

NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

Chapter 1 Purpose and Scope

1-1. Purpose

This regulation implements the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) and sets forth policy, responsibilities, and procedures for integrating environmental considerations into the overall National Security Agency (NSA) planning and decision making as required under the National Environmental Policy Act (NEPA). This part provides NSA specific procedures and requirements to be used by NSA decision makers to fully comply with NEPA. It establishes criteria for determining what NSA actions are categorically excluded from requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) and lists applicable categorical exclusions (CX) in Appendix A.

1-2. Scope

This document covers all varieties of NSA planning and actions including unclassified activities, classified activities, singular actions and those taken in cooperation with other military and Federal agencies. It covers planning and actions within the United States and those abroad. It is also applicable to contractor efforts resulting from NSA decisions.

1-3. References & Definitions

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq*;
Council on Environmental Quality Regulations, 40 CFR parts 1500-1508;
Executive Order 12114 Environmental Effects Abroad of Major Federal Actions
Interim Defense Acquisition Guidebook
NSA/CSS Policy 8-1 Acquisition Management System

The definitions set forth in 40 CFR part 1508, apply to this regulation.

1-4. Responsibilities

A) Each NSA Director, Associate Director, Directorate, manager (project, program, acquisition, etc.), activity, office, unit, or other organizational element shall:

- 1) Comply with this regulation and ensure integration of environmental planning during the initial planning stages of proposed actions.
- 2) Coordinate proposed actions and programs with OHES to determine possible environmental issues
- 3) Provide required project information to the environmental office sufficient to allow preparation of the required environmental documentation
- 4) Ensure that required environmental documentation for the proposed action

and alternatives to that action under NEPA is available to the appropriate decision-maker prior to the finalization of a decision.

- B) The Office of Occupational Health, Environmental, and Safety Services (OHES) shall:
 - 1) Develop environmental planning policy and provide oversight of the environmental planning process.
 - 2) Determine the level of environmental documentation required for proposed NSA actions.
 - 3) Prepare all Records of Environmental Consideration required under this regulation.
 - 4) Determine the scope of contract support for Environmental Assessments (EAs) and Environmental Impact Statements (EISs). Review and approve all contract work for these efforts, and conduct all non-contract work for these efforts.
 - 5) Be the liaison on environmental matters with Federal, State, and local governments and public organizations and individuals involving NEPA.

- C) The Office of General Counsel (OGC) shall:
 - 1) Provide legal advice to all NSA organizations and management on environmental documentation and NEPA.
 - 2) Review EAs and EISs prepared for NSA actions for legal sufficiency.

- D) The Office of Public Affairs (PAO) shall:
 - 1) Assist OHES as needed in ensuring the proper public notification and participation in the NEPA process.
 - 2) Assist in preparation of and attend public meetings or media sessions on environmental issues related to Environmental Assessments or Environmental Impact Statements.
 - 3) Assist in the publication of official notices in print media where required.
 - 4) Be a contact point for questions or inputs arising from public notices, and requests for copies of environmental documents.

Chapter 2

National Environmental Policy Act and the Decision Process

2-1. Introduction

A) The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. It establishes policies and goals for the protection of the environment. The goal of NEPA is to ensure that environmental information is available to decision-makers before decisions are made and actions taken, to help them make decisions based on an understanding of the environmental consequences of the action.

B) The NEPA process includes the systematic examination of possible and probable environmental consequences of implementing a proposed action, and

the examination of alternative efforts to that action. To be effective, integration of the NEPA process needs to occur at the earliest possible time in project and program planning to ensure that:

- (1) Planning and decision-making reflect environmental values.
- (2) Delays and potential conflicts later in the process are minimized.

C) To achieve these goals, all NSA decision-making that may have an impact on the environment will be evaluated in a multidisciplinary approach. This approach allows timely identification of environmental effects and values in sufficient detail for evaluation concurrently with economic, technical, and mission-related analyses at the earliest possible step in the decision process. When EAs or EISs are undertaken, the economic and social impacts will be included in the analysis of total environmental impacts. However, these secondary impacts, unaccompanied by physical environmental impacts, should not determine whether or not to prepare an environmental document.

