposal of uncontaminated buildings and other improvements for removal off-site. (REC required.)

A–26. Studies that involve no commitment of resources other than manpower. (REC required.)

A–27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S. (REC required.)

A–28. Development of table organization and equipment documents, no fixed location or site.

A–29. Grants of leases, licenses, and permits to use DA property for or by another governmental entity when such permission is predicated upon compliance with the NEPA. (REC required.)

Section II: Screening Criteria

A–30. A CX is a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required.

A–31. A CX may be used only when the criteria of paragraphs 4–1 and 4–2 have been applied and each of the following are true:

(a) This action is not a major federal action significantly affecting the quality of the human environment.

(b) There are minimal or no individual or cumulative effects on the environment as a result of this action.

(c) There is no environmentally controversial change to existing environmental conditions.

(d) There are no extraordinary conditions associated with this project.

(e) This project does not involve the use of unproven technology.

(f) This project involves no greater scope or size than is normal for this category of action.

(g) There is no potential of an already poor environment being further degraded.

(h) This action does not degrade an environment that remains close to its natural condition.

(i) There are no threatened or endangered species (or critical habitat), significant archaeological resources, National Registered or National Register eligible historical sites, or other statutorily protected resources.

(j) This action will not adversely affect prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers floodplains, wild and scenic rivers, or other areas of critical environmental concern.

[53 FR 46324, Nov. 16, 1988, as amended at 55 FR 35905, Sept. 4, 1990]

APPENDIX B TO PART 651—REFERENCES

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 the regulations.

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 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 420–40
Historic Preservation.
AR 530–1
Operations Security (OPSEC).
DODD 4100.15
Commercial Activities Programs.
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.

Section III

RELATED FORM

DD Form 1391
Military Construction Project Data.

APPENDIX C TO PART 651—NATIONAL ENVIRONMENTAL POLICY ACT

(42 U.S.C. 4321 *et seq.*)

APPENDIX D TO PART 651—CONTENTS OF THE ENVIRONMENTAL IMPACT STATEMENT (EIS)

D–1. Cover Sheet

The cover sheet will not exceed one page (40 CFR 1502.11) and will include—

(a) A cover sheet preceded by a protective cover sheet that contains the following statement: ''The material contained in the attached (final or draft) Environmental Impact Statement 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 EPA.

(b) A list of responsible agencies including the lead agency and any cooperating agency.

(c) 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.

(d) 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.

(e) A designation of the statement as a draft, final, or draft or final supplement.

(f) A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(g) The date by which comments must be received, computed in cooperation with the EPA. (See example cover sheet, Figure D–1.)

LEAD AGENCY: Department of the Army, TRADOC.
COOPERATING AGENCY (IES): (if any) U.S. Forest Service, U.S. Department of Agriculture.

TITLE OF THE PROPOSED ACTION: Development of training area, Fort Pleasant, Maryland.

AFFECTED JURISDICTION: State of Maryland; Smith, Taylor, and Jones Counties.

PREPARER/PROPONENT APPROVED (OF REVIEWED BY): Name, address and telephone number, name and title of proponent. (i.e., Installation Commander or program manager).

REVIEWED BY: Name and title of the environmental coordinator

APPROVED BY: Name and title of any intermediate proponent (i.e., MACOM commander); Name and title of Army Staff proponent (i.e., Director of program affected by EIS).

ABSTRACT: One paragraph summary.

REVIEW COMMENT DEADLINE: (Computed in cooperation with EPA guidance).

Figure D–1. Example cover sheet.

D–2. Summary

The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. 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).

In order 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. This summary should not exceed 10 pages.

D–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.

D–4. The 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 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. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

D–5. Alternatives Considered

This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, nontechnical language for the lay reader. A no action alternative will be included (40 CFR 1502.14(d)). For actions other than construction, the term no action is often misleading because a continuation of the status quo is implicit. This section needs no examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or numerical symbol may be used for each of the discussed alternatives (for example, alternative A). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections. The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In sum, the following points are required:

(a) A description of all reasonable alternatives including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(b) A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

(c) A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated.

(d) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

D–6. Affected Environment

This section will contain information about existing conditions in the affected areas necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. 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 all 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.

