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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Docket ID: USA-2019-HQ-0017]

RIN 0702-AB02

Environmental Analysis of Army Actions

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is revising its procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) NEPA regulations. These proposed revisions clarify and update the regulation, incorporate current Army NEPA procedures and practices, and revise and add categorical exclusions (CXs), reduce paperwork and delays, and promote better decisions consistent with national environmental policy set forth in NEPA.

DATES: Consideration will be given to all comments received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by 32 CFR part 651, Docket No. USA-2019-HQ-0017 and/or by Regulatory Information Number (RIN) 0702-AB02 or by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer,

Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David Guldenzopf, Ph.D., Office of the Deputy Assistant Secretary of the Army, Environmental, Safety, and Occupational Health, Director for Environmental Quality, (571) 256-7822.

SUPPLEMENTARY INFORMATION:

A. Background and Authority for this Rulemaking

This rule is a revision of the Department of the Army procedures at 32 Code of Federal Regulations (CFR) part 651 for implementing the National Environmental Policy Act of 1969 (NEPA) last revised on March 29, 2002 and the Council on Environmental Quality (CEQ) NEPA regulations, CFR parts 1500-1508.

NEPA establishes national policy and goals for protection of the environment. Section 102(2) of NEPA contains certain procedural requirements for the attainment of these goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports significantly affecting the quality of the human environment.

Authorities for this rule are 5 U.S.C. 301, NEPA, and 40 CFR parts 1500-1508. Under 5

U.S.C. 301, the head of a military department may prescribe regulations for the government of the department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. NEPA requires Federal agencies to analyze their proposed actions to determine if they could have significant environmental effects. The CEQ NEPA implementing regulations (40 CFR parts 1500-1508) require Federal agencies to adopt supplemental NEPA implementing procedures, including agency-specific CXs, and to provide opportunity for public review prior to adoption (40 CFR 1507.3).

B. Process Used by Army in the Development of the Proposed Revisions

The Assistant Secretary of the Army for Installations, Energy and Environment, as the Army proponent of this regulation, directed the revision of this part to align the regulation with current Army practices and procedures, and update CXs.

A subject matter expert team was formed to analyze and contribute to the development of the revision. The professionals comprising the team were current Army environmental experts with significant NEPA planning and compliance experience, including the preparation of environmental documentation such as CX records of environmental consideration, environmental assessments (EAs), environmental impact statements (EISs), findings of no significant impact, and records of decision. Army subject matter experts were supported by a legal working group comprised of experienced environmental law attorneys from the Army's Office of the General Counsel, Office of the Judge Advocate General, and Command-level Staff Judge Advocates with advanced education and experience, providing legal and policy advice to Federal agency decision-makers, managers, and practitioners on environmental planning and compliance responsibilities.

To determine if changes should be considered for existing CXs and if new CXs should be considered, Army environmental subject matter experts reviewed numerous existing NEPA documents to determine classes of actions which, when implemented, resulted in no significant individual or cumulative environmental effects. The Army reviewed other federal agency CXs to identify actions similar to those frequently carried out by the Army, and evaluated these other agency CXs to determine classes of actions for which a similar Army CX would be appropriate. Each CX that currently appears in the existing 32 CFR part 651, in addition to the proposed new CXs, was carefully reviewed in concept, coverage, applicability, and wording. Each revised and new CX was cautiously crafted with the goal of balancing increased administrative efficiency in NEPA compliance while avoiding the potential for misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. The Army carefully considered the anticipated cumulative impacts of each proposed new or revised CX, relying upon either the experiences of other Federal agencies' application of their own CXs, the cumulative effects analyses contained within the Army's NEPA analyses (both site-specific/project-level and programmatic), or both. In summary, the Army developed the proposed new and modified CXs and associated administrative records to conform to the requirements of NEPA as well as the Administrative Procedure Act (APA), its implementing regulations, and the subsequent body of case law pertaining to the APA's application as it relates to NEPA.

The CEQ was integral in the process to ensure that proposed changes to the Army's CXs meet NEPA requirements. Army provided the CEQ with proposed draft changes and justifications for each proposed change to 32 CFR part 651. Many of the changes that the Army is proposing are administrative in nature to clarify application of a particular CX.

All changes to the CXs are substantiated within the “Administrative Record for Revisions to Department of the Army Categorical Exclusions”, available for review at <https://denix.osd.mil/army-32cfr651/>.

C. Summary of the Proposed Changes

1. Proposed Revisions Generally

The proposed rule fully revises the Department of the Army NEPA procedures. The revisions to the proposed regulation include a reorganization and consolidation of the subparts. The changes were made to reduce repetitive language, to simplify and streamline the rule, and to update procedures to align with current Army organization and policies. The proposed revisions and rationale are provided in Table 1.

Table 1. Proposed Revisions Generally				
Subpart	Section	Proposed Subpart	Proposed Section	Rationale
A - Introduction	651.1 Purpose	A	651.1 Purpose, Scope, and Applicability	Update section title and content, reorganization and reduction of section paragraphs to simplify and organize requirements
	651.2 References	A	651.2 References	Minor updates to content
	651.3 Explanation of abbreviations and terms	A	651.3 Definitions, Terms, and Abbreviations	Update section title and content, addition of section paragraphs introduce key terms upfront to eliminate confusion
	651.4 Responsibilities	A	651.5 Army NEPA Compliance Responsibilities	Reorganization of sections to list responsibilities prior to policy, new section title, new section number, and update of content to incorporate current Army organization and policy
	651.5 Army Policies	A	651.4 Army NEPA Policy	Reorganization of sections and update of content to incorporate current Army organization and policy

Table 1. Proposed Revisions Generally				
Subpart	Section	Proposed Subpart	Proposed Section	Rationale
	651.6 NEPA analysis staffing	A	651.5 Army NEPA Compliance Responsibilities	Reorganization of sections to consolidate all responsibilities and update of content to incorporate current Army organization and policy
	651.7 Delegation of authority for non-acquisition systems	A	651.5 Army NEPA Compliance Responsibilities	Reorganization of sections to consolidate all responsibilities into one section and update of content to incorporate current Army organization and policy
	651.8 Disposition of final documents	A	651.5 Army NEPA Compliance Responsibilities	Reorganization of sections to consolidate all responsibilities into one section to incorporate current Army organization and policy
B - NEPA and the Decision Process	651.9 Introduction		Removed	Language/section obsolete
	651.10 Actions Requiring environmental analysis	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA procedures into one section, update of content to incorporate current Army procedures
	651.11 Environmental review categories	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA procedures into one section, update of content to incorporate current Army procedures
	651.12 Determining appropriate level of NEPA analysis	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA procedures into one section, update of content to incorporate current Army procedures
	651.13 Classified actions	B	651.8 Security Review and Clearance Policy for NEPA Documents	Reorganization of section (new title and new section number) and update of content to incorporate current Army procedures for security reviews

Table 1. Proposed Revisions Generally

Subpart	Section	Proposed Subpart	Proposed Section	Rationale
	651.14 Integration with Army planning	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section, update of content to incorporate current Army procedures
	651.15 Mitigation and monitoring	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section, update of content to incorporate current Army procedures
	651.16 cumulative impacts	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section, update of content to incorporate current Army procedures
	651.17 Environmental justice		Deleted	Environmental justice addressed through other compliance processes
C - Records and Documents	651.18 introduction		Removed	Language/section obsolete
	651.19 Record of environmental consideration	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.20 Environmental assessment	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.21 Finding of No Significant Impact	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.22 Notice of intent	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.23 Environmental Impact Statement	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section

Table 1. Proposed Revisions Generally

Subpart	Section	Proposed Subpart	Proposed Section	Rationale
	651.24 Supplemental EAs and Supplemental EISs	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section, update of content to incorporate current Army procedures
	651.25 Notice of availability	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.26 Record of Decision	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.27 Programmatic NEPA Analyses	B	651.6 Army NEPA Review	Reorganization of sections to consolidate NEPA review procedures into one section
	651.28 Introduction		Removed	Language/section obsolete
D - Categorical Exclusions	651.29 Determining when to use a CX (screening criteria)	C	651.11 Army CX Screening Criteria	Changes to extraordinary circumstances are provided in the Categorical Exclusions Administrative Record (https://denix.osd.mil/army-32cfr651)
	651.30 CX actions	C	651.12 Army CXs	Administrative change: section number change, title change
	651.31 Modification to the CX list	C	651.12 Army CXs	Administrative change: section number change, title change
E - Environmental Assessment	651.32 Introduction	D	651.13 Introduction	Section number update due to regulation reorganization
	651.33 Actions normally requiring an EA	D	651.14 Actions Normally Requiring an EA	Section number update due to regulation reorganization
	651.34 EA Components	D	651.15 Contents of the EA. 651.16 Contents of the FONSI	Reorganization of sections to clarify EA requirements
	651.35 Decision process	D	651.17 EA Review Process	Reorganization of sections to clarify EA requirements

Table 1. Proposed Revisions Generally				
Subpart	Section	Proposed Subpart	Proposed Section	Rationale
	651.36 Public involvement	D	651.17 EA Review Process	Reorganization of sections to clarify EA requirements
	651.37 Public availability	D	651.17 EA Review Process	Reorganization of sections to clarify EA requirements
	651.38 Existing Environmental Assessments	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section, update of content to incorporate current Army procedures
	651.39 Significance	E	651.19 Actions Normally Requiring an EIS	Moved to the EIS section to consolidate with actions normally requiring EIS discussion
F - Environmental Impact Statement	651.40 Introduction		651.18 Introduction	Section number update due to regulation reorganization
	651.41 Conditions requiring an EIS	E	651.19 Actions Normally Requiring an EIS	Section number and title update due to regulation reorganization
	651.42 Actions normally requiring an EIS	E	651.19 Actions Normally Requiring an EIS	Section number update due to regulation reorganization
	651.43 Format of the EIS	E	651.20 Contents of the EIS	Section number and title update due to regulation reorganization
	651.44 Incomplete Information	E	651.21 Incomplete or Unavailable Information	Section number and title update due to regulation reorganization
	651.45 Steps in preparing and processing an EIS	E	651.22 EIS Process, 651.23 Record of Decision, 651.24 Implementation of Decision, 651.25 Federal Register Publication of Army Actions	Reorganization and breakdown of EIS requirements for clarity
	651.46 Existing EISs	B	651.7 NEPA Principles and Practices	Reorganization of sections to consolidate NEPA principles and practices into one section

Table 1. Proposed Revisions Generally

Subpart	Section	Proposed Subpart	Proposed Section	Rationale
G - Public Involvement and the Scoping Process	651.47 Public involvement	A, D and E	651.4 Army NEPA Policy, 651.5 Army NEPA Compliance Responsibilities, 651.16 Contents of the FONSI, 651.22 EIS Process	Incorporation of public involvement procedures for various NEPA activities throughout the regulation
	651.48 Scoping Process	E	651.22 EIS Process	Reorganization of sections to consolidate EIS requirements
	651.49 Preliminary Phase	E	651.22 EIS Process	Reorganization of sections to consolidate EIS requirements
	651.50 Public interaction phase	E	651.22 EIS Process	Reorganization of sections to consolidate EIS requirements
	651.51 The Final phase	E	651.22 EIS Process	Reorganization of sections to consolidate EIS requirements
	651.52 Aids to information gathering	E	651.22 EIS Process	Reorganization of sections to consolidate EIS requirements
	651.53 Modifications of the scoping process			Deleted
H - Environmental effects of major army action abroad	651.54 Introduction	G	651.28 Overview	Section number and title update due to regulation reorganization
	651.55 Categorical exclusions	G	654.29 Use of Categorical Exclusions	Section number and title update due to regulation reorganization
	651.56 Responsibilities	A	651.5 Army NEPA Compliance Responsibilities	Reorganization of sections to consolidate responsibilities into one section to incorporate current Army organization and policy
Appendices	Appendix A - References		Appendix A - References	Appendix updated to incorporate current references

Table 1. Proposed Revisions Generally				
Subpart	Section	Proposed Subpart	Proposed Section	Rationale
	Appendix B - Categorical exclusions	C	Subpart C (651.9-651.12)	Reorganization of the regulation for ease of use - CX list incorporated into Subpart C. Changes to CXs are discussed on page 11
	Appendix C - Mitigation and monitoring		Subpart F (651.26 Mitigation and 651.27 Mitigation and Monitoring)	Incorporated within Subpart F for consolidation purposes
	Appendix D - Public participation plan		Subpart F (651.22)	Incorporated within Subpart F for consolidation purposes
	Appendix E - Content of the Environmental Impact Statement		Subpart F (651.22)	Incorporated within Subpart F for consolidation purposes
	Appendix F - Glossary		Appendix B	Appendix number update due to regulation reorganization, definitions updated

2. Proposed Revisions to Categorical Exclusions

32 CFR part 651, appendix B, lists the current Army CXs. The CX list has been integrated into the proposed subpart C, “Categorical Exclusions and Records of Environmental Consideration”.

D. Expected Impact of the Proposed Rule

The proposed rule revises internal Army procedures allowing for consistent implementation across the Army for NEPA responsibilities. Promulgating CXs will reduce government spending on compliance and shorten project timelines for those activities that do not need a detailed analysis. The Army currently prepares approximately 8,000 CXs annually. The Army expects the proposed changes will increase use of CXs and shorten project approvals.

E. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule has been designated a “significant regulatory action”, although not economically significant, under section 3(f) of Executive Order 12866 and was submitted to OMB for review. The revision is not a “major” rule within the meaning of Executive Order 12866 and the Congressional Review Act.

F. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is not expected to be subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is expected to be related to agency organization and management.

G. Alternatives

1. No Action. No action would result in continued use of the current regulation that contains outdated roles, responsibilities, procedures, and a limited CX list. This would result in increasing inefficiencies in Army NEPA analyses and could unnecessarily delay Army actions which do not individually or cumulatively have a significant effect on the human environment.

2. Next Best Alternative. The next best alternative to a complete revision of the regulation would be a revision of the CXs only. This would allow for use of new CXs instead of preparation of environmental assessments, but would not address changes and resulting inefficiencies in Army roles, responsibilities and procedures that have changed significantly since the regulation was first published in 2002.

H. The Regulatory Flexibility Act

The Army has determined this this action is not subject to the relevant provisions of the

Regulatory Flexibility Act, 5, U.S.C. 601.

I. Unfunded Mandates Reform Act

The Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or the private sector, of \$100 million or more.

J. National Environmental Policy Act and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

This Part implements the National Environmental Policy Act of 1969 (NEPA), and specifies the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making. Army has determined that the proposed regulations would not have a significant effect on the environment because they do not authorize any activity or commit resources to a project that may affect the environment. Therefore, Army does not intend to conduct a NEPA analysis of these proposed regulations for the same reason that CEQ does not require any Federal agency to conduct NEPA analysis for the development of agency procedures for the implementation of NEPA and the CEQ regulations.

E.O. 12898 requires agencies to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Army has analyzed this proposed rule and determined that it would not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

K. Paperwork Reduction Act

The Army has determined that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

L. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

M. Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks)

The rule is issued with respect to existing environmental guidelines and laws. Therefore, this rule should not directly impact this executive order.

N. Executive Order 13132 (Federalism)

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. This organization has determined that this rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 32 CFR Part 651

Categorical exclusions, Environmental analysis, Environmental assessments, Environmental impact statements.

For reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR part 651 to read as follows:

PART 651 – ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS

Sec.