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

E) These procedures will assist the decision-maker in selecting a preferred course of action. They provide the relevant background information and subsequent analyses of the proposal's positive and negative environmental effects. The decision-maker's written environmental evaluation is either a Categorical Exclusion with a Record of Environmental Consideration (REC), an Environmental Assessment with a Finding of No Significant Impact or a Notice of Intent, or an Environmental Impact Statement with a Record of Decision.

2-2. Actions requiring evaluation

A. The types of projects or actions to evaluate for environmental impact are wide ranging and include, but are not limited to:

- (1) Decisions to establish new sites, operations, or partnerships
- (2) Construction projects, including facilities construction, research and development for systems and other equipment).
- (3) Military Construction projects
- (4) Utility construction, involving repair or installation of any type of utility, including steam, water, sewer, communications, power
- (5) Activities (prototype development, testing, overall operation of installation, or facility test and evaluation programs)
- (6) System development, acquisition, and/or transition
- (7) Installation restoration projects undertaken pursuant to section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)
- (8) Leases, easements, permits, licenses, or other entitlement for use of real property by NSA at any location

- (9) Site closure of NSA/CSS operations
- (10) Site development, including remote facilities
- (11) Activities undertaken jointly with other members of the intelligence community, armed services, other federal government agencies, or other organizations.

2-3 Environmental Review Categories

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

- 1) Exemption by Law - The law must apply to DOD and/or NSA and must prohibit, exempt, or make impossible full compliance with NEPA (40 CFR 1500.6). (See Chapter 4-1 for security exemptions). Although NSA is an intelligence agency, the exemptions for national security issues will be not be used to address standard operation, construction and other projects but will be limited to those aspects of a proposed action that are classified.
- 2) Emergencies - In the event of an emergency, NSA may need to take immediate actions that have environmental impacts to promote national security and actions for the preservation of life and property. These actions shall be of short duration, and shall be approved by OHESS as not requiring NEPA documentation. In such cases, NSA will coordinate with the Deputy Under Secretary of Defense for Installations and Environment and the CEQ regarding the emergency and subsequent NEPA compliance.
- 3) Categorical exclusions (CX) - These actions normally do not require an EA or an EIS. NSA has determined that they do not individually or cumulatively have a significant effect on the human environment. Qualification for a CX is described in Chapter 3 - 1 of this regulation. Some actions qualifying as categorical exclusions may require documentation through a Record of Environmental Consideration, as noted in Chapter 3.
- 4) Environmental assessment (EA). (See Chapter 3 - 2 for actions normally requiring an EA). The category of actions requiring an EA is very broad, since it applies to all actions more significant that those requiring a CX, but with less impact than those requiring an EIS. This can include actions for which mitigation is available to reduce the potential impacts. The EA is also used to examine projects to determine if an EIS is required, or if impacts are not significant.
- 5) Environmental Impact Statement (EIS). As a category, actions requiring an EIS are those that clearly have significant impacts.

Chapter 3 Environmental Documentation

3-1 Categorical Exclusions

- 1) Categorical exclusions are those categories of actions that do not individually or cumulatively have a potential for significant impact to the environment. Consequently, they do not require preparation of an EA or an EIS.

- 2) Characteristics of categories of actions that usually do not require either an EIS or an EA include:
 - a) minimal adverse affect on environmental quality
 - b) no significant change to existing environmental conditions
 - c) no significant cumulative environmental impacts
 - d) socioeconomic effects only
 - e) similarity to actions previously assessed and found to have no significant impacts
- 3) Certain types of categorical exclusions do not require analytical environmental documentation. These actions may proceed with no additional effort from either the proponent or the environmental staff. Other actions require a brief listing of the project specifics and the reason for determining the categorical exclusion status. These actions require a Record of Environmental Consideration (REC) as an administrative record of the action and the involvement of the OHESS office. The REC shall be signed by the project proponent and OHESS.
- 4) A list of categorical exclusions, and those that require a REC, is provided in Appendix A.
- 5) Due to the limited environmental characteristics of projects covered under the Categorical Exclusion, no public coordination or publication is required.

