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Subpart B—National Environmental Policy Act and the Decision Process

§ 651.9 Introduction.

(a) The NEPA process is the systematic examination of possible and probable environmental consequences of implementing a proposed action. Integration of the NEPA process with other Army projects and program planning must occur at the earliest possible time to ensure that:

(1) Planning and decision-making reflect Army environmental values, such as compliance with environmental policy, laws, and regulations; and that these values are evident in Army decisions. In addition, Army decisions must reflect consideration of other requirements such as Executive Orders and other non-statutory requirements, examples of which are enumerated in § 651.14(e).

(2) Army and DOD environmental policies and directives are implemented.

(3) Delays and potential conflicts in the process are minimized. The public should be involved as early as possible to avoid potential delays.

(b) All Army decision-making that may impact the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts (section 102(2)(a), Public Law 91–190, 83 Stat. 852, National Environmental Policy Act of 1969 (NEPA)). This approach allows timely identification of environmental effects and values in sufficient detail for concurrent evaluation with economic, technical, and mission-related analyses, early in the decision process.

(c) The proponent of an action or project must identify and describe the range of reasonable alternatives to accomplish the purpose and need for the proposed action or project, taking a ''hard look'' at the magnitude of potential impacts of implementing the reasonable alternatives, and evaluating their significance. To assist in identifying reasonable alternatives, the proponent should consult with the installation environmental office and appropriate federal, tribal, state, and local agencies, and the general public.

§ 651.10 Actions requiring environmental analysis.

The general types of proposed actions requiring environmental impact analysis under NEPA, unless categorically excluded or otherwise included in existing NEPA documentation, include:

(a) Policies, regulations, and procedures (for example, Army and installation regulations).

(b) New management and operational concepts and programs, including logistics; RDT&E; procurement; personnel assignment; real property and facility management (such as master plans); and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan. NEPA requirements may be incorporated into other Army plans in accordance with 40 CFR 1506.4.

(c) Projects involving facilities construction.

(d) Operations and activities including individual and unit training, flight operations, overall operation of installations, or facility test and evaluation programs.

(e) Actions that require licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, or Federal Aviation Administration air space request (new, renewal, or amendment), in accordance with AR 95–50.

(f) Materiel development, operation and support, disposal, and/or modification as required by DOD 5000.2–R.

(g) Transfer of significant equipment or property to the ARNG or Army Reserve.

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

(i) Leases, easements, permits, licenses, or other entitlement for use, to include donation, exchange, barter, or Memorandum of Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to

use land for special events such as air shows or carnivals.

(j) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government-Owned, Contractor-Operated (GOCO) industrial plants or housing and construction via third-party contracting.

(k) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare proper environmental documentation may rest with the non-Army requester, who will provide needed information for Army review. The Army must review and adopt all NEPA documentation before approving such requests.

(l) Projects involving chemical weapons/munitions.

§ 651.11 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or the Army and must prohibit, exempt, or make impossible full compliance with the procedures of NEPA (40 CFR 1506.11). While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action are still subject to NEPA analysis and documentation. The fact that Congress has directed the Army to take an action does not constitute an exemption.

(b) *Emergencies.* In the event of an emergency, the Army will, as necessary, take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property, without the specific documentation and procedural requirements of other sections of this part. In such cases, at the earliest practicable time, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Installations and Environment (DUSD(IE)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this part or the CEQ regulations. However, the Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this notification requirement. After action reports may be required at the discretion of the ASA(I&E).

(c) *Categorical Exclusions (CXs).* These are categories of actions that normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a substantial effect on the human environment. Qualification for a CX is further described in subpart D and appendix B of this part. In accordance with § 651.29, actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA.

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (paragraphs (a) through (c) of this section) must be analyzed to determine if they could cause significant impacts to the human or natural environment (see § 651.39). The EA determines whether possible impacts are significant, thereby warranting an EIS. This requires a ''hard look'' at the magnitude of potential impacts, evaluation of their significance, and documentation in the form of either an NOI to prepare an EIS or a FNSI. The format (§ 651.34) and requirements for this analysis are addressed in subpart E of this part (see § 651.33 for actions normally requiring an EA). The