Subpart A—Introduction

651.1 Purpose, scope, and applicability.

651.2 References.

651.3 Definitions, terms, and abbreviations.

651.4 Army NEPA policy.

651.5 Army NEPA compliance responsibilities.

Subpart B—Army National Environmental Policy Act Implementation

651.6 Army NEPA review.

651.7 NEPA principles and practices.

651.8 Security Review and Clearance Policy for NEPA documents.

Subpart C—Categorical Exclusions and Records of Environmental Consideration

651.9 Categorical exclusions and screening criteria general information.

651.10 Record of environmental consideration.

651.11 Army CX screening criteria.

651.12 Army CXs.

Subpart D—Environmental Assessments

651.13 Introduction.

651.14 Actions normally requiring an EA.

651.15 Contents of the EA.

651.16 Contents of the FONSI.

651.17 EA review process.

Subpart E—Environmental Impact Statements

651.18 Introduction.

651.19 Actions normally requiring an EIS.

651.20 Contents of the EIS.

651.21 Incomplete or unavailable information.

651.22 EIS process.

651.23 Record of decision.

651.24 Implementation of decision.

651.25 Federal Register publication of Army actions.

Subpart F—Mitigation and Monitoring

651.26 Mitigation.

651.27 Mitigation monitoring and enforcement.

Subpart G—Environmental Effects of Major Army Actions Abroad

651.28 Overview.

651.29 Use of categorical exclusions.

Appendix A to Part 651—References

Appendix B to Part 651--Glossary

Authority: 42 U.S.C. 4321 et seq.; 40 CFR Parts 1500–1508; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

Subpart A—Introduction

§ 651.1 Purpose, scope, and applicability.

(a) This part implements: the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321, *et seq.*; the Council on Environmental Quality (CEQ)

regulations for implementing NEPA, 40 CFR parts 1500 through 1508; and establishes the Army's procedures for NEPA compliance. If there are any inconsistencies between this part and 40 CFR parts 1500 through 1508, as may be subsequently amended, the requirements of 40 CFR parts 1500 through 1508 shall prevail. The Army proponent for this part shall review this part every five years after publication to determine if such amendments or other circumstances require revision of this part.

(b) This part requires analysis and systematic examination of the environmental consequences associated with implementing proposed Army actions, public participation, and integration of environmental considerations into Army planning and decision-making.

(c) This part applies to the: Department of the Army, Active Army, Army Reserve, Joint Bases for which the Army is the lead component, the Army's Acquisition process, functions of the Army National Guard (ARNG) involving Federal funding, and functions for which the Army is the Department of Defense (DoD) executive agent (hereinafter, the term "Army" has the meaning described in this section). This part does not apply to Civil Works functions of the US Army Corps of Engineers (USACE) or to combat or combat-related activities in a combat or hostile fire zone. This part applies to relevant actions within the United States, which is defined as all States; 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.

§ 651.2 References.

Required and related publications are listed in appendix A of this part.

§ 651.3 Definitions, terms, and abbreviations.

(a) The following definitions apply to this part:

(1) *Army proponent (proponent)* -- The Army unit, element, or organization that has the requirement for a proposed Army action and is responsible for initiating and/or carrying the action out is the *proponent*. The proponent is responsible for compliance with NEPA and this part, and for ensuring that the appropriate NEPA analyses, public participation, and documentation is completed prior to a decision on the proposed action. The proponent or designee signs Records of Environmental Consideration, (RECs) Environmental Assessments (EAs), and Environmental Impact Statements (EISs), and is responsible for development and retention of the administrative record documenting NEPA compliance.

(2) *Army approving official (approving official)* -- The *approving official* is the Army military or civilian official who on behalf of the Army approves and signs decision documents (Findings of No Significant Impact (FONSI)s, and Records of Decision (RODs)). The proponent may function as the approving official, and approve and sign decision documents.

(3) *Active Guard and Reserve Duty* – The term “active Guard and Reserve duty” means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components. See 10 U.S.C. 101(d) (6) (A).

(4) *Adverse (impact or effect)* -- Impacts or effects of an action that are detrimental and may require some degree of mitigation to address the impact or to reduce the impact to a level that is not significant.

(5) *Categorical exclusion* -- A category of action that the Army has determined has no individual or cumulative significant effect on the human or natural environment, and for which no formal analysis under NEPA is required.

(6) *Controversy/controversial* -- Within the meaning of NEPA, and as used in this part, "controversy" and "controversial" refers to a major disagreement regarding the factual evidence pertaining to the effects of a proposed action on the quality of the human environment, rather than to the unpopularity or the amount of public opposition to a proposed action. Public opposition to a proposed action does not make that action controversial so as to require an EIS.

(7) *Environmental harm* -- Environmental harm results when an action may cause wide-scale, unmitigated, irreparable and irreversible detrimental effects, degradation, or damage to environmentally sensitive resources.

(8) *Decision documents*: NEPA decision documents are Findings of No Significant Impact (FONSI), and Records of Decision (RODs). The proponent may function as the approving official.

(9) *Environmental officer* -- An individual assigned to a table of organization and equipment (TO&E), or table of distributions and allowances (TDA) organization, or unit to accomplish environmental compliance requirements on behalf of his or her responsible commander, director, or supervisor. For the ARNG, environmental officers may serve in Federal positions under title 32 of the CFR or as a Federal Technician in Active Guard and Reserve Duty (AGR) status. In the event that the ARNG environmental officer is not a Federal civilian employee or a Federal Technician in AGR status, NEPA related actions requiring signature must

be signed by a Federal Technician, AGR, or Federal civilian employee in the ARNG environmental officer's chain of command.

(10) *Environmental planning* -- Actively incorporating environmental considerations into informed decision-making in order to balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations.

(11) *Environmentally sensitive resources* -- Includes but is not limited to: species that are federally listed as threatened or endangered or are candidates for such listing; threatened or endangered species critical habitat; migratory birds; Bald and Golden Eagles; prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; National Wildlife Refuges and National Parks; wild and scenic rivers; floodplains; wetlands; riparian areas; sole source aquifers; other natural resources of concern; paleontological resources, historic properties including sites, buildings, structures, districts, and objects eligible for or included in the National Register of Historic Places; Native American human remains and cultural items; archeological resources; Indian sacred sites; protected tribal resources including tribal trust resources, natural resources, and properties of traditional or customary religious or cultural importance retained by or reserved by or for Indian tribes through treaties, statutes, judicial decisions, or EOs.

(12) *Effect* -- Effects and impacts as used in this part are synonymous. Effects or impacts includes ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect or cumulative. Effects or impacts may be detrimental or adverse, and / or beneficial.

(13) *Extraordinary circumstances* -- Factors or circumstances in which a normally excluded action may have a significant environmental effect that then requires further analysis in an environmental assessment (EA) or an environmental impact statement (EIS).

(14) *Federal agency* -- Means all agencies of the Federal Government. It also includes for the purposes of this part those federally-recognized Indian tribes, States, and units of local governments that have assumed NEPA responsibilities for a Federal agency action under appropriate authority. It does not mean the Congress, the Judiciary, or the President.

(15) *Foreign nations* -- Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments; also includes contiguous zones and fisheries zones of foreign nations.

(16) *Global commons* -- Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

(17) *Impact* -- Impacts and effects as used in this part are synonymous. Impacts or effects includes ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect or cumulative. Effects or impacts may be detrimental or adverse, and / or beneficial.

(18) *Major Federal action* -- The term “major Federal action” has the same definition as that stated in 40 CFR 1508.18.

(19) *Mitigated FONSI* -- When mitigation is a component or factor of the proposed action (e.g., mitigation by design) and is so identified in the FONSI in order to reduce impacts to less than significant levels.

(20) *NEPA analysis* -- NEPA analysis is the analytic process involved in NEPA review.

(21) *Approving official (also Army approving official)* -- The approving official is the Army military or civilian official who on behalf of the Army approves and signs.

(22) *NEPA document* -- A NEPA document is the report that documents the NEPA analysis and its results.

(23) *Proponent (also Army proponent)* -- The Army unit, element, or organization that has the requirement for a proposed Army action and is responsible for initiating and/or carrying the action out is the Army proponent. The proponent is responsible for compliance with NEPA and this part, and for ensuring that the appropriate NEPA analyses, public participation, and documentation is completed prior to a decision on the proposed action. The proponent or designee signs RECs, EAs, and EISs, and is responsible for development and retention of the administrative record documenting NEPA compliance.

(24) *NEPA review* -- NEPA review is the process of project and program review under NEPA.

(25) *Non-developmental item (NDI)* -- An NDI is any previously developed item of supply used exclusively for government purposes by a Federal Agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement; any item described above that requires only minor modifications or modifications of the type customarily available in the commercial marketplace in order to meet the requirements of the processing department or agency.

(26) *Preparers* -- Government or contract personnel from a variety of disciplines who prepare NEPA documents. They are primarily responsible for the accuracy of the document. May include key government subject matter expert document reviewers and contributors who

provide substantive language for inclusion or whose editorial directions drive the substantive contents of the final NEPA document.

(27) *Previously disturbed land* -- Land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from native vegetation to nonnative species or a managed state.

(28) *Significance (of effects or impacts)* -- The significance of environmental effects or impacts is determined by examining both the context and intensity of the proposed action. All effects should be evaluated to determine the intensity or severity of impacts or effects and the analysis should establish, for each environmental resource warranting analysis, the threshold at which significance is reached. The threshold enables the determination of significant or less-than-significant impact. The evaluation of impacts must consider direct and indirect effects, short-term and long-term effects, adverse and beneficial effects, and cumulative effects. Potential impacts that may occur when a proposed action will have an overall beneficial effect must be analyzed for significance. If the proposed action could result in significant effects to the environment that cannot be mitigated to a level below significance, an EIS must be prepared prior to initiating action. Significant effects of socioeconomic consequences alone do not require an EIS. Significant beneficial effects alone do not require an EIS.

(29) *Staff or staffing* -- When used as a verb in this part, the term refers to the coordination of an action to obtain concurrence or approval.

(30) *Tiering* -- Tiering refers to the coverage of general matters such as a proposed DoD-wide or Army-wide program or policy in a broad EIS or Programmatic EA, with subsequent narrower environmental analyses (such as Command, installation, or site-specific levels)

adopting by reference the general discussions and concentrating solely on the issues specific to the analysis subsequently prepared.

(31) *Undisturbed land* -- Land in its natural state or land which has reverted to its natural state where ecological processes remain unattended by human activity.

(b) Abbreviations used in this part are explained in the glossary in appendix B of this part.

§ 651.4 Army NEPA policy.

(a) The regulatory procedures in this part must be met by proponents prior to implementing a proposed Army action affecting the environment. Army proponents will integrate NEPA review into Army project and program planning at the earliest possible time to ensure: Army actions are implemented in compliance with environmental laws, regulations, Executive orders (EO), Army and DoD policies and directives; delays and issues are minimized; and stakeholder and public involvement occurs as required. NEPA compliance does not substitute for or replace the need to comply with other independent environmental statutes (such as the Clean Water Act (CWA), Clean Air Act (CAA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), among others, Executive orders (EOs)), and other state and Federal agency requirements. All applicable environmental requirements that must be met for proposed Army actions should be taken into account in the NEPA analysis.

(b) The success of the Army's war-fighting readiness mission relies on access to and use of realistic natural landscapes and environmental conditions that would be experienced during combat. The NEPA evaluation of these critical environmental resources enables effective military readiness training, material development; and the ability to rapidly acquire, test, and field critical war-fighting materiel for our Soldiers. NEPA also supports the Army's ability to

effectively implement military construction activities, industrial operations, and Army modernization and future capabilities.

(c) The Army NEPA review process in this part defines responsibilities, appropriate levels of NEPA review, ensures alternatives are considered in Army decision-making, makes certain the public is involved in the NEPA review process as required, and that the analysis of environmental and socioeconomic impacts occurs in a manner that avoids, minimizes, or mitigates environmental impacts. The proponent will use the NEPA review process to inform Federal and state agencies, local governments, federally-recognized Indian Tribes, Alaska Natives, Native Hawaiians, non-governmental stakeholders, and members of the public about the potential environmental and socioeconomic impacts of proposed Army actions and proposed measures to address those impacts. Communication, cooperation, government-to-government consultation with federally-recognized Indian Tribes, and, as appropriate, collaboration between governmental and non-governmental entities are important elements of the NEPA review.

(d) Army decision-makers will use the results of the NEPA review in order to be informed, and to inform the public about the impacts that their decisions may have on environmental resources such as natural resources including soils, forests, rangelands, fish and wildlife, threatened and endangered species, wetlands, water quality, air quality, cultural resources including historic buildings, archeological sites, other historic properties, Native American sacred sites, and other resources under Army stewardship. The NEPA process will also inform decision-makers and the public of the potential socioeconomic impacts that their decisions may have on surrounding communities. Army decision-makers will balance mission requirements with socioeconomic and environmental concerns, technical requirements, economic

feasibility, and long term resiliency, will inform stakeholders and the public, and will document their decisions using the NEPA process and appropriate decision documents.

(e) Proponents will ensure that NEPA compliance is timely, effective, efficient, and adequately resourced, and will implement measures to optimize the NEPA process whenever possible. NEPA optimizing measures achieve more effective NEPA reviews and timely conclusion of the NEPA process. Measures to optimize the NEPA process include but are not limited to: a planning and coordination process for EISs to develop and confirm the description of the proposed action and alternatives prior to publication of the Notice of Intent; use of programmatic NEPA documents and tiering where appropriate; reduced attention on minor issues and extraneous background data and increased focus on critical issues; inclusion of information by reference to other documents; reduction of internal Army review-cycle times; adoption of other independent statutory requirements into the NEPA process where appropriate and allowed; and using categorical exclusions and mitigated FONSIIs whenever applicable; and by reducing the length of environmental documents by means such as meeting appropriate page limits.

§ 651.5 Army NEPA compliance responsibilities.

(a) *The Assistant Secretary of the Army (Installations, Energy and Environment) (ASA (IE&E)).* (1) The ASA (IE&E) is the Army's responsible official for NEPA policy and compliance, and is the proponent for this part.

(2) The ASA (IE&E) ensures the Army's actions affecting or impacting the environment are executed consistent with law, regulation, and policy. The ASA (IE&E) will, through the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health (DASA (ESOH)):

(i) Represent the Army NEPA Program to counterpart offices in the Office of the Secretary of Defense (OSD), the military services, CEQ, and Environmental Protection Agency (EPA), among others.

(ii) Communicate and advocate Army NEPA policies and programs to Congressional members and oversight committees, other Federal agencies, non-governmental organizations, federally-recognized Indian Tribes, Alaska Natives, Native Hawaiians, and the public.

(iii) Approve Federal Register (FR) publication of Army NEPA Notices of Intent (NOIs) and Notices of Availability (NOAs), Information for Members of Congressional Delegations, Questions and Answers, and Press Releases in accordance with § 651.25.

(iv) Coordinate FR publication of Army actions with the Army Federal Register Liaison Officer.

(v) Serve as the Secretary of the Army's (SA) responsible official for environmental analyses abroad.

(vi) Address exemption requests and emergency actions according to §651.6(b).

(vii) Review this part every five years after publication and determine if amendments to 40 CFR parts 1500 through 1508 or other circumstances require revision of this part.

(b) *The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT))*. The ASA (ALT) is the Army Acquisition Executive and leads the execution of the Army's acquisition function and the acquisition management system; supervises the life cycle management and sustainment of Army weapon systems and equipment from research and development through test and evaluation, acquisition, logistics, fielding, and disposition; appoints, manages, and evaluates program executive officers and manages the Army Acquisition

Corps and Army Acquisition Workforce. As the Army Acquisition Executive, the ASA (ALT) requires:

(1) Army acquisition programs and procedures comply with NEPA requirements as set forth in this part, and Department of Defense Directive 5000.01, Department of Defense Instruction 5000.02, Operation of the Defense Acquisition System (<http://www.dtic.mil/whs/directives/>), and implementing Army publications to include Army Regulation (AR) 70-1, Army Acquisition Policy, AR 73-1, Test and Evaluation Policy, and the discretionary guidance contained within Department of the Army Pamphlet 70-3, Army Acquisition Procedures (<http://www.apd.army.mil/>), as well as the Defense Acquisition Guidebook.

(2) Environment, safety, and occupational health (ESOH) planning in a Systems Engineering Plan (SEP); documentation of the results of the planning in a Programmatic ESOH Evaluation (PESHE) as an addendum to the SEP (the PESHE is for planning purposes and does not constitute or substitute for NEPA compliance).

(3) Integration of environmental considerations early in the acquisition process as part of the capability requirements document development and as part of the Analysis of Alternatives.

(4) Acquisition Program Executive Officers (PEOs) and Acquisition Program/Project/Product Managers (who acts as the Materiel Developer (MATDEV)) (PMs) prepare and maintain a NEPA Compliance Schedule covering all known or projected system-related activities, events, or proposed actions that may trigger a requirement for NEPA documentation.

(5) Acquisition PEOs and PMs function as the proponent for their respective acquisition actions and ensure the appropriate NEPA documentation is prepared prior to acquisition

activities, events, or proposed actions. As part of the materiel fielding package PEOs and PMs, in coordination with fielding locations, will prepare a comprehensive evaluation of environmental information and potential environmental issues obtained during the system specific acquisition process. The materiel fielding package containing the comprehensive evaluation of environmental information and potential site specific environmental issues will be provided to each fielding location.

(6) Acquisition PEOs and Acquisition Program/Project/Product Managers comply with the procedures in this part and:

(i) Coordinate NEPA documentation for acquisition with the appropriate stakeholders.

(ii) Make NEPA documents for acquisition available to the approving official prior to implementation of proposed actions.

(iii) Serve as the approving official where appropriate and sign or appoint a designee to sign NEPA documents for acquisition actions.

(iv) Maintain the NEPA administrative record for their acquisition and ensure they are placed in the Army NEPA repository in a timely manner.

(v) Provide installations with NEPA documents and associated analyses prepared during the acquisition process. The Installation Commander is responsible for ensuring that NEPA documentation has been completed prior to fielding new materiel at their installation.

(7) Middle-Tier Acquisitions (MTA), the MTA Decision Authority, and PEOs and PMs designated as an MTA Decision Authority comply with the requirements of NEPA by implementing this part in manner consistent with MTA actions to rapidly prototype and field high priority military capabilities.

(c) *The Deputy Chief of Staff (DCS), G-9*. DCS, G-9 is the Army Staff (ARSTAF) proponent for Army military construction, master planning, real property management, and base realignment and closure. DCS, G-9 assists and supports the ASA (IE&E) in all aspects of Army NEPA requirements and collaborates across the ARSTAF to ensure actions are fully coordinated. The DCS, G-9 will:

(1) Designate a DCS, G-9 environmental officer responsible for NEPA program management.

(2) Advise Army agencies in the preparation of NEPA analyses.

(3) Review and coordinate NEPA analyses and documents for Army actions, and NEPA analyses and documents submitted by other DoD components and other Federal agencies for actions of interest to or effecting the Army.

(4) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making processes.

(5) Prepare Army NEPA guidance for implementing this part, NEPA program metrics, and oversee NEPA initiatives executed by the Army Commands, Service Component Commands, and Direct Reporting Units.

(6) Monitor proponent implementation and execution of NEPA requirements, E.O. 12114 and 32 CFR part 187 requirements, and develop and execute guidance, programs, and initiatives to address problem areas.

(7) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and Status of Forces Agreements (SOFAs).

(8) Provide guidance and ensure commanders implement the requirements of E.O. 12114 and this part.

(9) Support DASA (ESOH) in all aspects of Army NEPA requirements.

(10) Advise headquarters organizations on process to secure funding for NEPA requirements.

(11) Maintain manuals and guidance for optimizing NEPA analyses in accordance with § 651.4(e) for major Army programs and make this guidance accessible to Army personnel and, as appropriate, the public.

(12) Maintain a record of command and installation NEPA points of contact (POCs) in the Army.

(13) Review NEPA training at all levels of the Army, including curricula at Army, DoD, other service, and other agency and institutions. Review of DoD, other service, and other NEPA training is limited to training affecting the Army.

(14) Designate and maintain an electronic Army-wide NEPA repository for all Army EAs and EISs, FONSIIs and RODs.

(15) Advise Army agencies regarding participation as a NEPA cooperating agency.

(d) *Deputy Chief of Staff G-3/5/7*. The Deputy Chief of Staff (DCS), G-3/5/7 is responsible for stationing the force. Any proposed stationing action which meet criteria set forth in AR 5-10 requires DCS G-3/5/7 coordination and Headquarters, Department of the Army (HQDA) senior leadership approval. All proposed actions impacting training mission will be coordinated with the DCS, G-3/5/7. The DCS G-3/5/7:

(1) Serves as or designates G-3/5/7 proponents and G-3/5/7 approving officials for Army actions under G-3/5/7 responsibility.

(2) Identifies the requirement to conduct NEPA early in the stationing planning process.

(3) Integrates NEPA, and NEPA optimizing measures into the strategic stationing decision framework.

(4) Ensures the appropriate NEPA analysis, document, and review process occurs to inform senior leaders prior to final stationing decisions.

(e) *The Assistant Secretary of the Army for Financial Management and Comptroller (ASA (FMC))*. The ASA (FMC) ensures Army NEPA compliance requirements are supported in annual authorization requests.

(f) *The Army General Counsel*. The Army General Counsel (GC) provides legal advice and review to the SA and ASA (IE&E) on all environmental matters, to include interpretation and compliance with NEPA and Federal implementing regulations, the requirements of EO 12114, and other applicable legal authority. Determines the final Army position on legal questions and issues related to NEPA. Serves as the point of contact between the Army and OSD Office of General Counsel and General Counsels of other services and Federal agencies with regard to Army NEPA compliance.

(g) *The Judge Advocate General (TJAG)*. TJAG provides legal advice to the ARSTAF and assistance in NEPA interpretation, Federal implementing regulations, the requirements of EO 12114, and other applicable legal authority; determine the legal sufficiency for Army EISs, EAs of national concern or interest, and other NEPA documentation as appropriate; and interface with the Army GC and the Department of Justice on NEPA-related litigation.

(h) *The Army Surgeon General*. The Surgeon General provides technical expertise and guidance to proponents in the Army, as requested, to assess public health, industrial hygiene, and other human health aspects of proposed programs and projects.

(i) *The Chief, Public Affairs.* The Chief, Public Affairs:

(1) Provides communication plan development guidance to enable appropriate public involvement on Army actions. Provides public affairs guidance on conducting public meetings for NEPA processes and on issuing public announcements such as NOIs, scoping, and NOAs.

(2) Reviews and coordinates planned public announcements on actions of national concern or interest, and actions that will undergo an EIS process, with appropriate ARSTAF elements, ASA (IE&E) and the Office of the Assistant Secretary of Defense for Public Affairs (OASD (PA)).

(3) Assists in the issuance of appropriate press releases to coincide with the publication of notices in the FR.

(4) Provides assistance, as requested, to Army Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(j) *The Chief of Legislative Liaison.* The Chief of Legislative Liaison notifies Members of Congress of pending actions including those that will be published in the FR. The Chief will:

(1) Provide guidance on issuing Congressional notifications for NEPA notifications that will be published in the FR.

(2) Review proposed Congressional notifications on actions.

(3) Issue Congressional notifications prior to the publication of NEPA notifications in the FR.

(k) *Commanders of Army Commands, the Director of the ARNG, Chief, U.S. Army Reserve and Commanding General of U.S. Army Reserve Command, Army Service Component Commands, and Direct Reporting Units (Commands).* These Commands will:

(1) Apply policies and procedures of this part to programs and actions within their staff responsibility, except for state-funded operations of the ARNG.

(2) Assume proponenty for their proposed actions.

(3) Assign a command environmental officer responsible for NEPA program management, and report the individual by name to DCS, G-9.

(4) For programs and actions within their staff responsibility that require a NEPA notice to be published in the FR, staff the FR publication package for review at HQDA; see § 651.25.

(5) Establish procedures for identification of the appropriate proponent and delineate responsibilities for the NEPA review process within their command. Develop and implement Command-wide NEPA guidance, as needed, in coordination with the DCS, G-9.

(6) Assist in the review and staffing of NEPA documentation prepared by or affecting subordinate elements.

(7) Maintain the capability (personnel and other resources) to comply with the requirements of this part and include provisions for NEPA requirements through the Program Planning and Budget Execution System (PPBES) process.

(8) ARNG installations consist of the 54 States and Territories and are commanded by a state government official, The Adjutant General (TAG).

(i) TAGs have authority over ARNG personnel and resources within the States and Territories they command. As a state government official, TAGs cannot function as the proponent or Army approving official. TAGs will review and validate NEPA documents prepared for projects within their command, and will forward those NEPA documents to the Director, ARNG.

(ii) The Director, ARNG or designee serves as the proponent and approving official for ARNG actions. The Director, ARNG or designee signs RODs for ARNG EISs, and FONSIIs for ARNG EAs.

(iii) ARNG Records of Environmental Consideration (RECs) are signed at the installation level by ARNG environmental officers that serve in Federal positions in title 32 of the CFR. In the event that the ARNG environmental officer is not a federal civilian employee, or a Federal Technician in Active Guard and Reserve Duty (AGR) status, the ARNG RECs are signed by a Federal Technician, AGR, or Federal civilian employee in the ARNG environmental officer's chain of command.

(1) *The Commander, U.S. Army Training and Doctrine Command (TRADOC)*. In addition to responsibilities as a proponent, as applicable, the Commander, TRADOC will:

(1) Ensure that NEPA requirements are understood and incorporated in the Officer Foundation Standards (OFS).

(2) Integrate environmental considerations into doctrine, organization, training, materiel, leadership and education, personnel, facilities, and policy (DOTMLPF-P) processes.

(3) Include environmental officer representation on all Integrated Concept Teams (ICTs) involved in requirements determinations.

(4) Ensure that TRADOC Capability Managers retain and transfer environmental analyses or data to the MATDEV upon approval of the materiel Capabilities Requirements Documents.

(5) Ensure that environmental considerations are incorporated into the Capabilities Requirements Documents.

(m) *Installation Commanders.* For the purposes of this part, Installation Commander refers to all Army Commanders and senior civilian managers of land holding organizations who serve as the senior executive for installation activities and are responsible for day-to-day operation and management of installations. Commanders who execute land holding functions may be referred to by different titles for different Army organizations. For an Installation Management Command installation, these responsibilities fall upon the Garrison Commander (the Senior Commander's senior executive for installation activities), or the Garrison Manager. For other Army commands, this function may be served by an Installation Commander; for the Reserves, Commanders of U.S. Army Reserve Readiness Divisions and Mission Support Commands (MSCs); for ARNG see § 651.5(l) for commander responsibilities. Commanders of arsenals or depots may have these same terms in their title ("Depot Commander"), and are also included in this section, as are commanders of Government-owned, Contractor-Operated (GOCO) facilities. This section is intended to refer to all commanders and senior civilian managers of land holding organizations, regardless of title. The description "land holding" is intended to encompass all resources and areas, such as surface and subsurface waters and airspace within the command and/or control of the land holding commander. Hereinafter, the term "Installation Commander" has the meaning described in this section. Installation Commanders will:

- (1) Establish an installation NEPA compliance program and evaluate its performance.
- (2) Serve as, or designate a proponent and approving official for installation sponsored actions requiring NEPA compliance.
- (3) Ensure NEPA requirements associated with fielding new materiel at their installation have been met.

(4) Plan, program, and budget for installation NEPA requirements, and initiate the NEPA review of installation proposed actions early in the planning process.

(5) Ensure that proposed actions subject to NEPA are coordinated by appropriate organizations.

(6) Ensure installation staff elements, tenants, and others incorporate NEPA requirements early in the planning of proposed actions.

(7) Maintain an administrative record of all installation NEPA documents and associated information, and ensure NEPA documents are deposited in the Army NEPA Repository.

(8) Ensure NEPA awareness and/or training is provided for professional staff, installation-level proponents, and document reviewers (for example, master planning, range operations, acquisition support staff, etc.).

(9) In coordination with the proponent, ensure mitigation measures specified in NEPA documents are carried out, and that a mitigation and monitoring plan is developed and implemented as needed.

(10) Consult on a government-to-government basis with federally-recognized Indian Tribes.

(11) Implement NEPA optimizing measures as appropriate.

(12) Review, validate, concur, or co-sign and approve (as appropriate) NEPA documentation for proposed actions prepared by other Army or DoD organizations that will take place in the area over which the Installation Commander has authority. The Installation Commander may authorize a designee to concur or co-sign on their behalf.

(13) Designate an Installation environmental officer responsible for NEPA program management who will:

- (i) Assist proponents in integrating the NEPA process into their activities and programs.
- (ii) Advise the commander on NEPA matters and enable early coordination with the proponent for proposed actions requiring NEPA documentation.
- (iii) Prepare and coordinate NEPA documents as directed by the Installation Commander.
- (iv) Serve as the proponent, and/or as the approving official if designated, for installation sponsored actions.
- (v) Advise his/her organization on the selection, preparation, and completion of NEPA analyses and documentation, as well as the possible extent of required mitigation (see Subpart F), for those proposed actions for which the organization is the proponent and for those NEPA analyses of others that will impact or involve the environmental resources or mission activities for which the organization has oversight.
- (vi) Develop and publish local NEPA guidance and procedures.
- (vii) Identify additional environmental information needed to support informed Army decision-making.
- (viii) Assist proponents to identify issues, impacts, and possible alternatives and/or mitigation measures relevant to specific proposed actions.
- (ix) Ensure mitigation measures are implemented, and mitigation monitoring occurs to ensure that mitigation measures are accomplished.
- (x) Assist in completion of agency, stakeholder, and public coordination. Request PAO review and assistance with all public communications and events.

Subpart B — Army National Environmental Policy Act Implementation

§ 651.6 Army NEPA review.

(a) Army actions that may involve some level of NEPA compliance generally include, but are not necessarily limited to:

(1) Policies, regulations, plans, and procedures that affect the use or management of the environment.

(2) Research, Development, Test, and Evaluation (RDT&E) activities; acquisition program actions; and real property and facility management actions.

(3) Projects involving facility construction, renovation, or demolition.

(4) Military operations and activities including training, flight operations, overall operation of installations, and test and evaluation programs.

(5) Actions that require licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, and Federal Aviation Administration (FAA) air space requests (new, renewal, or amendment).

(6) Materiel acquisition, development, testing, fielding, operation and support, disposal, and/or modification.

(7) Transfer and use of weapons systems or other personal property to the ARNG or Army Reserve.

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

(9) The planned use of land acquired through leases, easements, permits, licenses, out-grants, or other entitlement for use, to include donation, exchange, barter, or Memorandum of

Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to use land for special events such as sporting events, air shows, or carnivals.

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

(11) Request for approval to use, store, or dispose of non-DoD radiation sources, hazardous or toxic material, or hazardous or toxic wastes on Army land, when permitted by law.

(12) Stationing actions that result in increases, reductions, or realignments of military and civilian personnel.

(b) *Special circumstances.* The following are special circumstances addressing exemptions and emergency actions.

(1) *Exemption by law.* NEPA itself does not contain a statutory exemption. NEPA exemptions in other statutes must apply to DoD and/or the Army and must prohibit, exempt, or make impossible full compliance with the NEPA procedures. While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action may still be subject to NEPA review. Army proponents who believe a proposed Army action qualifies for an exemption from NEPA will, at the earliest practicable time, notify their chain of command and DASA (ESOH). DASA (ESOH) will coordinate with the appropriate OSD office, and will request a binding legal opinion regarding the applicability of the exemption from Army OGC. Congressional direction to the Army to take an action does not constitute an exemption from NEPA.

(2) *Emergencies.* (i) The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property to comply with this part. The Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security.

(ii) Where emergency circumstances make it necessary for a responsible Army official to take an action with significant environmental impact without observing the provisions of this part, the Army official will, at the earliest practicable time, notify their chain of command and DASA (ESOH). The responsible Army official will consult with CEQ as soon as reasonably possible about alternative arrangements. This section applies only to actions necessary to control the immediate effects of the emergency.

(iii) Where the significance of the impacts are unknown but are anticipated to be less than significant, and emergency circumstances make it necessary to take an action without observing the provisions of this part, the responsible Army official will, at the earliest practicable time, notify their chain of command and the DASA (ESOH). If the action is ongoing, an appropriate NEPA review will be prepared as soon as practicable.

(iv) After-action reports may be required at the discretion of the DASA (ESOH).

(v) State call-ups of ARNG during a natural disaster or other state emergency are excluded from the notification requirements of this section.

(c) *Levels of Army NEPA review.* The following are the levels of NEPA review that a proposed Army action may be subject to:

(1) *CX.* This level of NEPA review addresses actions that normally do not require an EA or an EIS. A CX is applicable where the Army has determined that certain actions do not

individually or cumulatively have a significant effect on the human environment. Requirements for application of a CX are further described in this part. The Army uses a Record of Environmental Consideration (REC) to document the application of certain CXs. Army CXs and RECs are addressed in subpart C of this part.

(2) *EA*. Proposed Army actions not covered by paragraphs (b) and (c)(1) of this section must be analyzed to determine if they could cause significant impacts to the environment. The EA is the basis for determining that impacts would not be significant, are mitigated to less than significant, or that an EIS is required. The EA requires analysis of the magnitude of impacts and evaluation of their significance. The EA findings are documented in either a FONSI or an NOI (to prepare an EIS). This process requires public review of the signed EA and draft FONSI. The format and requirements for the EA are addressed in subpart D of this part.

(3) *EIS*. When an action clearly has significant impacts or when an EA cannot be concluded by a FONSI, an EIS must be prepared. An EIS is initiated by the NOI published in the FR. An EIS examines the environmental effects of the proposed action and reasonable alternatives as well as potential measures to mitigate adverse effects. This process requires formal interaction with the public, to include a scoping process, opportunities for public review of the Draft EIS, and the incorporation of public comments. The format and requirements for the EIS are addressed in subpart E of this part.

(4) *Programmatic EA or EIS*. Army agencies may analyze proposed actions at a programmatic level for programs and actions that are similar in nature or broad in scope and/or that involve decisions related to multiple locations to eliminate repetitive discussions of the same issues and focus on the key points at each appropriate level of project review. When a programmatic EA or EIS has been prepared, any subsequent EIS, EA, or REC on an action

included within the entire program or policy (particularly a site-specific action) can "tier" off the original analyses, eliminating duplication. The subsequent documents need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent, site-specific action.

§ 651.7 NEPA principles and practices.

(a) *Synchronizing environmental reviews.* (1) Proponents will ensure that permitting, compliance, consultation, and coordination required by other applicable independent environmental statutes and regulations is completed prior to execution of the decision document (FONSI or ROD). The proponent will incorporate the information and requirements resulting from these independent compliance actions into the NEPA document to identify and assess potential environmental impacts and mitigation measures.

(2) NEPA compliance does not replace the procedural or substantive compliance requirements of other independent environmental statutes and regulations. The NEPA analysis summarizes and consolidates the information resulting from compliance with other independent environmental statutes and regulations into a single NEPA document. This ensures the approving official has a comprehensive view of the environmental issues and understands the full scope of potential environmental consequences.

(3) Decision documents will be forwarded to the planners, designers, and/or implementers to ensure the actions and mitigation measures occur as specified in the decision document and are incorporated as needed during project execution.

(b) *Analyzing connected actions.* (1) The Army will analyze impacts of connected actions within the same NEPA review. Connected actions are actions that are closely related, and include: actions that automatically trigger other actions that may require a higher level of

analysis; those that cannot or will not proceed unless another action is taken previously or simultaneously; and those that are interdependent parts of a larger action and depend on the larger action for their justification.

(2) *Segmentation* is the impermissible separation of connected actions into different NEPA analyses for the purposes of, or having the result of, avoiding the appearance of significance of the total action. Segmentation includes defining an action too narrowly to avoid a higher level of analysis. The use of a programmatic NEPA document and subsequent tiering of NEPA analyses is permissible and does not constitute improper segmentation.

(3) The rapidly and continuously evolving nature of the national defense mission, and the sheer size, nation-wide geographic distribution, and inherently hierarchical organization of the Army, often require that higher-headquarter decisions are made without a complete analysis of the multitude of connected actions, alternatives, and impacts at the site-specific, installation level. Such actions are best analyzed using a programmatic tiered NEPA approach, with the local-level analyses focused on alternatives for the best implementation of the higher-level decision.

(c) *Cumulative impacts*. NEPA documents must assess cumulative impacts.

(d) *Preparing the administrative record*. The proponent is responsible for maintaining the complete administrative record for the proposed action, and for providing copies of the record to the relevant environmental officer responsible for NEPA program management if requested. The administrative record includes all documents and information used to make the decision. All documentation and supporting administrative records will be retained by the installation staff responsible for NEPA program management, at the installation where the proposed action takes place. The administrative record will be retained for a minimum of six years after signature of

the decision document or the completion of the action, any required mitigation is complete, or the information is no longer valid, whichever is later. For programmatic NEPA analyses, the proponent will keep NEPA documentation and supporting administrative records. The proponent will ensure that EAs/FONSI and final EISs/RODs are uploaded into the Army NEPA repository as designated by DCS, G-9.

(e) *Preparing a Supplemental EA or Supplemental EIS.* When significant new or previously unknown circumstances or information relevant to the environmental effects or impacts of an action are revealed, the proponent will determine if the completed NEPA documentation is adequate. If the completed NEPA documentation is adequate, or if a CX is applicable to the changes or to the new circumstances or information, a REC may be prepared. If conditions warrant a Supplement EA or a Supplemental EIS, these documents are prepared and processed in the same way as the original EA or EIS. No new scoping is required for a Supplemental EIS filed within one year of the filing of the original ROD.

(f) *Addressing response actions.* Response actions implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) do not require separate NEPA review. Where appropriate, CERCLA and RCRA analysis and documentation should incorporate the values of NEPA.

(g) *Joint basing applicability.* This part applies to joint bases for which the Army is the supporting component. This part applies to supported military components on joint bases where the Army is the supporting component. Supported Army proponents on a joint base where another military service is the supporting component will follow the supporting military component's NEPA regulations. Under joint base agreements, the supporting service component

provides installation management services to the supported service component including management functions associated with NEPA documentation financed by supported components.

(h) *Army as NEPA lead agency.* In some cases, other Federal agencies, and local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to a proposed Army action that the NEPA process would benefit from the participation of the organization. When appropriate, the proponent for an action should determine whether these entities have an interest in becoming a cooperating agency. If cooperating agency status is established, a memorandum of agreement (MOA) or MOU is required to document specific expectations, roles, and responsibilities, including analyses to be performed, time schedules, availability of pre-decisional information, and other issues. Cooperating agencies use their own funds, and the designation of cooperating agency status neither enlarges nor diminishes the decision-making status of any Federal entity leading or cooperating in the action.

(i) *Army as NEPA cooperating agency.* In cases where other agencies take actions that can impact the Army mission, the Army may have some special or unique expertise or jurisdiction by law. In those circumstances, the Army may be a NEPA cooperating agency and provide information or technical expertise to a lead agency, approve portions of a proposed action under Army control, ensure the Army has an opportunity to be involved in an action of another Federal agency that will affect the Army, and provide review and approval of the portions of NEPA documents that affect the Army.

(j) *Other reports.* Army proponents may publish fact sheets and/or supplemental information documents on complex or long-term NEPA reviews to keep the public informed on the status of the proposed action.

(k) *Greenhouse gas (GHG) and climate change.* When defining the scope of NEPA analysis, the proponent determines whether and to what extent GHG emissions and climate change effects warrant analysis. When the proponent determines that reasonably foreseeable GHG emissions are substantial enough to warrant quantification, the proponent should:

(1) Quantify those GHG emissions where information and quantification tools are available, and where quantification would be practicable and not overly speculative.

(2) Where quantification would not be practicable or would be overly speculative, the proponent should include a qualitative analysis.

(3) Emissions should be reasonably foreseeable, there must be a sufficiently close causal relationship.

(4) Proponents are not required to quantify effects where information necessary for quantification is unavailable, not of high quality, or the complexity of identifying emissions would make quantification overly speculative.

(5) A direct and indirect effects analysis of GHG emissions is sufficient and a separate cumulative impact analysis for GHG emissions is not required.

(6) Proponents are not required to develop cost benefit analyses, including Social Cost of Carbon (SCC). SCC analyses were not intended for socio-economic analysis under NEPA or decision-making on individual actions, including project-level decisions.

(l) *Information inclusion.* Proponents should identify and eliminate from further consideration any insignificant issues and information that is not relevant or important to determining the environmental effects of a proposed action. This also includes issues and information which have been covered in a previous environmental review.

(m) *NEPA time limits.* Proponents should strive to achieve completion of:

(1) EAs within one year. One year is measured from the date of the proponent's decision to prepare an EA to the publication of a final EA.

(2) EISs within two years. Two years is measured from the date of the issuance of the NOI to the date a ROD is signed.

§ 651.8 Security review and clearance policy for NEPA documents.

The proponent will ensure NEPA documents intended for public release undergo operational security review and are cleared for public release. Security review and clearance protects classified information, controlled unclassified information, unclassified information that may individually or in aggregate lead to the compromise of classified information, militarily critical information and other information that if disclosed is deemed an operational security risk.

(a) Classified proposals, and proposed actions involving classification of information, militarily critical and other information whose disclosure is deemed a risk to national defense operational security does not relieve the proponent of the NEPA compliance requirement to assess and document the effects of their proposed action on the environment.

(b) Information may be considered militarily critical if it addresses the following subjects or affects the operations security thereof:

(1) New weapons or weapons systems, or significant modifications or improvements to existing weapons or weapons systems, equipment, or techniques.

(2) Military operations and significant exercises of national or international significance.

(3) Command, control, communications, computers, intelligence, surveillance, and reconnaissance; information operations and cyberspace; weapons of mass destruction; improvised explosive devices; and computer security.

(4) Military activities or application in space; nuclear weapons, including nuclear weapons effects research; defense from chemical and biological warfare and threats; initial fixed weapons basing; and arms control treaty implementation.

(5) Any other contemporary topic that is so designated by the appropriate authority.

(c) Proponents will follow all applicable DoD and Army information security regulations (including AR 380-5 Department of the Army Information Security Program) for proposed actions and NEPA analyses involving classified information, or military critical and other information deemed a risk to operational security. EAs and EISs which address classified proposals, contain classified information, militarily critical or other information deemed an operational security risk will be safeguarded, and may be restricted from public dissemination.

(d) When classified information, militarily critical or other information deemed an operational security risk can be reasonably separated from other information, an unclassified and publically releasable NEPA document will be prepared and processed in accordance with this part. Classified information, militarily critical and other information deemed an operational security risk will be safeguarded, restricted from public dissemination, and provided to reviewers and approving officials in accordance with AR 380-5. Critical program information will be kept separated and provided to reviewers and decision-makers in accordance with the appropriate distribution statement.

(e) When classified information, militarily critical and other information deemed an operational security risk is an integral part of the analysis of a proposal such that a meaningful NEPA document cannot be produced for public dissemination, the proponent will: ensure that the appropriate NEPA analysis is prepared by individuals with appropriate expertise and clearance levels, consider environmental effects in accordance with § 651.1(b), safeguard and

restrict the resulting NEPA document from public dissemination, and ensure that the approving official is fully informed of the environmental consequences of the proposed action prior to making a decision regarding the action. The proponent will retain the NEPA document and associated NEPA analyses as part of the administrative record for the proposed action in accordance with applicable Army information security regulations.

Subpart C— Categorical Exclusions and Records of Environmental Consideration

§ 651.9 Categorical exclusions and screening criteria general information.

(a) CXs are categories of actions with no individual or cumulative significant effect on the human or natural environment, and for which neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact. Proponents must apply the Army CX screening criteria to determine if a CX is applicable to their proposed action. The Army CX screening criteria are at § 651.11 and the Army CXs are at § 651.12.

(b) Specific screening criteria must be applied to determine if a CX is appropriate and applicable. The screening criteria must be applied to ensure that no extraordinary circumstances or effects on environmentally sensitive resources exist, or to ensure that any effects on environmentally sensitive resources have been addressed through a prior NEPA document or by compliance with other environmental statutes and regulations.

(c) If no CX is appropriate, the potential environmental impacts of the proposed action must be analyzed in an EA/FONSI or an EIS/ROD before it may proceed. Where documentation is needed to clarify that the proposed action is adequately covered by a prior completed NEPA document, a REC is prepared to that effect (§ 651.10).

§ 651.10 Record of environmental consideration.

(a) A REC is a signed statement that briefly describes a proposed action, and documents that the action has received NEPA review. A REC has no prescribed format, as long as it contains all relevant information required to support its conclusions.

(b) RECs are used to:

(1) Document how an action qualifies for a CX when a REC is required for the CX and that it is not a major Federal action or has no potential for significant effects on the environment;

(2) Document where other environmental statutory or regulatory compliance requirements (other than NEPA) have been used to address potential impacts to environmentally sensitive resources;

(3) Describe how a prior completed NEPA document applies to the current proposed action such that the proposed action has already been adequately analyzed in a completed NEPA document; and

(4) Identify new or additional information and document a determination that amendment or supplementation of a previously completed EA or EIS is not needed, even in light of the new or additional information. In such circumstances, an additional information document may be prepared and attached to the REC.

(c) *REC content.* (1) RECs must document the basis for the determination that a CX is applicable, including the conclusions reached during application of the screening criteria. The REC must expressly state that screening criteria were applied.

(1) RECs may include by reference relevant and readily available documents, and new or additional information.

(2) When used to document that a proposed action is adequately covered within a previously completed EA or EIS, the REC should state the applicable EA or EIS title, date, date of FONSI or ROD, and the location of record copies.

(3) While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental statutes and regulations. The REC should reference compliance with other environmental statutes and regulations. Appropriate interagency correspondence can be referenced in and/or attached to the REC to document compliance with other environmental statutes and regulations.

(4) RECs must address all connected actions associated with the proposed action.

(d) *REC coordination and signature.* RECs will be coordinated with appropriate Army offices as determined by the proponent. RECs require one signature, and are signed by the approving official, or their designee. RECs can only be signed by Army military personnel or a Federal civil service employee. RECs must be dated and include the estimated date or timeframe of the proposed action. RECs must be signed prior to the start of the proposed action. A REC need not be published or made available to the public for comment, but must be kept by the proponent with the project file for the proposed action and, subject to operations security review, may be made available to the public on request.

(e) Once a REC is signed, the NEPA process is concluded, and the proposed action may proceed.

(f) More than one CX may apply to a proposed action. Not all applicable CXs may require a REC; however, a REC should discuss all connected actions, including those that are covered by an applicable CX that does not require a REC, to clarify that the actions were analyzed and not segmented.

§ 651.11 Army CX screening criteria.

The Army Screening Criteria are as follows:

(a) The proposed action has not been segmented (see § 651.7(b)(2)).

(b) Determine if the proposed action involves extraordinary circumstances that would preclude the use of a CX. Extraordinary circumstances that preclude the use of a CX are:

(1) Unique characteristics of the affected site or region in which the proposed action is located indicate a reasonable likelihood of significant effects (direct, indirect, or cumulative) on public health, safety, or the environment.

(2) Possible effects on the environment are highly uncertain or the proposed action involves unique or unknown risks.

(3) Scope or size of the proposed action is substantially greater than what is typical or what is described in otherwise applicable CXs.

(4) Implementation of the proposed action would require a substantive revision to a management plan and an EA or EIS for the management plan is required prior to the plan revision being finalized or approved.

(5) Reasonable likelihood that the proposed action would result in discharges or emissions of pollutants above a de-minimis level and/or reportable quantities, and the discharge or emission is not otherwise alleviated through another environmental process (e.g., discharge or emission permit).

(6) Reasonable likelihood of violating an applicable Federal, state, or local law or requirement imposed for the protection of the environment.

(7) Effects on the quality of the environment likely to be highly controversial.

(8) Would establish a precedent (or make decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(9) Introduction/employment of materials or technology for which potential impacts on the environment are unproven.

(c) A CX may not be used if a proposed action would adversely affect an environmentally sensitive resource unless the adverse effect is addressed through another environmental compliance process (for example, Endangered Species Act (ESA), Native American Graves Protection and Repatriation Act (NAGPRA), Integrated Natural Resources Management Plans (INRMPs) adhering to the Sikes Act, Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act (BGEPA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Clean Water Act (CWA), etc.). A REC is required to document the use of another environmental compliance process to address potential impacts to environmentally sensitive resources. The term “environmentally sensitive resources” is defined in appendix B, Section II, of this part.

(d) The use of a CX does not relieve the proponent from compliance and consultation requirements under other statutes, regulations, and permits.

§ 651.12 Army CXs.

(a) *Army CXs.* Army CXs are grouped under common types of activities, see paragraphs (b) through (i) of this section.

(1) CXs that require a REC are so identified. If a CX does not require a REC, no documentation is necessary. The screening criteria must be analyzed to provide sufficient detail to demonstrate that no extraordinary circumstances exist that would preclude the use of a CX.

(2) Proposed actions may not be segmented in order to meet the requirements of a CX.

(3) The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be staffed, through channels, to the ODASA (ESOH). Subordinate Army headquarters may not modify the CX list through supplements to this part.

(4) More than one CX may be cited for a given proposed action.

(b) *Administrative measures.* (1) Routine law and order activities performed by civilian and military police, physical plant protection and security personnel, and civilian natural resources and environmental law officers. This includes defense support to civil authorities and search and rescue operations.

(2) Emergency or disaster assistance provided to Federal, state, or local entities (REC required).

(3) Preparation, revision, and promulgation of regulations, policies, directives, procedures, manuals, and guidance documents that implement HQDA or other Federal agency regulations, policy, procedures, manuals, and guidance documents that have been the subject of previous NEPA review or do not have substantial impacts on the environment.

(4) Proposed administrative activities and operations to be conducted in an existing structure that are within the scope and compatibility of the present functional use of the structure. This includes all routine administrative functions of any kind; examples include, but are not limited, to military and civilian personnel recruitment, hiring, paying, supervision, and management; budgets, appropriations, and contracts planning, administration, and management; documents and records preparation, management, and distribution; investigations, inspections, analyses, and studies planning, execution, and documentation; educational and public outreach material development and distribution; and communications, briefs, and staffing actions.

(5) Routine management of buildings, facilities, utilities, training areas, and ranges in order to support routine use and enable timely maintenance and repair. This CX includes all management activities to enable and maintain the full functionality of the site.

(6) Routine morale, welfare, and recreation activities not involving off-road recreational vehicles.

(7) Deployment of military forces on a temporary duty or training basis where existing facilities are used for their intended purposes consistent with the scope and size of existing mission.

(8) Routine travel and movement of personnel, vehicles, watercraft, aircraft, equipment, and other materiel and commercial goods.

(9) Approval of asbestos or lead-based paint management plans drafted in accordance with applicable laws and regulations (REC required).

(10) Special events and routine community relations events, whether on or off the installation. These include educational, technical, advisory, and consultation activities where the Army engages with communities, government, private organizations and individuals, federally-recognized Indian tribes, and the general public. Such events include for example, ceremonies, funerals (to include state funerals), open houses, town halls, air shows, athletic events, flyovers, Earth Day events, and concerts. (REC required for air shows and flyovers).

(11) Temporary closure or temporary restriction of access to roads, trails, recreational areas, and/or any lands within the boundaries of a military installation or within DoD real estate lease agreement land holdings in order to protect human or animal life, other natural or cultural resources, or for military training or security/law enforcement purposes (REC required).

(12) Reductions and realignments of civilian and/or military personnel that fall below the thresholds for actions reportable to Congress, as prescribed by statute (for example, 10 U.S.C. 2687(a)(2) and 10 U.S.C. 993). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations. (REC required when the net change in military and civilian authorizations at a military installation meets the threshold for forwarding a stationing package to the DCS, G-3/5/7).

(13) Relocation of personnel into existing federally-owned (or state-owned in the case of ARNG) or commercially-leased space. (REC required when the net change in military and civilian authorizations at a military installation meets the threshold for forwarding a stationing package to the DCS, G-3/5/7).

(14) An Army action occurring on another military service's property where the action qualifies for a CX of that military service, or for actions on property designated as a Joint Base or Joint Region that qualifies for a CX of any of the military services included as part of the Joint Base or Joint Region. When the Army proponent chooses to use another military service's CX to cover a proposed action, the proponent must have written confirmation that the other service does not object to using their CX to cover the Army action. The Army proponent will include that written confirmation in the administrative record for the proposed action. The Army official making the CX determination must ensure the application of the CX is appropriate and that the Army proposed action was a type contemplated when the CX was established by the other service, and that no extraordinary circumstances exist. (REC required).

(15) An Army action occurring on another Federal agency's property, or on property where another Federal agency is operating, that qualifies for a CX of the other Federal agency. If

the Army chooses to use the other Federal agency's CX to cover the proposed Army action, the Army proponent must have written confirmation that the other agency does not object to using their CX to cover the Army action. The Army proponent will include that verification in the administrative record for the proposed action. The Army proponent must determine that the Army action fits within the other Federal agency's CX, is of a similar type and scope as the action categorically excluded by the other Federal agency, and no extraordinary circumstances exist. (REC required).

(c) *Construction and demolition.* (1) Construction of new, alteration of existing (to include replacement or upgrades), and additions to existing buildings, facilities, structures (to include towers that do not present a collision hazard to military aircraft), launch pads, utility systems, and communication systems on previously disturbed land and/or on undisturbed land, provided there are no more than 5 cumulative acres of surface disturbance to undisturbed land. (REC required). This does not include construction of facilities intended primarily for the transportation, distribution, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste. The terms "previously disturbed land" and "undisturbed land" are defined in appendix B, Section II, of this part.

(2) Construction of new and expansion of existing parking lots and hardening of tank trails and turn pads on previously disturbed land and/or on undisturbed land, provided there are no more than 5 cumulative acres of surface disturbance to undisturbed land. If a parking lot design will replicate the pre-development hydrology, limitation may be extended to 10 acres (REC required). The terms "previously disturbed land" and "undisturbed land" are defined in appendix B, Section II, of this part.

(3) Placement and replacement of targetry and other stationary equipment on existing ranges provided there are no more than 5 cumulative acres of surface disturbance to undisturbed land (REC required). The term “undisturbed land” is defined in appendix B, Section II, of this part.

(4) Installation of fencing, utility systems, and communication systems that use existing right-of-way, and installation of airfield communication and safety equipment (REC required).

(5) Construction, placement, installation, or relocation of machinery and equipment (for example, analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment) from another site or structure to the new or altered building/facility/site, assuming the uses of the relocated items will be similar to their former uses (REC required).

(6) Demolition of buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable requirements, to include requirements associated with removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazards. For historic districts, sites, buildings, structures, or objects eligible for or included in the National Register of Historic Places, all requirements of the NHPA must be met (REC required).

(7) Road or trail construction on existing rights-of-ways or on previously disturbed areas to dimensions that meet design standards that permit safe vehicle operation (REC required).

(8) Construction, in accordance with applicable permits, of new or improved low water crossing and fording areas on existing trails or roads used for training purposes, and storm water conveyances for storm water management, safety, and other purposes. Construction or

improvements must permit the flow of water across the crossing/fording. Total ground area disturbed per low water crossing area must not exceed 5 acres. (REC required).

(9) Minor renovations and additions, in accordance with applicable permits, to waterfront facilities, including mooring piles, fixed floating piers, existing piers, unburied power cables, and maintenance and replacement of existing oil booms. (REC required).

(10) Actions in unsewered areas on lands within the boundaries of a military installation or within DoD real estate lease agreement land holdings involving the replacement of existing small (total capacity less than approximately 250,000 gallons per day) on-site wastewater and sewage systems, providing the new on-site systems do not relocate existing discharge (REC required).

(11) Construction or installation, to include modification, of fencing, gates, grates, walls, small enclosures, stakes, signage, cattle guards, and other small appurtenances or devices (for example, raptor electrocution prevention devices) attached to the land for the purposes of security or to otherwise protect human life, animal life, or other resources.

(12) Construction and modernization of common small arms ranges on previous or existing range sites in Army training and testing areas requiring total disturbance of approximately 40 acres or less, without change to noise contours that would potentially increase noise impacts to sensitive receptors and without change to existing Surface Danger Zones (SDZs). This includes the construction of a Range Operations Control Area, which contains common range support facilities and parking. This CX also includes the demolition of any old structures on the previously disturbed sites. Small arms ranges typically include weapons that fire ammunition that is .50 caliber or less and hand or launched grenades (REC required).

(13) Reconstruction, repair, restoration, retrofitting, or replacement of any facility, structure, road, or trail (including fencing, gates, parking lots, erosion control structures, storm water control structures, roads, trails, revegetation, removal of debris, or any other infrastructure improvement), that was in use and operation, or was under construction, and was damaged or destroyed due to a natural event, including but not limited to wildfires, floods, earthquakes, landslides, weather events; or an accident, vandalism, or an act of terrorism; and which will substantially conform to the preexisting design, function, and location as the original (REC required; will include consideration of anticipated temporary construction impacts).

(d) *Cultural and natural resources.* (1) Regeneration of an area to native tree species and other native vegetation species including: site preparation; post-fire rehabilitation activities (such as tree planting, fence replacement, or habitat restoration); timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides and do not require more than 1 mile of road construction; and restoration of wetlands, streams, riparian areas, and other water bodies. This does not include forestry operations (REC required).

(2) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations and Tribal Treaty rights.

(3) Scientific studies, surveys, data collection, monitoring, and information gathering activities that are minimally intrusive to the environment. Examples include, but are not limited to topographic surveys; bird counts; wetland mapping; use of remote sensing technologies; geophysical investigations using sonar; inventories, evaluation, and mitigation for historic properties in accordance with NHPA; other cultural and natural resource surveys, inventories, monitoring, and investigations; and geotechnical testing to support pre-construction

investigations and facility design when the geotechnical testing technology used is minimally intrusive to the environment (REC required).

(4) Maintenance, repair, and replacement in kind of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs; and maintenance, repair, and replacement in kind of existing fencing to provide improved wildlife ingress and egress.

(5) Update and implementation of Integrated Natural Resources Management Plans (INRMPs) and Integrated Cultural Resources Management Plans (ICRMPs), where plan update and implementation activities are similar in type, scope, and intensity to those currently allowed and result in no new adverse effects on the environment (REC required).

(6) Actions to find, contain, and eradicate localized populations of invasive species using control mechanisms listed in the installation Integrated Pest Management Plan (IPMP), provided the invasive species control mechanism affects an area 250 cumulative acres or less in size (REC required).

(7) Forestry and associated operations focused on the harvest of live trees not to exceed 70 acres. Salvage of dead or dying trees (and adjacent live trees) not to exceed 250 acres to control disease or the spread of insect infestation. Associated operations include no more than 0.5 mile of temporary road construction, and seeding or reforestation of timber areas (REC required).

(8) Prescribed burning not to exceed 4,500 acres per prescribed burn project, and mechanical vegetation removal not to exceed 1,000 acres per vegetation removal project, for the purposes of: reducing the risks and severity of wildland fires and fires resulting from Army mission activities; and enhancing the biodiversity, stability, and productivity of the natural environment (REC required).

(e) *Procurement and product modifications.* (1) Routine procurement of goods and other services (complying with applicable procedures for procurement of sustainable goods and services) to support operations and infrastructure, and routine utility services and contracts.

(2) Procurement, installation or replacement, or operation of utility and communication systems, mobile antennas, data processing equipment and similar electronic equipment, that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

(3) Conversion of commercial activities under the provisions of AR 5–20, Competitive Sourcing Program (for example, conversion of commercial RDT&E activities for military equipment). This includes only those actions that do not change the actions or the missions of the organization or alter the existing land use patterns.

(4) Modification, product improvement, or configuration engineering design change to materiel, structure, item, equipment, or system that does not change the original impact of the materiel, structure, item, equipment, or system on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product or non-developmental item (defined in Appendix B, Section II of this part; for example, forklift, chain saw, security monitoring equipment, software, automobile, commercially-available heavy equipment, etc.) that does not result in any unusual disposal requirements.

(6) Acquisition or contracting for spares and spare parts, consistent with the approved Technical Data Package (TDP).

(7) Modification and adaptation of commercially available products and non-developmental items for military application (for example, sportsman's products and wear such as holsters, shotguns, side arms, protective shields, clothing, backpacks, etc.), as long as

modifications do not alter the normal impact to the environment from similar military equipment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers and industry (for example, rubber bullets, stun grenades, and smoke bombs) for military police and crowd control activities where there is no change from the original product design and there are no unusual disposal requirements; the development and use by the military of non-lethal munitions and restraints that are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) *Real estate transactions.* (1) Grants, acquisitions, or terminations of leases, licenses, easements, permits for use of real property or facilities, and land withdrawal continuances or extensions that merely establish time periods in which there is no significant change in land or facility use (REC required).

(2) Disposal of excess easement areas to the underlying fee owner (REC required).

(3) Transfer of real property administrative control within the Army, to another military department, or to other Federal agency, including the return of public domain lands to the Department of Interior, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for systems on property that has been declared excess and proposed for disposal (REC required).

(5) Acquisition of real property (including facilities) where the land use will not change substantially, or where the land acquired will not exceed 40 acres and the use will be similar to Army activities on adjacent land (REC required).

(6) Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly (REC required).

(7) Agreements entered into with an eligible entity or entities under the Army Compatible Use Buffer (ACUB) program, in accordance with 10 U.S.C. 2684 or under other applicable authorities, that address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for purposes of limiting development of the property that would be incompatible with the mission of the military installation and/or for preserving habitat and cultural resources on the property that may eliminate or relieve current or anticipated restrictions on military testing, training or operations and for which there is no significant change of land use (REC required).

(g) *Maintenance, repair, and infrastructure operations.* (1) Routine repair and maintenance of buildings, facilities, launch pads, structures, utility/communication systems, airfields, grounds, parking areas, targetry and other stationary equipment on existing ranges, and fencing; includes associated components and equipment. Examples include, but are not limited to custodial services performed on existing facilities, removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint; in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint. REC required for work on structures eligible for or listed in the National Register of Historic Places where impacts to such environmentally sensitive resources have been resolved in accordance with NHPA Section 106 regulatory procedures).

(2) Routine repairs and maintenance of existing roads, trails, and firebreaks. Examples include, but are not limited to, grading and clearing the roadside of brush with or without the use

of herbicides; resurfacing a road to its original conditions; pruning vegetation; removal of dead, diseased, or damaged trees; replacing or cleaning culverts; and conducting minor soil stabilization activities.

(3) Routine installation, repair, and maintenance of equipment and vehicles (for example wheeled vehicles, tractors, lawn equipment, airfield equipment [such as runway visual range equipment and visual approach slope indicators], and military vehicles, equipment, and systems) that is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles. This does not include depot maintenance of unique military equipment.

(4) Repair and maintenance (including replacement and upgrade of parts), and decontamination operations for military equipment conducted at existing enclosed facilities, to include contractor-operated/owned enclosed facilities, consistent with previously established safety levels and in compliance with applicable Federal, state, and local requirements (REC required if proposed action entails a new/modified repair/maintenance operation affecting equipment containing munitions, explosives, or hazardous material, and the operation was not implemented at the enclosed facility during the preceding 5 years; REC required if the proposed action necessitates a new permit or change in an existing permit).

(5) Land repair and maintenance projects for the purpose of mitigating the effects of military training exercises. Examples include, but are not limited to: soil stabilization through revegetation; installing and maintaining erosion control measures; gulley and ravine stabilization; control of invasive vegetation; maintenance of existing structures such as culverts, terraces, and sediment control structures; and maintenance of improved surfaces that are part of the training landscape (REC required).

(6) Routine maintenance of streams and ditches or other rainwater conveyance structures and erosion control and storm water control structures (REC required).

(7) Development, adoption, update, and implementation of an installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program and plan (IPMP). The IPMP will provide for application of substances approved for use by the appropriate regulating agency when the application of such substances is implemented in accordance with the manufacturer's label directions, the IPMP, and INRMP as applicable. (REC required). This categorical exclusion does not apply to implementation of aerial spraying.

(8) Closure, decommissioning, mothballing, disconnection, and similar discontinued use of facilities, equipment, vehicles, aircraft, watercraft, and utility and communication systems, whether temporary or permanent (REC required).

(h) *Waste, hazardous materials, hazardous waste, and excess material and equipment.*

(1) Use of gauging devices, analytical instruments, and other devices containing sealed radiological sources; use of industrial radiography; use of radioactive material in medical and veterinary practices; possession of radioactive material incident to performing services such as installation, maintenance, leak tests, and calibration; use of uranium as shielding material in containers or devices; and radioactive tracers (REC required).

(2) Immediate responses in accordance with emergency response plans (for example, Spill Prevention, Control, and Countermeasure Plan (SPCCP)/Installation Spill Contingency Plan (ISCP), and Chemical Accident and Incident Response Plan) for release or discharge of oil, hazardous materials or hazardous substances; and emergency actions taken by Explosive Ordnance Demolition (EOD) detachment or Technical Escort Unit.

(3) Sampling, surveying, well drilling and installation, analytical testing, site preparation, and intrusive testing to determine if hazardous wastes, contaminants, pollutants, or special hazards are present (REC required). No REC required for CERCLA responses or RCRA corrective actions.

(4) Routine management to include the use of hazardous material or waste inventory management systems, transportation, distribution, use, storage, treatment, disposal, recycling, and other waste management activities for solid waste, hazardous waste, medical waste, radiological waste, and special hazards.

(5) Reutilization, marketing, distribution, donation, and resale of items, personal property, equipment, and materiel, to include normal transfer of items to the Defense Logistics Agency; items, personal property, equipment, and materiel that have been contaminated with hazardous materials or wastes but will be adequately cleaned and will conform to the applicable regulatory agency's requirements.

(i) *Training; research, development, engineering, testing, evaluation, and demonstration; manufacturing operations, and human systems integration.* (1) Training entirely of an administrative or classroom nature.

(2)(i) Military training, materiel testing, and materiel fielding activities conducted in or on existing military structures, ranges, maneuver areas, and training areas that are:

(A) Compatible with the current use of existing military structures, ranges, maneuver areas, and training areas;

(B) Similar in type, intensity, and setting to ongoing military activities; and

(C) Are conducted in accordance with applicable plans and standard operating procedures protective of the environment.

(ii) This categorical exclusion includes: use of existing SDZs and impact areas; emergency response training; use of missile, rocket and artillery-type projectiles; survivability and vulnerability testing; safety and engineering drills; training exercise modification on a Military Operations in Urban Terrain site or in a shoot house; simulated war games (in existing structures); and on-post tactical and logistical exercises involving brigade size units or smaller (REC required).

(3) Intermittent on-post training activities (or off-post training covered by an ARNG land use agreement) that involve no live fire or vehicles off established roads or trails. Uses include, but are not limited to, land navigation, physical training, FAA approved aerial overflights, and small unit level training.

(4) Flying activities, to include manned and unmanned aerial vehicle (UAV) flights, and other airspace use activities (for example, missile and projectile flights) in compliance with FAA regulations and in accordance with normal flight patterns and elevations for that facility/installation.

(5) Infrequent and temporary increases in air operations that do not exceed 50 percent of the typical installation aircraft operations rate or 50 additional operations per day. Repetitive use of this CX requires further analysis to determine there are no cumulative impacts. (REC required).

(6) Operation of small arms ranges on Army lands of approximately 40 acres or less in size, without change to noise contours that would potentially increase noise impacts to sensitive receptors and/or without change to existing SDZs, if operation includes appropriate monitoring for potential off-range impacts (for example, under the Operational Range Assessment Program or similar procedures). Small arms ranges typically include weapons that fire conventional

ammunition that is .50 caliber or less and hand or launched grenades. Includes operation of existing recreational small arms ranges on installations. (REC required).

(7) Routine operation and use of radar, sonar, laser, telemetry, and other systems that make use of the electromagnetic spectrum for detection, tracking, navigation, range-finding, targeting, communications, or other military purposes, within the boundaries of a military installation, boundaries of a DoD real estate lease agreement land holding, and/or existing airspace currently used for military training. Operation must conform to current American National Standards Institute/Institute of Electrical and Electronics Engineers guidelines for maximum permissible exposure to electromagnetic fields (REC required).

(8) Research (basic and applied), testing, other RDT&E production/repair operations, and manufacturing operations conducted at existing enclosed facilities to include contractor-operated/owned laboratories and other enclosed facilities, consistent with previously established safety levels (REC required if the proposed action involves the use of munitions and explosives of concern or hazardous material and the constituent was not used at the enclosed facility during the preceding 5 years, or if the proposed action is expected to release radiation).

(9) New activities conducted at established laboratories or manufacturing and maintenance facilities (including contractor-operated laboratories and facilities) of a similar type, nature, and scope as the prior or existing activities on the facility.

(10) Testing, evaluation, and demonstration of Soldier equipment, to include the operator, maintainer, and supporter, and support facilities, that provide for protection of the Soldier and the delivery of required ammunition, cargo, unit equipment, and shelters. Soldier support activities include the transportability testing of mobile facilities that include evaluation of weight, center of gravity, tilt table, and lane change, initial inspection, safety, weight, rail impact,

mobility testing, drop test, and final inspection. Testing also includes evaluation of the Lightweight Chemical-Biological Protection, including collective protection and detection equipment, to determine the durability of the Soldier-worn materials and to gain wearability data, including mock training exercises (REC required).

(11) Testing, evaluation, and demonstration of small-scale Army equipment with similar constituents and use as commercially available equipment (for example, backpacks, batteries, radios, flashlights, helmets, clothing, shoes, Global Positioning Systems, containers, test kits, respirators, netting, tents, stretchers, splints, and medical equipment).

(12)(i) Flight testing, evaluation, and demonstration of surface-to-surface, air-to-surface, surface-to-air, and air-to-air rockets, missiles, and medium and large caliber ammunition or artillery-type projectiles where:

(A) The projectile launch, flight, landing, and vehicle/payload recovery occurs solely within the boundaries of a military installation or within DoD real estate lease agreement land holdings;

(B) The entire flight from launch to landing occurs over an established range designated for testing of such projectiles;

(C) Landing and recovery, when feasible, of boosters, (surface) projectiles, payload, aerial targets and/or related debris occurs within a designated impact area (such as a warhead impact target area); and

(D) Recovery operations will be coordinated with explosive ordnance disposal (EOD) personnel to ensure test debris is rendered harmless to human health and safety prior to recovery.

(ii) This CX does not apply to the testing, evaluation, or demonstration of projectiles with payloads designed to release radiological, nuclear, and high-yield explosives or other types of

payloads that could cause significant threat to human health and/or the environment if released (REC required).

(13) Testing, evaluation, and demonstration of man portable, individual, and crew-served weapons systems used principally against personnel and lightly armored targets, to include both ballistic and non-ballistic systems and associated ordnance, munitions, aiming, powering, storage, training, specialized maintenance equipment, logistic support, and other ancillary items where:

- (i) The small arms firing occur solely within the boundaries of a military installation;
- (ii) The entire firing occurs over an established range designated for testing of small arms; and
- (iii) Landing and recovery, when feasible, of munitions and/or debris occurs within a designated impact area (REC required).

(14) Testing, evaluation, and demonstration of mortars on military installations, including:

- (i) General support, weapon system testing, production qualifications testing, mortar detection and data acquisition, proof assembly testing, acceptance testing, classification testing, and mortar technology demonstrations;
- (ii) General support for mortars testing requiring small arms firing, grenade launcher firing, and rocket propelled grenades firing when launch, flight, and impact occur on designated ranges; or
- (iii) Final classification testing, including static functioning of test items in a boxed and stacked configuration when launch, flight, and/or impact/detonation occur on designated ranges (REC required).

(15) Automotive testing involving testing, evaluation, and demonstration of automotive performance, transportability, reliability, human factors engineering and all applicable human systems integration domains, rail impact, lift and tie-down, tilt table, braking, steering and handling, side slopes, longitudinal slopes, gradeability, acceleration, and standard obstacles.

Testing also includes:

(i) Testing mobile equipment which includes weight and center of gravity, tilt table, and lane change;

(ii) Automotive performance tests accomplished in environmental chambers or in existing outdoor testing area, including blowing rain and sand tests and transportability tests (lift provision compression test, helicopter flight, and rail impact);

(iii) Specific automotive testing measuring for weight, center of gravity, and moment of inertia, and tire, track, and suspension dynamic and static properties;

(iv) Testing of automotive trailers for resistance to towing; and

(v) Performance vehicles tested for speed and acceleration, gradeability and side slopes, standard obstacles, transportability, fuel consumption, full load cooling, environmental performance, ride quality, winching, braking, steering and handling, towing compatibility, human factors, and material handling cranes (REC required).

(16) Testing, evaluation, and demonstration of robotic vehicles, to include Unmanned Ground Vehicle (UGV). Testing includes scenarios that:

(i) Test UGVs and Soldiers individually;

(ii) Test the interface between UGVs and Soldiers in mounted and dismounted maneuvers on existing test grids and training ranges, including navigation and identification of obstacles, targets, and hazards;

(iii) Test vehicles on existing test courses and existing improved surfaces; and

(iv) Test vehicles operating in test chambers while subjected to environmental conditions

(REC required).

(17) Testing, evaluation, and demonstration of UAV and associated technologies. Testing includes scenarios in which:

(i) The UAV is launched, operated, landed, and recovered solely within land boundaries of a military installation or within DoD real estate lease agreement land holdings;

(ii) The entire flight from launch to landing occurs over an established range designed for testing of such systems;

(iii) The entire flight from launch to landing occurs within DoD controlled airspace; and

(iv) Landing and recovery of UAVs, and recovery, when feasible, of associated test materials including munitions occurs within a designated test range or impact area (REC required).

Subpart D—Environmental Assessments

§ 651.13 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making. The analysis should describe the potential extent of impacts of a proposed action and its alternatives to determine whether those impacts are significant. The EA is the basis for determining that impacts would not be significant or that EIS is not necessary.

(b) The length of an EA should be adequate to meet the requirements of this part, depending upon site-specific circumstances and conditions.

(c) See § 651.8 for security review and clearance procedures for NEPA documents.

§ 651.14 Actions normally requiring an EA.

The following Army actions may require an EA, unless they qualify for the use of a CX or are already addressed in an applicable NEPA document. This list is not binding nor is it all inclusive.

- (a) Military construction, including contracts for off-post construction.
- (b) Land use changes.
- (c) Actions involving environmentally sensitive resources.
- (d) Proposed actions which support system acquisition throughout the system's lifecycle such as testing, fielding, and other program events.
- (e) Implementation of INRMPs, ICRMPs, Installation Master Plans, and similar management plans when there may be impacts on the environment.
- (f) Military training and testing activities on land, air, or water.
- (g) An action with significant local or regional effects on energy or water availability.
- (h) Increases in production of hazardous or toxic materials.
- (i) Changes to noise patterns that would affect sensitive receptors.
- (j) Changes to established airspace use or restrictions.
- (k) Actions with significant local or regional socioeconomic effects.
- (l) Acquisition or construction of (or space for) a facility that will use hazardous materials, drugs, or biological or radioactive materials. New use of hazardous materials, drugs, or biological or radioactive materials in a facility currently not using this material.
- (m) Changes in Army-wide doctrine or policy when there may be an impact on the environment.

§ 651.15 Contents of the EA.

EAs will include:

(a) *Signature page to document approval of the EA.* The signed signature page accompanies the EA when made available with the Draft FONSI for public comment.

(b) *Purpose.* Purpose of and need for the proposed action.

(c) *Description.* Description of the proposed action.

(d) *Alternatives considered.* The EA should briefly identify and describe the alternatives carried forward for analysis, including the ‘‘No Action’’ alternative and all other appropriate and reasonable alternatives that can accomplish the purpose and need for the proposed action. The discussion of alternatives should discuss why any alternatives were eliminated from full consideration.

(e) *Affected environment.* The EA must address or adopt by reference the general conditions and nature of the affected environment and establish the environmental setting against which environmental effects are evaluated. This should include any relevant general baseline conditions for those resources analyzed.

(f) *Environmental consequences.* The EA must address the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment. Discussion and comparison of impacts must provide sufficient analysis to reach a conclusion regarding the intensity of the impacts and whether any are significant. The EA will set out the threshold or criteria for each resource for a determination that a significant impact would occur. The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that could be individually or cumulatively significant. The EA must identify when information is incomplete

or unavailable, and will address the missing information in substantially the same way as prescribed for EISs (see § 651.21).

(g) *Mitigation.* The EA must identify what practical mitigation measures are available to reduce, avoid, minimize, rectify, compensate or eliminate identified adverse effects (see subpart F of this part). If applicable, the EA must clearly identify any mitigation measures that would be required to reduce an impact to less than significant. Proponents are encouraged to identify existing procedures or requirements that will be implemented as part of the proposed action and serve to mitigate adverse effects. When mitigation is a component or factor of the proposed action (e.g., mitigation by design), it should be so identified in the EA.

(h) *Conclusion.* The EA will provide a clear statement regarding whether or not the described impacts of the proposed action and alternatives are significant and whether or not any of the conclusions of less than significant are dependent upon mitigation measures being implemented. The EA will explain the next steps in the decision-making process, specifically identifying whether the outcome of the EA will be a FONSI or an NOI to prepare an EIS.

(i) *List of analysts/preparers and agencies and persons consulted.* Copies of correspondence with agencies and persons contacted during the preparation of the EA will be available in the administrative record and may be included in the EA as appendices. When operational security concerns require, the information specified in this paragraph may be omitted.

(j) *References.* References and appendices (as appropriate).

(k) *Public and agency involvement.* The EA will include a summary of the past public and agency involvement in the NEPA process for the proposed action and a summary of instructions for commenting on the EA and draft FONSI. The instructions for commenting will

include the public comment time period, due date for comments, and contact information for inquiries and comment submissions. The content of the appropriate public notice for the EA, as well as the body of the EA itself, will state where the EA and draft FONSI will be available to be accessed during the public comment period. If the EA included a Cooperating Agency, the agency will be identified.

§ 651.16 Contents of the FONSI.

(a) The FONSI briefly states why a proposed action will not significantly affect the environment and that an EIS will not be prepared. The FONSI includes summaries of information taken into account by the approving official. The FONSI should adopt the EA's discussion by reference.

(b) The draft FONSI will accompany the signed EA when made available for public comment. The draft FONSI must contain the following:

(1) The name of the proposed action and a reference to the EA for which the FONSI is issued. The FONSI should specifically state that it adopts the EA by reference.

(2) A brief description of the proposed action and alternatives analyzed in the EA.

(3) A summary and short discussion of the anticipated environmental effects of the proposed action, alternatives, and the no action alternative, and a determination of whether any of the impacts are significant.

(4) Identification of any mitigation measures that are necessary to reduce impacts to less than significant. The FONSI shall state the means of and authority for any mitigation that the proponent has adopted, any applicable monitoring or enforcement provisions, and any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.

(5) When mitigation is a component or factor of the proposed action (e.g., mitigation by design), it should be so identified in the FONSI.

(6) A brief discussion of public involvement and agency coordination/consultation.

(7) A declaration that the determination made in the draft FONSI is a preliminary determination, and that no final determination will be made until all comments submitted by the end of the public comment period have been considered.

(8) The approving official's signature block (unsigned).

(c) The final FONSI will be prepared following the public comment period. The final FONSI must contain the following:

(1) All items specified in paragraphs (b)(1) through (6) of this section, and the approving official's signature and date of signature.

(2) A statement that a FONSI is still appropriate following review of public comments and (if applicable) that the analysis of any new information that has come to the attention of the approving official since completion of the EA indicates no supplementation of the EA is necessary. If this statement cannot be made, the proponent must either supplement the EA and republish it or publish an NOI and proceed with an EIS. The proponent can also decline to pursue the proposed action.

(3) The proponent may proceed with the proposed action once the FONSI is signed.

§ 651.17 EA review process.

(a) An EA may result either in a FONSI, an NOI to prepare an EIS, or a determination not to pursue the proposed action.

(b) At any time during the EA process, when it is determined that the proposed action may have significant impacts that cannot be mitigated to level below significance, an NOI to

prepare an EIS may be initiated. In this case, an EA in preparation need not be completed. The proponent should notify the approving official of any such determination as soon as possible. See § 651.22(c) for guidance on preparing the NOI.

(c) The EA and draft FONSI will be made available to the public for 30 days.

(1) The 30-day period begins on the date that a public notice is published indicating the EA and draft FONSI are available for review. For actions of local or regional interest, the public notice regarding the availability of the EA and draft FONSI will be published in the appropriate local or regional media.

(2) The public notice must specify the deadline date for receipt of comments and describe the steps required to obtain the EA and draft FONSI. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism.

(3) In cases where a 30-day review period creates an unacceptable risk to national security concerns, the review period may be shortened by the proponent. In no circumstances should the public comment period for an EA/draft FONSI be less than 15 days.

(d) If the proposed action is nationwide in scope and of national concern, the availability of the EA and draft FONSI may be published in the FR, subject to DASA ESOH approval. The FR publication package must be submitted in accordance with § 651.25.

(e) Distribution of the EA and draft FONSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(f) The proponent is responsible for the distribution of the EA and draft FONSI package and consideration of review comments received. Public and inter-agency meetings may be held if the proponent determines that such meetings are needed and appropriate.

Subpart E—Environmental Impact Statements

§ 651.18 Introduction.

(a) An EIS is a tool to facilitate a full, open, and balanced discussion of significant environmental impacts that may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making. See § 651.6(b) for more information on levels of NEPA review.

(b) An EIS may be required when the proponent reasonably believes that the proposed action has:

(1) Potential for significant impact on the human environment, either on its own or when its impacts are combined with those of other actions.

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

(3) Potential for controversy regarding the factual evidence pertaining to the effects of the proposed action on the environment.

(c) Proponents will apply NEPA optimizing measures to EIS actions § 651.4(e).

(d) Proponents see § 651.8 for security review and clearance procedures for NEPA documents.

§ 651.19 Actions normally requiring an EIS.

The following actions normally require an EIS. The threshold for significance is a matter of context and intensity and will vary between installations. This list is not binding nor is it all inclusive.

(a) Substantial expansion of military facilities and infrastructure.

(b) Construction that has the potential for a significant effect on "environmentally sensitive" resources as described in § 651.11(c).

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impacts.

(d) Major land acquisitions, leasing, or other actions that may lead to significant changes in land use.

(e) Stationing of a brigade or larger unit, except where the only significant impacts are socioeconomic.

(f) Major training exercises or testing activities with potential for new and adverse environmental impacts.

(g) Changes in the mission, unit structure, or facilities with potential for significant environmental impacts.

(h) Initial public land withdrawals of over 5,000 acres.

§ 651.20 Contents of the EIS.

(a) *Cover sheet.* The cover sheet will include:

(1) A list of responsible agencies including the lead agency and any cooperating agency, if applicable.

(2) The title of the proposed action and, if appropriate, the titles of related cooperating agency actions, together with state and installation, municipality, or other local designation where the action is located.

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

(4) Date completed.

(b) *Administrative information.* (1) The address for submission of comments and inquiries, the telephone number for inquiries, and, as appropriate, the name and title of the approving official.

(2) A one-paragraph abstract of the statement that describes the purpose and need for the proposed action, alternatives, the significant environmental consequences of the proposed action and alternatives, and mitigation measures.

(3) In the case of a Draft Environmental Impact Statement (DEIS), the date by which comments must be received, computed in accordance with the minimum public comment period prescribed herein, will be included in the instructions for commenting.

(c) *Summary.* The purpose of the summary is to provide a brief overview of the purpose and need for the action, alternatives considered, environmental impacts, areas of controversy, mitigation measures, and issues yet to be resolved. The summary will also contain a synopsis of state and Federal consultations and permit requirements and their status.

(d) *Table of contents.* The table of contents should include a sequential list of the EIS's organizational structure (e.g., chapter and/or section numbers and headings), figures, tables, and appendices; and the associated starting page number of each item listed. The electronic version of the Draft and Final EIS filed with EPA and made available to the public will meet related requirements noted in EPA's EIS filing protocols regarding enabling a reader to find specific document sections (e.g., bookmarking feature) rapidly.

(e) *Purpose of and need for the proposed action.* This section should clearly state the nature of the problem or need to which the proponent is responding.

(f) *Description of the proposed action and any alternatives carried forward for analysis, including the no action alternative.* This section will include:

(1) A discussion on how the proposed action and the range of alternatives would solve the problem or fulfill the need.

(2) The relevant background information on the proposed action; its operational, social, economic, and environmental objectives, and its benefits. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here.

(3) All reasonable alternatives, including the no action alternative. The Army will identify the preferred alternative or alternatives, if one or more exists, in the DEIS and identify such alternative in the FEIS unless another law prohibits the expression of such a preference. List any alternatives that were eliminated from detailed study, and include a brief discussion of the reasons for which each alternative was eliminated.

(4) A description of environmental management practices and measures that are currently in effect and are therefore considered part of the proposed action and alternatives, and will serve to minimize, mitigate, or eliminate adverse effects.

(5) A list of anticipated state and Federal permits and other legal requirements.

(g) *Affected environment (baseline conditions) that may be impacted.* This section will contain information about existing conditions in the affected areas in sufficient detail to understand the potential effects of the alternatives under consideration. Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the magnitude of expected impacts. Information on baseline conditions may be adopted by reference where appropriate.

(h) *Environmental consequences and mitigation measures.* This section forms the scientific and analytic basis for the comparison of impacts. The environmental impacts of the alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided to the approving official and the public. For each resource area, the threshold for significance should be set out. The information should be summarized in a brief, concise manner including graphics, and tabular or matrix formats. The following areas will be covered:

- (1) Direct effects (short-term and long-term) and their significance.
- (2) Indirect effects (short-term and long-term) and their significance.
- (3) Possible conflicts between the proposed action and existing land use plans, policies, and controls.
- (4) Energy requirements and conservation potential of various alternatives and mitigation measures.
- (5) Irreversible and irretrievable commitments of resources associated with the proposed action.
- (6) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.
- (7) Urban quality, historic and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- (8) Cumulative effects of the proposed action in light of other past, present, and reasonably foreseeable actions.
- (9) Means to mitigate adverse environmental effects (see subpart F of this part).

(10) The extent to which adverse effects would remain after application of identified mitigation measures.

(11) The analysis will address impacts to all resources, including impacts which are less than significant. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and not merely be a quantification of facts. Mitigation measures whose implementation forms the basis of any "less than significant" conclusion should be so identified.

(12) The analysis will address circumstances where mitigation of adverse environmental effects is not technically, financially, or otherwise feasible. The analysis will explain why mitigation of adverse environmental effects is not feasible and the loss of environmentally sensitive resource(s) without mitigation measures is acceptable relative to the importance of the proposed action to national policy and national defense.

(i) *Conclusions.* The EIS will clearly state the conclusions of the environmental consequences analysis, to include a summary of mitigation measures.

(1) The EIS will provide a comparative presentation of the environmental consequences of all alternatives analyzed.

(2) To simplify consideration of complex relationships, the summary of proposed mitigation measures shall include a table format presentation or refer to a distinct and unambiguous mitigation and monitoring plan that is part of the EIS.

(3) To simplify consideration of mitigation measures and to improve tracking, the summary of proposed mitigation measures will include a table format presentation.

(j) *Public and agency involvement.* A summary of public and agency involvement in the EIS process, both past and future, as appropriate, will be provided in the Draft and Final EIS.

Past involvement would address, for example, public scoping. Future involvement documented in the Draft EIS would succinctly address, for example, public meetings and the opportunity to submit written comments.

(k) *Other environmental statutes.* The Draft and Final EIS will summarize the requirements for and status of compliance under other environmental statutes that would have to be completed prior to implementing the proposed action or alternatives. This summary should be presented in the discussion for each resource area. The Final EIS should document (in an appendix) the results of required compliance under other statutes.

(l) The Final EIS will document (in an appendix) public and agency comments received as part of the Draft EIS public comment period. Comments will be clearly credited to the appropriate entity (e.g., commenting organization or individual with personal information such as physical address, email address, and phone number removed). The Final EIS will document the Army's response to the issues raised. Where possible, similar comments will be grouped for a common response.

(m) *Signature page.* The Draft and Final EIS will be signed by the approving official.

(n) *List of preparers.* The EIS will list the names of its preparers, including those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the individuals who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they must be identified as such.

(o) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies, private parties or organizations, federally-recognized Indian Tribes, Native Alaskans, and Native Hawaiians.

(p) *References.* References and appendices (as appropriate).

§ 651.21 Incomplete or unavailable information.

When the proposed action will have significant adverse effects on the human environment, and there is incomplete or unavailable information, the EIS will make clear that the information is lacking, and will address the issue as follows:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the Army will include the information in the EIS.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (for example, the means for obtaining it are beyond the state of the art), the EIS will include:

(1) A statement that such information is incomplete or unavailable.

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

§ 651.22 EIS process.

(a) *Purpose and need.* The first step in preparing an EIS is to articulate the purpose and need for the proposed action.

(b) *Public participation plan.* A public participation plan that provides for periodic interaction with the community should be developed. The proponent is responsible for ensuring information is provided to members of the public regarding where they can obtain information about the ongoing action.

(c) *NOI.* The NOI initiates the formal scoping process and its preparation is the responsibility of the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR in accordance with § 651.25 and, as appropriate, in media outlets with general circulation in the areas potentially affected by the proposed action. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the proponent deems appropriate.

(2) The NOI will clearly state the purpose and need, describe the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(d) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent will ensure contact is made with appropriate Federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation.

(e) *Scoping.* The proponent will begin the scoping process. Portions of the scoping process may take place prior to publication of the NOI.

(1) As part of the scoping process, determine whether to hold public meetings.

(2) Scoping determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping process, participants identify the range of actions, alternatives, and impacts to consider in the EIS.

(3) The extent of the scoping process, including public involvement, will depend on several factors. These factors include, but are not limited to:

(i) The size and type of the proposed action.

(ii) Whether the proposed action is of regional or national interest.

(iii) Degree of possible environmental controversy.

(iv) Geographic range of the affected environmental parameters.

(v) Extent of prior environmental compliance reviews.

(vi) Involvement of any substantive time limits.

(vii) Requirements of other laws for environmental review.

(viii) Anticipated cumulative impacts.

(f) *NOA publication.* Upon completion of the DEIS, a NOA will be published in the FR in accordance with § 651.25.

(1) Following approval of the publication package, the proponent will provide the DEIS to EPA for filing and notice in the FR in accordance with EPA procedures.

(i) The EPA publishes a weekly notice of EISs filed with EPA during the preceding week. The EPA's notice provides the date by which the comment period ends for each Draft EIS listed. Unless requested otherwise by the Army, and based upon compelling reasons of national policy after consultation with EPA, the comment period end date is calculated based upon the date EPA's notice is published.

(ii) EPA reviews the DEIS and provides an assessment.

(2) Publication of the Army's approved NOA in the FR will occur at the same time as the FR publication of EPA's weekly notice.

(3) The DEIS is distributed simultaneously with publication of the NOA in the FR.

(g) *Public review and participation.* (1) The following time periods, calculated from the publication date of the FR notice, will generally be observed:

(i) Not less than 45 days for public comment on DEISs.

(ii) Not less than 15 days for public availability of DEISs prior to any public meeting on the DEIS.

(iii) See § 651.22(k) for time period limitations regarding a decision on the proposed action.

(2) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs.

(h) *Public meetings or hearings on the DEIS.* If appropriate, hold public meetings or hearings on the DEIS. Media releases to publicize the meetings or hearings should be issued at least 15 days prior to the meeting. If the public is invited to provide verbal comments on the DEIS at the meeting or hearing, the comments will be recorded verbatim. If public involvement requirements associated with laws and regulations other than NEPA are integrated with a public meeting or hearing on the DEIS (e.g., 36 CFR 800.2(d)(1) through (3) for public involvement under the NHPA), the media release should identify these additional elements.

(i) *The FEIS.* (1) Following the public comment period, the proponent is responsible for preparation of the FEIS.

(i) If the changes to the DEIS are exclusively clarifications or minor factual corrections, a document consisting of only the DEIS comments, responses to the comments, and errata sheets may be prepared and circulated. If such an abbreviated FEIS is anticipated, the DEIS should contain a statement advising reviewers to keep the document so they will have a complete set of final documents. The final EIS to be filed with EPA will consist of a complete document containing a new cover sheet, the errata sheets, comments and responses, and the text of the DEIS.

(ii) If substantial modifications are warranted, the proponent will ensure a complete FEIS is prepared. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. The Army will identify the preferred alternative or alternatives in the FEIS unless another law prohibits the expression of such a preference.

(2) Coordination, approval, filing, and public notice of an FEIS are the same as for a draft DEIS.

(j) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to the NEPA document or prepare new documentation or supplemental information as necessary

(k) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published its notice of receipt of the FEIS in the FR, or 90 days after the EPA notice of receipt of the DEIS, whichever is later. The ROD documents that the decision has been made and the basis for that decision.

§ 651.23 Record of Decision.

The proponent will prepare the ROD. The ROD will be signed by the approving official and will:

(a) Clearly state the decision by describing it in sufficient detail to address the significant issues and ensure necessary long-term monitoring and execution.

(b) Identify all alternatives considered by the Army in reaching its decision. Discuss preferences among alternatives based on relevant factors including environmental, economic, and technical considerations and agency statutory missions. Identify the environmentally preferred alternative.

(c) Identify and discuss all such factors, including any essential considerations of national policy and national defense that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental factors, the selected alternative will not necessarily be the environmentally preferred alternative.

(d) Discuss how the considerations of § 651.23(c), above, entered into the decision.

(e) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not.

(f) Clearly and expressly identify or adopt by reference those mitigation measures that were incorporated into the decision which require specific funding (i.e., funding that will be required in addition to the applicable Army organizations' internal operating budget and will be dedicated to the specified mitigation measure) and those for which specific monitoring is appropriate (e.g., results in a specific deliverable such as a survey or report, requires reporting to a regulatory agency, etc.).

(g) Adopt mitigation measures to reduce adverse environmental effects (see subpart F of this part). Mitigation measures may include actions that require programming and funding, and measures that are already in effect and do not require additional funding (e.g., standard operating procedures, best management practices, etc.).

(h) Include a statement that the Antideficiency Act (31 U.S.C. 1341) prevents Federal agencies, including the Army, from incurring obligations that are not yet funded by Congress, and that while the Army's intent is to pursue funding for all mitigation measures identified in the ROD, the Army is limited by future Congressionally-approved budgets.

§ 651.24 Implementation of Decision.

(a) Implementation of the decision may begin immediately after signature on the ROD. The proponent will prepare and coordinate a NOA for publication in the FR in accordance with § 651.25.

(b) The proponent is responsible for implementing mitigation measures and other conditions that have been identified in the EIS and included in the ROD. The proponent, in coordination with the Installation Commander as appropriate will:

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Ensure that funding is secured for selected mitigation measures.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures and make the results of relevant monitoring available.

§ 651.25 Federal Register publication of Army actions.

The proponent is responsible for preparation of the FR publication package for their actions. FR publication packages are required for EIS NOIs, EIS NOAs, RODs, and notices of withdrawal of an EIS NOI. By exception, NOA FR publication packages are also prepared for

EAs/draft FONSIIs that are nationwide in scope and of national concern. FR publication packages must be coordinated and contain the documentation as required in this section.

(a) The FR publication package must include: the FR NOI, NOA, or ROD as appropriate; either Information for Members of Congressional Delegations (if the action is affecting one or several installations and states) or Information for Members of Congress (if the action is nationwide, affecting many installations and states to a point that requires informing *all* Members of Congress); Questions and Answers; Press Release; and the proponent's record of coordination.

(b) The FR publication package must be coordinated by the proponent as follows:

(1) The proponent will coordinate the FR publication package through their chain of command to DCS, G-9 and OTJAG for review. The proponent will address all comments and questions from DCS, G-9 and OTJAG. The DCS, G-9 will forward the FR publication package to ODASA (ESOH) with all revisions incorporated.

(2) ODASA (ESOH) will coordinate the FR package with OCLL, OCPA, OGC, and the SA (as appropriate).

(3) Information for Members of Congressional Delegations is prepared for actions of interest to a specific Delegation(s). By exception, when the action has nation-wide implications to the point where it is appropriate to provide information on the action to every Member of Congress an Information for Members of Congress is prepared by the proponent.

(4) ODASA (ESOH) provides the approved FR package to the Army Federal Register Liaison Officer for publication in the FR. The Army Federal Register Liaison Officer will provide the anticipated date the FR notice will be published.

(c) ODASA (ESOH) will notify DCS, G-9, the proponent, and OCLL of the anticipated FR publication date. OCLL will notify the relevant Members of Congress of the action prior to publication in the FR.

(1) If the action is a NOA for a Draft or Final EIS, the proponent or their designee is responsible for uploading of the required documents to EPA's EIS website (<https://www.epa.gov/nepa>). Uploading the EIS to EPA's EIS website shall not precede Secretariat approval of the FR package.

(2) Publication or release of local notices by Army proponents shall not precede the FR notice, and will be identical to the notice published in the FR.

(3) It is the proponent's responsibility to allow sufficient time to coordinate publication of their notice in the FR in order to avoid conflicts with execution of the proposed action.

Subpart F— Mitigation and Monitoring

§ 651.26 Mitigation.

(a) Throughout the NEPA process, the proponent must consider mitigation measures to avoid, minimize, or compensate for adverse environmental effects:

(b) Identification of Mitigations. Potential mitigation measures must be identified for all adverse effects, not just those that are significant. Some adverse effects are so minute as to be barely noticeable; for these de minimis effects, it is possible that no mitigation is required. When mitigation is a component or factor of the proposed action (e.g., mitigation by design), it should be identified in the EA or EIS.

(c) Determining Appropriate Mitigation Measures. The identification and evaluation of appropriate mitigation measures must involve the use of experts familiar with the predicted environmental impacts, in addition to collaboration with affected resource agencies.

(d) Practicability of Mitigation Measures. Only those practicable mitigation measures that can reasonably be accomplished as part of a proposed action and alternatives will be identified. A number of factors determine what is practicable, including military mission, manpower restrictions, financial feasibility, technical feasibility, institutional barriers, and public acceptance. In certain circumstances, mitigation of adverse environmental effects may not be practicable and the decision to proceed with an action may result in an acceptable loss of environmentally sensitive resources.

(e) Adoption and Implementation of Mitigation. Implementation of mitigation measures is the responsibility of the proponent. The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action.

(f) Any mitigation measures selected will be clearly outlined in the FONSI or ROD. All practicable means to avoid or minimize environmental effects resulting from the selected alternative should be adopted, or an explanation given as to why they were not. Mitigation measures that were considered in the EA or EIS but rejected in the FONSI or ROD must be discussed, providing the reason for rejection.

(g) An EA may result in a FONSI based upon the analysis and selection of mitigation measures that reduce adverse environmental effects to the point that they are no longer significant. If mitigation measures are used in such a manner, the FONSI must identify them, and they become legally binding and must be accomplished as the selected alternative is implemented.

(h) Mitigation measures will be planned, programmed, and budgeted by the proponent or, if appropriate, through the appropriate installation or mission program, in accordance with applicable Army policy and regulation. Implementation of the selected action should be conditioned on funding of mitigation, subject to the Antideficiency Act (31 U.S.C. § 1341).

§ 651.27 Mitigation Monitoring and Enforcement.

(a) Monitoring and enforcement ensure that mitigations are effective and are performed as described in NEPA documents. If mitigation measures are extensive, the Installation Commander will prepare, resource, and implement a Mitigation Monitoring and Enforcement Plan (MMEP). If prepared, a MMEP may be filed with the proponent's file copy of the EA or EIS, and may be summarized and adopted in the FONSI or ROD.

(b) A MMEP should address the following:

(1) Effectiveness Monitoring. Plans should identify what mitigation measures must be monitored and how the effectiveness of the mitigation measures are evaluated. Effectiveness will be determined based on specific criteria that may include but are not limited to:

(i) Effectiveness metrics developed for mitigation results that are quantitative, measurable, and replicable.

(ii) A baseline assessment that identifies the state of environmentally sensitive resources prior to disturbance by the action.

(iii) A control that isolates the effects of the mitigation measures from effects originating outside the action.

(iv) Ability to implement any necessary corrective actions to mitigation measures.

(2) Enforcement Monitoring.

(i) Contractor performance. The proponent must ensure that mitigation measures performed under contract are subject to timely inspection and all contract provisions are met and enforced.

(ii) NEPA Lead agency performance. When there is a Lead and a Cooperating agency involved in a proposed action (see 32 CFR 651.7 (h) and (i)), the Lead agency must ensure that needed tasks are performed. Actions enabling enforcement include providing appropriate funding in the project budget, and arranging for necessary manpower allocation.

(iii) NEPA Cooperating agency performance. When a cooperating agency performs a mitigation required by NEPA, the lead agency as proponent must ensure that the cooperating agency fully understands its role in funding and executing the mitigation. The proponent's mitigation monitoring and enforcement plan should include monitoring cooperating agency mitigation actions.

(3) Potential change in environmental conditions. The MMEP should identify the possibility of a change in environmental conditions or project activities identified in the EA or EIS that may require adjustment in mitigation measures. Adjustments to mitigation measures may be needed when the original conclusions of the extent of environmental effects are found to be inaccurate and original mitigation measures are too limited or too extensive, or when previously undetected environmentally sensitive resources are found to be present during implementation of the action.

(4) Observation Frequency. Identify requirements for the frequency of observation especially where the effectiveness of a mitigation measure is uncertain, or environmental controversy remains associated with the selected action or mitigation measures.

Subpart G— Environmental Effects of Major Army Actions Abroad

§ 651.28 Overview.

This section provides an overview of requirements for addressing the environmental effects of Army actions abroad.

(a) NEPA applies to Army actions within the United States (as defined in § 651.1(c)). NEPA does not apply to Army actions abroad (outside of the United States). E.O. 12114, Environmental Effects Abroad of Major Federal Actions, addresses requirements for environmental effects of Army actions abroad.

(b) E.O. 12114 and 32 CFR part 187, Environmental Effects Abroad of Major DoD Actions, provide responsibilities relating to analysis of the environmental effects of Army actions abroad and in the global commons. Responsible Army components will document the review of potential environmental effects of their actions abroad and in the global commons. Environmental review will be consistent with diplomatic factors (including applicable SOFAs), stationing agreements and final governing standards, national security considerations, site-specific ARs, and ability to access information.

(c) The analysis and documentation of potential environmental effects of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes, planning for military exercises, training plans, and military operations. The requirement for documentation is subject to exemptions listed in paragraph 2-5 of EO 12114.

§ 651.29 Use of Categorical Exclusions.

CXs in § 651.12 of this part are not applicable to environmental considerations in locations abroad where NEPA is not applicable. They may be used, however, to assist in gauging the level of analysis that may be needed under this Subpart.

Appendix A to Part 651—References

Military publications and forms are accessible from a variety of sources through the use of electronic media or paper products. In most cases, electronic publications and forms that are associated with military organizations can be accessed at various address or web sites on the Internet. Since electronic addresses can frequently change, or similar web links can also be modified at several locations on the Internet, it's advisable to access those sites using a search engine that is most accommodative, yet beneficial to the user. Additionally, in an effort to facilitate the public right to information, certain publications can also be purchased through the National Technical Information Service (NTIS). Persons interested in obtaining certain types of publications can write to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Section I—Required Publications

AR 360–1

The Army Public Affairs Program.

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this part.

Antideficiency Act.

Public Law 97-258, 96 Stat. 923; *as amended* (31 U.S.C. 1341)

AR 5–10

Stationing.

AR 70-1

Army Acquisition Policy.

AR 200–1

Environmental Protection and Enhancement.

AR 380–5

Department of the Army Information Security Program.

Defense Acquisition Guidebook

<https://www.dau.mil/tools/dag>

DA PAM 70–3

Army Acquisition Procedures.

Department of Defense Directive 5000.01

The Defense Acquisition System

Department of Defense Instruction 5000.02

Operation of the Defense Acquisition System.

Executive Order 12114

Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 comp., p. 356.

Executive Order 13007

Indian Sacred Sites, 3 CFR, 1996 Comp., p. 196.

Clean Air Act

Public Law 88-206; *as amended* (42 U.S.C. 7401, *et seq.*).

Clean Water Act of 1977

Public Law 95–217, 91 Stat. 1566 and Public Law 96–148, Sec. 1(a)–(c), 93 Stat. 1088 (33

U.S.C. 1251 *et seq.*)

Comprehensive Environmental Response, Compensation, and Liability Act of 1980

As amended (CERCLA, Superfund) (42 U.S.C. 9601 *et seq.*)

Endangered Species Act of 1973

Public Law 93–205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*)

Fish and Wildlife Coordination Act

Public Law 85–624, Sec. 2, 72 Stat. 563 and Public Law 89–72, Sec. 6(b), 79 Stat. 216. (16 U.S.C. 661 *et seq.*)

Migratory Bird Treaty Act of 1918

(16 U.S.C. 703-712; Ch. 128; July 3, 1918; 40 Stat. 755)

National Environmental Policy Act of 1969

Public Law 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*)

National Historic Preservation Act

Public Law 89–665, 80 Stat. 915 (54 U.S.C. 300101 *et seq.*)

Native American Graves Protection and Repatriation Act

Public Law 101–601, 104 Stat. 3048 (25 U.S.C. 3001 *et seq.*)

Pollution Prevention Act of 1990

Public Law 101–508, Title VI, Subtitle G, 104 Stat. 13880–321 (42 U.S.C. § 13101 *et seq.*)

Resource Conservation and Recovery Act of 1976

Public Law 94–580, 90 Stat. 2795 (42 U.S.C. 6901 *et seq.*)

Rivers and Harbors Appropriation Act of 1899

33 U.S.C. 407

Sikes Act

Public Law 86–797, 74 Stat. 1052 (16 U.S.C. 670a *et seq.*)

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

36 CFR part 800

Advisory Council on Historic Preservation.

40 CFR parts 1500 through 1508

Council on Environmental Quality.

Section III—Prescribed Forms

This section contains no entries.

Section IV—Referenced Forms

This section contains no entries.

Appendix B to Part 651—Glossary

Abbreviations

AAE

Army Acquisition Executive.

ACAT

Acquisition Category.

ACOM.

Army Command.

AGR

Active Guard and Reserve Duty.

APHC

U.S. Army Public Health Center.

AQCR

Air Quality Control Region.

AR

Army Regulation.

ARNG

Army National Guard.

ARSTAF

Army Staff.

ASA (AL&T)

Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

ASA (FMC)

Assistant Secretary of the Army (Financial Management and Comptroller).

ASA (IE&E)

Assistant Secretary of the Army (Installations, Energy and Environment).

BGEPA

Bald and Golden Eagle Protection Act.

CARD

Cost Analysis Requirements Description.

CBTDEV

Combat Developer.

CEQ

Council on Environmental Quality.

CERCLA

Comprehensive Environmental Response, Compensation, and Liability Act.

CFR

Code of Federal Regulations.

CONUS

Continental United States.

CX

Categorical Exclusion.

DA

Department of the Army.

DASA (ESOH)

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

DCS

Deputy Chief of Staff.

DEIS

Draft Environmental Impact Statement.

DoD

Department of Defense.

DOPAA

Description of Proposed Action and Alternatives.

DOTMLPF-P

Doctrine, organization, training, materiel, leadership and education, personnel, facilities, and policy.

DRU

Direct Reporting Unit.

DTIC

Defense Technical Information Center.

EA

Environmental Assessment.

EIS

Environmental Impact Statement.

EJ

Environmental Justice.

EO

Executive Order.

EOD

Explosive Ordnance Demolition.

EPA

Environmental Protection Agency.

ESA

Endangered Species Act.

ESOH

Environment, Safety, and Occupational Health.

FAA

Federal Aviation Administration.

FEIS

Final Environmental Impact Statement.

FONSI

Finding of No Significant Impact.

FR

Federal Register.

GC

General Counsel.

GOCO

Government-Owned, Contractor-Operated.

GSA

General Services Administration.

HQDA

Headquarters, Department of the Army.

ICRMP

Integrated Cultural Resources Management Plan.

ICT

Integrated Concept Team.

INRMP

Integrated Natural Resources Management Plan.

IPMP

Integrated Pest Management Plan.

ISCP

Installation Spill Contingency Plan.

ITAM

Integrated Training Area Management.

MATDEV

Materiel Developer.

MBTA

Migratory Bird Treaty Act.

MILCON

Military Construction.

MMEP

Mitigation Monitoring and Enforcement Plan.

MOA

Memorandum of Agreement.

MOU

Memorandum of Understanding.

MSC

Mission Support Commands

NAGPRA

Native American Graves Protection and Repatriation Act.

NEPA

National Environmental Policy Act.

NGB

National Guard Bureau.

NHPA

National Historic Preservation Act.

NOA

Notice of Availability.

NOI

Notice of Intent.

NRC

Nuclear Regulatory Commission.

NTIS

National Technical Information Service.

OASD (PA)

Office of the Assistant Secretary of Defense (Public Affairs).

OCLL

Office of the Chief of Legislative Liaison.

OCPA

Office of the Chief of Public Affairs.

OFS

Officer Foundation Standards.

OGC

Office of General Counsel.

OPSEC

Operations Security.

OSD

Office of the Secretary of Defense.

PAO

Public Affairs Officer.

PCB

Polychlorinated Biphenyls.

PESHE

Programmatic Environment Safety and Occupational Health Evaluation.

PEO

Program Executive Officer.

PM

Program/Project/Product Managers.

POC

Point of Contact.

POL

Petroleum, Oils, and Lubricants.

PPBES

Program Planning and Budget Execution System.

RCRA

Resource Conservation and Recovery Act.

RDT&E

Research, Development, Test, and Evaluation.

REC

Record of Environmental Consideration.

ROD

Record of Decision.

SA

Secretary of the Army.

SARA

Superfund Amendments and Reauthorization Act.

SDZ

Surface Danger Zone.

SEP

Systems Engineering Plan.

SOFA

Status of Forces Agreement.

SPCCP

Spill Prevention, Control, and Countermeasure Plan.

TAG

The Adjutant General

TDP

Technical Data Package.

TJAG

The Judge Advocate General.

TRADOC

U.S. Army Training and Doctrine Command.

UAV

Unmanned Aerial Vehicle.

UGV

Unmanned Ground Vehicle.

USACE

U.S. Army Corps of Engineers.

USAEC

U.S. Army Environmental Command.

U.S.C.

United States Code.

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