3-2 Environmental Assessment

- 1) An NSA action shall require the preparation of an Environmental Assessment when a proposal is not one that normally requires an Environmental Impact Statement and does not qualify for categorical exclusion. An Environmental Assessment is made to determine the extent of the environmental impacts of a project, and decide if those impacts are significant. The EA is a short, concise, written analysis of the project and impacts that is sufficient to determine whether to prepare a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). Examples of actions that normally require preparation of an EA are listed in Appendix A.
- 2) The components of the EA shall include:
 - a) Purpose and need for the proposed action
 - b) Description of the proposed action
 - c) Description of alternatives to the proposed action, to include the no-action alternative and a minimum of one additional alternative
 - d) Description of the environmental consequences of the proposed action and alternatives
 - e) Listing of documents referenced and agencies and personnel contacted
 - f) Conclusion or finding, to be either
 - i) Finding of No Significant Impact (FONSI), or
 - ii) Notice of Intent (NOI) to prepare an EIS

- 3) At a minimum, for all projects the project proponent and OHES shall sign the EA. OHES shall determine the appropriate administrative signature level for project proponents. In addition to these signatories, the base commander, property owner, or other appropriate authority as determined by OHES shall sign the EA for unclassified projects.
- 4) Public participation, by environmental agencies and the general public, should occur to the extent merited. This participation shall include coordination letters, publication of a notice of availability for an EA, and publication of the EA. When considering the extent of public participation, the factors to be considered shall include
 - a) Magnitude of the proposed project
 - b) Extent of public interest
 - c) Urgency of the action
 - d) Classification
- 5) Finding of No Significant Impact. If a determination is made on the basis of the EA not to prepare an EIS, the NSA proponent shall prepare a FONSI in accordance with 40 CFR 1508.13 and make the FONSI available to the affected public as specified in 40 CFR 1501.4(e) and 40 CFR 1506.6.

3-3 Environmental Impact Statement

- 1) An Environmental Impact Statement (EIS) is required for those projects where there is a significant and non-mitigatable impact to the environment. It is the most complex of the required environmental documents, requiring the most analysis, greatest degree of documentation, and most formalized process.
- 2) Notice of Intent (NOI) shall be published in the Federal Register prior to the start of the public scoping process for the EIS. The scoping process shall solicit public comment from both governmental and private sources. The purpose of the scoping process is to focus the environmental analysis on significant issues and de-emphasize insignificant issues. The process also requires the meaningful participation of the public.
- 3) NSA will prepare an EIS when necessary based on the factors identified in 40 CFR 1508.27 in accordance with the requirements of 40 CFR Part 1502. The recommended format provided in 40 CFR 1502.10 will be used by NSA for all draft EISs and final EISs.
- 4) The Record of Decision (ROD) for the EIS shall be signed by the Director, NSA and staffed through the Office of the Secretary of Defense and Director, Central Intelligence. The ROD shall be concise and explain the conclusion, the reason for the selection, and the alternative considered. The ROD must identify the course of action that is environmentally preferable, regardless whether that is the selected option. The ROD shall summarize all the major factors weighed in making the decision, including essential considerations of national policy. The ROD must state if all practical means to avoid, minimize, or mitigate impacts have been employed, and if not, explain why.

Chapter 4 Special Conditions

4-1 Classified Actions

- 1) Classification or the security concerns of a proposed action does not relieve the Agency of the requirement to assess and document the effects of a proposed action. Proponents of a project with classification concerns shall at a minimum ensure that a representative of OHSS and a representative of OGC are fully briefed on the proposed project.
- 2) Environmental documents shall be prepared, safeguarded, and disseminated in accordance with the requirements applicable to classified information. When feasible, those documents shall be organized in such a manner that classified portions are included as appendices so that unclassified portions can be made available to the public. This will normally not be possible when the proposal itself is classified.
 - A) For classified actions, environmental analysis and documentation, with evaluation of alternatives, shall be conducted, with the resulting documentation classified at the appropriate level.
 - B) Where possible, proposed actions shall be described in terms and details that allow for publication as unclassified.

4-2 Alternatives Analysis

- 1) All EAs and EISs shall include evaluation of alternatives to the proposed action. The alternatives considered should include appropriate consideration of the "no action" alternative, the "proposed action" and all other appropriate and reasonable alternatives that can be realistically accomplished. Efforts shall be made to encourage the development of additional alternatives as appropriate, including discussion of why apparently obvious options were not considered.
- 2) Categorical Exclusions and Records of Environmental Consideration do not require analysis of alternatives. If alternatives are known, they may be mentioned or discussed if the situation merits.

4-3 Systems Acquisition

- 1) System acquisition activities under NSA/CSS Circular 8-1 are required to undergo environmental review and comply with NEPA requirements. The development of the Programmatic Environmental Safety and Health Evaluation (PESHE) will be done in conformance with this regulation, and will include appropriate NEPA documentation as part of the PESHE.

4-4 Lead and Cooperating Agency

- 1) Some NSA actions may be undertaken with other government agencies. NSA may be the principal proponent of the action, or an implementing agent of the project proponent. In all cases, NSA shall either prepare the environmental documentation as the lead agency, or shall actively participate in the review and comment on the documentation prepared by another lead agency. This shall apply to classified actions and overseas actions as well as those occurring within the US. In no case shall NSA be involved in an action that does not meet NEPA requirements.
- 2) For projects occurring outside of the main NSA campus, the format of the required document will conform to that of host agency if they so require. A

separate document conforming to NSA format will not be required.

4-5 Contractor Participation

1) Use of contractors to perform Environmental Assessments or Environmental Impact Statements, or a portion of either, is acceptable. The contractor shall not have any contractual or financial benefit in the outcome of any of the analysis, including the no action alternative. Should a contractor be required for specialized or general support in any or all portions of the EA or EIS, it shall be the responsibility of the proponent organization to provide OHES with the requisite funds to ensure proper execution of the technical tasks. All NSA NEPA documents, whether prepared by government employees or contractors, belong to and are the responsibility of NSA. Correspondence and documents distributed outside of NSA should generally be signed out by NSA personnel and documents should reflect on the cover sheet that they are NSA documents.

4- 6 Conformity

1) The Clean Air Act Amendments of 1990 established a conformity requirement for Federal agencies. Projects that are categorically excluded are determined to have already addressed conformity issues. All EAs and EISs are required to address conformity with state air quality issues in their analysis.

4-7 Pollution Prevention

1) The Pollution Prevention Act of 1990 established a national policy of preventing or reducing pollution at the source whenever possible. Where pollution prevention opportunities exist, they shall be documented in the appropriate environmental documentation. Pollution Prevention shall be addressed in appropriate EAs and EISs. When pollution cannot be prevented, the environmental analysis should include, whenever possible recycling, energy recovery, and environmentally safe disposal actions.

4-8 Environmental Justice

1) In conformance with the provisions of Executive Order (E.O.) 12898, projects that require an EA or an EIS shall address the impact of the project on minority and low-income populations.

4-9 Environmental Effects of NSA Actions Abroad

1) Procedures for analysis of environmental actions abroad are contained in 32 CFR 187, Environmental Effects Abroad of Major Department of Defense Actions (DODD 6050.7). That directive provides comprehensive policies, definitions and procedures for implementing EO 12114. The requirements of 32 CFR 187 shall be followed for NSA actions abroad.

2) NSA activities abroad shall conform to the requirements of the Final Governing Standards for the country in which the proposed action is located. The preparation of the required documents shall be as for activities in the United

States, with records being retained by OHES.

4-10 Public Notice

1) Except as provided in Section 4-1 Classified Actions, notification is required for various aspects of the NEPA process. Activities that require public notification include:

- a) Availability of FONSI and EA
- b) Notice of Intent (NOI) for an EIS
- c) Public scoping meetings for an EIS
- d) Availability of a draft EIS
- e) Public hearings for a draft EIS
- f) Availability of the final EIS
- g) Record of Decision (ROD) for an EIS

2) For action of local concern, the list of possible notification methods provided in 40 CFR 1506.6(b)(3) is only illustrative. NSA may use other means of notification as a substitute for any of the methods listed. Because many NSA actions are of limited environmental interest to persons or organizations outside of NSA, NSA may limit local notification to the state single point of contact and local governmental representatives.

APPENDIX A

List of Specific NEPA Activities

The following is a list of specific activities and the level of NEPA documentation required by the activity. This list is specific to the National Security Agency. Due to the location of NSA on a US Army base, the list follows closely with AR200-2, Environmental Effects of Army Actions. Actions occurring on other service bases shall be tailored to reflect host service requirements and to jointly meet NEPA requirements.

Categorical Exclusions (CX) – No documentation required.

Routine operation, repair and maintenance of buildings, roads, equipment and other facilities except when requiring the application or disposal of hazardous or contaminated materials.

Routine procurement of utility services including water, wastewater, electrical, and natural gas, from existing utility suppliers.

Training of an entirely administrative and classroom nature.

Storage of materials other than ammunition, and other hazardous or toxic chemicals.

Operations conducted by established laboratories within enclosed, existing facilities where all radiation, noise, emissions and waste disposal are in compliance with appropriate regulations using existing facilities.

Routine personnel actions occurring within existing Agency controlled space, including reduction of staff levels and realignment of staff within existing facilities.

Installation and operation of utility and communication systems, data processing, cable and similar electronic equipment using existing rights of way, easements, and distribution systems within existing facilities provided no excavation is required.

Installation of receiving or transmitting antennas on existing buildings or improved surfaces, where no new utilities are required.

Reconfiguring and remodeling of building interiors and exteriors provided no hazardous materials or hazardous wastes are involved.

Acquisition activities involving the development and acquisition of computer software and hardware systems deployed in existing spaces where no infrastructure construction is required (documentation will be noted in the program PESHE).

CX - Record of Environmental Consideration (REC) required

External construction that does not significantly affect, change or alter land use, provided the operation of the project does not have an environmental impact.

Grants of easements for the use of existing rights of way for use by electrical, telephone, and other transmission and communications lines; transmitter and relay facilities; water, wastewater and stormwater pipelines and facilities; and for similar utility systems.

Grants of leases, licenses, and permits to use existing facilities and property for non Agency activities, provided that use is consistent with existing uses.

Real property transactions, including obtaining or renewing of leases, easements, and permits from governmental or private organizations.

Real property transactions acquiring property or facilities for Agency use.

Construction involving any excavation, or installation of structures on existing impervious surfaces.

Acquisition activities involving the development and acquisition of computer software and hardware systems deployed in existing spaces where infrastructure construction is required (documentation will be noted in the program PESHE).

Repair, alteration, demolition or abandonment of buildings or component support buildings and utility systems where such activity involves hazardous material (PCBs, asbestos, lead paint, oil, gasoline, etc.).

Actions Normally requiring an Environmental Assessment (EA)

Projects funded and executed under the Military Construction (MILCON) program.

Changes in existing land use that generates impacts on the environment, including generation of stormwater or removal of vegetative cover.

Proposed changes in policy or doctrine that may have potential environmental consequences.

Acquisition of space for, and operation of, a laboratory or production facility that will use hazardous chemicals.

Development and staffing of new sites, facilities and operations, including significant increases in staffing at existing sites.

Closure of existing sites, facilities and operations involving real property actions.

Actions that could potentially cause impacts to wetlands or floodplains.

Environmental restoration or improvement projects.

Any project which has a potential for cumulative impact on environmental quality, the release of harmful chemicals into the environment, violation of State Implementation Plans (SIPs), or some harm to culturally or ecologically sensitive areas.