

the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)]

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 23

Grant programs.

Accordingly, Title 32, Chapter I, Subchapter B of the Code of Federal Regulations is amended to add Part 23 to read as follows:

PART 23—GRANTS AND AGREEMENTS—MILITARY RECRUITING ON CAMPUS

Sec.

23.1 Military recruiting on campus.

Authority: 5 U.S.C. 301.

§ 23.1 Military recruiting on campus.

(a) *Clause for award documents.* (1) Grants officers shall include the following clause in grants and cooperative agreements with institutions of higher education:

“As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution that has a policy of denying, and that it is not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using procedures established by the Secretary of Defense to implement section 558 of Public Law 103-337 (1994), to be such an institution during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.”

(2) If a recipient refuses to accept the clause in paragraph (a)(1) of this section, the grants officer shall determine that the recipient is not qualified with respect to the award, and may award to an alternative recipient.

(b) *Language for program solicitations.* (1) To notify prospective recipients of the requirement in paragraph (a) of this section, grants officers shall include the following

notice in program announcements or solicitations under which grants or cooperative agreements may be awarded to institutions of higher education:

“This is to notify potential proposers that each grant or cooperative agreement that is awarded under this announcement or solicitation to an institution of higher education must include the following clause:

“As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution that has a policy of denying, and that it is not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using procedures established by the Secretary of Defense to implement section 558 of Public Law 103-337 (1994), to be such an institution during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.”

“If your institution has been identified under the procedures established by the Secretary of Defense to implement section 558, then: (1) No funds available to DoD may be provided to your institution through any grant, including any existing grant; (2) as a matter of policy, this restriction also applies to any cooperative agreement; and (3) your institution is not eligible to receive a grant or cooperative agreement in response to this solicitation.”

(2) Grants officers may include introductory language with the language in paragraph (b)(1) of this section, to tailor the notice to the circumstances of the particular announcement (e.g., to reflect a Broad Agency Announcement under which a DoD Component would award contracts, as well as grants and cooperative agreements). However, the language and the intent in paragraph (b)(1) may not be changed without the approval of the Director, Defense Research and Engineering [requests for such approval are to be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon; Washington, DC 20301-3080].

Dated: January 19, 1995.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Department of the Air Force

32 CFR Part 989

RIN 0701-AA36

Environmental Impact Analysis Process (EIAP)

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulations to update the Air Force process for compliance with the National Environmental Policy Act and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. This revision provides policy and guidance for consideration of environmental matters in the Air Force decision-making process. It implements the Council on Environmental Quality regulations and 32 CFR Part 188 as well as Executive Order 12114.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Reinertson or Mr. Jack C. Bush, (HQ USAF/CEVP), 1260 Air Force Pentagon, Washington, DC 20330-1260, telephone, (703) 695-8942.

SUPPLEMENTARY INFORMATION:

Discussion of Major Issues

Unless otherwise noted, the discussions in the following paragraphs only address issues where public comments were received and clarification is required. For portions of the final rule where comments were not received, the final rule is consistent with the proposed rule, and no further discussions are included. Portions of the proposed rule have also been changed so the final rule more clearly states the intended meaning. Some of these changes are based on public input, but are not addressed in a specific discussion.

Readers should note that as part of a reduction of bulk and clarification of this rule, specific reformatting has been accomplished. Section 989.9, formerly titled, Lead and cooperating agency, is now titled, Cooperation and adoption.

Section 989.32, Definitions, has now changed to, Attachment 1—Glossary of References, Abbreviations, Acronyms, and Terms. Section 989.32 is now titled, Procedures for analysis abroad, and § 989.33, Categorical exclusions, is now, Attachment 2—Categorical Exclusions.

Environmental considerations—global commons, § 989.34 and, Environmental considerations—foreign nations and protected global resources, § 989.35, have been reorganized as § 989.32, Procedures for analysis abroad,

and § 989.33, Requirements for analysis abroad. This reorganization of the rule was accomplished to show that Air Force environmental planning abroad is part of the EIAP, but is not considered a part of the Air Force's NEPA compliance. Air Force analysis abroad is strictly driven by 32 CFR Part 187, Environmental effects abroad of major DOD actions. Title 32 CFR Part 187 implements Executive Order 12114, Environmental Effects Abroad of Major Federal Actions.

The former § 989.36, Procedures for holding public hearings, has been reformatted as Attachment 3—Procedures for Holding Public Hearings on Draft Environmental Impact Statements.

1. Combining Documents

Comments: Commenters indicated that comprehensive planning is based upon a solid information base, quite similar to the information base required for the EIAP. Commenters further indicated that comprehensive plans should support good economic, environmental and social management goals, and the Air Force EIAP should be applied to comprehensive planning.

Response: Sections 1500.4(o), 1500.5(i) and 1506.4 of the CEQ regulations address combining environmental documents to reduce duplication and paperwork. This combination could include any other type of document so long as the actual NEPA document is in compliance with that law and the CEQ regulations. Air Force comprehensive planning includes as a fundamental planning component, environmental constraints and opportunities. It also incorporates operational, urban planning, and capital improvement programs, to identify and assess development alternatives and ensure compliance with applicable federal, state, and local laws, regulations and policies. No further changes will be made to this regulation with reference to wording addressing combining documents.

2. Environmental Assessments (EA)

Comment: Several commenters disagreed with Air Force's "non-involvement" of the public or oversight agencies in preparation of draft EAs. Further, commenters suggested that draft EAs be made available to the public for review and comment in the same manner as draft EISs. Commenters major concerns revolved around the potential for the Air Force to "hide" potential impacts and to take actions that would otherwise require an EIS and therefore require public hearings.

Response: CEQ has indicated their intent as to when public review of EAs is necessary. For example: borderline cases (reasonable argument for preparation of an EIS); unusual, new, or precedent setting cases; public controversy; or when the action is one which would normally require an EIS. CEQ has also indicated that where the proposal itself integrates mitigation from the beginning and it is impossible to define the proposal without including the mitigation, the agency may then rely on mitigation measures in determining if overall effects would not be significant. In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action.

The Air Force has identified specific actions where a 30 day public review is required. Section 989.14 of this rule has been modified to identify procedures for public involvement in the development of an EA. The Air Force has included the public in the review of appropriate EAs, where the public input would assist in better decision-making.

The Air Force has specifically modified § 989.14(g) by adding a subparagraph (5) which will require all EAs that mitigate impacts to insignificance in lieu of an EIS, to be the subject of a public review period. Section 989.14(j) has been revised to define how to initiate a public review period for specified actions. The extent of public involvement will typically coincide with the magnitude and complexity of the proposed action and its potential effect on the area in question.

3. Finding of No Significant Impact (FONSI)

Comment: Commenters suggested that the final rule should provide provisions for public dissemination and comment on all FONSI. Commenters also suggested that a public review period should be provided for all NEPA documentation.

Response: The Air Force considers all NEPA compliance documents public documents, unless classified for operational reasons. These documents are available to the public, upon request or as part of previously established mailing list. They are also available through regional offices of federal agencies having responsibility for a certain area of environmental protection, the state single point of contact and state agencies. The amount of time provided for review of an EA/FONSI is directly related to the magnitude of the action and potential environmental controversy. Section 989.15(e)(l) has been edited to clarify

intent and to ensure that all Air Force organizations understand that a public review is the norm unless clearly unnecessary.

Section 989.15(f) has been modified by adding subparagraph (4) in cases where potential significant environmental impacts found during preparation of an EA/FONSI are mitigated to insignificance in lieu of preparing an EIS, as defined in § 989.22(c).

4. Public Involvement in the Environmental Impact Analysis Process (EIAP) (Air Force NEPA Compliance Process) Notice of Intent (NOI): Scoping and Review and Comments of Documentation

Comment: Commenters were concerned that the Air Force would attempt to keep the public involvement in a proposal to a minimum by not releasing information or ignoring public concerns. Commenters suggested that the Air Force would attempt to hide potential significant impacts related to a proposal. Further, commenters indicated that when a federal agency holds a public scoping meeting in a given community they must return to that same community to hold hearings on the DEIS.

Response: The Air Force includes the affected public in all its NEPA compliance actions (see 2 and 3 above) for the initiation of a proposal through the final decision (initial scoping process, the public review and comment process and responding to concerns raised by individuals, organizations and other federal agencies).

Section 1506.6. of the CEQ regulations requires agencies to make "diligent efforts" to involve the public in the agency's NEPA procedures. The Air Force includes the public as fully as is practicable in the NEPA decision-making process. Section 989.23, Public notification mandates not only legally required public involvement, but also encourages equally effective means for including public participation in the Air Force's NEPA process.

When the Air Force is preparing an EIS for an action that could potentially impact on a specific community, it is the Air Force's intent to fully incorporate the community in the process of scoping and public hearings. In the case where the action was carried no further than the scoping stage, because it may have been discontinued, the Air Force would not hold a public hearing. For continuing actions the Air Force will return to the scoping venue to hold public hearings on the DEIS, unless the scoping process has indicated a lack of interest. On the other hand, if

decision-making for a proposal was the subject of an EA, a determination as to whether or not a scoping meeting or public hearing will be held would be made based upon criteria provided in § 989.14(j). The Air Force has identified specific procedures for holding public hearings on draft EISs (see Attachment 3).

5. Draft Environmental Impact Statement (DEIS)

Comments: Commenters indicated that wording be revised to make clear what is being stated regarding distribution of summary documentation when the DEIS is unusually long. Commenters suggested that wording, to address unusually long DEISs, should be circulated which would include a list of locations (such as public libraries) where the entire DEIS may be reviewed. If the agency receives a timely request for the entire statement and for additional time to comment, the time for that requester only shall be extended by at least 15 days beyond the minimum review period.

Commenters suggested that when responding to comments the agency should, in the comment section of the document, refer the reader to the appropriate modified text. This would allow the reviewer to quickly find the appropriate response.

Response: Section 989.19(d) has been edited to clarify procedures for handling summary documents and making lengthy DEISs available for public review at specific locations. Section 989.19(e) has been added to provide guidance as to when and how to seek additional comments from the interested public. Guidance in subsection (e) will be followed when there has been a significant change in circumstances, development of new information or where there is substantial controversy concerning a proposal.

Section 989.21(a) has been revised to reflect the correct procedural requirements for EPA filing of notices of availability. Section 989.28 has been revised to better discuss issues relative to air quality in NEPA documentation.

6. Final Environmental Impact Statement (FEIS)

Comments: Commenters suggested that the distribution process for the FEIS should be clarified to clearly indicate that FEISs must be furnished to any person, organization, or agencies that made comments on the DEIS. Commenters also indicated that a new section should be added which would give guidance as to when reevaluation

of a completed NEPA analysis should occur.

Response: Section 989.20(a) has been modified to reflect concerns related to distribution of the FEIS. Also, a new subsection § 989.20(c) has been added. This section describes when, due to the lack of advancement of a proposal, reevaluation of the NEPA documentation should be accomplished to ensure its validity.

7. Mitigation

Comments: Commenters indicated that the regulation should mandate the inclusion of the cost of mitigation as a line item in the budget for a proposed action versus the currently existing "where possible" language. Commenters also indicated that the Air Force may burden proponents of actions by requiring them to prepare mitigation plans as described in § 989.22(d).

Response: The Air Force uses mitigations to reduce or eliminate potential impacts. Commitment to the use of mitigations, as defined both in the text of a NEPA analysis and the FONSI or ROD, are considered by the Air Force to be legally required and will be fulfilled. Mitigations are placed into a computer tracking system at HQ Air Force, with periodic status updates/validations being accomplished. Section 989.15(e)(2)(iv) has been added to require a 30-day review period for EA/FONSIs where potential impacts will be mitigated to insignificance. Also § 989.22(d) has been modified to better reflect Air Force intent relative to execution of mitigations.