D–7. Environmental and Socioeconomic Consequences

This section of the EIS forms the scientific and analytic basis for the summary comparison of effects discussed in D–5. The following will be discussed (40 CFR 1502.16):

(a) Direct effects and their significance. Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effect might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

(b) Indirect effects and their significance. Include here socioeconomic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

(c) Possible conflicts between the proposed actions and Federal, regional, State, and local (including indian tribe) land and airspace use plans, policies, and controls for the area concerned. Compare the land use aspects of the proposed action and discuss possible conflicts, such as siting an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with State wildlife management, or creating conflicts with prime and unique farmland policies.

(d) The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects that cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, short-term can range from a very short period of time during which an action takes place to the expected life of a facility.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures. Consult the Energy Resource Impact Statement (AR 11–27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. Conservation techniques that could attenuate energy consumption should also be discussed within this section; for example, the use of insulation for newly constructed family housing that would reduce the long-term consumption of fuel oil or natural gas.

(f) Natural or depletable resource requirements and conservation potential of various mitigation measures. Include discussion of any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. The term resources should include—

(1) Materials. Discuss materials in short supply such as metals and wood, but do not include materials that are plentiful or have competitive alternatives (for example, aggregate or fill materials).

(2) Natural. Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farmlands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) Cultural. Discuss destruction of human interest sites, archaeological and historical, scenic views or vistas, or valued open space. Reiterate lasting socioeconomic effects the proposed action might have on the surrounding community.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including reuse and conservation potential of various alternatives and mitigation measures. Discuss the effect on adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as the built environment) and resultant impacts on social interaction areas such as privacy, public opinion, personnel perceptions, and other aspects of the social environment. Review the reuse potential of existing building space and its time-use allocation, usually referred to as time and spatial management. (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse.)

(h) Means to mitigate adverse environmental effects. Include mitigation not already included as part of the various alternatives. Also, specify migitations that require action by other agencies or outside parties.

D–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). Include 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 may 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, the list will not exceed two pages.

D–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 FEIS will normally only list those who have commented or shown an interest in the proposed action.

D–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.

D–11. Appendices

If an agency prepares an appendix to an EIS, the appendix will—

(a) Consist of material prepared in connection with an EIS (as distinct from material that is not so prepared and incorporated by reference).

(b) Consist only of material that substantiates any analysis fundamental to an impact statement.

(c) Be analytic and relevant to the decision to be made.

(d) Be circulated with the EIS or readily available upon request.

APPENDIX E TO PART 651—COUNCIL ON ENVIRONMENTAL QUALITY (CEQ) REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

(40 CFR parts 1500–1508)

APPENDIX F TO PART 651—IMPLEMENTING A MONITORING AND METHODOLOGY PROGRAM[1]

F–1. Mitigation

(a) The 1978 CEQ regulations for implementing NEPA recognizes the following five means of mitigating an environmental impact:

(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 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 (40 CFR 1508.20).

(b) The intention of mitigation is to reduce the effects of the action on the environment. The five means of mitigation (see (a), above) are discussed in (1) through (5) below.

(1) Avoidance. This method avoids environmental impact by not performing certain activities; for example, allowing tracked vehicles to cross only at designated improved stream crossings. This restriction would reduce the effects on a stream resulting from random access, such as increased turbidity caused by bank erosion and bottom disturbance caused by the tracks.

(2) Limitation of action. The extent of an impact can be reduced by limiting the degree or magnitude of the action; for example, changing the firing time or the number of rounds fired on artillery ranges to reduce the noise impact on nearby residents. In the example in (a) above, the number of authorized

[1] From: John Fittipaldi, et al., Handbook for Environmental Impact Analysis and Planning, Technical Report N–130, U.S. Army Construction Engineering Research Laboratory (USA–CERL), October 1982, pp. 133–143.

stream crossings would have been limited or minimized.

(3) Restoration of the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. This impact can be mitigated by either reseeding or replanting the areas with native plants after the exercise.

(4) Preservation and maintenance operations. 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 transporation effects such as air pollution, energy consumption, and traffic congestion.

(5) Replacement. This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, replace deer habitat in the project area with deer habitat in another area; or, replace fisheries habitat with deer habitat. This replacement can occur either on the site of impact or at another location. This type of mitigation is often used in water resources projects. For example, if an action were destroying some of the installation's best deer habitat, a potential mitigation would be developing another section of the installation into deer habitat. This is an example of an in-kind replacement at a different site.

F–2. Identification of Mitigation Techniques

(a) Introduction. Identifying and evaluating mitigation techniques involves using experts familiar with the predicted environmental impacts. A single mitigation measure will often alleviate several different impact.

(b) Sources of information. Many potential sources of information exist concerning the mitigation of various environmental effects. The following sources of information are available on post: Other sources are as follows:

(1) Within the DA, there are sources such as the Army Environmental Hygiene Agency (AEHA), the major Army command (MACOM) environmental office, the Army Environmental Office, U.S. Army Corps of Engineers (USACE) research laboratories (for example, U.S. Construction Engineering Research Laboratory [USA–CERL], U.S. Army Waterways Experiment Station, and U.S. Cold Regions Research Laboratory), USACE Huntsville Division, and the military assistance offices in certain districts.

(2) State agencies are another potential source of information. The appropriate POC within these agencies may be obtained from the installation environmental office.

(3) Another source is directories such as USA–CERL Technical Report N–40,[2] as discussed in Engineering Technical Note 79–6.[3]

(4) Another source on mitigation procedures is Ramifications/Mitigation statements from USA–CERL's Environmental Impact Computer System (EICS).[4]

(5) Local interest groups may also be able to help identify potential mitigation measures.

(c) Example mitigation techniques. 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. This avoids 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 reseeding areas after construction.

(d) Mitigation alternatives. Consideration of all practical mitigation alternatives are considered. The emphasis is not on what can be theoretically accomplished, but on what can be accomplished for each alternative.

(1) Practical mitigations are those that the proponent can accomplish with the project's constraints such as manpower and money. Practical measures must be defined at the installation level; what may be practical on one post or at one time may not be practical on another. A number of items 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.

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[2] R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N–40/ADA057226 (USA–CERL July 1978).

[3] Coordination with Federal and State Land Use Agencies, Engineer Technical Note 76–6 (Department of the Army (DA), 8 February 1979).

[4] L. V. Urban, et al., Computer-aided Environmental Impact Analysis for Construction Activities; User Manual, Technical Report E–50/ADA008988 (USA–CERL, March 1975).

(2) The previous examples involved some amount of conflict in all these areas. Although mission conflicts are inevitable, they are not insurmountable. Therefore, the proponent should be cautious about declaring all mitigations impracticable and should carefully consider any manpower requirements. This may be a greater restriction than military mission conflicts.

(3) There is no standard rule of thumb applicable to mitigation activities. 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. This will require coordination by the proponent office early in the process to allow enough time to get the mitigation activities into the budget cycle. If the mitigation is not funded on schedule with the action, the action can be judicially stopped.

(4) Mitigations that do not fall directly within the definition of practical 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 EIS.

F–3. Monitoring

Monitoring is an integral part of any mitigation system and a way to examine an enviromental mitigation. The two basic types of monitoring are as follows:

(a) Enforcement monitoring. Enforcement monitoring ensures that mitigation is being performed as described in the environmental document and ensuring that mitigation requirements and penalty clauses are written into any contracts. It also includes ensuring that these provisions are enforced. Before mitigation can take place on-post, it must be budgeted, scheduled, and the necessary manpower must be assigned. Any changes required in post regulations must be completed and enforced. The actual mitigation (for example, aerial seeding of a training area) must be performed. Enforcement monitoring involves the monitoring of all these activities.

(b) Effectiveness monitoring. Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. This must be a scientifically based quantitative investigation. Generally, qualitative measurements are not acceptable. However, it is not necessary to measure everything that may be affected by the action, only enough information to judge the method's effectiveness.

F–4. Establishing a Monitoring System

Establishment of a monitoring system must involve all appropriate offices that will be involved in its implementation. When evaluating several different potential monitoring systems, the ability to perform the monitoring is the most critical factor. This means that manpower—both on post and outside expertise—must be available. Sufficient funds must also be available for the monitoring process. Figures F–1 through F–3 illustrate the steps in establishing a monitoring system. Figure F–1 is designed to help select the type of monitoring system needed. Figure F–2 shows the responsibilities of the lead agency in establishing an enforcement monitoring program. Figure F–3 illustrates the steps necessary to establish an effectiveness monitoring program.

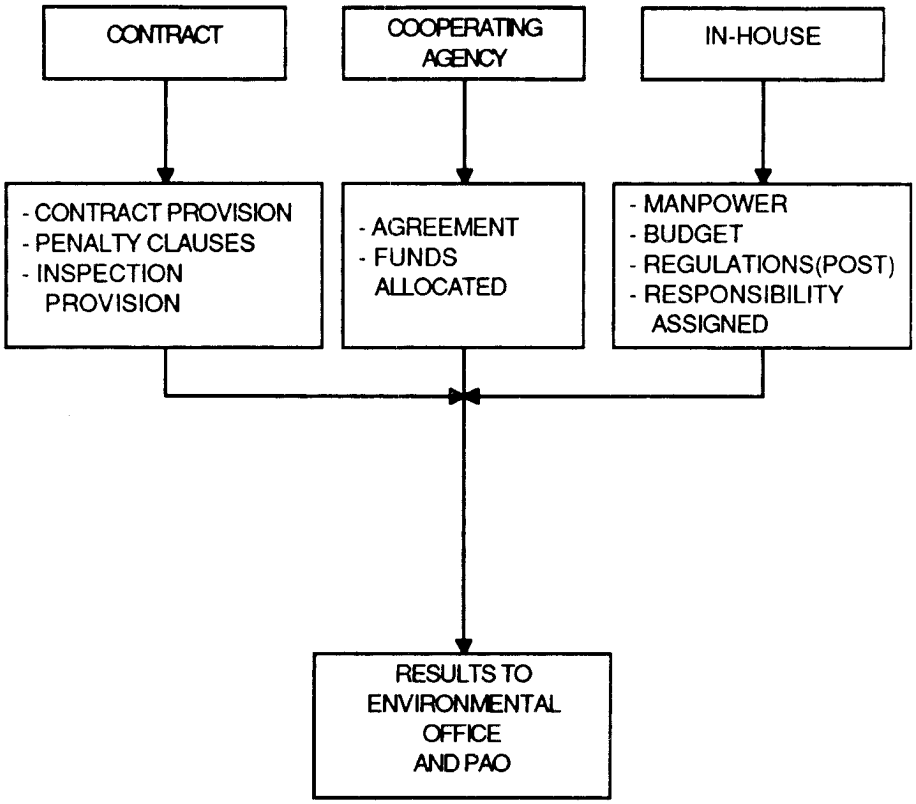

Figure F-1. Monitoring mitigations

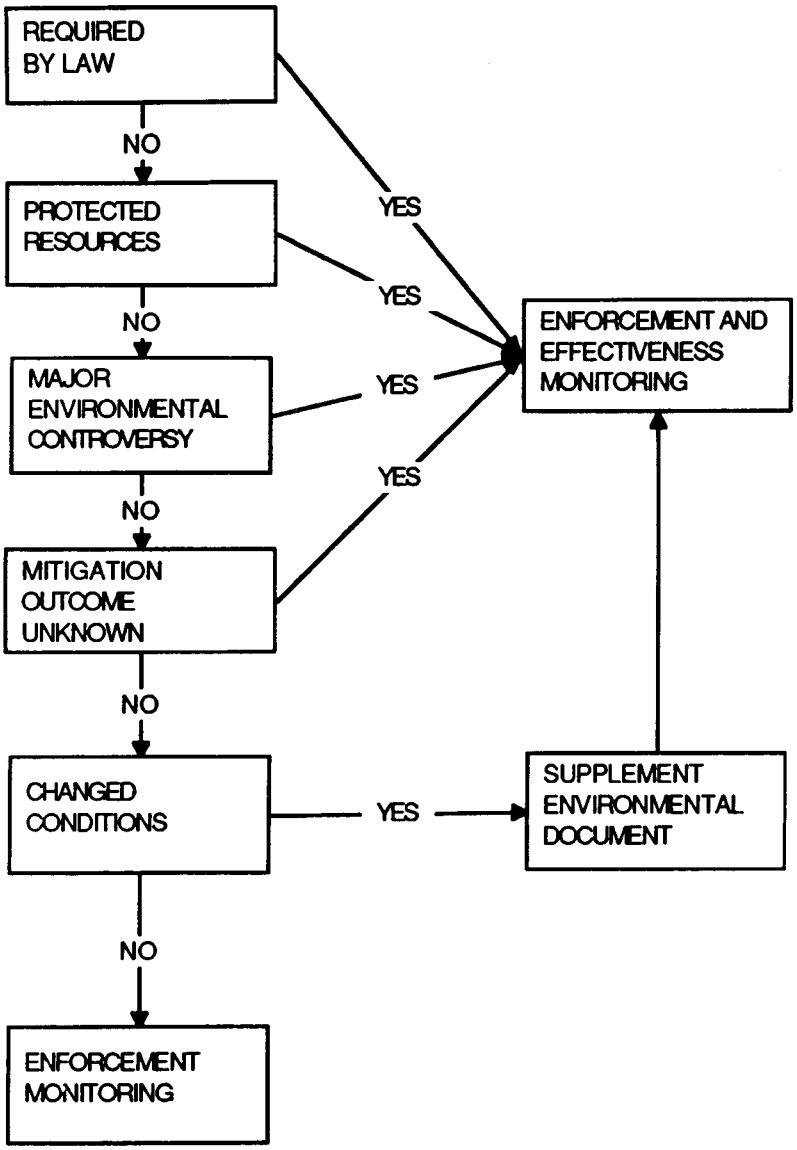

Figure F-2. Enforcement monitoring

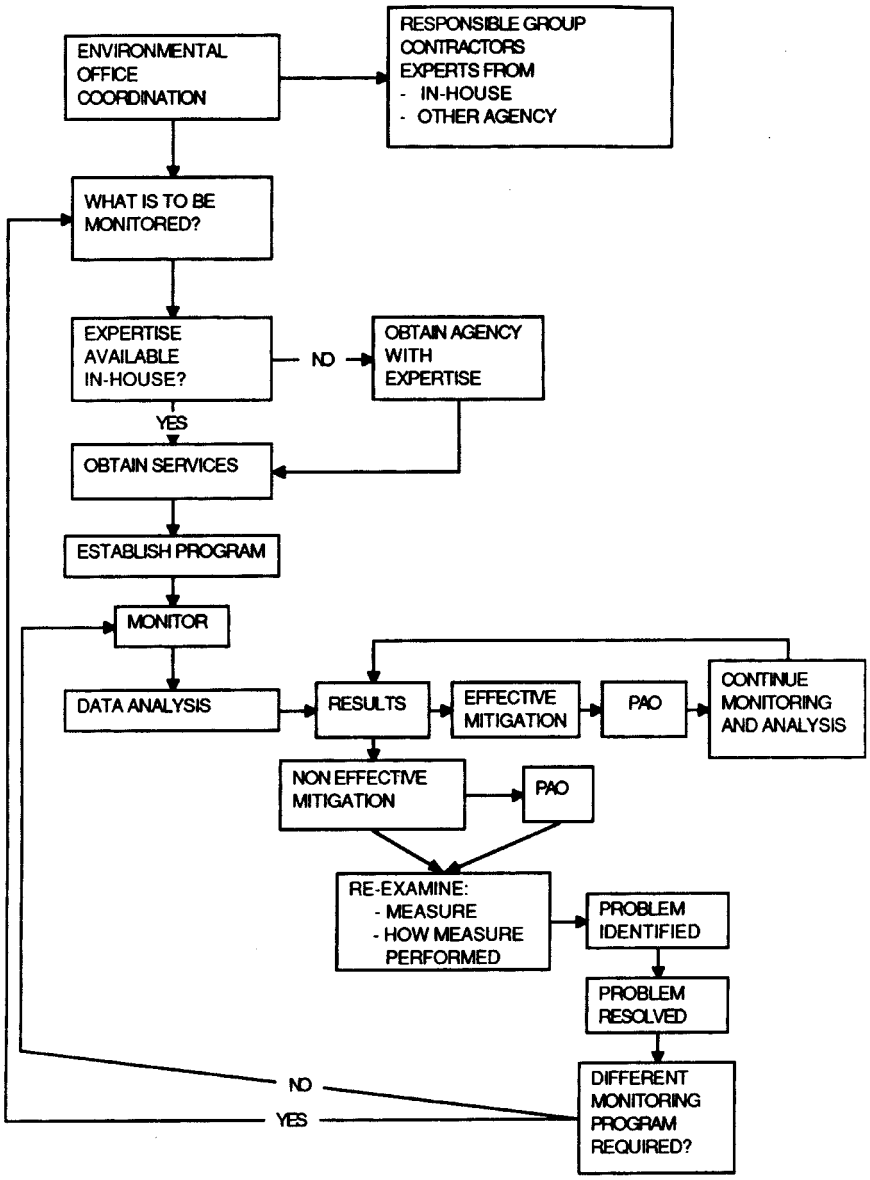

Figure F-3. Effectiveness monitoring

F–5. Type of Monitoring Program

AR 200–1 and other laws and regulations help determine the types of monitoring program. There are five basic considerations for monitoring programs (Figure F–1):

(a) Legal requirements. Permits for some actions will require that a monitoring system be established, for example, dredge and fill permits from the Corps of Engineers. These will generally require both enforcement and effectiveness monitoring programs.

(b) Protected resources. These include Federal- or State-listed endangered or threatened species, important historic or archaeological sites (whether or not these are included 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.

(c) Major environmental controversy. If a controversy remains regrading 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.

(d) 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, that may have worked successfully in one area, may not work in another.

(e) Changed conditions. The final consideration is whether any condition, such as the environmental setting, have 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 impact evaluation 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–6. Enforcement Monitoring Progam Development

The development of an enforcement monitoring program is governed by who will actually perform the mitigation (Figure F–2). The following three different groups may actually perform the work: a contractor, a cooperating agency, or a lead agency (in-house). However, the lead agency is ultimately responsible for performing any mitigation activities.

(a) 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 provisions.

(b) 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 are complete.

(c) Lead agency performance. If the lead agency performs the mitigation, the proponent has several responsibilities to—

(1) Ensure that needed tasks are performed.

(2) Provide appropriate funding in the project budget.

(3) Make arrangements for necessary manpower allocations.

(4) Make any necessary changes in the agency (installation) regulations (such as, environmental or range regulations).

(d) Results. In any case, whether the mitigation is performed by contract, a cooperating agency, or the lead agency, all results will be sent to the Public Affairs Office and the Environmental Office on post.

F–7. Effectiveness Monitoring Program Development

Effectiveness monitoring is the most difficult to establish (Figure F–3). The responsible agent, such as the Director of Training, should coordinate the monitoring with the Environmental Office.

(a) Determination of what is to be monitored. The first step in this type of monitoring program is to determine what must be monitored. This determination should be 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.

(b) Finding expertise. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post; Table F–1 lists potential sources on a military installation. If it is not

available, it must be obtained from an outside source. Directories such as USA-CERL Technical Report N–40[5] may provide the needed information. In addition, local universities may have specialists and local interest groups who can identify experts within a particular field. This may be particularly helpful if a mitigation is considered controversial.

(c) Establishment of a program. After a source of expertise is located, the program can be established, using the following five technical criteria:

(1) Any parameters used must be measurable; for example, the monitor 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 decisionmaker can take any necessary corrective action before the effects are irreversible.

TABLE F–1. POTENTIAL MONITORING AND MITIGATION EXPERTISE

Ecology	
	Installation Environment Specialist
	Installation Wildlife Officer
	Installation Forester
	Installation Natural Resource Committee
	Corps District Environmental Staff
Health and Safety	
	Installation Preventive Medicine Officer
	Installation Safety Officer
	Installation Hospital
	Installation Mental Hygiene or Psychiatry Officer
	Chaplain's Office
Air Quality	
	Installation Environmental Specialist
	Installation Preventive Medicine Officer
Water Quality	
	Installation Environmental Specialist
	Installation Preventive Medicine Officer
	Corps District Environmental Staff
Socioeconomic	
	Personnel Office

[5] R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N–40/ADA057226 (USA-CERL, 1978).

TABLE F–1. POTENTIAL MONITORING AND MITIGATION EXPERTISE—Continued

	Public Information Officer
	Corps District Economic Planning Staff
Earth Science	
	Installation Environmental Specialist
	Corps District Geotechnical Staff
Land Use Impacts	
	Installation Master Planner
	Corps District Community Planners
Noise	
	Preventive Medicine Officer
	Directorate of Engineering and Housing
	Installation Master Planner
Aesthetics	
	Installation Landscape Architect
	Corps District Landscape Architects
Energy and Resource Conservation	
	Installation Environmental Specialist
Historic and Archaeological Resources	
	Installation Environmental Specialist
	Installation Historian or Architect
	Corps District Archaeologist
Airspace	
	Installation Air Traffic and Airspace Officers
	Department of the Army Regional Representative to the Federal Aviation Administration
	Department of the Army Aeronautical Services Office
	Military Airspace Management System (MAMS)
	Installation Range Control Officer

(d) Program management. There are several program management considerations. First, 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.

(e) Initiation of program. The next step is to initiate the monitoring program. In most cases, a monitor 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.

(f) Sample collection, data analysis, and coordination. The next step in the monitoring program is sample collection and data analysis. A nontechnical summary of the data analysis should be provided to the Public Affairs Office, which will handle routine

information requests related to the program. Technical results from the analysis should be sent to the installation environmental office, which will coordinate them with the proponent. Other related coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the environmental office.

(g) Continuation of program.

(1) If the mitigations are effective, the monitoring should be continued. However, even if a noneffective result is obtained, a nontechnical summary should still be sent to the Public Affairs Office. The Environmental Office and the responsible group should reexamine the mitigation measures with the experts. The problem may be either inadequacy of the mitigation measure, in the performance, or in the monitoring.

(2) Once the problem is identified, the responsible group and the experts should determine whether more detailed information is needed, whether the monitoring is being implemented incorrectly, or whether the mitigation is inadequate.

(3) After the problem is resolved, the group must determine whether a different monitoring system should be established. If the old program is adequate, it should be continued; however, if a different program is required, then a new system must be established.

APPENDIX G TO PART 651—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS

(Refer to Department of Defense, Final Procedures, 32 CFR part 197, Enclosure 1.)

APPENDIX H TO PART 651—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), 32 CFR part 197, Enclosure 2. Adopted herewith except that references to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) are changed to Assistant Secretary of Defense (Production and Logistics).)

APPENDIX I TO PART 651—GLOSSARY

Section I

Abbreviations

ARNG
Army National Guard
ARSTAF
Army Staff
ASA (I&L)
Assistant Secretary of the Army (Installations and Logistics)
CEQ
Council on Environmental Quality
CERCLA
Comprehensive Environmental Response Compensation and Liability Act
CX
Categorical exclusions
DA
Department of the Army
DEIS
Draft Environmental Impact Statement
DESOH
Deputy of Environment, Safety, and Occupational Health
DOD
Department of Defense
EA
Environmental assessment
EIS
Environmental Impact Statement
EPA
Environmental Protection Agency
FEIS
Final Environmental Impact Statement
FNSI
Finding of No Significant Impact
FR
Federal Register
FS
Feasibility study
HQDA
Headquarters, Department of Army
I&L
Installation and logistics
MACOM
Major Army command
NEPA
National Environmental Policy Act
NOA
Notice of availability
NOI
Notice of Intent
OASA (I&L)
Office of the Assistant Secretary of the Army, (Installation and Logistics)
OCLL
Office of the Chief of Legislative Liaison
OCPA
Office of the Chief of Public Affairs
OSD
Office of the Secretary of Defense
POC
Point of contact
REC
Record of environmental consideration
ROD
Record of decision
SARA
Superfund Amendments and Reauthorization Act
SOFA
Status of Forces Agreement

Section II

TERMS

Categorical exclusion (CX)

A category of actions that do not require an EA or an EIS because DA has determined that the actions do not have an individual or cumulative impact on the environment. (Refer to Subpart D for further discussion.)

Closure of a majority installation

(Except where the only significant impacts are socioeconomic with no significant biophysical environmental impact). ''Majority military installation'' is defined in chapter 2 of ''Department of Defense Base Structure Report'' as ''A contiguous parcel of land with facilities and improvements thereon having a command and control organization providing a full range of BASOPS (base operations) functions in support of assigned missions.'' Compare with the definition of a ''minor installation,'' which is ''under the command of and receives resources support from the commander of another installation which is geographically distant.''

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.

HQDA 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 decisionmaking 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 environmental impact statement, 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 is dependent 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 Engineering and Housing becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, U.S. Army Training and Doctrine Command (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 decisionmaker. 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.)

PARTS 652–654—[RESERVED]

PART 655—RADIATION SOURCES ON ARMY LAND

AUTHORITY: 10 U.S.C. 3012.

§655.10 Use of radiation sources by non-Army entities on Army land (AR 385–11).

(a) Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including civilian contractors) on an Army installation. Approval of the installation commander is required to obtain an Army radiation permit. For the purposes of this section, a radiation source is:

(1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR);