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mitigate environmental impacts and, if not, explain why not.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. If using Best Management Practices (BMPs), identify the specific BMPs being used and include those BMPs in the mitigation plan. Discuss mitigation measures in terms of “will” and “would” when such measures have already been incorporated into the proposal. Use terms like “may” and “could” when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that is approved by the decision-maker. Where possible and appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must ensure compliance with mitigation requirements, monitoring their effectiveness, and must keep the EPF informed of the mitigation status. The EPF reports its status, through the MAJCOM, to HQ USAF/A7CI when requested. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may “mitigate to insignificance” potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before con-

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tinuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent prepares a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded, through the MAJCOM EPF to HQ USAF/A7CI for review within 90 days from the date of signature of the FONSI or ROD.

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§ 989.23 Contractor prepared documents.

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document's list of preparers.

§ 989.24 Public notification.

(a) Except as provided in § 989.26, public notification is required for various aspects of the EIAP.

(b) Activities that require public notification include:

- (1) An EA and FONSI.
- (2) An EIS NOI.
- (3) Public scoping meetings.
- (4) Availability of the draft EIS.
- (5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).
- (6) Availability of the final EIS.
- (7) The ROD for an EIS.

(c) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF

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may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under § 989.15(e)(2), and for all EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not “legal” newspapers or “legal section” of general newspapers).

(d) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other equivalent agency (date of letter of notification).

§ 989.25 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such nonpermanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

§ 989.26 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision-making process; however, Air Force staff must prepare, safeguard, and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the FEDERAL REGISTER) or public involvement in the EIAP. However, the

Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.26(b) actions, an NOI or NOA will not be published in the FEDERAL REGISTER until the proposed action is declassified. For § 989.26(c) actions, the FEDERAL REGISTER will run an unclassified NOA which will advise