8. Classified Actions

Comments: Commenters indicated that classifying NEPA compliance documentation should not be allowed. Commenters perceived that the Air Force would classify programs that released chemical toxins or radioactive materials into the environment, without informing the public because of the classified nature of the program producing the pollutants. Commenters further indicated that the Air Force would classify a program just to hide its environmental impacts or to avert Congressional scrutiny.

Response: As stated earlier, it is the Air Force's intent to include the public in all of its NEPA compliance actions. Classifying of an action will not be accomplished to "hide" potential environmental controversy. However, environmental documentation will be classified to safeguard issues of national security. Although an action may be classified, the Air Force intends to comply with NEPA, for classified actions, as described in § 989.25, and

will make available, unclassified portions of environmental documents for public review.

9. Airspace

Comments: Commenters referred to an inter-agency agreement between the National Park Service (NPS), the Fish and Wildlife Service (FWS), the Bureau of Land Management (BLM), and the Federal Aviation Administration (FAA), where the FAA, recognizing the values for which the NPS, FWS, and BLM lands are managed, has established a 2,000' Above Ground Level (AGL) advisory as the requested minimum altitude for aircraft flying over lands administered by these agencies. These agencies seek voluntary cooperation with the 2,000' AGL minimum altitude advisory. Commenters expressed a concern regarding airspace reviews being considered in relation to potential impacts of over flights of the National Wildlife Refuge System. Commenters also indicated the Air Force should fully integrate land management agencies in development of NEPA documents.

Response: The Air Force has entered into a Memorandum of Understanding that outlines various airspace responsibilities, (see § 989.27, "Airspace proposals." Further, the Air Force has identified 3000' AGL as the base altitude to apply a CATEX (see Attachment 2 A.2.3.35). Any airspace proposal below 3000' AGL will trigger the requirement to prepare a more in-depth level of NEPA analysis. The Air Force includes all land management agencies in NEPA compliance. Where necessary, the Air Force invites these agencies to act as "Cooperating Agency" for that agency's decision making purposes. For NEPA compliance documents related to airspace issues, a full analysis will be accomplished with input from the public and responsible agencies. The Air Force has added § 989.15(e)(1)(v) to require a 30-day review period for EAs analyzing proposed changes in airspace use or designation.

10. Categorical Exclusion (CATEX)

Comments: Commenters indicated that the list of actual CATEXes should be placed under § 989.13 so all requirements are found under one heading. Commenters also indicated that some of the Air Force CATEXes are too broad in scope.

Response: Due to the length of the CATEX list, it will remain as a separate section (now, Attachment 2—Categorical Exclusions). Although the initial perception may be that a CATEX is too broad, the Air Force believes that proper procedural application of the EIAP will provide for adequate scoping

of issues. The Air Force accomplishes this initial scoping via the Air Force Form 813, Request for Environmental Impact Analysis, as described in § 989.12. When this Form is applied as intended and filled out accurately, the determination of scope and whether or not a CATEX will apply, will be better determined.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of \$100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use. This rule revises and replaces Air Force Regulation (AFR) 19-2, Environmental Impact Analysis Process (EIAP), 10 August 1982, and AFR 19-3, Environmental Impact Analysis Process Overseas, 23 September 1981.

List of Subjects in 32 CFR Part 989

Environmental protection,
Environmental impact statements.

Therefore 32 CFR Part 989 is revised to read as follows:

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

- Sec.
- 989.1 Purpose.
 - 989.2 Concept.
 - 989.3 Responsibilities.
 - 989.4 Initial considerations.
 - 989.5 Organizational relationships.
 - 989.6 Budgeting and funding.
 - 989.7 Requests from non-Air Force agencies or entities.
 - 989.8 Analysis of alternatives.
 - 989.9 Cooperation and adoption.
 - 989.10 Tiering.
 - 989.11 Combining EIAP with other documentation.
 - 989.12 Air Force Form 813, Request for Environmental Impact Analysis.
 - 989.13 Categorical exclusion.
 - 989.14 Environmental assessment.
 - 989.15 Finding of no significant impact.
 - 989.16 Environmental impact statement.
 - 989.17 Notice of intent.
 - 989.18 Scoping.
 - 989.19 Draft EIS.
 - 989.20 Final EIS.
 - 989.21 Record of decision.
 - 989.22 Mitigation.
 - 989.23 Public notification.
 - 989.24 Base closure and realignment.
 - 989.25 Classified actions (40 CFR 1507.3(e)).
 - 989.26 Occupational safety and health.
 - 989.27 Airspace proposals.
 - 989.28 Air quality.
 - 989.29 Pollution prevention.

- 989.30 Special and emergency procedures.
- 989.31 Reporting requirements.
- 989.32 Procedures for analysis abroad.
- 989.33 Requirements for analysis abroad.

Attachment 1 to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms.

Attachment 2 to Part 989—Categorical Exclusions.

Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

Authority: 10 U.S.C. 8013.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the Environmental Impact Analysis Process differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, 42 U.S.C. 4321-4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500-1508, referred to as the "CEQ Regulations"). Further requirements are contained in 32 CFR Part 188 (Department of Defense Directive (DoDD) 6050.1, Environmental Effects in the United States of DoD Actions, July 30, 1979), and DoD Instruction 5000.2, Defense Acquisition Management Policies and Procedures, February 23, 1991, with Change 1¹ and Air Force Supplement 1, Acquisition Management Policies, 31 August 1993, with Change 1. To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, Executive Order 12114, and 32 CFR Part 187 (DoDD

¹ Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979). To comply with Executive Order 12114 and complete the EIAP, the Executive Order, 32 CFR Part 187, and this part must be used together.

(d) Attachment 1 of this part is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR Part 1508 for other terminology used in this part.

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and Executive Order 12114 according to Air Force Policy Directive (AFPD) 32-70².

(b) Major commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) *Office of the Secretary of the Air Force.* (1) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment (SAF/MI):

(i) Promulgates and oversees policy to ensure integration of environmental considerations.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EA) and Findings of No Significant Impact (FONSI).

(iii) Is the liaison on environmental matters with Federal agencies and national-level public interest organizations.

(iv) Is the approval authority for all Environmental Impact Statements (EIS) prepared for Air Force actions, whether classified or unclassified.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environmental Protection Committee (EPC) on EIAP questions.

(3) Office of Legislative Liaison (SAF/LL):

(i) Distributes draft and final EISs to congressional delegations.

(ii) Reviews and provides the Office of the Secretary of Defense (OSD) with

² See footnote 1 to § 989.1.

analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) Office of Public Affairs (SAF/PA):

(i) Reviews environmental documents requiring Office of the Secretary of the Air Force approval prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLSA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and Air Force Instruction (AFI) 35-202, Environmental Community Involvement³.

(iv) The National Guard Bureau, Office of Public Affairs (NGB-PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) *Headquarters US Air Force (HQ USAF)*. The Civil Engineer (HQ USAF/CE) formulates and oversees execution of EIAP policy. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) *MAJCOMs, Air Force Reserve (AFRES), ANG, and Field Operating Agencies (FOA)*. These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands.

(1) *Air Force Center for Environmental Excellence (AFCEE)*. The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) provides technical assistance to major commands and the Air Force Base Conversion Agency.

(2) *Air Force Regional Compliance Offices (RCO)*. RCOs review other agency environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper RCO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The RCO:

(i) Notifies the proponent, after receipt, that the RCO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as required.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF, the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) *Headquarters Air Force Materiel Command (HQ AFMC)*. HQ AFMC is responsible for applying EIAP to all proposed Air Force weapons systems and modifications to existing systems. These documents may be used as a basis for tiering documents in subsequent system beddown environmental analyses (see § 989.10). HQ AFMC ensures that:

(i) Environmental documents for acquisition of systems required for Defense Acquisition Board (DAB) decisions are completed prior to DAB milestone decisions.

(ii) Detailed guidance on the EIAP for acquisition programs, contained in DoD Instruction 5000.2 with Change 1, (part 6, Section I) and Air Force Supplement 7 with Change 1; DoD Manual 5000.2-M, Defense Acquisition Management Documentation and Reports, February 1991, with Change 1 (part 4, section F, Integrated Program Summary) and Air Force Supplement 1 with Change 1,⁴ is complied with or is followed. Analysis requirements in this instruction apply where the Air Force is the sole acquisition agent or the lead service for joint programs.

(iii) EIAP studies involving real property, facilities, personnel, and training to support acquisition programs are coordinated through the HQ AFMC environmental planning function.

(d) *Environmental Planning Function (EPF)*. The EPF is the interdisciplinary staff, at any level of command, responsible for the EIAP. The EPF:

(1) Assists the proponent in preparing a Description of Proposed Action and Alternatives (DOPAA) and actively supports the proponent during all phases of the EIAP.

(2) Evaluates proposed actions and completes Sections II and III of AF Form 813, Request for Environmental Impact Analysis, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The EPF responsible official signs the AF Form 813 certification.

(3) Identifies and documents, with technical advice from the bioenvironmental engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(4) Prepares environmental documents, or obtains technical

assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(5) Ensures the EIAP is conducted on base- and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(6) Prepares the Notice of Intent (NOI) to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(7) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32-1021, Planning and Programming of Facility Construction Projects.⁵

(e) *Proponent*. Each office, unit, or activity at any level that initiates Air Force actions is responsible for:

(1) Notifying the EPF of a pending action and completing Section I of the AF Form 813, including a DOPAA, for submittal to the EPF.

(2) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(3) Integrating the EIAP into the planning stages of a proposed program or action and, with the EPF, determining as early as possible whether to prepare an EIS.

(4) Presenting the DOPAA to the EPC for review and comment.

(5) Coordinating with the EPF prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(6) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded to HQ USAF/CEV for review and publication in the **Federal Register**.

(f) *Environmental Protection Committee (EPC)*. The EPC helps commanders assess, review and approve EIAP documents.

(g) *Staff Judge Advocate (SJA)*. The Staff Judge Advocate:

(1) Advises the command-level proponent EPF and EPC on CATEX determinations and the legal sufficiency of environmental documents.

³ See footnote 1 to § 989.1.

⁴ See footnote 1 to § 989.1.

⁵ See footnote 1 to § 989.1.

(2) Advises the EPF during the scoping process of issues that should be addressed in EISs and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT (or NGB-JA) and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and TDY costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures, with concurrence from HQ USAF/CEV (or ANGRC/CEV).

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB-JA).

(h) *Public Affairs Officer.* This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs implications of proposed actions and reviews environmental documents for public affairs issues.

(2) Advises the EPF during the scoping process of issues that should be addressed in the EIS.

(3) Prepares, coordinates, and distributes news releases related to the proposal and associated EIAP documents.

(4) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge.

(5) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35-202.⁶

(i) *Medical Service.* The Medical Service, represented by the bioenvironmental engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) *Safety Office.* The Safety Office provides technical assistance to EPFs to ensure consideration of safety standards and requirements.

§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through AF Forms 813, EAs, FONSI, EISs, EIS Records of Decision (ROD), and documents prepared according to Executive Order (E.O.) 12114.

(b) Evaluate proposed actions for possible categorical exclusion (CATEX)

from environmental impact analysis (attachment 2 of this part). CATEXs may apply to actions in the United States, its territories and possessions, and abroad.

(c) Make environmental documents, comments, and responses, including those of other Federal, state, and local agencies and the public, part of the record available for review and use at all levels of decision making.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decision making.

(e) Ensure that alternatives considered by the decision-maker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Carry out actions that affect the environment of a foreign nation in a way that allows consideration of the environment, existing international agreements, and the sovereignty of other nations.

(i) Determine whether any foreign government should be informed of the availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (SAF/MIQ) through the Assistant Secretary of Defense. This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(a) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), or by the tenant unit. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made

on the proposal and an action is undertaken. Host/tenant agreements should provide specific procedures to ensure host oversight of tenant compliance.

(b) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813. When a program for a given year has sufficient support, HQ USAF/XOO notifies the host command or NGB-XO to initiate the EIAP. For classified actions, MAJCOMs and ANG begin reporting monthly EIAP status to HQ USAF/XO (copy to SAF/MIQ and HQ USAF/CEV) while the proposal is still classified, and upon declassification, to HQ USAF/CEV. MAJCOMs and ANG continue reporting until the EIAP is complete for all projects.

(c) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/CEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses. The scheduling unit's higher headquarters may choose whether to prepare the environmental document, but is ultimately responsible for EIAP document accomplishment and approval.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF budgets for the anticipated EIAP workload based on reports of command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding. For HQ AFMC, the system program office or project office budgets and funds EIAP efforts relating to research, development, testing, and evaluation activities.

§ 989.7 Requests from non-Air Force agencies or entities.

Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with

⁶See footnote 1 to § 989.1.

concerned state, local, and tribal authorities.

(a) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(b) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16 (a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs, the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(c) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in § 989.8.

§ 989.8 Analysis of alternatives.

The Air Force must analyze reasonable alternatives to the proposed action and the "no action" alternative in all EAs and EISs, as fully as the proposed action alternative.

(a) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable

alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(b) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). Proponents may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(c) Except where excused by law, the Air Force must always consider and assess the environmental impacts of the "no action" alternative. "No action" may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Cooperation and adoption.

(a) *Lead and Cooperating Agency* (40 CFR 1501.5–1501.6). When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a Record of Decision for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead or cooperating agency.

(b) *Adoption of EA or EIS*. The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but the Air Force must independently review the EA or EIS and determine that it is current and that it satisfies the requirements of this part. The Air Force then prepares its own FONSI or ROD, as the case may be. In the situation where the proposed action is not substantially the same as that described in the EA or the EIS, the Air Force may adopt the EA or EIS, or a portion thereof, by circulating the EA or EIS as a draft and then preparing the final EA or EIS.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another Federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062, Air Force Comprehensive Planning)⁷ with the requirements of NEPA and the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 Air Force Form 813, request for environmental impact analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues. The rationale for not addressing environmental issues must also be recorded in the EA or EIS.

⁷ See footnote 1 to § 989.1.

§ 989.13 Categorical exclusion.

(a) CATEXs apply to those classes of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in attachment 2 of this part. Command supplements to this part may not add CATEXs or expand the scope of the CATEXs in attachment 2 of this part.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

- (1) Minimal adverse effect on environmental quality.
- (2) No significant change to existing environmental conditions.
- (3) No significant cumulative environmental impact.
- (4) Socioeconomic effects only.
- (5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to actions abroad are in 32 CFR Part 187. The EPF or other decision-maker forwards requests for additional exemption determinations for actions abroad to HQ USAF/CEV with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813 or elsewhere, except as noted in the CATEX list.

(e) Application of a CATEX to an action does not eliminate the need to meet air conformity requirements (see § 989.28).

§ 989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF must prepare an EA (40 CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no decision on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:

- (1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.
- (2) Aids the Air Force in complying with the NEPA when no EIS is required.
- (d) An EA discusses the need for the proposed action, reasonable alternatives

to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation.

(e) The format for the EA is the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) Certain EAs require SAF/MIQ approval because they involve topics of special importance or interest. Unless directed otherwise by SAF/MIQ, the EPF must forward the following types of EAs to SAF/MIQ through HQ USAF/CEV (copy to AFCEE/EC for technical review), along with an unsigned FONSI:

(1) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990). A Finding of No Practicable Alternative (FONPA) must be submitted to HQ USAF/CEV when the alternative selected is located in wetlands or floodplains, and must discuss why no other practical alternative exists to avoid impacts. See AFI 32-7064, Integrated Resources Management.⁸

(2) System acquisition EAs.

(3) All EAs on non-Air Force agency proposals that require an Air Force decision, such as use of Air Force property for highways and joint-use proposals.

(4) EAs for actions that require the Air Force to make conformity determinations pursuant to the Clean Air Act, as amended, and the implementing rules. Conformity determinations are made by SAF/MIQ, see § 989.28.

(5) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§ 989.22(c)).

(h) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

- (1) Public land withdrawals of less than 5,000 acres.
- (2) Minor mission realignments and aircraft beddowns.
- (3) Building construction on base within developed areas.
- (4) Minor modifications to Military Operating Areas (MOA), air-to-ground weapons ranges, and military training routes.

(5) Remediation of hazardous waste disposal sites.

(i) Abbreviated Environmental Assessment. In special circumstances, when the potential environmental impacts of a proposed action are clearly insignificant (as documented on AF Form 813) and none of the CATEXs in attachment 2 of this part apply, the EPF can use an abbreviated EA to assess the action. At a minimum, the abbreviated EA will consist of:

(1) AF Form 813 with attachments analyzing the environmental impacts of the proposed action and reasonable alternatives.

(2) A concise description of the affected environment.

(3) A concise FONSI (see § 989.15).

(j) The Air Force should involve environmental agencies, applicants, and the public in the preparation of EAs (40 CFR 1501.4(b)). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.23(b) and (c).

§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not attached, the FONSI must include:

- (1) Name of the action.
- (2) Brief description of the action (including alternatives considered and the chosen alternative).
- (3) Brief discussion of anticipated environmental effects.
- (4) Conclusions leading to the FONSI.
- (5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSI as brief as possible. Most FONSI should not exceed two typewritten pages. Stand-alone FONSI without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.23. The MAJCOM and NGB are responsible for release of FONSI to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

⁸See footnote 1 to § 989.1.

(e) The EPF must provide the FONSI and complete EA to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The earliest of the FONSI transmittal date (date of letter of transmittal) to the SPOC or other interested party is the official notification date.

(1) The EPF must make the draft EA/FONSI available to the affected public unless disclosure is precluded for security classification reasons. Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in § 989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA/FONSI is prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and draft FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS (§ 989.22(c)).

(v) If the proposed action is a change to airspace use or designation.

(f) As a rule, the same organizational level that prepares the EA reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature, except as provided in § 989.14(g).

(g) Air Force staff must get permission to deviate from the procedures outlined

in this part from SAF/MIQ in accordance with § 989.30.

§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts require preparation of an EIS (40 CFR Part 1502). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155-158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish to HQ USAF/CEV the NOI (40 CFR 1508.22) describing the proposed action for publication in the **Federal Register**. The EPF, through the host base public affairs office, will also provide the NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the proper state SPOC (E.O. 12372) and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA to HQ USAF for review.

§ 989.18 Scoping.

After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The purpose of this process is to de-emphasize insignificant issues and

focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send meeting plans for scoping meetings to AF/CEV (or ANGR/CEV) for SAF/MIQ concurrence no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see attachment 3 of this part).

§ 989.19 Draft EIS.

(a) *Preliminary draft.* The EPF prepares a Preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs are normally fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/CEV for HQ USAF EPC review and to AFCEE/EC for technical review.

(b) *Review of draft EIS.* After the HQ USAF EPC review, the EPF makes any necessary revisions to the PDEIS and forwards it to HQ USAF/CEV as a draft EIS for security and policy review. Once the draft EIS is approved, HQ USAF/CEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/CEV then files the document with the Environmental Protection Agency (EPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS (40 CFR 1502.19).* (1) The public comment period for the draft EIS is at least 45 days from the publication date of the notice of availability (NOA) of the draft EIS in the **Federal Register**. EPA publishes in the **Federal Register**, each week, NOAs of EISs filed during the preceding week. This public comment period may be extended an additional 15 days, at the request of the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example agencies with jurisdiction by law or agencies with special expertise in evaluating the

environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19).

(2) The EPF holds public hearings on the draft EIS according to the procedures in 40 CFR 1506.6(c) and (d). Hearings take place no sooner than 15 days after the **Federal Register** NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing plans to HQ USAF/CEV (or ANGR/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. See attachment 3 of this part for public hearing procedures.

(d) *Response to comments (40 CFR 1503.4)*. The EPF must incorporate its responses to comments in the final EIS by either modifying the text and referring in the appendix to where the appropriate modification is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

(e) *Seeking additional comments*. The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope after the scoping process is such a changed circumstance. An additional public comment period may also be necessary after the publication of the draft EIS due to public controversy or changes made as the result of previous public comments. Such periods when additional public comments are sought shall last for at least 30 days.

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent may, with the prior approval of SAF/MIQ, prepare a document containing only draft EIS comments, Air Force responses, and errata sheets of changes staffed to the HQ USAF EPC for coordination. However, the proponent must submit the draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/CEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are

required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, except that the public need not be invited to comment during the 30-day post-filing waiting period. The final EIS should be furnished to every person, organization, or agency that made substantive comments on the draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in the same way as the original draft and final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the FEIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

§ 989.21 Record of decision.

(a) The MAJCOM prepares draft RODs, formally staffs them to HQ USAF/CEV for verification of adequacy, and forwards them to the final decision-maker for signature. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until 30 days after publication of the NOA of the final EIS in the **Federal Register**. EPA publishes NOAs each Friday; when Friday is a holiday, the notice is published on Thursday.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.23, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action (proposed action or an alternative) that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all

practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. 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 are 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 keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status to HQ USAF/CEV on a periodic basis. 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 continuing 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 publishes 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 to HQ USAF/CEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Public notification.

Except as provided in § 989.25, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

- (1) The FONSI for an EA.
- (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.

(b) 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 may limit local notification to the SPOC, local government representatives, and local news media. For all FONSI or EIS notices, if the news media fail to carry the story and, in the case of a FONSI, if the action requires that, after public notice of the FONSI, 30 days must pass before a decision or any action is permissible (see § 989.15(e)(2)), the public affairs officer must purchase an advertisement in the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(c) 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 organization (date of letter of notification) or when the local media carries the story (date of story), whichever occurs first. Operations and maintenance funds pay for the advertisements.

§ 989.24 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 non-permanent 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. When dealing with base closure or realignment EIAP documents, MAJCOMs and HQ USAF offices should obtain legal advice on special congressional requirements. Consult with HQ USAF/XOO, the HQ USAF focal point for the realignment process, decision documents, and congressional requirements.

§ 989.25 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 § 989.25(b) actions, an NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For § 989.25(c) actions, the **Federal Register** will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSI, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification is needed to provide a comprehensive understanding of the issues. SAF/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

§ 989.26 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. Normally, compliance with Occupational Safety and Health Administration (OSHA) standards will mitigate hazards. The EIAP document does not need to specify such compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.27 Airspace proposals.

The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated

by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.28 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR Part 93, Subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP.

§ 989.29 Pollution prevention.

The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must incorporate pollution prevention measures whenever feasible. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe

disposal actions (see AFI 32-7080, Pollution Prevention Program⁹).

§ 989.30 Special and emergency procedures.

(a) *Special procedures.* During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/CEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) *Emergency procedures (40 CFR 1506.11).* Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/CEV, for SAF/MIQ coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

§ 989.31 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked through the Work Information Management System-Environmental Subsystem (WIMS-ES), as required by AFI 32-7002, Environmental Information Management System.¹⁰ ANGRC/CE will provide EIAP updates to HQ USAF/CEV through the WIMS-ES.

(b) All documentation will be disposed of according to AFMAN 37-139, Records Disposition—Standards (formerly AFR 4-20, Volume 2¹¹).

§ 989.32 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR Part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114, Environmental Effects Abroad of Major Federal Actions. For analysis of Air Force actions abroad, 32 CFR Part 187 will be followed. Also, refer to *Environmental Defense Fund v. Massey*, 986 F. 2d 528.

§ 989.33 Requirements for analysis abroad.

The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR Part 187, the following Air Force specific rules apply:

(a) For EAs dealing with global commons, HQ USAF/CEV will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

(b) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/CEV for the HQ USAF EPC review and AFCEE/EC technical review. After EPC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(c) For environmental studies and environmental reviews, forward all environmental studies and reviews to HQ USAF/CEV for coordination among appropriate Federal agencies. HQ USAF/CEV makes environmental studies and reviews available to the Department of State and other interested Federal agencies, and, on request, to the United States public, in accordance with 32 CFR Part 187. HQ USAF/CEV also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR Part 187.

Attachment 1 to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms

References

Legislative

10 U.S.C. 2687, *Base closures and realignments*

42 U.S.C. 4321-4347, *National Environmental Policy Act of 1969*

42 U.S.C. 7506(c), *Clean Air Act Amendments of 1990*

42 U.S.C. 13101(b), *Pollution Prevention Act of 1990*

43 U.S.C. 155-158, *Engle Act*

Executive Orders

Executive Order 11988, *Floodplain Management*, May 24, 1977 (3 CFR, 1977 Comp., p. 117)

Executive Order 11990, *Protection of Wetlands*, May 24, 1977 (3 CFR, 1977 Comp., p. 121)

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979 (3 CFR, 1979 Comp., p. 356)

Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982 (3 CFR, 1982 Comp., p. 197)

US Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National

⁹See footnote 1 to § 989.1.

¹⁰See footnote 1 to § 989.1.

¹¹See footnote 1 to § 989.1.

Environmental Policy Act, 40 CFR Parts 1500-1508

DoD Instruction 5000.2, *Defense Acquisition Management Policies and Procedures*, February 23, 1991, with Change 1, and Air Force Supplement 1, *Acquisition Management Policies*, 31 August 1993, with Change 1

DoD Manual 5000.2-M, *Defense Acquisition Management Documentation and Reports*, February 1991

DoD Directive 6050.1, *Environmental Effects in the United States of DoD Actions*, July 30, 1979 (32 CFR Part 188)

DoD Directive 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979 (32 CFR Part 187)

Air Force Publications

AFPD 32-70, *Environmental Quality*

AFI 32-1021, *Planning and Programming of Facility Construction Projects*

AFI 32-7002, *Environmental Information Management System*

AFI 32-7062, *Air Force Comprehensive Planning*

AFI 32-7064, *Integrated Resources Management*

AFI 32-7080, *Pollution Prevention Program*

AFI 35-202, *Environmental Community Involvement*

AFMAN 37-139, *Records Disposition—Standards*

Abbreviations and Acronyms

Abbreviation or acronym Definition

AFCEE Air Force Center for Environmental Excellence

AFCEE/EC Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate

AFI Air Force Instruction

AFLSA/JACE Air Force Legal Services Agency/Environmental Law and Litigation Division

AFLSA/JAJT Air Force Legal Services Agency/Trial Judiciary Division

AFMAN Air Force Manual

AFMOA/SG Air Force Medical Operations Agency/Aerospace Medicine Office

AFPD Air Force Policy Directive

AFRES Air Force Reserve

ANG Air National Guard

ANGRC Air National Guard Readiness Center

CATEX Categorical Exclusion

CEQ Council on Environmental Quality

CFR Code of Federal Regulations

DAB Defense Acquisition Board

DoD Department of Defense

DoDD Department of Defense Directive

DoDM Department of Defense Manual

DOPAA Description of Proposed Action and Alternatives

EA Environmental Assessment

EIAP Environmental Impact Analysis Process

EIS Environmental Impact Statement

E.O. Executive Order

EPA Environmental Protection Agency

EPC Environmental Protection Committee

EPF Environmental Planning Function

FAA Federal Aviation Administration

FEIS Final Environmental Impact Statement

FOA Field Operating Agency

FONPA Finding of No Practicable Alternative

FONSI Finding of No Significant Impact

GSA General Services Administration

HQ AFMC Headquarters, Air Force Materiel Command

HQ USAF Headquarters, United States Air Force

HQ USAF/CE The Air Force Civil Engineer MAJCOM Major Command

MOA Military Operating Area

MOU Memorandum of Understanding

MSL Mean Sea Level

NEPA National Environmental Policy Act of 1969

NGB-BCF National Guard Bureau Air Directorate

NGB-JA National Guard Bureau Office of the Staff Judge Advocate

NGB-PA National Guard Bureau Office of Public Affairs

NOA Notice of Availability

NOI Notice of Intent

OSD Office of the Secretary of Defense

OSHA Occupational Safety and Health Administration

PDEIS Preliminary Draft Environmental Impact Statement

RCO Air Force Regional Compliance Office

ROD Record of Decision

SAF/GC Air Force General Counsel

SAF/LL Air Force Office of Legislative Liaison

SAF/MI Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment

SAF/MIQ Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)

SAF/PA Air Force Office of Public Affairs

SJA Staff Judge Advocate

SPOC Single Point of Contact

TDY Temporary Duty

U.S.C. United States Code

WIMS-ES Work Information Management System-Environmental Subsystem Terms

Note: All terms listed in the CEQ Regulations, 40 CFR Part 1508, apply to this part. In addition, the following terms apply:

Description of Proposed Action and Alternatives (DOPAA)—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action.

Environmental Impact Analysis Process (EIAP)—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

Finding of No Practicable Alternative (FONPA)—Documentation according to Executive Orders 11988 and 11990 that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

Interdisciplinary—An approach to environmental analysis involving more than one discipline or branch of learning.

National Environmental Policy Act of 1969 (NEPA)—The basic national charter to protect the environment that requires all Federal agencies to consider environmental impacts when making decisions regarding proposed actions.

Pollution Prevention—"Source reduction", as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

Proponent—Any office, unit, or activity that proposes to initiate an action.

Scoping—A public process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action.

United States—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

Attachment 2 to Part 989—Categorical Exclusions

A2.1. Proponent/EPF Responsibility. Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, state regulatory agency review of plans, and so on.

A2.2. Additional Analysis. Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

A.2.2.1. Actions of greater scope or size than generally experienced for a particular category of action.

A.2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A.2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A.2.2.4. Use of unproven technology.

A.2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

A.2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A.2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.3. CATEX List. Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and

decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.

A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

A2.3.9. Repairing and replacing real property installed equipment.

A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos.

A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

A2.3.13. Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

A2.3.14. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

A2.3.15. Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (1) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (2) no degradation in the environmental restoration program will occur.

A2.3.16. Acquiring land and ingranths (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

A2.3.17. Transferring land, facilities, and personal property for which the General

Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, including returning public domain lands to the Department of the Interior.

A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this attachment. The EPF must document application of this CATEX on AF Form 813.

A2.3.20. Converting in-house services to contract services.

A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. § 2687).

A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a temporary duty (TDY) basis where existing facilities are used.

A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of hazardous spillage or waste sites or contaminated groundwater or soil. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with interagency agreements, administrative orders, or work plans previously agreed to by EPA or state regulators. *Note:* This CATEX does not apply to the selection of the remedial action.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery

site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan. Long-term cleanup and remediation activities should be evaluated separately.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in "air shows" and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

A.3.1. General Information:

A.3.1.1. The Air Force solicits the views of the public and special interest groups and, in appropriate cases, holds public hearings on the draft EIS.

A.3.1.2. The Office of the Judge Advocate General, through the Air Force Legal Services

Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings.

A3.1.3. The proponent EPF establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.), and forwards the transcripts of the hearings to AFLSA/JAJT.

A3.2. Notice of Hearing (40 CFR 1506.6):
A3.2.1. Public Affairs officers:

A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.

A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

A3.2.1.3. Under certain circumstances, purchase an advertisement announcing the time and place of the hearing as well as other pertinent particulars.

A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

A3.2.2. If an action has effects of national concern, publish notices in the **Federal Register** and mail notices to national organizations that have an interest in the matter.

A3.2.2.1. Because of the longer lead time required by the **Federal Register**, send out notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

A3.2.3. The notice should include:

A3.2.3.1. Date, time, place, and subject of the hearing.

A3.2.3.2. A description of the general format of the hearing.

A3.2.3.3. The name and telephone number of a person to contact for more information.

A3.2.3.4. The request that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

A3.2.3.5. Any limitation on the length of oral statements.

A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.

A3.2.3.7. A summary of the proposed action.

A3.2.3.8. The offices or location where the Draft EIS and any appendices are available for examination.

A.3.3. Availability of the Draft EIS to the Public. The EPF makes copies of the Draft EIS available to the public at an Air Force installation or other suitable place in the vicinity of the proposed action and public hearing.

A3.4. Place of the Hearing. The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the

hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer:

A3.5.1. The AFLSA/JAJT selects a judge advocate, who is a military judge with experience in conducting public meetings, to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be the Staff Judge Advocate of the proponent command, have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Each speaker should have a time limit to provide maximum public input to the decision-maker.

A3.6. Record of the Hearing. The hearing officer must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The hearing officer should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The hearing officer should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The hearing officer must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format. Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Organizing Speakers by Subject. If time and circumstances permit, the hearing officer should group speakers by subject matter. For example, all persons wishing to address water quality issues should make their presentations one after the other so the EIS preparation team can review the transcript and make summaries from it more easily.

A3.7.2. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR § 1502.19) to any person, organization, or

agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.3. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.4. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.5. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The hearing officer may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.6. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.7. Ending or Extending a Hearing. The hearing officer has the power to end the

hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

A3.8. **Adjourning the Hearing.** After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead time constraints, SAF/MIQ may waive **Federal Register** notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually 2 weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-94-029]

RIN 2115-AE47

Drawbridge Operation Regulations; Superior Oil Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 82, across Superior Oil Canal, mile 6.3, between

Grand Chenier and Pecan Island, Cameron Parish, Louisiana, by permitting the draw to remain closed to navigation unless 8 hours, notice is given for an opening of the draw. Presently, the draw is required to open on signal from 6 a.m. to 6 p.m. and from 6 p.m. to 6 a.m. the bridge opens on 4 hours, notice. This action will provide relief to the bridge owner, thereby creating a savings to the taxpayer, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Commander (ob), Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130-3396, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-6951.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Manager, (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Regulatory History

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Superior Oil Canal, LA, in the **Federal Register** (59 FR 50530). The Coast Guard received three letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

LDOTD requested the 8 hours, notice for an opening of the draw versus on-signal opening between 6 a.m. and 6 p.m. and 4 hours, notice from 6 p.m. to 6 a.m. because of a decline in vessel traffic that passes the Superior Oil Canal bridge. This rule will eliminate the requirement of having a person on duty from 6 a.m. to 6 p.m. at the bridge site, creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Comments and Changes

Three letters of comment were received in response to Public Notice CGD08-94-029 issued on October 14, 1994. The Federal Emergency Management Agency, the National Marine Fisheries Service and the

Louisiana Department of Wildlife & Fisheries offered no objection to the rule change. Therefore, the Final Rule remains unchanged from the Proposed Rule.

Assessment

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under Section 6a(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is the number of vessels which pass the bridge, (1.9 per 24 hour period). The three comments received offered no objection to the proposed rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows: