

# ARMY NATIONAL GUARD CULTURAL RESOURCES HANDBOOK

## Volume II: Appendices



2013

*Cover Photos*

*Top row left: Stone Arch Bridge, January 1988, Camp Ravenna Joint Military Training Center, Ohio.*

*Top row center: Tacoma Armory, August 2008, Tacoma, Washington.*

*Top row right: Members of Brown County Historical Society and Brownwood Boy Scouts, October 2006, Camp Bowie, Brownwood, Texas.*

*Middle row left: Winter Haven Armory, January 2008, Winter Haven, Florida.*

*Middle row center: Archaeological Resources Protection Act Warning Sign, date unknown, installation unknown, Texas.*

*Middle row right: New York Army National Guard Military Museum, May 2006, Saratoga Springs, New York.*

*Bottom row left: Cultural Feature, New Mexico Army National Guard, ca. 2008, Roswell, New Mexico.*

*Bottom row center: Post Chapel, ca. 2009, Camp Edwards, Massachusetts.*

*Bottom row right: Land Ships SS Swatara and SS Manada, 1890, Fort Indiantown Gap, Pennsylvania.*

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## **Appendix A: Frequently Asked Questions**



## Appendix A: Frequently Asked Cultural Resources Questions

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Note: These FAQs reflect the major issues that the ARNG-ILE CRM team sees arise. This section will be updated annually to address new questions as they come up.

1. If a proposed project is on previously “disturbed land” is there any requirement for cultural resources evaluation, including an archaeological survey?
  - Depends. It is important to know how you arrived at the “disturbed land” determination. Activities that only impact the upper centimeters of the ground (such as agricultural tilling or slab paving) may not preclude the need for archaeological surveys, as intact cultural deposits may still be present within or adjacent to the disturbance. The Area of Potential Effect must be considered in three dimensions – there may be undisturbed land next to, above, or below the disturbed soil, and intact cultural deposits may be present adjacent to the disturbance in any of these dimensions. Therefore, agricultural fields may require survey and evaluation as part of compliance with the Section 106 process. Early consultation with the SHPO to determine the extent of “disturbance” can assist in answering this question on a project by project basis in a timely manner.
2. If the Army National Guard (ARNG) is able to comply with our National Environmental Policy Act (NEPA) requirements at a Record of Environmental Consideration (REC) level, is there any additional consultation required for cultural resources, other than checking the appropriate boxes on the REC form?
  - Depends. Regardless of the level of effort under NEPA required of a project, the project (if it is occurring on Federal land or is funded partially or in whole by Federal funds) will require compliance with the NHPA Section 106 process. NEPA level of effort does not change NHPA Section 106 basic requirements. Often the NEPA process will envelop the NHPA process, but this is not always the case; for example, no public notification period is required for a NEPA REC, but it may still be required under the NHPA. Make sure you have fulfilled your requirements under BOTH Federal regulations and received concurrence from the SHPO.
3. We never receive any responses from Tribes\* on other projects, so we assume they aren’t interested in what we do on our installation or facility, correct?
  - Sometimes Tribes do not respond to individual project requests, but still want information about projects within the state or a particular facility. A good response to this situation is to conduct annual tribal meetings and lay out an approach for consultation with the Tribes. If a Tribe has not been responding to letters, bring this up during consultation and see if there are areas/facilities within your state that are of particular interest. These terms can be specified in a Memorandum of Understanding (MOU) that will provide a path forward for project consultation.

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\* The word “Tribes” (with a capital T) is used inclusively throughout this document to include Federally Recognized Native American Tribes, Alaskan Natives, and Native Hawaiians Organizations as defined in the NHPA and the Native American Graves Protection and Repatriation Act (NAGPRA).

4. Is it true I must consider landscape and viewshed issues only when building within the boundaries of a National Register historic district?
  - False. Landscape and viewshed must be considered regardless of historic district status. Landscapes can be determined eligible for the National Register of Historic Places (NRHP), and the potential effects associated with Federal actions on the landscape require consultation with the SHPO and Tribes as appropriate. Impacts to viewsheds must be considered for historic districts and for buildings/sites that are individually eligible for or listed in the NRHP. Viewsheds encompass views from and to an eligible/listed property and the view of the property from elsewhere. That means that new construction, for example, adjacent to a historic building requires the Cultural Resource Manager (CRM) to evaluate whether the construction will adversely impact the adjacent building because of the change in viewshed.
5. Once a building/archaeological site is determined eligible for NRHP inclusion, can that designation ever change?
  - Yes. Designations can change or be rescinded (36 CFR 63.6). For example, if a major renovation changes an eligible historic building significantly, or if an eligible archaeological site is damaged by natural or man-made causes, those properties may no longer qualify for NRHP inclusion. These cases require consultation with the SHPO, just as original determinations of eligibility require consultation.
6. How can I determine if a Tribe has an interest in an area?
  - Contact the Native American Graves Protection and Repatriation Act (NAGPRA) division in the National Park Service to ask which Tribes are culturally affiliated with your state. You can also do a records search of representatives (if known) in your area to help determine affiliation. The National Park Service (NPS) also offers a Native American Consultation Database and the Bureau of Indian Affairs (BIA) publishes the official list of Tribes with updated lists of the head of each tribe.
7. What defines a Federal undertaking under the NHPA Section 106 process?
  - A Federal undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal assistance; and those requiring a Federal permit, license or approval (36 CFR 800.16(y)).
8. How many times do I need to contact Tribes for Federal undertakings?
  - The number of times a Tribe should be contacted will depend on the level of NEPA being conducted for the project. Refer to chapter 8 of the *Army National Guard (ARNG) NEPA Handbook* (1 October 2011) for more detailed guidance.
9. When does NAGPRA apply?
  - There are three sections of NAGPRA relevant to the state ARNGs. Section 3 addresses Native American cultural items recovered from Federal lands as a result of ongoing or future projects. Sections 5 and 6 apply to cultural items that are under the control or possession of an organization receiving Federal funding (a “museum” under NAGPRA). Sections 5 and 6 of NAGPRA apply to collections recovered from both state and Federal lands until such time as existing collections have met the requirements of these sections.

10. When does the Archaeological Resources Protection Act (ARPA) apply?
  - ARPA applies to archaeological resources that are 100 years or older, located on or recovered from Federally owned or Tribal lands. ARPA does not apply to state land. Archaeological resources include artifacts (items made, modified, or used by humans), structures, features (such as fire pits), rock art, graves, and human skeletal remains. ARNG-ILI maintains a list of Federally owned ARNG properties.
11. Does the Programmatic Agreement for the Demolition of World War II Temporary Buildings (“demo memo”) (1 May 1991) allow me to do anything to those buildings?
  - No. The “demo memo” only allows demolition of a certain grouping of World War II-era “temporary” wood buildings. That means no additional compliance actions can occur for these buildings prior to demolition of the buildings, provided the building(s) are within the category codes outlined in the “demo memo.” However, all *alterations* of these buildings (i.e., window, roof, door replacement, etc.) do require consultation and compliance with NHPA Section 106 process. Those actions are not covered under the “demo memo.”
12. Does the SHPO sign the Integrated Cultural Resource Management Plan (ICRMP)?
  - No. The ICRMP is an “internal planning document” in accordance with Army Regulation (AR) 200-1. As such, the SHPO and other consulting parties and Tribes are given the opportunity to review and comment on the ICRMP, but do not sign the document. The ICRMP is only signed by appropriate ARNG personnel. As a result, all proposed ARNG projects (including those described within the ICRMP) require consultation on an individual basis in compliance with NHPA Section 106.



## **Appendix B: Supplemental Laws, Statutes, and Regulations**





## **Appendix B: Supplemental Laws, Statutes, and Regulations**

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Recommend state ARNGs use this Appendix to keep copies of relevant state regulations.

### ***American Antiquities Act of 1906***

- Provides information on permitting valid archaeological investigations and penalties for damage and destruction of antiquities. This act also empowered presidents to declare National Monuments, parks, and historical sites. This law is enforced on Federal lands only; otherwise state laws apply.

### ***Archaeological and Historic Preservation Act of 1974 (AHPA)***

- Provides for the preservation of historical and archaeological data, including relics and specimens on Federal lands only; otherwise state laws apply.

### ***American Indian Religious Freedom Act of 1978 (AIRFA)***

- Provides for the protection and preservation of traditional American Indian religions.

### ***Energy Independence and Security Act of 2007***

- Sets forth energy reduction goals in Federal buildings.
- Directs the Secretary of Energy to establish specific energy-efficiency performance standards for Federal buildings.

### ***EO 13327 – Federal Real Property Asset Management (03 March 2003)***

- Requires Federal agencies to develop and submit asset management plans that incorporate the management requirements for historic properties established in EO 13287 (3 March 2003) and the environmental management requirements established in EO 13148 (21 April 2000).
- Establishes the Federal Real Property Council, which is tasked with consideration of the environmental costs, including restoration and compliance expenditures, associated with property ownership.

### ***EO 13514 – Federal Leadership in Environmental, Energy, and Economic Performance (05 October 2009)***

- Ensures all new Federal buildings are designed to achieve zero net energy by 2030.
- Ensures all new construction, major renovations, or repair or alteration of Federal buildings comply with the Guiding Principles of Federal Leadership in High Performance and Sustainable Buildings.
- Ensures at least 15 percent of existing agency buildings and leases (above 5,000 gross square feet) meet the Guiding Principles by fiscal year (FY) 2015.
- Ensures that the agency makes annual progress towards 100 percent compliance across its building inventory.
- Ensures that cost-effective, innovative strategies to minimize energy, water, and materials consumption are pursued.
- Requires existing building systems to reduce the consumption of energy, water, and materials, and to identify alternatives to renovation that reduce existing asset deferred maintenance costs.

- Requires the identification of opportunities to:
  - Consolidate and eliminate existing assets.
  - Optimize the performance of portfolio property.
  - Reduce associated environmental impacts.
- Ensures rehabilitation of Federally owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the building.
- Provides requirements on advance regional and local integrated planning.

#### ***Defense Installations Strategic Plan 2007***

- Outlines measures for managing cultural resources to support missions and benefiting future generations.
- Calls for improved availability of information on National Historic Landmarks.
- Calls for standardized military construction (MILCON) program metrics.

#### ***Army Memorandum: Sustainable Design and Development Policy Update (27 October 2010)***

This memorandum is the Department of Army's 2010 update to the Sustainable Design and Development Policy. The memorandum stipulates that all new vertical construction be Leadership in Energy and Environmental Design (LEED) Silver-certified starting with FY 2013.

#### ***Army Memorandum: Strategy for the Environment (October 2004)***

This 2004 Department of Army memorandum establishes a long-range vision for sustainability. It outlines requirements for energy efficiency, reduction in the use of fossil fuels, water conservation, improved utility systems, building lifecycle costs, and recycling of materials.

#### ***Army Memorandum: Sustainable Strategy for Waste in Military Construction, Renovation, and Demolition Activities (6 February 2006)***

The 2006 memorandum requires compliance with LEED standards as set forth in the Strategy for the Environment memorandum. Further, it mandates that all construction, renovation, and demolition projects reduce diversion of waste to the landfills by 50 percent.

#### ***AR 420-1: Army Facilities Management (24 August 2012)***

This regulation addresses the management of Army facilities. It applies to Active Army, ARNG, and U.S. Army Reserve and tenants on Active Army installations. Specifically, this regulation addresses the operations and management of public works activities, housing and other facilities management, military construction program development and execution, master planning, utilities services and energy management, and fire and emergency services. It contains management control provisions and identifies key management controls that must be evaluated.

## **Paleontological Laws**

### ***Federal Antiquities Act of 1906***

Paleontological resources are recognized as significant to our culture and are given Federal, state, and local protection by the Federal Antiquities Act of 1906.

### ***National Environmental Policy Act of 1969 (NEPA)***

NEPA requires Federal agencies take all practicable measures to “preserve important historic, cultural, and natural aspects of our national heritage” (NEPA Sec. 101[b][4]). NEPA does not provide specific guidance regarding paleontological resources.

### ***Federal Land Policy and Management Act of 1976 (FLPMA)***

The FLPMA directs Federal land managers to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” This applies to resources found on BLM lands.

### ***Paleontological Resources Preservation Act (PRPA) (30 March 2009)***

The PRPA requires the Secretaries of the Interior and Agriculture to “manage and protect paleontological resources on Federal land using scientific principles and expertise.” The PRPA defines Federal land as that controlled or administered by the Secretary of the Interior, except American Indian land; or National Forest System land controlled or administered by the Secretary of Agriculture. The PRPA only applies to Federal lands and does not affect private lands.

## **Location of State Laws**

### ALABAMA

<http://www.legislature.state.al.us/Search/SearchText.htm>

### ALASKA

<http://www.legis.state.ak.us/folhome.htm>

### ARIZONA

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

### ARKANSAS

<http://www.lexisnexis.com/hottopics/arcodex/Default.asp>

### CALIFORNIA

<http://www.leginfo.ca.gov/calaw.html>

### COLORADO

<http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>

### CONNECTICUT

<http://www.cga.ct.gov/asp/menu/Statutes.asp>

### DELAWARE

<http://delcode.delaware.gov/index.shtml>

### FLORIDA

<http://www.floridalawonline.net/>

### GEORGIA

<http://w3.lexis-nexis.com/hottopics/gacode/default.asp>

### HAWAII

<http://www.capitol.hawaii.gov/>

### IDAHO

[http://www.idaho.gov/laws\\_rules/](http://www.idaho.gov/laws_rules/)

### ILLINOIS

<http://www.ilga.gov/legislation/ilcs/ilcs.asp>

### INDIANA

<http://www.ai.org/legislative/ic/code/>

### IOWA

<http://www2.legis.state.ia.us/IACODE/>

### KANSAS

[http://www.kslegislature.org/li/b2011\\_12/statute/](http://www.kslegislature.org/li/b2011_12/statute/)

### KENTUCKY

<http://www.lrc.state.ky.us/krs/titles.htm>

### LOUISIANA

<http://www.legis.state.la.us/>

### MAINE

<http://www.mainelegislature.org/legis/statutes/>

### MARYLAND

[http://mlis.state.md.us/asp/web\\_statutes.asp](http://mlis.state.md.us/asp/web_statutes.asp)

### MASSACHUSETTS

<http://www.mass.gov/legis/laws/mgl/>

### MICHIGAN

[http://www.legislature.mi.gov/\(S\(iifav4iiub5ggnm2c5kxm3r\)\)/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(iifav4iiub5ggnm2c5kxm3r))/mileg.aspx?page=home)

### MINNESOTA

<https://www.revisor.mn.gov/pubs/>

### MISSISSIPPI

<http://www.michie.com/mississippi>

### MISSOURI

<http://www.moga.mo.gov/htmlpages/Indexnewtest2.html>

### MONTANA

<http://leg.mt.gov/css/default.asp>

### NEBRASKA

<http://uniweb.legislature.ne.gov/laws/laws.php>

### NEVADA

<http://www.leg.state.nv.us/law1.cfm>

### NEW HAMPSHIRE

<http://www.gencourt.state.nh.us/rsa/html/indexes/default.html>

### NEW JERSEY

[http://lis.njleg.state.nj.us/cgi-bin/om\\_isapi.dll?clientID=525039&depth=2&expandheadings=off&headingswithhits=on&infobase=statutes.nfo&softpape=TOC\\_Frame\\_Pg42](http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=525039&depth=2&expandheadings=off&headingswithhits=on&infobase=statutes.nfo&softpape=TOC_Frame_Pg42)

### NEW MEXICO

<http://www.nmonesource.com/nmnxtadmin/NMPublic.aspx>

### NEW YORK

<http://www.findlaw.com/11stategov/ny/laws.html>

### NORTH CAROLINA

<http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl>

### NORTH DAKOTA

[http://www.law.cornell.edu/states/north\\_dakota](http://www.law.cornell.edu/states/north_dakota)

### OHIO

<http://codes.ohio.gov/orc>

### OKLAHOMA

<http://www.lsb.state.ok.us/>

### OREGON

<http://www.leg.state.or.us/ors/>

PENNSYLVANIA

<http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000>

RHODE ISLAND

<http://www.rilin.state.ri.us/Statutes/Statutes.html>

SOUTH CAROLINA

<http://www.scstatehouse.gov/code/statmast.php>

SOUTH DAKOTA

<http://legis.state.sd.us/statutes/TitleList.aspx>

TENNESSEE

<http://www.michie.com/tennessee>

TEXAS

<http://www.statutes.legis.state.tx.us/>  
<http://codes.lp.findlaw.com/txstatutes>

UTAH

<http://www.michie.com/utah>

VERMONT

<http://www.leg.state.vt.us/statutesMain.cfm>

VIRGINIA

<http://leg1.state.va.us/000/src.htm>

WASHINGTON

<http://apps.leg.wa.gov/rcw/>

WEST VIRGINIA

<http://www.legis.state.wv.us/WVCODE/Code.cfm>

WISCONSIN

<http://www.legis.state.wi.us/rsb/stats.html>

WYOMING

<http://legisweb.state.wy.us/titles/statutes.htm>

GUAM

<http://www.guamcourts.org/CompilerofLaws/index.html>

NORTHERN MARIANAS

<http://www.cnmilaw.org/welcome.php>

PUERTO RICO

<http://michie.lexisnexis.com/puertorico/>

U.S. VIRGIN ISLANDS

<http://michie.lexisnexis.com/virginislands>



## **Appendix C: Points of Contact List — ARNG, Tribes, and SHPO**





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### ARNG

#### **ACSIM Point of Contact:**

Ms. Kathleen McLaughlin  
Department of Army, ACSIM  
Attn: McLaughlin/PT9301  
600 Army Pentagon  
Washington, DC 20310-0600  
Email: [kathleen.a.mclaughlin8.civ@mail.mil](mailto:kathleen.a.mclaughlin8.civ@mail.mil)  
Phone: 703-601-1593

#### **Army National Guard Staff Point of Contact:**

Dr. Rebecca Klein (Archaeologist and Eastern POC)  
Army National Guard Directorate  
Attn: ARNG-ILE  
111 S. George Mason Dr.  
Arlington VA 22204  
Email: [rebecca.a.klein16.civ@mail.mil](mailto:rebecca.a.klein16.civ@mail.mil)  
Phone: 703-607-1176

Derek Manning (Architectural Historian and Central POC)  
Army National Guard Directorate  
Attn: ARNG-ILE  
111 S. George Mason Dr.  
Arlington VA 22204  
Email: [derek.manning.civ@mail.mil](mailto:derek.manning.civ@mail.mil)  
Phone: 703-607-7190

Stephanie Webber (Native American Consultation and Western POC)  
Army National Guard Directorate  
Attn: ARNG-ILE  
111 S. George Mason Dr.  
Arlington VA 22204  
Email: [stephanie.e.webber.ctr@mail.mil](mailto:stephanie.e.webber.ctr@mail.mil)  
Phone: 703-601-7036

Personnel in these positions may change. For the most up-to-date information please contact the offices listed above.

## **Tribes**

Consultation with Tribes is an important aspect of cultural resource management and compliance with Federal laws, regulations, and executive orders. There are more than 560 Federally recognized American Indian tribes, Native Hawaiian organizations, and Alaska Native villages and corporations with which the ARNG could potentially consult. The National Park Service offers a Native American Consultation Database that can be queried by the county in which an installation is located to identify which Tribes to consult and to obtain contact information (<http://grants.cr.nps.gov/nacd/index.cfm>). Additionally, THPO identification and contact information can be accessed at ([http://grants.cr.nps.gov/THPO\\_Review/index.cfm](http://grants.cr.nps.gov/THPO_Review/index.cfm)). The Bureau of Indian Affairs (BIA) publishes the official list of Tribes with updated lists of the head of each Tribe; this can be found at <http://www.bia.gov/idc/groups/public/documents/text/idc002652.pdf>. This information may change periodically; please check the websites for each project or consultation for the most updated information.

## SHPO

### ALABAMA

Alabama Historical Commission  
468 South Perry Street  
Montgomery, AL 36130-0900  
Phone: 334-242-3184  
Fax: 334-240-3477

**Online Staff Directory:**

[http://www.preserveala.org/staffdirectory.aspx?sm=a\\_d](http://www.preserveala.org/staffdirectory.aspx?sm=a_d)

### ALASKA

Alaska DNR, Office of History & Archaeology  
550 West 7th Avenue  
Suite 1310  
Anchorage, AK 99501-3565  
Phone: 907-269-8721  
Fax: 907-269-8908

**Online Staff Directory:**

<http://dnr.alaska.gov/parks/oha/misc/ohastaff.htm>

### ARIZONA

Arizona State Parks  
1300 West Washington  
Phoenix, AZ 85007  
Phone: 602-542-4174  
Fax: 602-542-4180

**Online Staff Directory:**

<http://azstateparks.com/SHPO/staff.html>

### ARKANSAS

Department of Arkansas Heritage  
323 Center Street  
Suite 1500  
Little Rock, AR 72201  
Phone: 501-324-9150  
Fax: 501-324-9154

**Online Staff Directory:**

<http://www.arkansaspreservation.org/staff-directory/>

### CALIFORNIA

Office of Historic Preservation  
Department of Parks & Recreation  
P.O. Box 942896  
Sacramento, CA 94296-0001  
Phone: 916-653-6624  
Fax: 916-653-9824

**Online Staff Directory:**

[http://ohp.parks.ca.gov/?page\\_id=1075](http://ohp.parks.ca.gov/?page_id=1075)

### COLORADO

Colorado Historical Society  
1300 Broadway  
Denver, CO 80203  
Phone: 303-866-3355  
Fax: 303-866-4464

**Online Staff Directory:**

<http://www.coloradohistory-oahp.org/staff/staff.htm>

### CONNECTICUT

Connecticut Commission on Culture & Tourism  
One Constitution Plaza  
Hartford, Connecticut 06103  
Phone: 860-256-2753  
Fax: 860-256-2811

**Online Staff Directory:**

<http://www.cultureandtourism.org/cct/cwp/view.asp?a=2271&q=302030>

### DELAWARE

Division of Historical and Cultural Affairs  
21 The Green  
Dover, DE 19901  
Phone: 302-739-5313  
Fax: 302-739-6711

## **FLORIDA**

Division of Historical Resources, Department of  
State

500 South Bronough Street

Room 305

Tallahassee, FL 32399-0250

Phone: 850-245-6300

Bureau of Historic Preservation

Toll Free Phone: 800-847-7278

Phone: 850-245-6333

Fax: 850-245-6437

### **Online Staff Directory:**

[http://www.flheritage.com/contact/people.cfm#  
Dept4](http://www.flheritage.com/contact/people.cfm#Dept4)

## **GEORGIA**

Historic Preservation Division/DNR

34 Peachtree Street NW

Suite 1600

Atlanta, GA 30303-2316

Phone: 404-656-2840

Fax: 404-651-8739

### **Online Staff Directory:**

[http://georgiashpo.org/staff\\_directory](http://georgiashpo.org/staff_directory)

## **GUAM**

Guam Historic Preservation Office

Department of Parks & Recreation

490 Chalan Palasyo

Agana Heights, Guam 96910

Phone: 671-475-6296/7

Fax: 671-477-2822

### **Online Staff Directory:**

<http://historicguam.org/about.htm>

## **HAWAII**

Department of Land & Natural Resources

601 Kamokila Boulevard

Suite 555

Kapolei, HI 96707

Phone: 808-587-0400

Fax: 808-587-0390

State Historic Preservation Office

Phone: 808-692-8015

Fax: 808-692-8020

### **Online Staff Directory:**

<http://www.state.hi.us/dlnr/hpd/hpphone.htm>

## **IDAHO**

Idaho State Historical Society

2205 Old Penitentiary Road

Boise, ID 83712

Phone: 208-334-2682

## **ILLINOIS**

Illinois Historic Preservation Agency

1 Old State Capitol Plaza

Springfield, IL 62701-1512

Phone: 217-782-4836

Fax: 217-524-7525

## **INDIANA**

Department of Natural Resources

402 West Washington Street

Indiana Government Center South

Room W256

Indianapolis, IN 46204

Division of Historic Preservation &

Archaeology

402 West Washington Street

Room W274

Indianapolis, IN 46204

**IOWA**

State Historical Society of Iowa  
Capitol Complex  
East 6th and Locust Street  
Des Moines, IA 50319  
Phone: 515-281-8741  
Fax: 515-242-6498

**Online Staff Directory:**

<http://www.iowahistory.org/contact-list.html>

**KANSAS**

Kansas State Historical Society  
6425 Southwest 6th Avenue  
Topeka, KS 66615-1099  
Phone: 785-272-8681 ext. 210  
Fax: 785-272-8682

**Online Staff Directory:**

<http://www.kshs.org/staff>

**KENTUCKY**

Kentucky Heritage Council  
300 Washington Street  
Frankfort, KY 40601  
Phone: 502-564-7005  
Fax: 502-564-5820

**Online Staff Directory:**

<http://heritage.ky.gov/staff.htm>

**LOUISIANA**

Department of Culture, Recreation & Tourism  
P.O. Box 44247  
Baton Rouge, LA 70804  
Phone: 225-342-8200  
Fax: 225-342-8173

Website: <http://www.crt.state.la.us/hp/>

**Online Staff Directory:**

<http://www.crt.state.la.us/hp/staff.aspx>

**MAINE**

Maine Historic Preservation Commission  
55 Capitol Street  
Station 65  
Augusta, ME 04333  
Phone: 207-287-2132  
Fax: 207-287-2335

**Online Staff Directory:**

<http://www.state.me.us/mhpc/contact.html>

**MARYLAND**

Maryland Historical Trust  
100 Community Place  
3rd Floor  
Crownsville, MD 21032-2023  
Phone: 410-514-7600  
Fax: 410-514-7678

**Online Staff Directory:**

[http://mht.maryland.gov/MHT\\_staff.html](http://mht.maryland.gov/MHT_staff.html)

**MASSACHUSETTS**

Massachusetts Historical Commission  
220 Morrissey Boulevard  
Boston, MA 02125  
Phone: 617-727-8470  
Fax: 617-727-5128

**MICHIGAN**

Michigan Historical Center  
702 West Kalamazoo Street  
P.O. Box 30740  
Lansing, MI 48909-8240  
Phone: 517-373-1630  
Fax: 517-335-0348

**Online Staff Directory:**

[http://www.michigan.gov/mshda/0,4641,7-141-54317\\_54760\\_61869---,00.html](http://www.michigan.gov/mshda/0,4641,7-141-54317_54760_61869---,00.html)

## **MINNESOTA**

Minnesota Historical Society  
345 Kellogg Boulevard West  
St. Paul, MN 55102-1906  
Phone: 651-259-3100  
Fax: 651-282-2374

### **Online Staff Directory:**

<http://www.mnhs.org/shpo/contact.htm>

## **MISSISSIPPI**

Mississippi Department of Archives & History  
P.O. Box 571  
Jackson, MS 39205-0571  
Phone: 601-576-6850

Division of Historic Preservation  
Phone: 601-576-6940  
Fax: 601-576-6955

### **Online Staff Directory:**

<http://mdah.state.ms.us/admin/contact.html>

## **MISSOURI**

State Department of Natural Resources  
Phone: 573-751-4732  
Fax: 573-751-7627

State Historic Preservation Office  
P.O. Box 176  
Jefferson City, MO 65102  
Phone: 573-751-7858  
Fax: 573-526-2852

### **Online Staff Directory:**

<http://www.dnr.mo.gov/shpo/staffdir.htm>

## **MONTANA**

State Historic Preservation Office  
1410 8th Avenue  
P.O. Box 201202  
Helena, MT 59620-1202  
Phone: 406-444-7719  
Fax: 406-444-6575

### **Online Staff Directory:**

<http://www.montanahistoricalociety.com/shpo/staff.asp>

## **NEBRASKA**

Nebraska State Historical Society  
P.O. Box 82554  
1500 R Street  
Lincoln, NE 68501  
Phone: 402-471-4745  
Fax: 402-471-3100

## **NEVADA**

Historic Preservation Office  
100 North Stewart Street  
Capitol Complex  
Carson City, NV 89701-4285  
Phone: 775-684-3440  
Fax: 775-684-3442

### **Online Staff Directory:**

[http://nvshpo.org/index.php?option=com\\_content&view=article&id=28](http://nvshpo.org/index.php?option=com_content&view=article&id=28)

## **NEW HAMPSHIRE**

New Hampshire Division of Historical Resources  
19 Pillsbury Street  
2nd Floor  
Concord, NH 03301-3570  
Phone: 603-271-8850  
Fax: 603-271-3433  
TDD: 800-735-2964

### **Online Staff Directory:**

<http://www.nh.gov/nhdhr/staff.html>

## **NEW JERSEY**

Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, NJ 08625  
Phone: 609-292-2885  
Fax: 609-292-7695

Historic Preservation Office  
4th Floor  
501 East State Street  
P.O. Box 404  
Trenton, NJ 08625  
Phone: 609-984-0176  
Fax: 609-984-0578

### **Online Staff Directory:**

[http://www.nj.gov/dep/hpo/whos\\_who\\_03\\_28\\_2012.pdf](http://www.nj.gov/dep/hpo/whos_who_03_28_2012.pdf)

## **NEW MEXICO**

Historic Preservation Division  
Bataan Memorial Building  
407 Galisteo Street  
Suite 236  
Santa Fe, NM 87501  
Phone: 505-827-6320  
Fax: 505-827-6338

### **Online Staff Directory:**

<http://www.nmhistoricpreservation.org/about/staff-list.html>

## **NEW YORK**

Parks, Recreation & Historic Preservation  
Agency Building #1  
Empire State Plaza  
Albany, NY 12238  
Phone: 518-474-0443

Field Services Bureau  
NY State Parks, Recreation & Historic  
Preservation  
Peebles Island P.O. 189  
Waterford, NY 12188-0189  
Phone: 518-237-8643 (ext. 3269)  
Fax: 518-233-9049

### **Online Staff Directory:**

<http://nysparks.state.ny.us/shpo/contact/>

## **NORTH CAROLINA**

Division of Archives & History  
4610 Mail Service Center  
Raleigh, NC 27699-4610  
Phone: 919-807-7280  
Fax: 919-733-8807

Division of Archives & History  
4617 Mail Service Center  
Raleigh, NC 27699-4617  
Phone: 919-733-4763  
Fax: 919-733-8653

### **Online Staff Directory:**

<http://www.hpo.ncdcr.gov/hpostaff.htm>

## **NORTH DAKOTA**

State Historical Society of North Dakota  
612 East Boulevard Avenue  
Bismarck, ND 58505  
Phone: 701-328-2666  
Fax: 701-328-3710

## **NORTHERN MARIANAS**

Department of Community & Cultural Affairs  
Division of Historic Preservation, Airport Road  
Saipan, MP 96950  
Phone: 670-664-2120/2125  
Fax: 670-664-2139

### **Online Staff Directory:**

<http://www.cnmihpo.net/personnel.html>

## **OHIO**

Ohio Historic Preservation Office  
Ohio Historical Society  
567 East Hudson Street  
Columbus, OH 43211-1030  
Phone: 614-298-2000  
Fax: 614-298-2037

### **Online Staff Directory:**

<http://www.ohiohistory.org/about-us>

## **OKLAHOMA**

State Historic Preservation Office  
Oklahoma Historical Society  
Oklahoma History Center  
2401 North Laird Avenue  
Oklahoma City, OK 73105-7914  
Phone: 405-521-6249  
Fax: 405-522-0816

### **Online Staff Directory:**

<http://www.okhistory.org/shpo/shpostaff.htm>

## **OREGON**

Oregon Parks & Recreation Department  
725 Summer Street NE  
Suite C  
Salem, OR 97301

### **Online Staff Directory:**

[http://egov.oregon.gov/OPRD/HCD/  
contact\\_us\\_directory.shtml](http://egov.oregon.gov/OPRD/HCD/contact_us_directory.shtml)

## **PENNSYLVANIA**

Pennsylvania Historical and Museum  
Commission  
300 North Street  
Harrisburg, PA 17120  
Phone: 717-787-2891

Bureau for Historic Preservation  
Commonwealth Keystone Building  
2nd Floor  
400 North Street  
Harrisburg, PA 17120-0093  
Phone: 717-705-4035  
Fax: 717-772-0920

### **Online Staff Directory:**

<http://www.portal.state.pa.us/portal/server.pt?open=512&objID=3741&&PageID=417977&level=2&css=L2&mode=2>

## **PUERTO RICO**

State Historic Preservation Office  
P.O. Box 9066581  
San Juan, PR 00906-6581  
Phone: 787-721-3737  
Fax: 787-721-3773

## **RHODE ISLAND**

Rhode Island Historic Preservation & Heritage  
Commission  
Old State House  
150 Benefit Street  
Providence, RI 02903  
Phone: 401-222-2678  
Fax: 401-222-2968

### **Online Staff Directory:**

[http://www.preservation.ri.gov/about/directory.  
php](http://www.preservation.ri.gov/about/directory.php)

## **SOUTH CAROLINA**

Department of Archives & History  
8301 Parklane Road  
Columbia, SC 29223-4905  
Phone: 803-896-6100  
Fax: 803-896-6167

### **Online Staff Directory:**

[http://scdah.sc.gov/aboutus/Pages/agencydirecto  
ry.aspx](http://scdah.sc.gov/aboutus/Pages/agencydirectory.aspx)

## **SOUTH DAKOTA**

State Historic Preservation Office  
Cultural Heritage Center  
900 Governors Drive  
Pierre, SD 57501  
Phone: 605-773-3458  
Fax: 605-773-6041

### **Online Staff Directory:**

[http://www.sdhistory.org/HP/hp\\_staff.htm](http://www.sdhistory.org/HP/hp_staff.htm)

## **TENNESEE**

Tennessee Historical Commission  
2941 Lebanon Road  
Nashville, TN 37243-0442  
Phone: 615-532-1550  
Fax: 615-532-1549

### **Online Staff Directory:**

<http://www.tn.gov/environment/hist/staff.shtml>



## TEXAS

Texas Historical Commission  
P.O. Box 12276  
Austin, TX 78711-2276  
Phone: 512-463-6100  
Fax: 512-463-8222

Architecture Division  
Phone: 512-463-6094  
Fax: 512-463-6095

### Online Staff Directory:

<http://www.thc.state.tx.us/contactus/cotdefault.shtml>

## U.S. VIRGIN ISLANDS

Department of Planning & Natural Resources  
Cyril E. King Airport  
Terminal Building - 2nd Floor  
St. Thomas, VI 00802

State Historic Preservation Office  
17 Kongens Gade  
Charlotte Amalie  
St. Thomas, VI 00802  
Phone: 340-776-8605  
Fax: 340-776-7236

## UTAH

Utah State History  
300 Rio Grande  
Salt Lake City, UT 84101  
Phone: 801-533-3500  
Fax: 801-533-3503

### Online Staff Directory:

[http://history.utah.gov/about\\_us/staff\\_directory.html](http://history.utah.gov/about_us/staff_directory.html)

## VERMONT

Vermont Division for Historic Preservation  
National Life Building, Drawer 20  
Montpelier, VT 05620-0501  
Phone: 802-828-3211

### Online Staff Directory:

[http://accd.vermont.gov/about\\_us/staff](http://accd.vermont.gov/about_us/staff)

## VIRGINIA

Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221  
Phone: 804-367-2323  
Fax: 804-367-2391

### Online Staff Directory:

[http://www.dhr.virginia.gov/homepage\\_features/ContactUs.htm](http://www.dhr.virginia.gov/homepage_features/ContactUs.htm)

## WASHINGTON

Office of Archeology & Historic Preservation  
P.O. Box 48343  
Olympia, WA 98504-8343

1063 South Capitol Way  
Suite 106  
Olympia, WA 98501  
Phone: 360-586-3065/3064  
Fax: 360-586-3067

### Online Staff Directory:

<http://www.dahp.wa.gov/about-us/staff-directory>

## WEST VIRGINIA

West Virginia Division of Culture & History  
Historic Preservation Office  
1900 Kanawha Boulevard East  
Charleston, WV 25305-0300  
Phone: 304-558-0220  
Fax: 304-558-2779

### Online Staff Directory:

<http://www.wvculture.org/agency/stafflist2.html>

## WISCONSIN

Wisconsin Historical Society  
816 State Street  
Madison WI 53706  
Phone: 608-264-6464  
Fax: 608-264-6504

### Online Staff Directory:

<http://www.wisconsinhistory.org/about/stafflist/>

**WYOMING**

Wyoming State Historic Preservation Office  
2301 Central Avenue  
3rd Floor  
Cheyenne, WY 82002  
Phone: 307-777-7697  
Fax: 307-777-6421

**Online Staff Directory:**

<http://wyoshpo.state.wy.us/Contact/Staff.aspx>

## **Appendix D: Sample Memorandum for Record**



## Appendix D: Sample Federal Memorandum for Record



NATIONAL GUARD BUREAU  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

ARNG-ILE

08 July 2009

### MEMORANDUM FOR RECORD

SUBJECT: Tribal Consultation for the Demolition of Building 198 - Admirals Row, Brooklyn Navy Yard

1. Tribal consultation was initiated via formal letter submitted by the National Guard Bureau (NGB) to two federally-recognized and two state-recognized tribes recorded as having cultural affiliation and interest with the Brooklyn, New York region on January 7, 2009 (see proceeding page for an example letter sent to identified tribes). Tribes were invited to participate as consulting parties for the undertaking at Admirals Row, Brooklyn Navy Yard, defined as the demolition of Building 198 and the associated ground disturbance.

- For EAs, remember that the NEPA Handbook requires 3 letters  
- Remember, this is just an example. All the language would change dependent on project, etc.

2. The four tribes invited to participate as consulting parties were:

Delaware Nation (federally-recognized)  
Stockbridge-Munsee Community Band of Mohicans (federally-recognized)  
Poospatuck-Unkechaug Nation (state-recognized)  
Shinnecock Nation (state-recognized)

3. The NGB received one response from the Stockbridge-Munsee Community Band of Mohicans on February 4, 2009. They asked that if inadvertent discoveries are uncovered during demolition activities, that they be contacted.

4. Points of contact for this action is the undersigned at 703-607-7190 or kristin.leahy@us.army.mil.

Encl  
as

KRISTIN LEAHY  
Cultural Resources Program Manager

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## **Appendix E: Sample NHPA Memorandum of Agreement**





## Appendix E.1: Sample Memorandum of Agreement — Buildings

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MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL GUARD BUREAU,  
INDIANA ARMY NATIONAL GUARD,  
AND  
THE INDIANA STATE HISTORIC PRESERVATION OFFICE  
FOR THE DEMOLITION OF STOUT FIELD BUILDING 8  
2012

WHEREAS, the National Guard Bureau (NGB), as a federal agency, is required to comply with the National Historic Preservation Act (16 U.S.C. §470f) (NHPA), and its implementing regulations, 36 CFR Part 800, and the NGB provides federal funding and guidance to state Guard organizations; and

WHEREAS, the Indiana Army National Guard (INARNG) Joint Forces Headquarters, operates a 115 acre installation at Stout Field, Indianapolis, Marion County, Indiana; and

WHEREAS, the INARNG intends to demolish and remove Building 8 (DHPA #13318), an 83 year old state owned/operated former aircraft hangar located at Stout Field; INARNG will complete this project using both federal and state funding sources, and INARNG and NGB have determined that this project constitutes a federal undertaking as defined by 36 C.F.R. 800.16(y); and

WHEREAS, the INARNG, in consultation with Indiana State Historic Preservation Officer (IN SHPO), established the Area of Potential Effect (APE), as the cumulative area of potential visual effect (radius circle around Building 8) and an area of potential direct effect (footprint of Building 8) as illustrated in Appendix A; and

WHEREAS, INARNG has determined, and the IN SHPO has concurred, that Buildings 5, 8 & 9, located within the APE, are individually eligible for listing in the National Register of Historic Places (NRHP) under Criteria C, Architecture and Design, that Stout Field is not eligible for NRHP listing as an historic district, and that there are no other historic properties within the APE; and

WHEREAS, INARNG has determined that the Undertaking shall result in adverse effects to historic properties through the physical destruction of Building 8 and diminishment of Buildings 5 and 9 integrity of setting (Appendix B); and

WHEREAS, the INARNG has determined that there are no Federally recognized Native American tribes (Appendix C), that attach traditional religious and cultural importance to the structures and landscape within the APE; INARNG contacted the Absentee Shawnee Tribe of Oklahoma, Citizen Potawatomi Nation, Delaware Nation, Eastern Shawnee Tribe of Oklahoma, Forest County Potawatomi Community, Hannahville Indian Community, Kickapoo Tribe of Kansas, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma, Pokagon Band of Potawatomi Indians, Prairie Band Potawatomi Nation, Wyandotte Tribe of Oklahoma, Kickapoo Tribe of Oklahoma, Shawnee Tribe, Nottawaseppi Huron Band of Potawatomi, Delaware Tribe of Indiana; INARNG received response letters from the Kickapoo Tribe of Kansas and Delaware Tribe declining the opportunity to participate in the process (Appendix C); and

WHEREAS, the INARNG invited the City of Indianapolis Historic Preservation Commission, Indiana Landmarks, Marion County Historical Society, Wayne Township Historical Society, the Marion County Historian, the Aviation Association of Indiana, and the Indiana Historical Society to participate in the consultation process for this undertaking via letter dated April 16, 2012 (Appendix C). The INARNG only received a single response letter from the City of Indianapolis Historic Preservation Commission; and

WHEREAS, the INARNG consulted with the City of Indianapolis Historic Preservation Commission as a consulting party, and the commission declined to sign this Memorandum of Agreement (MOA) as a concurring party; and

WHEREAS, the INARNG took the following steps to notify and engage the public: created a public website hosted on the INARNG public website (<http://in.ng.mil>) available from May 8, 2012 to June 29, 2012; listing a Public Notice in the local newspaper, the *Indianapolis Star* on Wednesday, May 16, 2012, and Wednesday, May 30, 2012 requesting public input and notification of a comment period through June 15, 2012 (Appendix C). The INARNG received no comments during the public comment period; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), INARNG notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation by letter dated April 16, 2012, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) by letter dated May 9, 2012 (Appendix C); and

WHEREAS the INARNG has determined that adaptive reuse or any other alternative to preserve Building 8 is not economically feasible; and

NOW, THEREFORE, the INARNG, the NGB, and the IN SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

#### STIPULATIONS

The INARNG will implement the following measures:

I. Mitigation of Adverse Effects Caused by the Demolition of Stout Field Building 8

A. The INARNG shall complete and submit to the IN SHPO all mitigation materials listed in (1) below within two years or prior to the demolition of Building 8 at Stout Field.

1. The INARNG shall perform photographic and architectural documentation on Building 8 in accordance with the Indiana DNR – Division of Historic Preservation and Archaeology's (IN SHPO) Minimum Architectural Documentation Standards, adopted July 27, 2011 (Appendix D).

- a) The documentation will include digital photography, a photo log, an architectural description, a statement of significance, architectural drawings, and a sketch plan.
    - (1) The digital photography will include between ten (10) and thirty (30) views of the structure. The views must include all exterior facades, the major entrance, significant interior spaces such as principal rooms and stairs, and interior and exterior architectural details.
    - (2) A digital camera with at least 5.0 megapixel quality and TIF setting capability is required.
    - (3) Two (2) sets of 5"x7" black and white prints made on high-quality photographic grade paper must be created from the digital photography. Each print must be labeled in pencil or archival photographic marker with the building name; address; city, county; location, direction of camera, and description of view; and date of photography.
    - (4) A set of architectural drawings will be created to illustrate Building 8. If no existing or original floor plans are located, the INARNG will contract the creation of architectural drawings of Building 8. The drawings should include a site plan, floor plans, and building elevations.
  - b) All documentation should be printed and presented in notebook form (either spiral bound or three ring binder), measuring 8.5" x 11" with cover, and two copies must be submitted to the IN SHPO. The IN SHPO will submit one copy to the Indiana State Archives.
  - c) Additionally, INARNG shall copy all images and documents that can be copied to electronic format to Archival Gold CD-R or DVD-R and submit two of these discs to the IN SHPO.
- B. The INARNG shall complete all mitigation listed in (a. and b.) below within (5) five years of the signed MOA.
- 1. The INARNG will develop an interpretive marker to commemorate Building 8. The INARNG will determine the specific location and design of the marker in further consultation with the IN SHPO and consulting parties.
  - 2. The INARNG will prepare appropriate NRHP nomination forms found at <http://www.cr.nps.gov/nr/publications/forms.htm> for Buildings 5 and 9 at Stout Field.

- a) The nominations prepared on the NRHP forms will include all applicable documentation requirements, including photography, sketch plan, topographic map, and written documentation. The INARNG will send the completed forms to the Indiana Division of Historic Preservation and Archaeology (IN SHPO) for technical and substantive review and comment.
- b) The IN SHPO will submit the completed nominations to the Indiana State Historic Preservation Review Board for approval. The IN SHPO will forward approved nominations to the National Park Service for formal listing in the NRHP.

## II. Administrative Stipulations

- A. Definition of signatories. For the purposes of this MOA the term "signatories to this MOA" means the NGB, INARNG and the IN SHPO, each of which has authority under 36 CFR 800.6(c)(8) to terminate the MOA if agreement cannot be reached regarding an amendment.
- B. Professional supervision. The INARNG shall ensure that all activities regarding research and reporting are carried out pursuant to this MOA are carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Architectural History* (36 CFR Part 61).
- C. Alterations to project documents. The INARNG shall not alter any plan, scope of services, or other document that has been reviewed and commented on pursuant to this MOA, except to finalize documents commented on in draft, without first affording the signatories to this MOA the opportunity to review the proposed change and determine whether it shall require that this MOA be amended. If one or more such party(ies) determines that an amendment is needed, the signatories to this MOA shall consult in accordance with 36 CFR 800.6(c) (7) to consider such an amendment. The signatories will have thirty days to consider the amendment. The INARNG will notify in writing everyone when the consultation with the signatories has been completed and the outcome of the consultation.
- D. Post Review Discovery. If any unanticipated discoveries of historic properties, sites, artifacts, objects, or human remains are encountered, the INARNG shall comply with 36 CFR 800.13(b), (c), and/or (d), and IC 14-21-1-27 and IC 14-21-1-29, by stopping work in the immediate area and informing the SHPO (and applicable tribes based upon the nature of the discovery) within two (2) business days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1, 312 IAC 21, 312 IAC 22, the current Guidebook for the Indiana Historic Sites and Structures Inventory-Archaeological Sites, and all other appropriate federal and state guidelines, statutes, rules, and regulations.
- E. Anti-Deficiency Act compliance. All requirements set forth in this MOA requiring expenditure of Army funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by the Army under the terms of this MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.
- F. Dispute Resolution

1. Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, INARNG shall consult with such party to resolve the objection. If INARNG determines that such objection cannot be resolved, INARNG will:
  - a. Forward all documentation relevant to the dispute, including the INARNG's proposed resolution, to the ACHP. The ACHP shall provide INARNG with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, INARNG shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. INARNG will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, INARNG may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, INARNG shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.
  - c. INARNG's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

#### G. Amendments

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### H. Termination

If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation G, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, INARNG must either (a) execute an Agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. INARNG shall notify the signatories as to the course of action it will pursue.

#### I. Duration

This Agreement will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, INARNG may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation G above.

J. Reporting

The INARNG shall provide the IN SHPO with a letter report on or before October 1 of each year. Each report will summarize previous year activities carried out under the terms of this MOA until the stipulations for this MOA have been completed.

K. Execution

Execution of this MOA by the INARNG, the NGB, and IN SHPO and implementation of its terms evidence that the INARNG and the NGB have taken into account the effects of this undertaking on historic properties, afforded the ACHP an opportunity to comment, and fulfills the INARNG's Section 106 responsibilities regarding this undertaking.

Until a signed copy of the MOA has been filed by the INARNG with the ACHP, the MOA is not valid. The NGB will also send a signed copy to the Department of the Army, Assistant Chief of Staff for Installation Management for their files.

MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL GUARD BUREAU,  
INDIANA ARMY NATIONAL GUARD,  
AND  
THE INDIANA STATE HISTORIC PRESERVATION OFFICE  
FOR THE DEMOLITION OF STOUT FIELD BUILDING 8  
2012

Signature Page

NATIONAL GUARD BUREAU

By: \_\_\_\_\_  
Michael C. Ahn  
Colonel, US Army  
Chief, Environmental  
Programs Division

Date: \_\_\_\_\_

INDIANA ARMY NATIONAL GUARD

By: \_\_\_\_\_  
R. Martin Umbarger  
Major General, Indiana Army National Guard  
The Adjutant General

Date: \_\_\_\_\_

INDIANA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_  
Dr. James A. Glass  
Deputy State Historic Preservation Officer

Date: \_\_\_\_\_

Memorandum of Agreement  
INARNG Demolition of Stout Field Building 8  
DRAFT-September 17, 2012

Appendix A – Area of Potential Effects (APE)

Appendix B – Project Description

Appendix C – Correspondence  
SHPO, ACHP, Consulting Parties Letters  
Tribal Consultation  
MFR for Public Involvement

Appendix D – Documentation Standards

Memorandum of Agreement  
INARNG Demolition of Stout Field Building 8  
DRAFT-September 17, 2012

8



## Appendix E.2: Sample Memorandum of Agreement — Archaeology

MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL GUARD BUREAU,  
CONNECTICUT ARMY NATIONAL GUARD,  
AND  
THE CT STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE  
CONSTRUCTION OF A REGIONAL TRAINING INSTITUTE PROJECT, CAMP RELL  
(2010)

**WHEREAS**, the National Guard Bureau (NGB), as a federal agency, is required to comply with the National Historic Preservation Act (16 U.S.C §470f) (NHPA), and the NGB provides federal funding and guidance to state Guard organizations including the Connecticut Army National Guard (CTARNG); and

**WHEREAS**, the CTARNG operates Camp Rell, an 82 acre, state owned training area located in Niantic, East Lyme, New London County, CT along the shore of the Niantic River; and

**WHEREAS**, the CTARNG proposes to construct a Regional Training Institute (RTI) consisting of one 83,000 square foot building with associated walkways and parking areas, (hereinafter, "the undertaking") using federal funds, at Camp Rell, where buildings 401-409, 501, and a parking area are currently located; and

**WHEREAS**, the CTARNG, in accordance with the NHPA, has determined that the undertaking's Area of Potential Effect (APE)(as defined in 36 CFR 800.16(d)), encompasses approximately 12 acres in the southern portion of Camp Rell (Attachment 1) and

**WHEREAS**, archaeological site CT 45-64, discovered during Phase II investigations in 2001 and located in the southwestern portion of Camp Rell, contains components of a late Middle Woodland occupation; and

**WHEREAS**, the CTARNG, in consultation with the Connecticut State Historic Preservation Office (CTSHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA, has determined that site CT 45-64, within the APE, is eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion D (Attachment 2); and

**WHEREAS**, the CTARNG and CTSHPO agree that site CT 45-64 has been extensively excavated meeting Phase III data recovery requirements as defined in the CTSHPO's *Environmental Review for Connecticut's Archaeological Resources* (Poirier 1987) and evidenced in the final report *Phase 3 Archaeological excavations of the Proposed Military Academy Site at Camp Rell/Rowland in the Niantic Section of East Lyme, CT* (Lavin and Banks 2006) and no further excavations within the aforementioned APE, except for the 6,000 square foot bitumen covered parking lot between buildings 409 and 501 and the

area proposed for utility installation immediately adjacent to the paved roadway to the south and east of the site, are required; and

**WHEREAS**, the CTARNG's original 2007 design for the proposed RTI placed the RTI building on top of the NRHP eligible archaeological site, CT 45-64, CTARNG redesigned the proposed RTI in 2009 and, per the updated design, portions of site CT 45-64 would be covered by a new parking lot; and

**WHEREAS**, the CTARNG, in consultation with the CTSHPD pursuant to 36 CFR Part 800 implementing Section 106 of the NHPA, has determined that buildings within the APE, 401-409 and 501, are not eligible for the NRHP per correspondence dated July 29, 1998 (Attachment 3) and that no further consultation per NHPA Section 106 for these facilities is required and the buildings will be demolished; and

**WHEREAS**, the CTARNG, in consultation with the CTSHPD and in accordance with the NHPA, has determined that the undertaking will have an adverse effect, as defined in 36 CFR 800, on archaeological site CT 45-64; and

**WHEREAS**, the removal of the parking lot and underlying materials located between buildings 501 and 409, as well as the area proposed for utility installation immediately adjacent to the paved roadway to the south and east of the site will be monitored by archaeologists to ensure that artifacts uncovered during removal activities are documented; and

**WHEREAS**, the CTARNG sent a letter to the East Lyme Historical Society on March 4, 2010, following up via e-mail on March 18, 2010 in order to determine whether there were any comments on the proposed mitigation measures (Attachment 4); and

**WHEREAS**, the CTSHPD is authorized to enter into this agreement in order to fulfill its role of advising and assisting Federal and State agencies in carrying out their Section 106 responsibilities under the following federal and state statutes: Section 101 and 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106, at 800.2(c)(1)(i) and 800.6(b), and the Connecticut Environmental Policy Act, Section 22a-1a-3(a)(4) of the Connecticut General Statutes; and,

**WHEREAS**, the CTARNG has consulted with two federally-recognized Indian Tribes, the Mashantucket Pequot Tribe and Mohegan Tribe (the Interested Tribes), that attach traditional religious or cultural importance to the affected properties and artifacts affected by this undertaking. CTARNG invited them to participate in consultation to develop this Memorandum of Agreement (MOA) (Attachment 5). CTARNG has requested their review and comment on the mitigation measures proposed within the agreement. The Interested Tribes

concur with the findings of the CTARNG and the CTSHPO and have accepted the opportunity to be concurring parties on this MOA; and

**WHEREAS**, by letter dated January 27, 2010, CTARNG notified the Advisory Council of Historic Preservation (ACHP) of this undertaking and the ACHP declined to participate in the consultation by letter dated February 5, 2010 (Attachment 6); and

**WHEREAS**, to the best of our knowledge and belief, no human remains, sacred objects or sacred sites as defined in Section 10-381 of the Connecticut General Statutes are expected to be encountered in the archaeological work proposed for sites within the APE; and

**NOW, THEREFORE**, the NGB, CTARNG and CTSHPO shall enter into this MOA to ensure that the following stipulations relating to future activities at site CT 45-64 will be implemented in a timely manner and with adequate resources in compliance with the NHPA.

## **STIPULATIONS**

### **I. Monitoring of Parking Lot Removal between buildings 409 and 501**

During the removal of the parking lot between buildings 409 and 501, an archaeologist meeting Professional Standards (found in Stipulation III below) shall be on site to determine whether any artifacts (as defined by section 10-381 of the Connecticut General Statutes) or prehistoric features are disturbed during the removal operations in the APE. If artifacts and/or features are discovered, removal activities shall be relocated to another area and the CTARNG Cultural Resources Manager (CRM) and project Contracting Officer's Representative (COR) shall be notified immediately. The on-site archaeologist shall explain the significance of the artifacts or features to the CTARNG CRM and the following procedures will be implemented:

- a. Artifacts shall be documented in place when possible or as soon as discovered if part of removal debris;
- b. Artifacts shall be collected after recording;
- c. Archaeological features shall be excavated and where appropriate, samples collected to provide information on the age and function of the individual Feature(s);
- d. Soil samples and other archaeological supporting materials shall be collected under the discretion of the archaeologist.
- e. If floral, faunal, or other organic specimens are collected from archaeological features and those samples are pertinent to the documentation and interpretation of the archaeological resource, the CTARNG or the archaeologist will ensure that such materials are

identified and analyzed, inclusive of radiometric (radiocarbon) and/or accelerator mass spectrometry (AMS) dating.

Archaeological excavation and removal activities will proceed concurrently wherever possible. In the event that this is not practical, all archaeological field work will be completed not more than two days after parking lot removal is complete.

## **II. Monitoring of Excavations for Utility Installation**

An archaeologist meeting the qualifications outlined in Stipulation III will monitor the excavation associated with utility installation in the area immediately adjacent to the roadway located to the south and east of the site. If significant visible concentrations of artifacts and/or individual or multiple features are discovered during the utility excavation activities, the CTARNG Cultural Resources Manager (CRM) and project Contracting Officer's Representative (COR) shall be notified immediately. The on-site archaeologist shall explain the significance of the artifacts or features to the CTARNG CRM and the following procedures will be implemented:

- a. Artifact clusters shall be sampled through expeditious archaeological excavations. Any excavations will be strictly focused on the collection of sufficient material to characterize any distinct visible concentrations of artifacts within the utility trench. The level of sampling will be determined by the CTARNG Cultural Resources Manager (CRM) and project Contracting Officer's Representative (COR) in consultation with the archaeologist;
- b. Prehistoric archaeological Features shall be partially excavated and where appropriate, samples collected to provide information on the age and function of the individual Feature(s). Only those portions of Features identified within the utility trench will be subject to sampling and excavation. Partial excavation shall include a maximum of fifty percent (50%) of the Feature.

## **III. Professional Supervision**

CTARNG shall ensure that all archaeological activities carried out pursuant to this Agreement are implemented by, or under the direct supervision of, a person or persons meeting the Secretary of Interior's Professional Qualification Standards for Archeology (48 FR 44739).

## **IV. Preparation of Educational Brochure**

The CTARNG will prepare a public education booklet that highlights the Native American, historic and military related archeological heritage of Camp Rell. The public oriented booklet shall be consistent in professional quality to the CTSHP's State Archeological Preserve booklets. A draft of the booklet will be submitted to CTSHP for review and comment prior to its finalization. The CTARNG shall provide 300 copies and a digital version to the SHPO for public distribution within three years of the date this MOA is finalized.

**V. Site Visits**

In coordination with CTARNG, representatives of the CTSHP and any Tribes may request to visit the site. Site visits must be scheduled in advance to address security access issues.

**VI. Recovery and Treatment of Human Remains and Associated Funerary Objects that may be found during parking lot removal near site CT 45-64**

The CTARNG, the CTSHP, and the Interested Tribes agree that the proper methods and treatment for handling human remains and funerary objects that may be found, and for recording related information, are set forth in the ACHP's *Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites*, published in the Federal Register on May 18, 1999. Although human remains are not likely to be identified within the project area, CTARNG acknowledges its obligations under Connecticut General Statute Section 10-388 concerning the discovery and treatment of human remains. Consistent with Section 10-388, CTARNG or the archaeologist will notify the Office of the State Archaeologist immediately if human remains are discovered during the archaeological monitoring or any subsequent phase of construction.

**VII. Curation of Artifacts found, if any, at site CT 45-64**

If artifacts are found during parking lot removal, these items (artifacts and associated records, including notes, photographs, negatives, processed data, and maps ) will be curated with the Dodd Center located at the University of Connecticut (Storrs), as per the terms agreed to in correspondence between CT ARNG and the Dodd Center dated February 22, 2010.

**VIII. Monitoring and Discovery Report**

CTARNG shall prepare a Monitoring and Discovery Report upon completion of field work and provide 2 (two) hard copies to CTSHP, 1 (one) copy each to the Interested Tribes, and 1 (one) copy to NGB for review and comment. The Monitoring and Discovery Report will document the procedures followed and any

discoveries that occurred during monitoring activities as described in Stipulation

## **ADMINISTRATIVE STIPULATIONS**

### **I. Definition of Signatories**

For the purposes of this MOA the term "signatories to this MOA" means the NGB, CTARNG, and the CT SHPO, each of which has authority under 36 CFR 800.6(c)(8) to terminate the MOA if agreement cannot be reached regarding an amendment.

### **II. Anti-Deficiency Act**

All requirements set forth in this MOA requiring expenditure of federal funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 USC Section 1341). No obligation undertaken by the CTARNG under the terms of this MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose. If compliance with the Anti-Deficiency Act alters or impairs the CTARNG's ability to implement the stipulations of this MOA, the CTARNG will consult according to the amendment and termination procedures found in this section.

### **III. Alterations to Project Documents.**

The CTARNG shall not alter any plan, scope of services, or other document that has been reviewed and commented on pursuant to this MOA, except to finalize documents commented on in draft, without first affording the signatories to this MOA the opportunity to review the proposed change and determine whether it shall require that this MOA be amended. If one or more such party (ies) determines that an amendment is needed, the signatories to this MOA shall consult in accordance with 36 CFR 800.6(c) (7) to consider such an amendment. The signatories will have thirty days to consider the amendment. The CTARNG will notify in writing everyone when the consultation with the signatories has been completed and the outcome of the consultation.

### **IV. Termination**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation E, above. If parties are unable to reach an acceptable amendment, the CTARNG will follow the proceeding procedures for termination.



1. If the CTARNG determines that it cannot implement the terms of this MOA, or if the NGB or CTSHPO determines that the MOA is not being properly implemented, the CTARNG, the NGB or the CT SHPO may propose to the other signatories to this MOA that it be terminated.
2. The party proposing to terminate this MOA shall so notify the other two signatories to this MOA, explaining the reasons for termination and affording them thirty (30) days to consult and seek alternatives to termination.
3. Should such consultation fail the CTARNG, NGB or the CT SHPO may terminate the MOA. Should the MOA be terminated, the CTARNG shall either:
  - a. Consult in accordance with 36 CFR 800.6 to develop a new MOA;  
or
  - b. Request the comments of the ACHP pursuant to 36 CFR 800.7.
4. Execution of this MOA is intended to evidence the CTARNG's compliance with §106 of the NHPA. This fulfills Section 106 for this action.
5. If the terms of this agreement have not been implemented within three years after the date of the signatures below, this MOA shall be considered null and void. In such event the CTARNG shall so notify the signatories to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

#### **V. Objection to MOA by Member of the Public**

At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the undertaking on historic properties be raised by a member of the public, the CTARNG shall respond to the individual that made the objection in a timely manner.

#### **VI. Dispute Resolution**

1. Should the CTSHPO or concurring party object in writing to any actions carried out or proposed pursuant to this MOA, the CTARNG will consult with such party to resolve the objection. If the CTARNG, in consultation with the NGB, determines that the objection cannot be resolved within 90 days, the CTARNG will request further comments from the ACHP pursuant to 36 CFR § 800.7. If after initiating such consultation the CTARNG and the NGB determines that the objection cannot be resolved through consultation, the CTARNG shall forward all

documentation relevant to the objection to the ACHP, including the CTARNG's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a. Advise the CTARNG and the NGB that the ACHP concurs in the CTARNG's proposed response to the objection, whereupon the CTARNG will respond to the objection accordingly;
  - b. Provide the CTARNG and the NGB with recommendations, which the CTARNG shall take into account in reaching a final decision regarding its response to the objection; or
  - c. Notify the CTARNG and the NGB that the objection will be referred for advisory comments of the ACHP in accordance with 36 CFR 800.7(b).
2. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the CTARNG may assume the ACHP's concurrence in its proposed response to the objection.
  3. The CTARNG shall take into account any of the advisory comments of the ACHP provided in accordance with this stipulation with reference only to the subject of the objection; the CTARNG's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
  4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the undertaking on historic properties be raised by a member of the public, the CTARNG shall take the objection into account.

#### **VII. Amendments**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### **VIII. Non-availability of Funds**

This agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined this agreement.



Execution of this MOA by the CTARNG and NGB and CTSHPO and implementation of its terms evidence that the CT ARNG and NGB have taken into account the effects of this undertaking on historic properties, afforded the Council a reasonable opportunity to comment, and fulfills the CTARNG and NGB's Section 106 responsibilities for this undertaking.

Until a signed copy of the MOA has been filed by the CTARNG with the ACHP, the MOA is not valid. The NGB will also send a signed copy to the Department of the Army, Assistant Chief of Staff for Installation Management for their files.

MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL GUARD BUREAU,  
CONNECTICUT ARMY NATIONAL GUARD,  
AND  
THE CT STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE  
CONSTRUCTION OF A REGIONAL TRAINING INSTITUTE PROJECT, CAMP RELL  
(2010)

**National Guard Bureau:**

Michael J. Bennett Colonel, US Army Chief, Environmental Programs Division	Date
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**Connecticut Army National Guard:**

Thaddeus J. Martin Major General The Adjutant General	Date
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**Connecticut State Historic Preservation Officer:**

David Bahlman Connecticut Deputy State Historic Preservation Officer	Date
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**Concurring Parties:**

**Mashantucket Pequot Tribe:**

\_\_\_\_\_  
Kathleen Knowles  
Tribal Historic Preservation Officer

\_\_\_\_\_  
Date

**Mohegan Tribe:**

\_\_\_\_\_  
Elaine Thomas  
Archaeology Program Coordinator

\_\_\_\_\_  
Date



## **Appendix F: Environmental Document Review SOPs**



## Appendix F: Environmental Document Review SOPs



**NATIONAL GUARD BUREAU**  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

MAR 3 2011

ARNG-ILE

### MEMORANDUM FOR ENVIRONMENTAL PROGRAM MANAGERS

SUBJECT: Environmental Document Review Policy

1. **PURPOSE.** This memorandum establishes ARNG-ILE-T (ILE-T) policy to review State and Territory environmental documents within a standard period with exception. This policy is effective on the signature date.
2. **APPLICABILITY.** This policy guidance is applicable for:
  - a. Army Compatible Use Buffer (ACUB) Documents
  - b. Environmental Assessments (EAs)
  - c. National Historic Preservations Act Agreement Documents (NHPA MOAs/PAs)
  - d. U.S. Fish and Wildlife Service Biological Assessments (BAs)
  - e. U.S. Fish and Wildlife Service Biological Opinions (BOs)
  - f. Environmental Condition of Property (ECOP) Documents
  - g. NEPA Records of Consideration (RECs)
  - h. Integrated Cultural and Natural Resource Management Plans (ICRMPs/INRMPs)
  - i. Federal Memoranda of Understanding (MOUs)
  - j. Wildfire Management and Pest Management Plans
  - k. New and Updated Noise Management Plans
3. **GENERAL.** This policy updates the 31 Oct 08 Environmental Document Review Policy Memo, which formalizes the review process and establishes a time frame in which State Environmental Program Managers (EPMs) can expect ARNG-ILE-T to review and comment on the various environmental documents. Enclosed are flow charts depicting the review processes for the various types of documents. All days are business days.
4. **ILE-T RESPONSIBILITIES.**
  - a. The ILE-T Program Manager (PM) receives the complete packet of the environmental document to be reviewed, and logs the date it was received into the appropriate document tracker.
  - b. The PM notifies the state Point of Contact (POC) within five days that the packet was received and if any additional items are missing.

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- c. The PM works with the State POC to prepare the document for full staff review.
- d. Once the document is ready for full staff review, the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.
- e. The standard initial review period for most documents (once they are staffed for internal review) is: 15 business days for RECs, 30 business days for documents that do not require legal review, and 45 business days for documents with legal reviews. Final review periods will vary by document type. Additional time will be required for documents that require staffing with the Army. See the review process outlines and process maps for the specific timelines for the various documents.
- f. The PM prepares the staffing correspondence and errata sheet (if applicable), and initiates internal staff review.
- g. The PM monitors progress to ensure the internal staff review is completed on schedule. If the document review cannot occur within the scheduled period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.
- h. After full staff review is completed, the PM will submit the document packet to NGB-JA (JA) for initial review (if applicable).
- i. After initial internal and/or legal review is completed, the PM will return the document packet to the State to address any comments. The packet will include, at a minimum: the document (with tracked comments, if applicable) and associated materials (appendices, etc.), the errata sheet, if applicable, and a formal memorandum signed by the Chief, Training and Infrastructure Branch; other materials may be included as necessary.
- j. When the revised document is returned to ARNG, the PM will staff the document to ILE Subject Matter Experts (SMEs), JA, and HQ-OACSIM/DASA (DA) (as necessary) for final review.
- k. The PM will submit the final document to the Division Chief, ILE for final signature, as appropriate.
- l. The exception to the standard review period is when the ILE Staff (to include JA) diminishes due to deployments or an unfilled position. In this event, an exception applies, and the review period is doubled (i.e. 90 business days instead of 45).

5. STATE RESPONSIBILITIES.



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- a. Submit complete packets for review. (Checklists are available for ICRMPs/INRMPs, EAs, NHPA Agreement Documents, and BAs to assist states in ensuring they have a complete packet.)
- b. Respond within ten working days of the ILE-T PM notifying the State of missing components of a document or an incomplete packet.
- c. Submit one copy of entire text in a searchable .pdf format, along with completed signature page to the ILE-T PM upon completion of the document review.
- d. In the rare occasion the State requests the document review be expedited in less time than the standard review period, the State POC will provide written justification to the Training and Infrastructure Branch Chief for consideration.
- e. Should a document be delayed at the state ARNG for an extended period of time or considerable changes are made to the action and the document, it may require the staffing process at ILE-T to start from the beginning.

6. REVIEW PROCESS FOR ARMY COMPATIBLE USE BUFFER (ACUB) (ENCL 1)

- a. The ILE-T PM receives the complete ACUB packet (including the REC) and logs the date it was received into the appropriate document tracker.
- b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. Once the complete packet is received, the PM works with the State to prepare the document for full staff review.
- c. Once the PM has accepted the complete packet, the 30-day Initial Internal Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.
- d. The PM prepares the errata sheet and initiates full staff review, which includes at a minimum: ARNG-TRS (Training Division) and ARNG-ILI (Installations Division); other ARNG Divisions are added as necessary.
- e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.
- f. After initial review is completed, the ILE-T PM will return the document packet to the State to address any comments.
- g. After the State ARNG has addressed all comments, the document, detailed errata, and cover letter signed by the Installation Commander will be resubmitted to ILE-T.

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h. The ILE-T PM will initiate final internal staff (TRS and ILI) review. The Divisions will complete final review within 15 business days. The ACUB proposal must receive support from TRS in order for ILE-T to forward the packet to HQ-OACSIM for approval.

i. When TRS provides concurrence, the ILE-T PM will submit the final ACUB proposal to the Division Chief, ILE for signature and transmittal to HQ-OACSIM.

j. The PM will staff the document to HQ-OACSIM for review and approval. The document will undergo four levels of review at HQ-OACSIM, which typically takes six months to one year to complete. (The State POC can begin requesting funds via STEP and DoDs Readiness and Environmental Protection Initiative (REPI) Program when the proposal reaches the third level of HQ-OACSIM review.)

k. Upon concurrence (by signature) by HQ-OACSIM, the ILE-T PM will provide the OACSIM approval memo to the State POC and provide the State POC a copy of the Cooperative Agreement template.

7. REVIEW PROCESS FOR ENVIRONMENTAL ASSESSMENTS (EA) (ENCL 2)

a. The ILE-T PM receives the complete EA packet, and logs the date it was received into the appropriate document tracker.

b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. (Checklists are available for EAs to assist states in ensuring they have a complete packet.) Once the complete packet is received, the PM works with the State to prepare the document for full staff review.

c. Once the PM has accepted the complete packet, the 45-day Initial Internal Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.

d. The PM prepares the errata sheet and initiates internal staff review, which includes at a minimum: ILE-T SMEs, TRS, ILI, and NGB-PAI (PAI)(Public Affairs); other ARNG Divisions are added as necessary.

e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

f. After internal staff review is completed, the ILE-T PM will submit the document packet, including the errata sheet containing any comments made by ARNG staff reviewers, to JA for initial review. JA initial review will be completed within 15 business days.

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g. After initial legal review is completed, the ILE-T PM will return the document to the State via memorandum to address comments. The State ARNG will complete the 30-day public review for NEPA documents at this time.<sup>1</sup>

h. Once the State ARNG has addressed all comments (and the 30-day public review process for NEPA documents has been completed), the complete EA Packet (final EA, draft FNSI, and detailed errata) will be resubmitted to ILE-T. If components are missing, the packet will be returned to the State within five days. Once the PM has accepted a complete packet, the 20-day Final Review cycle begins and the PM notifies the State POC of the date the State can expect the approved packet to be returned.

i. The ILE-T PM will afford the ILE SMEs (e.g. Cultural/Natural Resources PMs) the opportunity to review the document to ensure comments have been adequately addressed. Concurrence from ILE SMEs will be sent in writing (through email) to the ILE-T PM within five days.

j. The ILE-T PM will submit the document to JA for final legal sufficiency. JA will complete final review within 15 days, and provide a letter to the PM stating the document is legally sufficient.

k. When legal sufficiency has been obtained, the ILE-T PM will submit the final EA and draft FNSI to the Division Chief, ILE for publication approval. The PM will return the approved draft FNSI in pdf form, the final EA if edits were made, and a memorandum stating that the dFNSI is ready for public review to the State.

l. The State ARNG will complete the final 30-day NEPA public review. If no public comments are received, then the State ARNG will submit the final EA and final FNSI to the ILE-T PM to staff for Division Chief, ILE signature on the FNSI.

m. If public comments are received, the State ARNG will address them appropriately and resubmit the updated FNSI to the ILE-T PM. The PM will staff the EA and FNSI to JA for final approval (five days).

n. When final legal approval has been obtained, the ILE-T PM will submit the final EA and final FNSI to the Division Chief, ILE for signature.

8. REVIEW PROCESS FOR NHPA AGREEMENT DOCUMENTS (MOA/PA) (ENCL 3)

a. The ILE-T PM receives the complete agreement document packet, and logs the date it was received into the appropriate document tracker.

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<sup>1</sup> Currently, EAs undergo two public reviews. The ARNG Handbook (available June 2011) will revise this process to eliminate the public review of the draft EA. Public review will only occur at the final stage.

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b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. (A checklist is available to assist states in ensuring they have a complete packet.) Once the complete packet is received, the PM works with the State to prepare the document for full staff review.

c. Once the PM has accepted the complete packet, the 45-day Initial Internal Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.

d. The PM prepares the errata sheet and initiates internal staff review, which includes at a minimum: TRS, ILI, and PAI; other ARNG Divisions are added as necessary.

e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

f. After internal staff review is completed, the ILE-T PM will submit the document packet, including the errata sheet containing any comments made by ARNG staff reviewers, to JA for initial review. JA initial review will be completed within 15 business days.

g. After initial legal review is completed, the ILE-T PM will return the document packet to the State ARNG to address any comments.

h. After the State ARNG has addressed comments, the document and detailed errata will be resubmitted to ILE-T with written approval of revision by state regulators: State Historic Preservation Office (SHPO) and State JAG office. If any components are missing, the packet will be returned to the State within five days. Once the PM has accepted a complete packet, the Final Review cycle begins and the PM notifies the State POC of the date the State can expect the approved packet to be returned.

i. The ILE-T PM, as an SME, will have five days to review the complete, final document to ensure comments have been adequately addressed.

j. The ILE-T PM will submit the document to JA for final legal sufficiency. JA will complete final review within 15 days, and provide a letter to the PM stating the document is legally sufficient or will work with the State POC to address remaining JA comments.

k. The ILE-T PM will staff the document to HQ-OACSIM for review. HQ-OACSIM will respond with comments within 30 days.

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l. When HQ-OACSIM review has been completed and their comments addressed by the State ARNG, the ILE-T PM will submit the document to the Division Chief, ILE for final signature. The PM will mail the signed copies back to the State POC.

m. The State ARNG will obtain the other necessary signatures, and provide a fully executed document back to ILE-T.

#### 9. REVIEW PROCESS FOR USFWS BIOLOGICAL ASSESSMENTS (BA) (ENCL 3)

a. The ILE-T PM receives the complete packet, and logs the date it was received into the appropriate document tracker. The ILE-T PM will notify HQ-OACSIM (by email) that ARNG has received a BA, and offer the opportunity for HQ-OACSIM to request additional information.

b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. (Checklists are available for BAs to assist states in ensuring they have a complete packet.) Once the complete packet is received, the PM works with the State to prepare the document for full staff review.

c. Once the PM has accepted the complete packet, the 45-day Initial Internal Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.

d. The PM prepares the errata sheet and initiates internal staff review, which includes at a minimum ILE-T SMEs; other ARNG Divisions are added as necessary.

e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

f. After internal staff review is completed, the ILE-T PM will submit the document packet, including the errata sheet containing any comments made by ARNG staff reviewers, to JA for initial review. JA initial review will be completed within 15 business days.

g. After initial legal review is completed, the ARNG-ILE-T PM will return the document packet to the State ARNG to address any comments.

h. After the State ARNG has addressed any comments made, the document and detailed errata will be resubmitted to ILE-T. If components are missing, the packet will be returned to the State within five days. Once the PM has accepted a complete packet, the Final Review cycle begins and the PM notifies the State POC of the date the State can expect the approved packet to be returned.

ARNG-ILE

SUBJECT: Environmental Document Review Policy

i. The ILE-T PM, as an SME, will have five days to review the final, complete document to ensure comments have been adequately addressed.

j. The ILE-T PM will submit the document to JA for final legal sufficiency. JA will complete final review within 15 days, and provide a letter to the PM stating the document is legally sufficient.

k. If HQ-OACSIM has requested to review the document, comments will be sent to the ILE-T PM within 30 days.

l. When all reviews have been completed, and all comments addressed, the ILE-T PM will submit the document to the Chief, Training and Infrastructure Branch, for final signature approving the State to enter into formal consultation and designating the State ARNG the non-Federal representative. A separate memorandum will be submitted directly to the USFWS stating that the state ARNG has been designated as the non-Federal representative on the project.

m. The State ARNG will request a draft copy of the Biological Opinion (BO) from USFWS, to be furnished to the ILE-T PM. (See #10 for the review process for BOs.)

10. REVIEW PROCESS FOR USFWS BIOLOGICAL OPINIONS (BO) (ENCL 3a)

a. The ILE-T PM receives the draft BO, and logs the date it was received into the appropriate document tracker.

b. The ILE-T PM notifies the State POC within five days that the packet was received. Once the PM has the document, the ten-day<sup>2</sup> Initial Review cycle begins and the PM notifies the State POC of the date the State can expect the reviewed document to be returned.

c. The ILE-T PM will submit the BO to JA for review, and will afford HQ-OACSIM the opportunity to comment. If accepted, HQ-OACSIM will respond with comments within 30 days.

d. Concurrently, the ILE-T PM will review the BO to ensure it corresponds to the Biological Assessment. Both ILE-T and JA reviews will be completed within ten business days. (If necessary, the ILE-T PM can submit a request to the USFWS requesting additional review time.)

e. When all reviews have been completed, the ILE-T PM will return the document, with comments, to USFWS. If necessary, a follow-up meeting with USFWS will occur to discuss any concerns.

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<sup>2</sup> Per USFWS regulations (50 CFR 402.14 (g)(5)), the Federal agency has 10 days to review and comment on Biological Opinions.



ARNG-ILE  
SUBJECT: Environmental Document Review Policy

**11. REVIEW PROCESS FOR ENVIRONMENTAL CONDITION OF PROPERTY  
(ECOP) (ENCL 4)**

- a. The ILE-T PM receives the complete ECOP packet, and logs the date it was received into the appropriate document tracker.
- b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. Once the PM has accepted a complete packet, the 30-day Initial Review cycle begins and the PM notifies the State POC of the date the State can expect the reviewed packet to be returned.
- c. The PM completes the internal document review within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.
- d. After internal review is completed, the ILE-T PM will return the document packet to the State ARNG to address any comments.
- e. Once the State ARNG has addressed any comments made, the document will be resubmitted to ILE-T.
- f. The ILE-T PM will conduct a final review within five days, and prepare the memo to be signed by the Chief, Training and Infrastructure Branch, approving the final ECOP document.

**12. REVIEW PROCESS FOR RECORDS OF ENVIRONMENTAL CONSIDERATION  
(RECS) (ENCL 5)**

- a. The ILE-T PM receives the complete REC packet, and logs the date it was received into the appropriate document tracker.
- b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. Once the PM has accepted a complete packet, the 15-day Initial Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.
- c. The PM initiates SME review, which includes, at a minimum, Cultural and Natural Resources PMs; other ILE SMEs are added as necessary.
- d. The ILE-T PM monitors progress to ensure the SME review is completed within 15 days. If the document review cannot occur within the 15-day period, the PM will notify the State, and negotiate a new completion date with the State POC.

ARNG-ILE

SUBJECT: Environmental Document Review Policy

e. After SME review is completed, the ILE-T PM will submit any comments made by ILE-T SME reviewers to the State via email to address.

f. After the State has addressed any comments made, the document will be resubmitted to ILE-T. The ILE-T PM will afford the ILE-T SMEs the chance to review the document to ensure comments have been adequately addressed. Concurrence from ILE SMEs will be sent in writing (through email) to the ILE-T PM within five days.

g. The ILE-T PM will prepare the concurrence memo to be signed by the Chief, Training and Infrastructure Branch.

h. If the REC has an associated ECOP, the ECOP review process (#11) applies.

13. REVIEW PROCESS FOR INTEGRATED CULTURAL/NATURAL RESOURCE MANAGEMENT PLANS (ICRMPS/INRMPS) (ENCL 6)

a. The ILE-T PM receives the complete ICRMP/INRMP packet, and logs the date it was received into the appropriate document tracker.

b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. (Checklists are available to assist states in ensuring they have a complete packet.) Once the complete packet is received, the PM works with the State to prepare the document for full staff review.

c. Once the PM has accepted the complete packet, the 30-day Initial Internal Review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.

d. The PM prepares the errata sheet and initiates internal staff review, which includes at a minimum: ILE-T SMEs, TRS, ILI, and PAI; other ARNG Divisions are added as necessary.

e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

f. After internal staff review is completed, the ILE-T PM will return the document and completed errata to the State ARNG to address any comments.

g. After the State ARNG has addressed any comments made, the document and detailed errata will be resubmitted to ILE-T. If components are missing, the packet will be returned to the State within five days. Once the PM has accepted a complete packet, the ten-day Final Review cycle begins and the PM notifies the State POC of the date the State can expect the approved packet to be returned.



ARNG-ILE

SUBJECT: Environmental Document Review Policy

h. The ILE-T PM, as an SME, will have ten days to review the final, complete document to ensure comments have been adequately addressed.

i. When final internal review has been completed, the ILE-T PM will submit the document to the Division Chief, ILE for final signature.

j. The State ARNG will obtain the other necessary signatures, and provide a fully executed document back to ILE-T.

14. REVIEW PROCESS FOR FEDERAL MEMORANDA OF UNDERSTANDING (MOUS) (ENCL 7)

a. The ILE-T PM receives the complete draft MOU packet, and logs the date it was received into the appropriate document tracker.

b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. Once the PM has accepted a complete packet, the 45-day Initial Review cycle begins and the PM notifies the State POC of the date the State can expect the reviewed packet to be returned.

c. The PM initiates internal staff review, if necessary, which may include ILE-T SMEs (Natural/Cultural Resources/NEPA PMs). The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

d. After internal staff review is completed, the ILE-T PM will submit the document, containing any comments made by ARNG staff reviewers, to JA for initial review. JA initial review will be completed within 15 business days. Comments from ILE-T and JA are made within the document itself through track changes.

e. After initial legal review is completed, the ILE-T PM will return the document packet to the State ARNG to address any comments.

f. After the State ARNG has addressed any comments made, the document will be resubmitted to ILE-T. If components are missing, the packet will be returned to the State within five days. Once the PM has accepted a complete packet, the Final Review cycle begins and the PM notifies the State POC of the date the State can expect the approved packet to be returned.

g. If applicable, the ILE-T PM will afford the ILE SMEs (e.g. Natural/Cultural Resources PMs) five days to review the document to ensure comments have been adequately addressed. Concurrence from ILE-T subject matter experts will be sent in writing (through email) to the ILE-T PM within five days.

ARNG-ILE

SUBJECT: Environmental Document Review Policy

h. The ILE-T PM will submit the document to JA for final legal sufficiency. JA will complete final review within 15 days, and provide a letter to the PM stating the document is legally sufficient.

i. The ILE-T PM will submit the legally sufficient document to the Division Chief, ILE for final signature.

j. The State ARNG will obtain the other necessary signatures, and provide a fully executed document back to ILE-T.

15. REVIEW PROCESS FOR WILDFIRE MANAGEMENT AND PEST MANAGEMENT PLANS (ENCL 8)

a. The ILE-T PM receives the complete packet of the environmental document to be reviewed, and logs the date it was received into the appropriate document tracker.

b. The ILE-T PM notifies the State POC within five days that the packet was received and if any items are missing. Once the PM has accepted a complete packet, the 30-day review cycle begins and the PM notifies the State POC of the date the State can expect the fully staffed packet to be returned.

c. The PM initiates internal staff review, which may include ILE-T SMEs, as necessary. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify the State, post the explanation in the Tracker system, and negotiate a new completion date with the State POC.

d. After internal review is completed, the ILE-T PM will return the document and errata to the State ARNG to address any comments.

e. After the State ARNG has addressed any comments made, the document and detailed errata will be resubmitted to ILE-T.

f. For Pest Management Plans: the ILE-T PM will sign the document.

g. For Wildfire Management Plans: the ILE-T PM will submit the document to ILI for final approval.

16. REVIEW PROCESS FOR NEW AND UPDATED NOISE MANAGEMENT PLANS (ENCL 9)

a. The ILE-T PM receives the complete packet of the environmental document to be reviewed, and logs the date it was received into the appropriate document tracker.

ARNG-ILE

SUBJECT: Environmental Document Review Policy

b. The ILE-T PM notifies the US Army Public Health Command (USAPHC) within five days that the packet was received and if any items are missing. Once the complete packet is received, the PM works with the State to prepare the document for full staff review.

c. Once the PM has accepted the complete packet, the 30-day Initial Internal Review cycle begins and the PM notifies the State POC/USAPHC of the date the State can expect the fully staffed packet to be returned.

d. The PM prepares the errata sheet and initiates internal staff review, which includes at a minimum: TRS, ILI, and PAI; other ARNG Divisions (ILE-T SMEs) are added as necessary.

e. The ILE-T PM monitors progress to ensure the internal staff review is completed within 30 days. If the document review cannot occur within the 30-day period, the PM will notify State/USAPHC, post the explanation in the Tracker system, and negotiate a new completion date.

f. After internal review is completed, the ILE-T PM will submit any comments made by ARNG staff reviewers, via errata, to the State/USAPHC to address.

g. After the State/USAPHC has addressed any comments made, the document will be resubmitted to ILE-T. If components are missing, the packet will be returned to the State within five days.

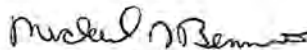
h. The ILE-T PM, as an SME, will have five days to review the final complete document to ensure comments have been adequately addressed.

i. The ILE-T PM will submit the document to the Chief, Training and Infrastructure Branch for final approval.

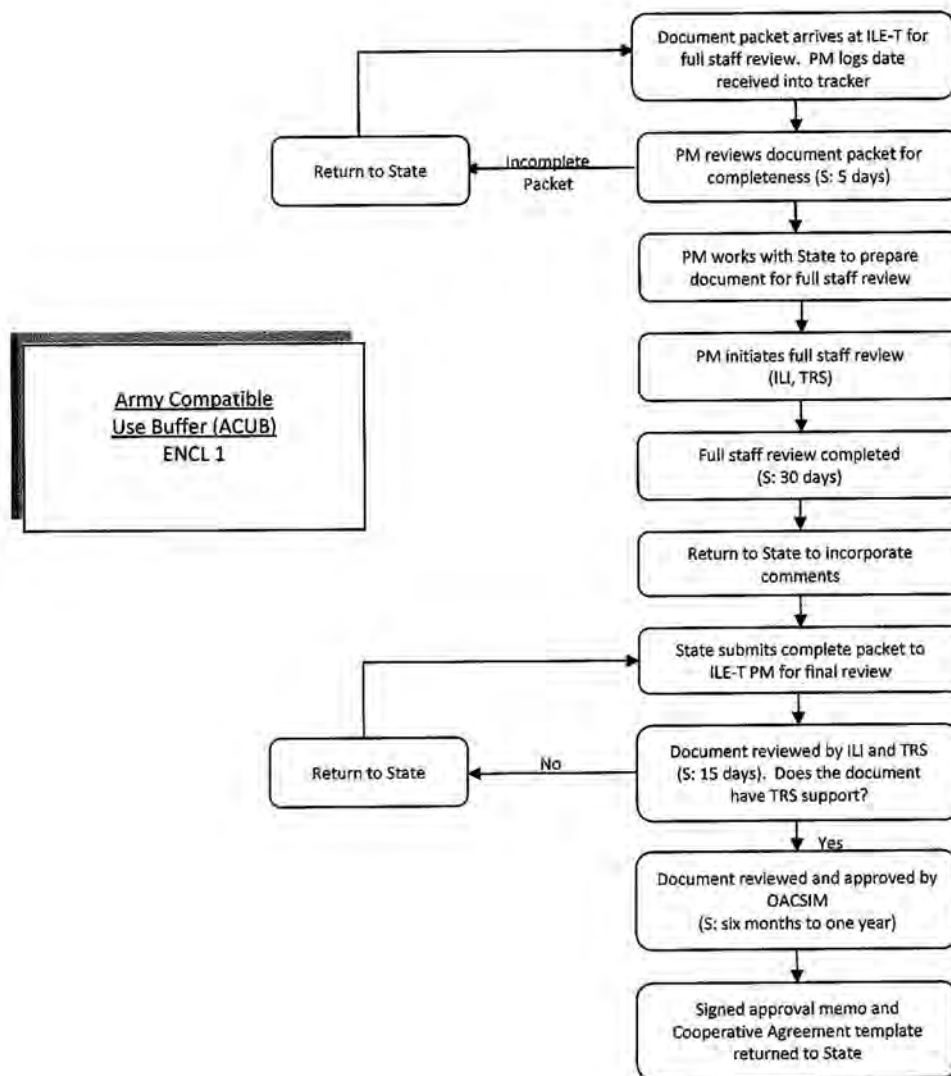
j. The State ARNG will distribute the final plan to the Facilities Management Office Master Planner and public agencies, as appropriate.

17. The point of contact for this policy is Ms. Beth Erickson, Deputy Division Chief, Environmental Programs Division at (703) 607-7969 or beth.a.erickson@us.army.mil.

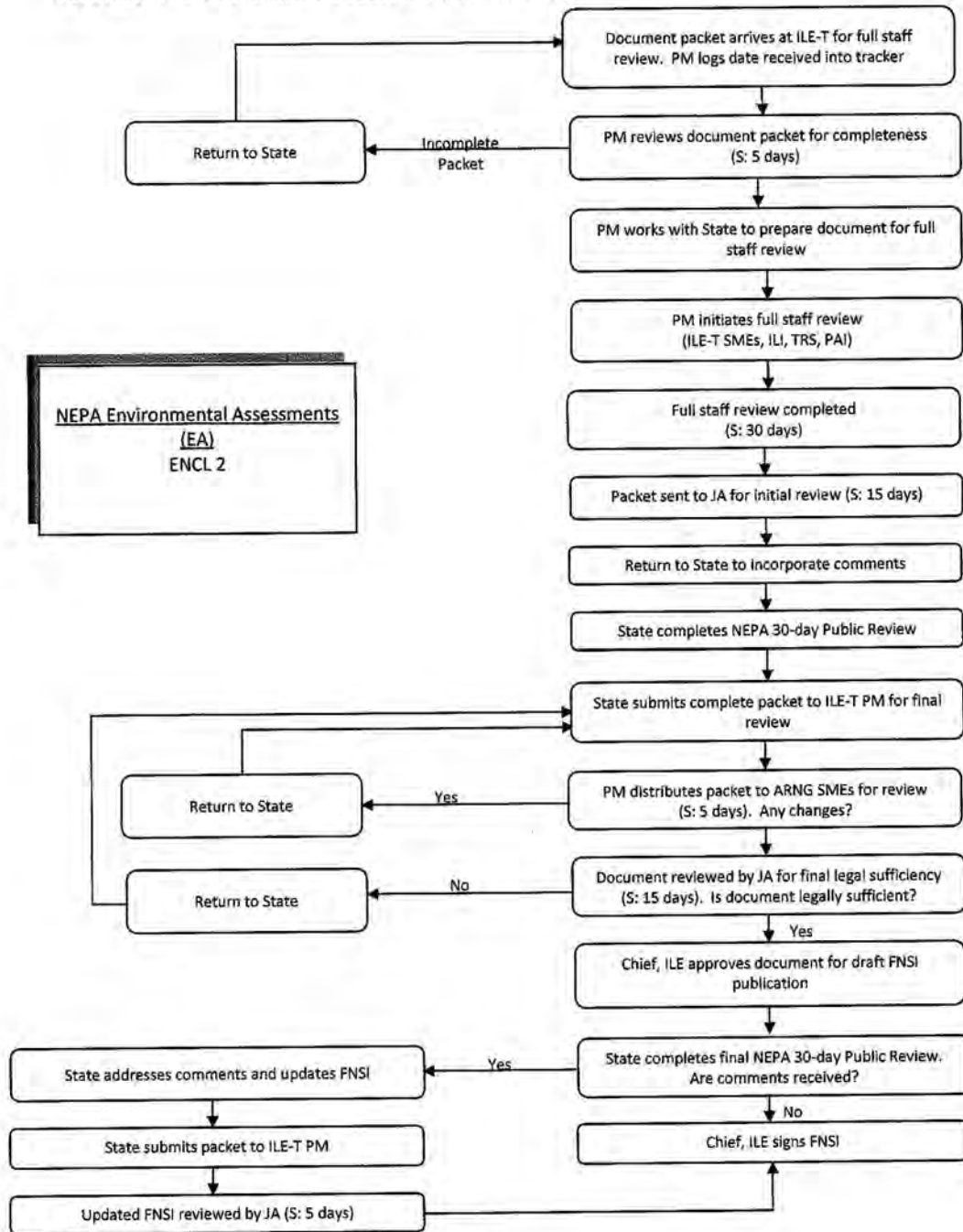
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MICHAEL J. BENNETT  
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Chief, Environmental  
Programs Division

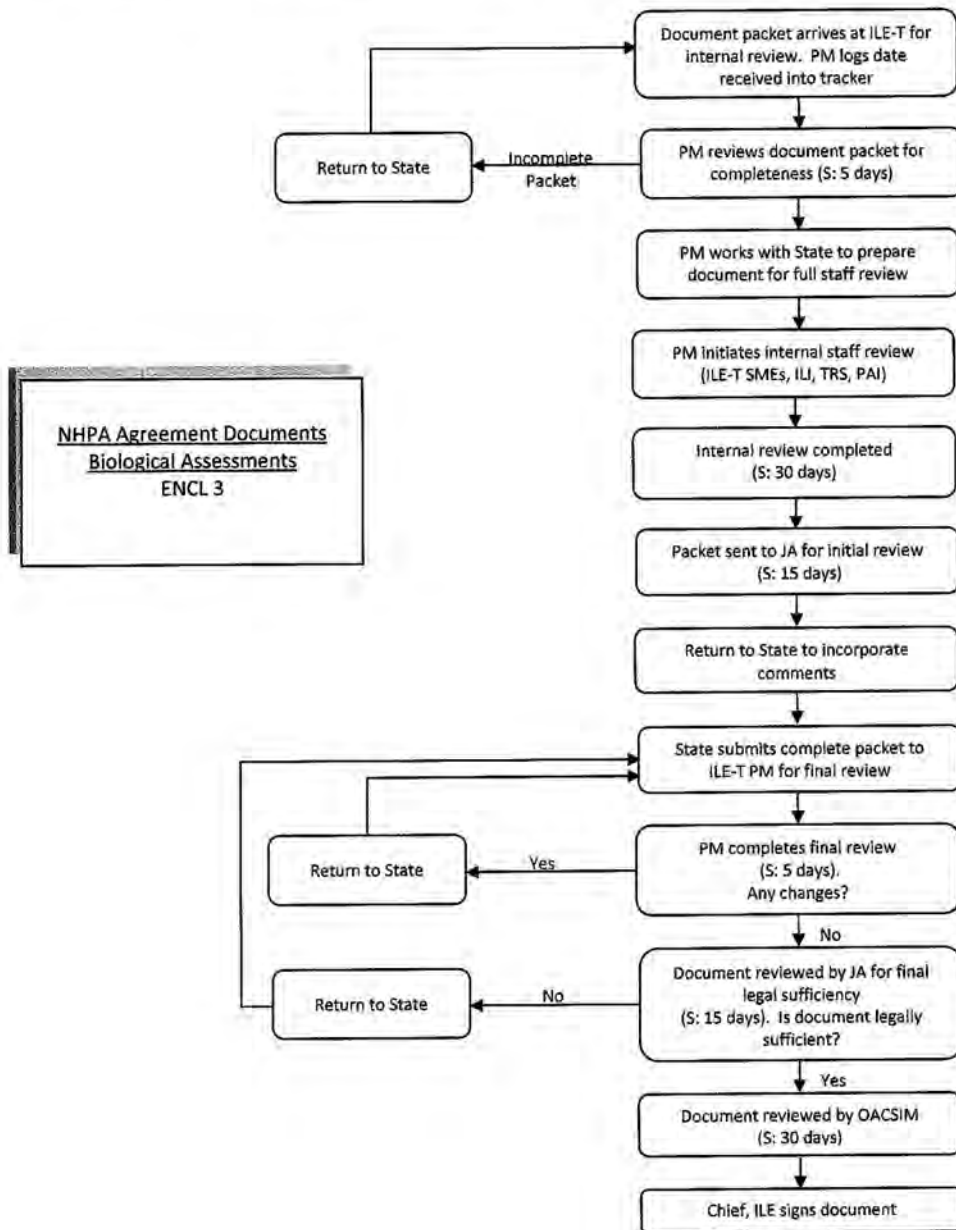
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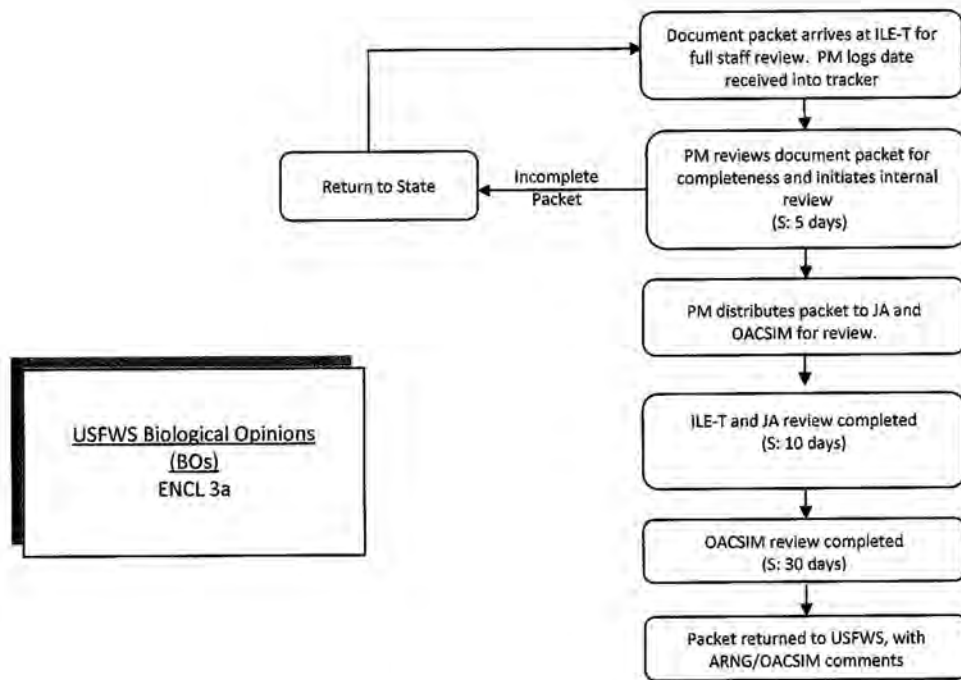
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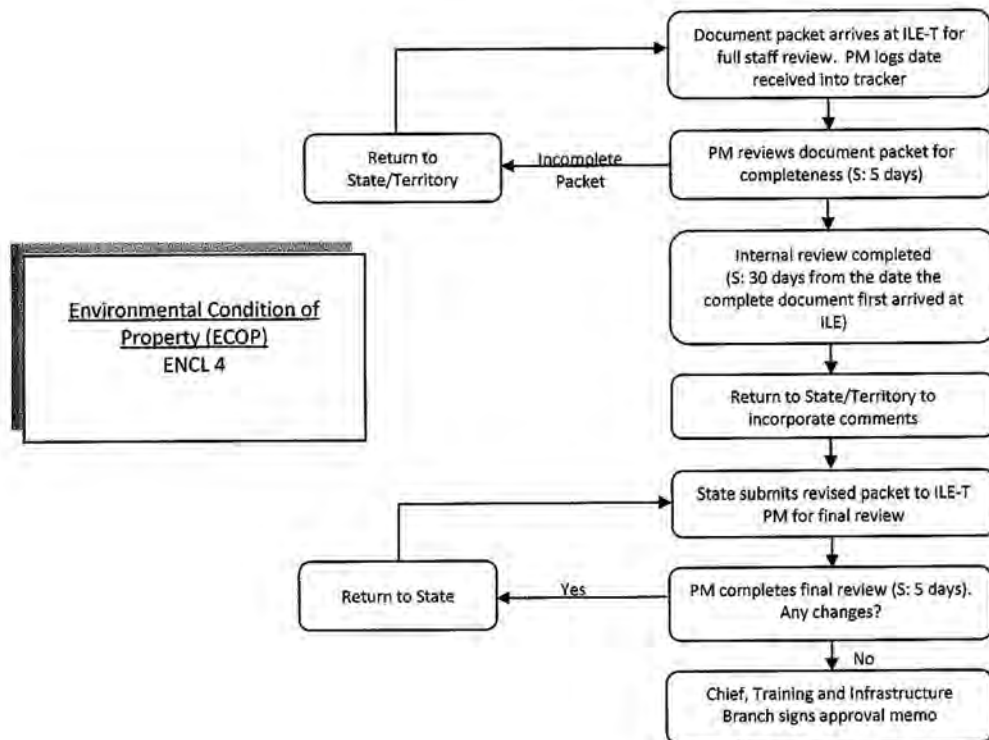
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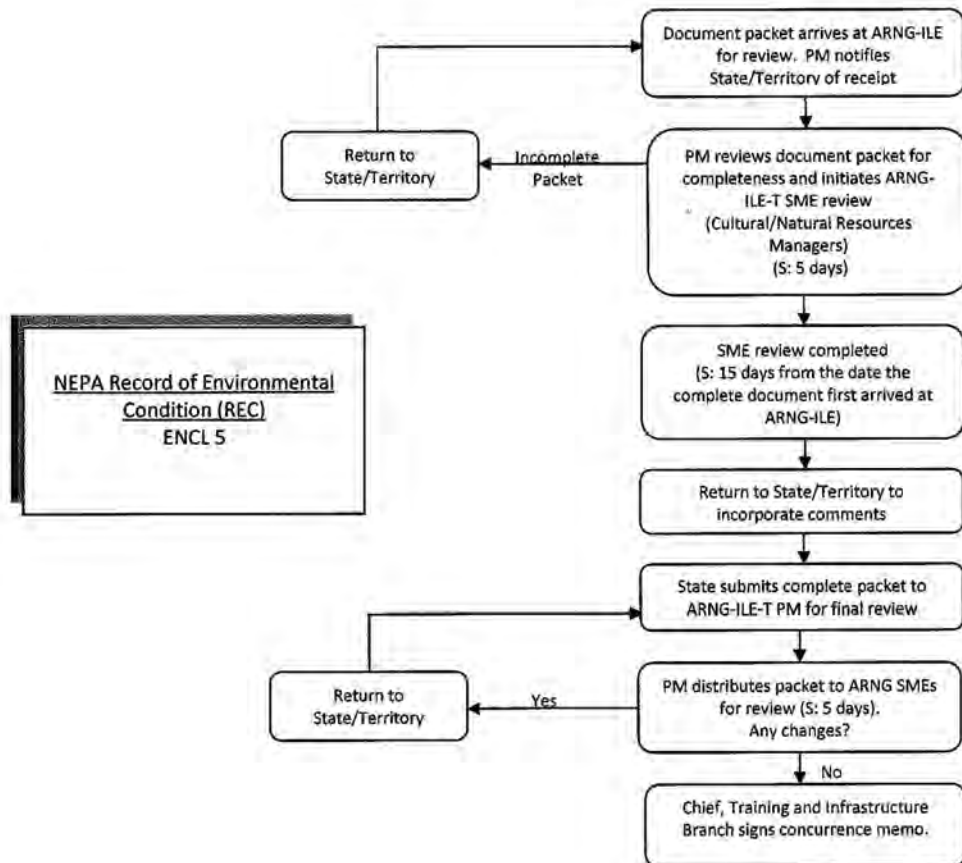


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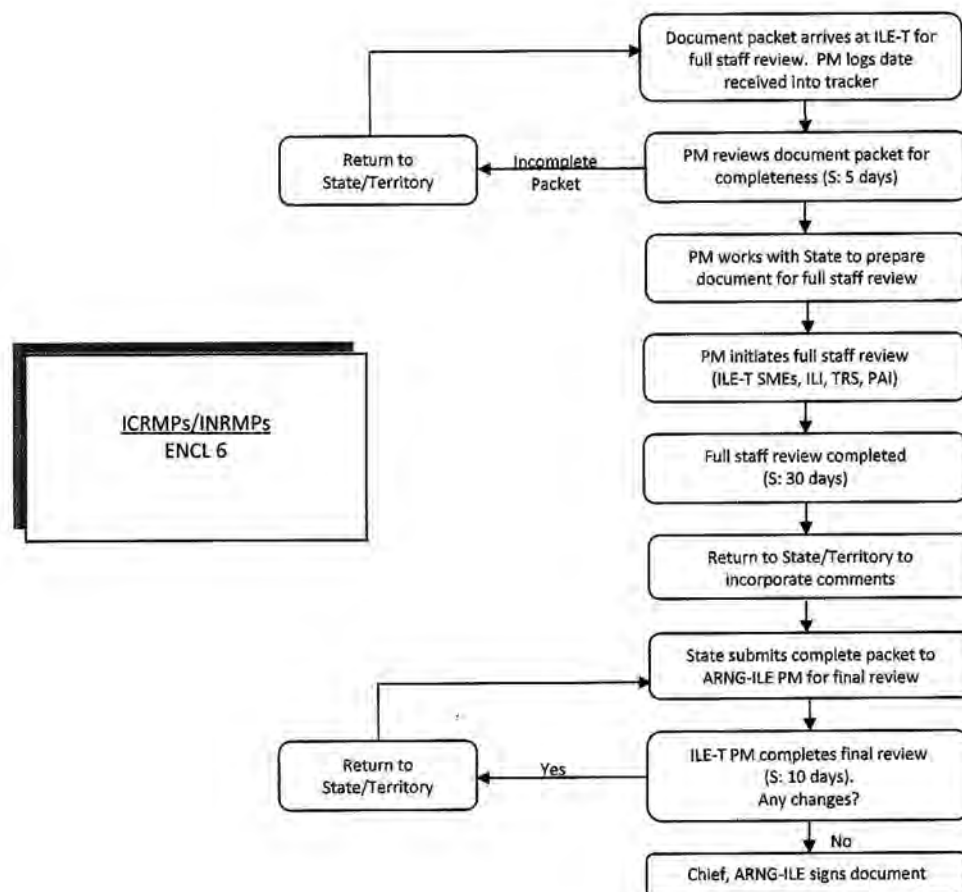




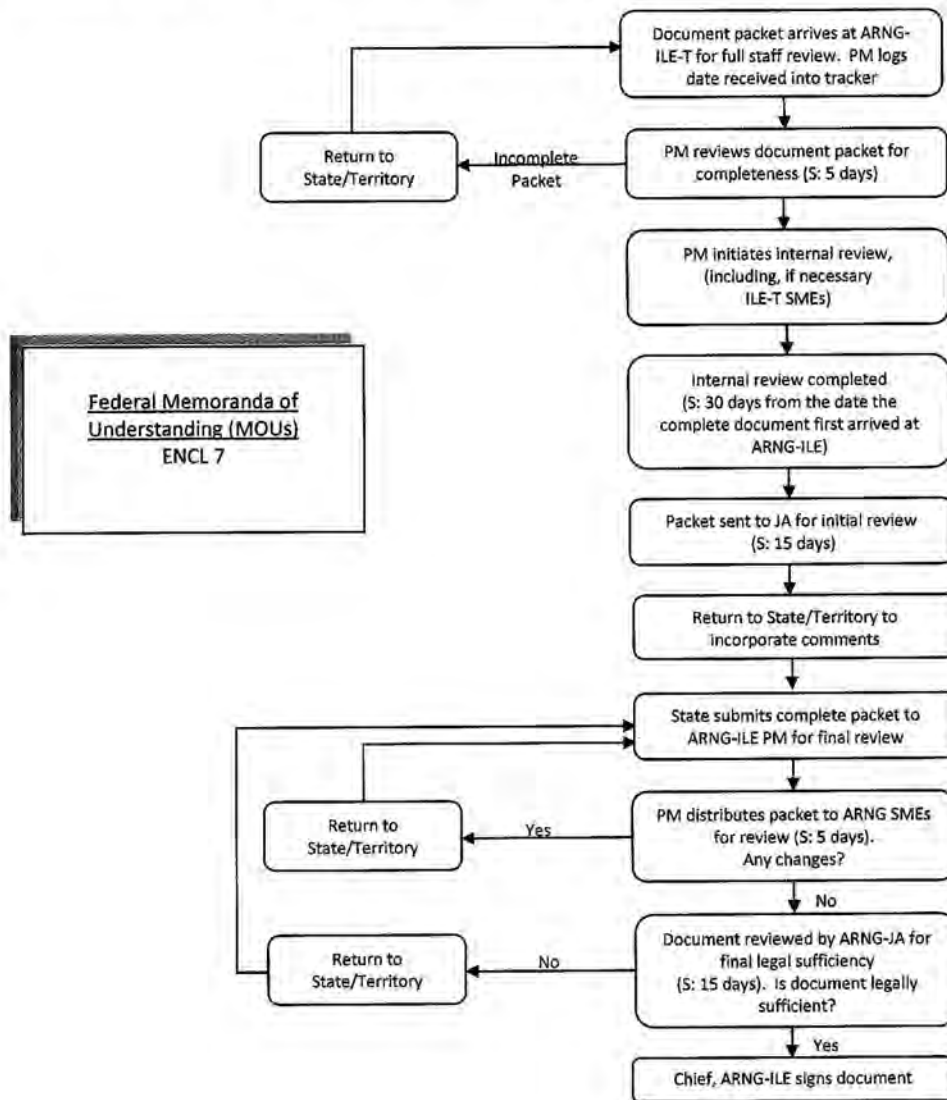
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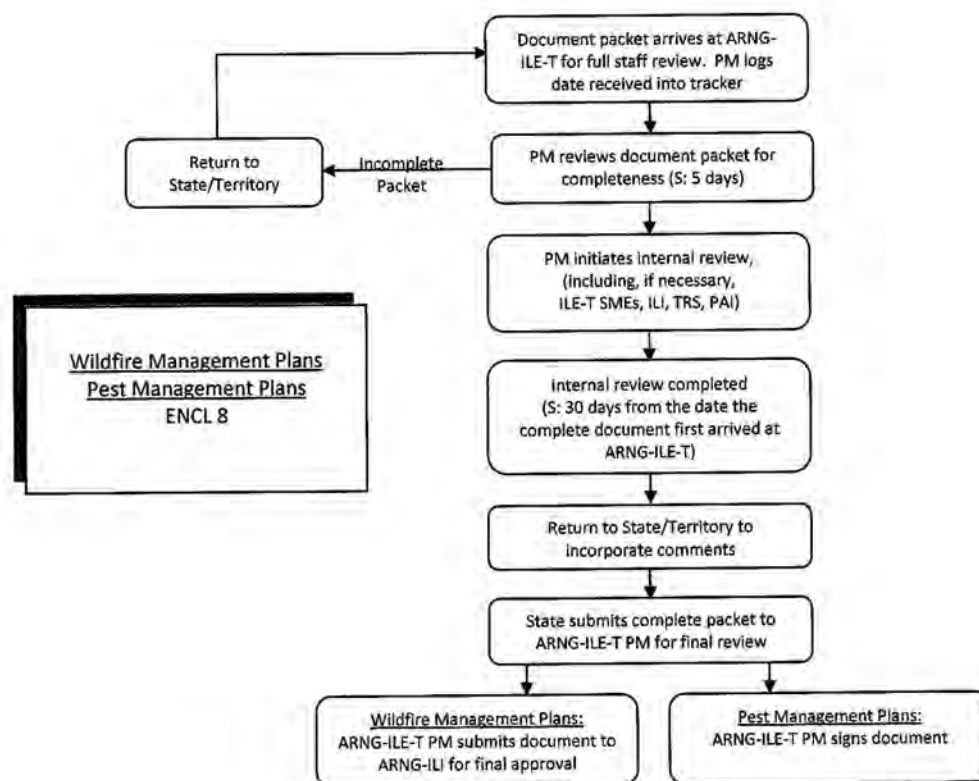
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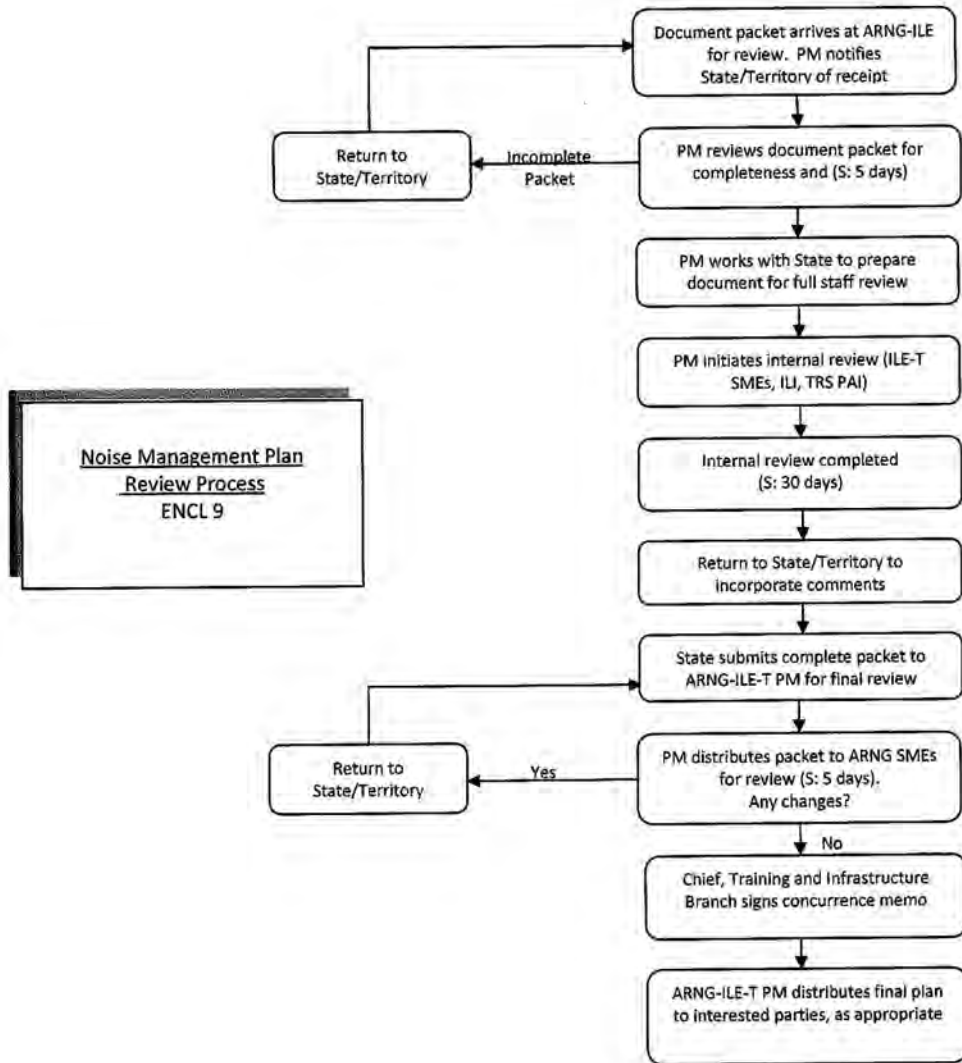
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## **Appendix G: NHPA Programmatic Agreement Guidance**





## Appendix G: Programmatic Agreement Guidance



NATIONAL GUARD BUREAU  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

NGB-ARE-C

18 MAR 2009

### MEMORANDUM FOR ENVIRONMENTAL PROGRAM MANAGERS

SUBJECT: National Guard Bureau (NGB) Guidance for the Completion and Implementation of Programmatic Agreements under the National Historic Preservation Act

1. PURPOSE. This memorandum establishes NGB-ARE guidance for approval, drafting and completion of NHPA Programmatic Agreements (PAs).

2. APPLICABILITY. This policy guidance applies to all state Army National Guard (state ARNG) installations considering the creation of PAs in order to streamline the National Historic Preservation Act (NHPA) Section 106 process at their sites.

#### 3. GENERAL.

a. Federal agencies, including the NGB, are required to comply with the NHPA for actions defined as a "federal undertaking" according to 36 CFR § 800.16(y). The 36 CFR § 800 is the implementing regulation for the Advisory Council on Historic Preservation's process concerning NHPA compliance. A variety of streamlined methods are available in the ACHP regulations, specifically in 36 CFR § 800.14 in order to meet Section 106 obligations. These alternatives allow federal agencies to tailor and streamline the NHPA Section 106 process while also complying with NHPA and its implementing regulations for federal undertakings. PAs are one of the methods for federal agencies, like NGB, to use when streamlining the process in order to ensure compliance with NHPA.

b. Details regarding PAs are found in 36 CFR § 800.14(b). PAs are the most common alternative and are implemented by a state ARNG, in consultation with NGB. The PAs govern the implementation of a particular state ARNG program, the resolution of adverse effects from complex projects, or multiple undertakings when a Memorandum of Agreement (MOA) cannot adequately cover all factors within a complex project.

c. As the federal agency responsible for ARNG compliance with NHPA, this guidance ensures NGB's involvement in the decision making process associated with the creation of a state ARNG PA. All state ARNGs must obtain NGB approval for the creation of an NHPA PA prior to beginning the process of consulting with appropriate State Historic Preservation Offices (SHPOs), ACHP, and other external stakeholders such as Native American tribes, local historical societies, and others as appropriate.

NGB-ARE-C

SUBJECT: National Guard Bureau (NGB) Guidance for the Completion and Implementation of Programmatic Agreements under the National Historic Preservation Act

#### 4. NHPA PROGRAMMATIC AGREEMENT NGB APPROVAL PROCESS:

a. Prior to beginning NHPA PA consultation with external stakeholders, the state ARNG Cultural Resources Manager (CRM) must provide the NGB a memorandum detailing the need for the NHPA PA. This memo must provide NGB with the following information:

(1) The reason the state ARNG feels an NHPA PA is necessary rather than continuing with standard NHPA Section 106 compliance.

(2) Current federal undertakings, as defined by NHPA, that are currently occurring or are planned to occur on the identified site.

(3) How the state ARNG intends to streamline the NHPA Section 106 process within an NHPA PA. The NGB understands that this may change as a result of consultation but needs to know the state ARNG's initial thoughts on how they would like to streamline the standard Section 106 process, as defined in 36 CFR § 800.

b. Once the NGB receives the official memorandum from the state ARNG CRM identifying their desire to begin consultation with the NGB, SHPO, ACHP, Native American tribes (if necessary), and other stakeholders, the NGB will review the submittal to determine whether the NGB approves the decision to move forward with an NHPA PA. The state ARNG CRM may be contacted by the NGB Cultural Resources Program Manager for additional information, if necessary, regarding purpose and need for the NHPA PA.

c. Within 30 days, the state ARNG will receive a formal memorandum from NGB, signed by the NGB-Training and Infrastructure (NGB-T&I) Branch Chief stating the NGB's approval or disapproval for the creation of an NHPA PA.

d. If the NGB approves the creation of the NHPA PA, the state ARNG should continue to work, in consultation with the NGB, and other stakeholders, to create the agreement document under the consultation requirements stipulated in 36 CFR § 800.14. (This includes, but is not limited to, the state ARNG formally inviting the ACHP to participate in consultation associated with the creation of the NHPA PA).

e. In the event that the NGB does not approve the state ARNG proposal to create a PA, the state ARNG will be responsible for compliance with the NHPA Section 106 process as it is stipulated in 36 CFR § 800.

f. NGB will assist states with alternative approaches toward Programmatic Agreements if the original proposal is not approved and the state ARNG feels a PA will assist them in their daily responsibilities under NHPA.

NGB-ARE-C

SUBJECT: National Guard Bureau (NGB) Guidance for the Completion and Implementation of Programmatic Agreements under the National Historic Preservation Act

5. NGB REVIEW OF DRAFT AND FINAL PROGRAMMATIC AGREEMENTS:

a. Once the state ARNG consults with the NGB, SHPO, ACHP, Native American tribes (as necessary), and other stakeholders have agreed to the preliminary terms and conditions of the PA, the state ARNG will officially submit the draft PA to NGB for full staff review.

(1) Full-staff review is conducted by NGB-ARI, NGB-ART, NGB-PA, NGB-JA, and NGB-ARE. State ARNGs are recommended to work with the NGB-ARE Cultural Resources Project Manager prior to full staff review to ensure the document meets both the needs of NGB in conjunction with all other stakeholders. This can help accelerate the time required for NGB reviewers during the full-staff review.

(2) The NGB-ARE will submit official full-staff review comments to the state ARNG for revision.

(3) The state ARNG will continue to work with stakeholders to ensure that all parties involved are in agreement with any changes NGB recommends.

(4) Once all parties agree to the draft PA, the state ARNG will submit a final version of the document for NGB final legal sufficiency review and signature by NGB-ARE Chief. When the document is ready for final legal sufficiency review and NGB-ARE signature, the state ARNG should submit a written statement to NGB by stakeholders including the state ARNG JAG, ACHP, SHPO, Native American tribes, and others stating their approval of the document as written.

(5) The NGB-ARE Chief will be the first signature on the PA after legal sufficiency has been gained. Once the NGB-ARE Chief signs the document, the NGB-ARE will mail back original signature pages to the state ARNG to obtain the remaining signatures.

(6) The final PA will only be considered implemented when a copy has been filed with the ACHP, regardless if they chose not to sign the agreement document.

6. The point of contact is Ms. Kristin Leahy, NGB-ARE Cultural Resource Program Manager, at 703-607-7190 or Kristin.Leahy@us.army.mil.



ERIC N. ANDERSEN  
Acting Chief, Environmental  
Programs Division

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## **Appendix H: Sample Tribal Consultation Checklist**



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## Appendix H: Sample Tribal Consultation Checklist

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### *Undertaking/Action Information*

- Please check what types of undertakings are of interest to your Tribe:

#### **1. Major Training Areas (See Attached List)**

- ☐ New construction
- ☐ Major changes in training types
- ☐ Demolition of existing structures
- ☐ Additions to existing structures
- ☐ Transfer of ownership of land
- ☐ Archeological survey or testing
- Other \_\_\_\_\_

#### **2. Readiness Centers (See Attached List)**

- ☐ Demolition of existing structures
- ☐ Additions to an existing structure
- ☐ Transfer of ownership of land
- ☐ The construction of new Readiness Centers in the counties you selected above
- ☐ Archeological survey or testing
- Other \_\_\_\_\_

3. In an effort to reduce excessive correspondence, the following project types are excluded from routine communication:

- Work conducted within previously disturbed area; i.e., repaving roads or minor roadwork that occurs within the existing and previously disturbed roadbed or easement, repair of an underground pipe or utility lines within the previous trench.
- Building maintenance, renovations, and additions with no ground disturbance.
- Building demolition that will not result in ground disturbance
- Other \_\_\_\_\_

Ground disturbance includes new surface area as well as disturbance to new depths.

☐ agree    ☐ do not agree





## **Appendix I: Tribal Consultation Memorandum of Understanding (MOU) Guidance and Sample**



## Appendix I: Tribal Consultation Memorandum of Understanding (MOU) Guidance and Sample



**NATIONAL GUARD BUREAU**  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

NGB-ARE

MAR 10 2010

### MEMORANDUM FOR ENVIRONMENTAL PROGRAM MANAGERS

**SUBJECT:** National Guard Bureau Guidance for Federally Recognized Native American (Tribes) Memorandums of Understanding (MOU)

1. Reference: Army Regulation (AR) 200-1, Environmental Protection and Enhancement, 13 Dec 07.

2. This memorandum establishes NGB guidance for the development of MOUs with Federally-recognized Native American tribes, Native Hawaiians and Alaskan Natives. This policy guidance applies to ARNG installations in all states and territories considering the creation of MOUs in order to streamline consultation with Tribes.

3. Roles and Responsibilities.

a. The Director, ARNG, will serve as the primary advisor for all ARNG environmental issues, and sign or appoint a designated representative to sign all ARNG Federal compliance agreements, consent orders, and environmental assessments, findings of no significant impact and other pertinent Federal environmental documentation. For more information please see Army Regulation 200-1, Section 1-16(d), page eight.

b. The Garrison Commander will establish government-to-government relations with Federally Recognized Indian Tribes and Native Alaskans. For more information please see Army Regulation 200-1, Section 1-24, page 13.

4. There are two types of MOUs to use for consultation with Federally Recognized Tribes.

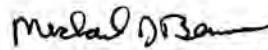
a. Federal MOU. Tribes and State ARNGs may determine that a MOU will assist in streamlining compliance with federal regulations. A federal MOU may discuss federal mission, federal funds, and/or federal laws and regulations. This includes but is not limited to the National Historic Preservation Act, Native American Graves and Repatriation Act (NAGPRA) and Archeology Resources Protection Act. As the MOU discusses how the state ARNG and tribes would comply with Federal laws, it is considered a Federal compliance agreement per 3b. Therefore, all federal MOUs must be submitted to NGB for technical and legal review as well as to the Chief of NGB-ARE for signature. Do not reference NAGPRA in an MOU if the MOU does not cover federal land.

NGB-ARE

SUBJECT: National Guard Bureau Guidance for Federally Recognized Native American  
(Tribes) Memorandums of Understanding (MOU)

b. State MOU. Tribes and State ARNG may determine that a State MOU will benefit the relationship and streamline consultation efforts. A state MOU may only discuss state compliance and laws, discuss general protocol (i.e. how and when to contact tribes, tribal areas of interest) and identify point of contact from the Tribe and ARNG. This type of MOU cannot reference any federal regulations. A state MOU does not require submittal to NGB for technical or legal review. NGB can provide technical review upon request.

5. Point of Contact for this action is Ms. Stephanie Webber, Cultural Resource Manager, at DSN 327-7036, 703-601-7036 or [stephanie.webber@us.army.mil](mailto:stephanie.webber@us.army.mil).

  
MICHAEL J BENNETT  
COL, NGB  
Chief, Environmental  
Programs Division

**MEMORANDUM OF UNDERSTANDING  
AMONG  
THE NATIONAL GUARD BUREAU,  
THE XX ARMY NATIONAL GUARD  
AND  
THE \_\_\_\_\_ NATION**

*Whereas*, the **National Guard Bureau (NGB)** has a federal mission operating in accordance with federal statutes and regulations, including but not limited to, the National Historic Preservation Act of 1966, as amended, Department of Defense Instruction 4710.02—DoD Interactions with Federally-Recognized Tribes, and Executive Order 13175—Consultation and Coordination with Indian Tribal Governments; and

*Whereas*, the **XX Army National Guard (XX ARNG)** has a federal mission that includes federal military training and federally-funded activities on land it owns, leases, or controls within XX (See Attachment D for a list of XX ARNG Installations and Readiness Centers); and

*Whereas*, the **NGB, XX ARNG, and \_\_\_\_\_ Nation**, henceforth referred to as “the parties” herein intend to provide procedures for routine communications, protection of cultural resources information, meeting the tribal consultation requirements set forth above, and improvement of cultural resource stewardship; and

*Whereas*, **XX ARNG** activities may have an adverse effect on historic properties included in or eligible for the National Register of Historic Places and that are of traditional religious and cultural importance to the \_\_\_\_\_ **Nation**; and

*Whereas*, the **XX ARNG** has consulted with the \_\_\_\_\_ **Nation**, a federally recognized tribe, on a Government-to-Government basis to develop this MOU; and

*Whereas*, the parties to this Memorandum of Understanding (MOU) recognize that the \_\_\_\_\_ **Nation** possesses the knowledge, experience, and oral tradition to identify and evaluate historic properties of traditional religious and cultural importance; and

*Whereas*, through the use of this MOU, the parties intend to maintain a close relationship as partners and stewards of cultural resources; and

*Whereas*, no portion of this MOU should be interpreted to limit the rights, duties, or responsibilities as may be implemented under state and federal statutes, regulations, policies, Executive memoranda or Executive orders and related documents;

*Now, Therefore*, the **NGB, XX ARNG and the \_\_\_\_\_ Nation** agree that communication between the parties shall be as follows:

**I. Routine Communications**

A. The **XX ARNG** shall host a consultation meeting at least once every two (2) years, as funding will allow. This may be combined with, or substituted by, individual meetings with Tribes at their headquarters.

B. The **XX ARNG** shall visit Tribal officials at Tribal headquarters in \_\_\_\_\_. The **XX ARNG** shall make biennial visits when in lieu of hosting a consultation meeting or as is necessary for fulfilling the obligations of this MOU.

C. The parties intend to consult as stewards of cultural resources. In the past, the parties have periodically scheduled face-to-face consultations. However, it may be necessary to address immediate issues when face-to-face consultation is not possible. **Section I Parts D - G** defines the means of interim and routine communications for those periods in which face-to-face consultation is impractical.

D. The parties agree that the preferred methods of communication are indicated in Attachment B. In the event that these methods fail, the parties shall use the United States Postal Service (certified or regular U. S. mail).

E. Without limiting the right to communicate after this period, the parties intend to reply within forty-five (45) days to any issue that is raised during routine communication. The **XX ARNG** will phone the tribe thirty (30) days after the initial communication is sent to ascertain tribal receipt of the communication. The **XX ARNG** intends to proceed with the proposed action at the expiration of forty-five (45) days from the first routine communication if no objections or expressions of concern are received.

F. The parties agree to maintain the confidentiality of information pertaining to historic properties of traditional religious or cultural importance.

G. The **NGB, XX ARNG** and \_\_\_\_\_ **Nation** shall designate a representative. Each party shall provide contact information in Attachments A and B. Contact information shall be maintained and updated as appropriate.

## **II. Development, Review, and Implementation of the Statewide XX Integrated Cultural Resources Management Plan (ICRMP)**

A. The **XX ARNG** shall provide for the Tribe's meaningful involvement in the development and implementation of the ICRMP. The **XX ARNG** shall develop and implement strategies in consultation and collaboration with the Tribe, to avoid, minimize, or mitigate adverse effects to cultural resources as specified in the statewide ICRMP.

B. The ICRMP is reviewed every year and revised every five years or as circumstances warrant (change in mission, real property ownership, etc). The **XX ARNG** shall provide the \_\_\_\_\_ **Nation** at least sixty (60) days to review and provide comments on five-year revisions to the ICRMP, and consult with the Tribe on how to address comments received. The **XX ARNG** shall provide the Tribe with a copy of the final ICRMP or revision pages. In addition, the **XX ARNG** will annually provide the Tribe a list of proposed projects for the upcoming fiscal year. The final ICRMP and revisions shall be a component plan of the **XX ARNG** state installation Master Plan, and other plans where appropriate (e.g., master, training, and environmental plans).

## **III. Tribal Area for Consultation**

The Tribe wishes to be consulted in accordance with the map showing areas of concern delineated in Attachment C.

## **IV. Administrative**

A. Nothing in this MOU shall be interpreted to alter the requirements of federal and state laws, or their implementing regulations. In the event any portion of this MOU is deemed contradictory to law or regulation, only that contradictory portion becomes void. The sole contradictory issue does not vitiate the entire agreement. The parties should consult to resolve the contradictory issue with the intent to

reform that portion to make it compliant with the applicable law or regulation, and the remaining portions of the MOU remain in full force and effect.

B. Nothing in this MOU shall be construed as limiting or affecting the legal authority of either party, nor does it commit either party to exceed their available appropriations. Commitments made from this MOU are subject to the availability of funds. However, each party will make a good faith effort to fund any action necessary for the implementation of this MOU.

C. This MOU is executed as of the last date shown below, and shall remain in effect until rescinded. The MOU may be revised by mutual agreement. Either party upon a ninety (90) day written notice can unilaterally terminate this MOU.

*Now, Therefore,* it is agreed upon that the **National Guard Bureau, XX Army National Guard** and the \_\_\_\_\_ **Nation** will cooperate to achieve the principles and purposes set forth in this MOU.

\_\_\_\_\_  
XXXX XX XXXXXXXX  
Major General  
The Adjutant General  
XX Army National Guard

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
XXXX XX XXXXXXXX  
Principal Chief  
\_\_\_\_\_ Nation

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
XXXX XX XXXXXXXX  
Colonel, U.S. Army  
Chief, Environmental Programs Division  
Army National Guard Directorate

\_\_\_\_\_  
(Date)





## **Appendix J: Tribal Consultation Meeting Guidance**



## Appendix J: Tribal Consultation Meeting Guidance

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### ***Notes on Government-to-Government Consultation Meetings***

Each tribal consultation meeting/workshop is unique and will be influenced by the personalities and interests of the participants. Meeting agendas can be specific but must remain flexible, addressing concerns as they arise while keeping the overall flow and objectives clear. Consultation meetings are productive when they are viewed as a learning experience for both the Federal agency and the tribal governments. Given the numerous Tribes and representatives participating, a meeting may move more slowly than anticipated and seem to stray from the agenda. The agenda should be viewed as an overall plan for continuous exchange while moving toward the meeting goals.

### ***Consultation Meeting Agendas***

Often a consultation meeting goal is to provide Tribes information needed to determine what resources, projects, programs, etc., at the state ARNG are of interest or concern to them, and to define how the ARNG should consult with them (MOU development). Since each Tribe is a sovereign nation, each will make these determinations individually although some or all may choose to work out a collective or consensus-based consultation response or protocol.

Tribal representatives may request the inclusion of a tribal caucus in the agenda. A tribal caucus is a time for the tribal representatives to meet and discuss issues among themselves. Generally, the agency or others are not invited to participate in a caucus. A tribal caucus provides the Tribes a venue to discuss issues of their liking without the constraints of an imposed or agenda or meeting facilitator. It also provides a measure of confidentiality. However, difficulty can arise in maintaining the tribal caucus within the schedule for the overall meeting since the meeting's resumption is dependent on the duration of the caucus.

### ***Additional Suggestions***

The objective of this section is to provide knowledge for effective engagement with American Indian tribal leaders so the state ARNG can conduct meaningful consultation and build relationships with relevant Tribes. Information that is shared at these meetings should be treated as confidential and any request to share the information should be made during the meeting.

- Many American Indian cultures are deeply rooted in oral traditions. Part of this tradition includes active listening and taking care to not interrupt someone while he or she is speaking, even to ask questions or make a comment.
- Patience is valued and a sign of respect.
- Opening and closing prayers by a tribal elder are a respectful and common practice at government-to-government consultation meetings with Tribes. It is not perceived as religious but as an important process to call on a higher power for clear consciousness for everyone involved at the meeting. Opening prayers set the correct tone for the meeting; closing prayers express appreciation for the good attention of the higher power and generally wish the participants safe travels on their return home.
- Historical events are sometimes told by a tribal representative during introductions or during private conversations. The event is told from an American Indian perspective and is often told as a means of establishing trust. Openness and attentiveness are appropriate and respectful responses. Do not challenge the factual basis of statements.

- Openly accept gifts on behalf of the ARNG and express appreciation. Gifts can be displayed at the ARNG installation in lobbies or meeting rooms without violating government rules against personal acceptance of gifts. To deny or return a gift is considered an offense.
- When photographing events, always ask if representatives would like their photographs taken. Refrain from photographing anyone who declines.
- Any information related to sacred sites or related to human remains should remain within the confines of the consultation meeting. Unless given specific permission, none of the sacred information should be made available in a map.
- Asking questions about Native stories or specific traditions is often seen in a positive light from the tribal communities. The consultation process is a way to open communication channels, and expressing an interest in tribal traditions is a good way to begin to break down cultural barriers.
- The following websites provide additional resources for tribal consultation:

<http://www.achp.gov/nap.html>

<http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm>

<http://www.denix.osd.mil/na/>

<http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx#State>

<http://www.indian.senate.gov/#>

<http://www.cast.uark.edu/home/research/archaeology-and-historic-preservation/archaeological-informatics/native-american-consultation-database.html>.

## **Appendix K: NHPA Programmatic Agreement Signatory Guidance**



## Appendix K: NHPA Programmatic Agreement Signatory Guidance



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT  
600 ARMY PENTAGON  
WASHINGTON, DC 20310-0600

19 JAN 2012

DAIM-ISE

US ARMY NATIONAL GUARD BUREAU (ATTN: COL MICHAEL J. BENNETT),  
111 South George Mason Drive, Arlington, VA 22204-1382

SUBJECT: Defining Signatory Status for National Historic Preservation Act (NHPA)  
Programmatic Agreements (PA)

1. Purpose: This memorandum serves to clarify the signatory status authority on National Historic Preservation Act (NHPA) agreement documents.
2. References:
  - a. Army Regulation (AR) 200-1: Environmental Protection and Enhancement, 13 Dec 07.
  - b. National Historic Preservation Act (NHPA) of 1966, as amended (16 USC 470-470w).
3. Policy: Required signatories to any NHPA Programmatic Agreement (PA) and/or Memorandum of Agreement (MOA) are the Garrison Commander (GC); the Adjutant General (TAG) for the ARNG; Division Chief, Army Environmental Division, and the State Historic Preservation Officer (SHPO). The Advisory Council of Historic Preservation (ACHP) must be an invited signatory for every NHPA agreement document. This is in compliance with language found within 36 CFR 800.14 (b) (2) (iii). Other signatories may be included only if they will be directly implementing responsibilities stipulated in the agreement document otherwise they should be consulting parties.
4. The point of contact is Kathleen McLaughlin, (571) 256-9726 or email: Kathleen.a.mclaughlin8.civ@mail.mil.

ROBERT A. SINKLER  
Colonel, GS  
Chief, Army Environmental Division







## **Appendix L: ICRMP Guidance Memorandum**



## Appendix L: ICRMP Guidance Memorandum



**NATIONAL GUARD BUREAU**  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

25 JAN 2010

NGB-ARE

MEMORANDUM FOR The Environmental Program Manager (EPM) of all States, Puerto Rico, the US Virgin Islands, Guam and the District of Columbia

SUBJECT: Army National Guard Integrated Cultural Resource Management Plan (ICRMP) Policy Guidance for Revisions and Updates

1. PURPOSE. This memorandum establishes NGB-ARE guidance for the implementation and revision of ICRMPs.
2. APPLICABILITY. This policy guidance applies to all state ARNG Environmental Programs.
3. REFERENCES:
  - a. New Policy Guidance for Development of the Integrated Cultural Resources Management Plan, 11 Dec 2009
  - b. Department of Defense Instruction Number 4715.03, Environmental Conservation Program, 3 May 1996.
  - c. Department of Defense Instruction Number 4715.16, Cultural Resource Management, 18 Sep 2008.
  - d. Army Regulation 200-1, Environmental Enhancement and Protection, 13 Dec 2007.
  - e. Department of Defense Policy American Indian and Alaska Native Policy, 01 Oct 1998.
  - f. Department of Defense Instruction Number 4710.01, DoD Interactions with Federally Recognized Tribes, Sep 2006.
4. GENERAL.
  - a. GOAL. The goal of this guidance is to provide details for the development of Integrated Cultural Resource Management Plans (ICRMPs). Under the National Historic Preservation Act of 1966, as amended (NHPA), Federal agencies are required to develop programs to identify, evaluate and preserve historic properties in accordance with the agency's mission. Department of Defense Instruction (DoDI) 4715.16 is the Department of Defense's over reaching guidance which requires establishment of an

**NGB-ARE-C**

**SUBJECT: Army National Guard Integrated Cultural Resource Management Plan (ICRMP) Policy Guidance for Revisions and Updates**

ICRMP covering operations that could impact historic properties. Army Regulation (AR) 200-1 is the Army's implementing guidance which states the requirement for an ICRMP to manage Army cultural resources (Chapter 6 Section 4(a) (1). Because the National Guard Bureau (NGB) - Army National Guard (ARNG), is a component of the Army and provides state ARNG installations operational funding, state ARNG organizations are required to implement an ICRMP covering all their facilities that have identified historic properties or have the potential to have historic properties. In certain cases, a state ARNG may qualify for a variance waiver from the ICRMP requirement if they do not have historic properties based on completed surveys and inventories.

b. **OBJECTIVE.** The following guidance is intended to implement the Department of Army's New Policy Guidance for the Development of an ICRMP, dated 11Dec09, to establish the NGB criteria for decision-making on ICRMP updating or revising at the 5 year cycle, and providing annual reporting guidelines. DoDI 4715.16, Sections 3.b.1 and 6.2, requires annual updates and a five year review of the implementation status of the ICRMP. The ICRMP Review Process will determine if any proposed ARNG operational changes are likely to result in negative impacts to cultural resources that cannot be mitigated or addressed by other means. If that determination is made, a revision, rather than an update, must be prepared. Such factors as ARNG mission changes or new environmental program goals will often require ICRMP revisions because the impacts of these new actions will not be adequately addressed in the current ICRMP.

c. Revisions may also be required if, in consultation, ICRMP stakeholders request one due to impacts of concern to them. These stakeholders include the State Historic Preservation Office (SHPO), NGB, Federally recognized Tribes and other state or local groups or agencies. However, if all the stakeholders agree that the existing ICRMP does not require significant changes and there are no major changes to mission, organization or management, an update to the ICRMP will be appropriate. Updates may be prepared instead of revisions if there are no operational and/or mission changes that will create negative impacts to cultural resources and if identified stakeholders of the original ICRMP, including State Historic Preservation Office (SHPO), NGB, Federally Recognized Tribes, and previously identified interested stakeholders determine an update is appropriate. This guidance is intended to establish criteria upon which the decision to prepare a revision, or to maintain the existing ICRMP with a five-year update, is made as well as clarify annual update requirements.

d. The five (5) year implementation period initiates after the Chief of NGB-ARE has signed the ICRMP and approved NEPA documentation.

**5. ICRMP REVISION, UPDATE, AND ANNUAL REPORT DEFINITIONS.**

**a. ICRMP Revision**

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(ICRMP) Policy Guidance for Revisions and Updates

(1) A revision replaces the existing ICRMP. It can occur at any time based on one or both of the following:

(a) Changes to goals, objectives, management, legal, or regulatory changes that result in negative impacts to cultural resources (see 6.iv.3 for defining qualities of "negative impacts"); and/or,

(b) It is determined necessary in state ARNG consultation with the SHPO, NGB, or other stakeholders. It is the state ARNG's decision, however, as to whether an ICRMP Revision or Update is needed based on this consultation.

(2) A revision contains all required ICRMP sections and information and is subject to NEPA review, typically an Environmental Assessment.

(3) SHPO, Federally-recognized Native American and Alaskan Tribes and Native Hawaiians, other interested stakeholders should receive a copy of the draft ICRMP Revision for review and/or comment. Copies of this correspondence should be included in the ICRMP Revision and provided to NGB.

b. ICRMP Update

(1) An update concerns only selected portions of an existing ICRMP. There are not any changes to mission and/or management goals or objectives that result in negative impacts to cultural resources. Most typically, an update changes the status of projects/tasks to achieve previously identified objectives.

(2) Other common updates may include:

- Updates to survey data/studies
- New maps/imagery
- Agreement documents
- Listing of new proposed projects
- New National Register eligibility findings

(3) Needs only a Record of Consideration (REC) under NEPA and does not need public review IF the following occur:

- Management goals, mission, other defined operations and resources have not changed other than updated inventories; and/or,
- Projects are updated for new period to meet continuing management goals; and/or,
- Support data is updated such as new GIS maps.

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(4) SHPO, Federally-recognized Native American and Alaskan Tribes and Native Hawaiians, other interested stakeholders should receive a copy of the draft ICRMP update for review and/or comment. Copies of correspondence should be included in the ICRMP Update and provided to NGB.

c. ICRMP Annual Report

(1) A requirement for all state ARNGs regardless of whether they have an ICRMP, ICRMP Revision, ICRMP Update, or have been granted an ICRMP Variance.

(2) ICRMP Annual Reports should be staffed to the SHPO and other interested stakeholders as a courtesy and will include the status of previously listed ICRMP projects and the ICRMP projects to be completed the next year to achieve objectives.

(3) Annual Reports should follow the most recent NGB template.

(4) Signed copies are provided to the NGB and added as addendum to existing the ICRMP. NGB should receive Annual Reports each year according to the date the FNSI or REC was signed. NGB will report receipt of ICRMP Annual Report in the quarterly State Performance Indicator Report System (SPIRS).

(5) A REC is not required.

6. ICRMP REVIEW PROCESS

a. The ICRMP Review Process should occur 6 months prior to the 5-year anniversary of the signing of the current ICRMP or granted variance.

b. The general purpose of the ICRMP Review to take place upon the 5-year anniversary of the current ICRMP is to determine the following:

- Is the ICRMP working or functioning?
- Is the ICRMP having the intended results?
- Are Goals and/or Objectives being met?
- Are Standard Operating Procedures being used?
- Are stated support projects being completed?

c. The state ARNG will submit a memorandum to NGB-ARE identifying whether they will update or revise the current ICRMP. The memorandum should include responses to the questions outlined in 6b above and apply the criteria of 7a and 7b to make the ICRMP Revision/Update determination. This memorandum should also be included as an attachment to the ICRMP Revision or Update.

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d. Documented conclusions will include:

- If the ICRMP needs only an UPDATE, then outline the needed updates and list recurring and new projects.
- If the ICRMP needs REVISION due to changes in management, or goals and objectives, then outline changes in these areas and list recurring and new projects supporting these changes.

e. ICRMP Review Factors:

(1) If Review determines that ICRMP is not having intended effect, then revision is likely required.

(2) An ICRMP that is, or will no longer be, successful without changes will require a full ICRMP Revision.

(3) Negative Impacts to Cultural Resources

(a) Negative impacts to cultural resources are measurable changes on historic properties and their integrity and/or associated characteristics which identified them as eligible for the National Register that cannot be mitigated through available resources (such as NHPA Agreement Documents) or actions outlined in the original ICRMP. This can include individual or cumulative effects from projects, policies and procedures, or land management/use decisions.

(b) Consequences are interpreted to follow the Criteria of Adverse Effect (36 CFR § 800.5(a)(1)): "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register."

7. WHEN AN ICRMP REVISION IS PREFERRED.

The following are examples of when an ICRMP should be revised, not updated.

a. Preservation or Environmental Goals Changed:

(1) New/modified set of environmental goals:

(a) New Regional or National contexts or Areas of Interest developed.



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- (b) New Federal, State, or Local laws/regulations that affect cultural resources.
- (c) New regional/state/local land use planning agreements and partnership that result in new or modified goals.
- (d) New legal/regulatory findings/designations/requirements relating to land use that negatively affect cultural resources (wetlands, water quality, erosion/sedimentation, smoke, endangered species, etc).
- (e) New public access/uses.
- (f) Previous goal(s) no longer relevant/needed and removed from plan.
- (2) New Preservation Objectives:
  - (a) New preservation requirements such as new or revised preservation laws or regulations established.
  - (b) New technologies or techniques that the state ARNG applies to achieve a preservation goal.
  - (c) New knowledge or feedback from earlier ICRMP implementation results in changes to established objectives/targets (schedules, acreage, numbers, etc)
  - (d) Original/existing ICRMP lacked measurable objectives.
- b. Mission Goals Changed:
  - (1) New/modified set of mission goals or objectives that cannot be mitigated under an NHPA Agreement Document or under the current ICRMP.
    - (a) New or modifications to existing types of training (e.g., changes to military land uses).
    - (b) New or changes to vehicles, weapons, or other equipment that may have a different impact to cultural resources.
    - (c) Base Realignment and Closure Act (BRAC), transformation, or other initiatives that result in new units being assigned to a site or installation, or the removal/relocation of existing units to other sites that may have a different impact to cultural resources.
    - (d) Changes to throughput requirements (frequency, duration, acreage, location, training-days, range schedules, etc).



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c. It is important that the state ARNG consider the scale of modifications in addition to changed goals/objectives in determining whether an ICRMP Revision or Update is warranted.

**8. ICRMP REVISION REQUIREMENTS.**

a. Based on the ICRMP Review (Section 6 above), changes will be made to revise the ICRMP. Revisions may use the most recent NGB ICRMP template, if the state ARNG so chooses.

b. Requires Environmental Assessment (EA) with FNSI including review w/public review, SHPO, Federally-recognized Native American and Alaskan Tribes and Native Hawaiians, other interested stakeholders, and staffed to NGB.

c. Second draft incorporates comments, receives 2<sup>nd</sup> public review, is staffed to NGB for final approval/legal sufficiency (include draft FNSI with EA), SHPO, Federally-recognized Native American and Alaskan Tribes and Native Hawaiians, other interested stakeholders (prefer concurrence and signatures).

d. Final version of ICRMP with concurrence, if possible, by SHPO, Federally-recognized Native American and Alaskan Tribes and Native Hawaiians, other interested stakeholders is staffed to NGB for final approval and signature of ICRMP and FNSI.

e. The five (5) year implementation period initiates after all signatories, including the Chief of NGB-ARE, have signed the ICRMP and FNSI.

**9. NEPA REQUIREMENTS FOR ICRMP REVISIONS AND ICRMP UPDATES.**

a. ICRMP Revisions – Five (5) year: Environmental Assessment (EA) and Finding of No Significant Impact (FNSI).

b. ICRMP Update – Five (5) year: Record of Consideration (REC), Copy of original signed FNSI.

c. Update – Annual: A REC is not required.

**10. ICRMP VARIANCES.**

a. Every five years, those state ARNGs having being granted an ICRMP variance will be required to reassess the need for ICRMPs as part of the ICRMP Review Process. The state ARNG requesting the variance must fill out the NGB variance request form and submit for review. The NGB will determine whether the state ARNG variance request is

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(ICRMP) Policy Guidance for Revisions and Updates

acceptable and that the state ARNG does not require an ICRMP for another five year period.

b. All state ARNGs granted ICRMP variances continue to be responsible for the development of an annual ICRMP report.

11. AVAILABILITY OF THE ICRMP. The ICRMP shall be available electronically on the installation's web site or other website that is used to support the installation. Electronic versions of the ICRMP should not contain sensitive site information nor budget information.

12. METRICS. ICRMPs shall relate their preservation programs via goals and objectives to the DODI 4715.03 cultural resource metrics. Status of metrics shall be collected through the Army Environmental Database – Environmental Quality Reporting System.

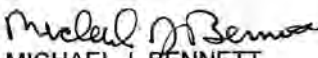
13. ACCOUNTABILITY.

a. Status of annual ICRMP reports and implementation of the results from the five (5) year ICRMP review process shall be sent to the NGB Cultural Resources Point of Contact prior to the fifth anniversary of the date of the FNSI or REC. Failure to provide this information to NGB is a Class III EPAS finding and a State Performance Indicator Reporting System (SPIRS) negative finding reported to the state's Adjutant General.

b. All state ARNGs who are late in preparing an ICRMP Update or ICRMP Revision, based on the ICRMP review process set forth in this guidance, will have a negative report findings on SPIRS until they complete the ICRMP review process and determine whether they will develop an ICRMP Update or ICRMP Revision for the proceeding five years.

c. Once the state ARNG has completed the official ICRMP review process, the state ARNG will report AMBER each quarter on SPIRS reporting until the ICRMP Update or ICRMP Revision is completed if their current ICRMP has expired.

14. The point of contact is Ms. Kristin Leahy, Cultural Resources Program Manager, DSN 327-7190, 703-607-7190 or kristin.leahy@us.army.mil.

  
MICHAEL J. BENNETT  
COL, NGB  
Chief, Environmental  
Programs Division

**Appendix M: Nationwide Programmatic Agreement for Army National Guard  
Readiness Centers Maintenance and Repair**



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## Appendix M: Nationwide Programmatic Agreement (PA) for Army National Guard Readiness Centers Maintenance and Repair

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### NATIONWIDE PROGRAMMATIC AGREEMENT

for

ARMY NATIONAL GUARD READINESS CENTERS MAINTENANCE AND REPAIR

among

The NATIONAL GUARD BUREAU

The NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

and

The ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the National Guard Bureau (NGB) must comply with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and its implementing regulations, 36 CFR Part 800, for all Federally owned or Federally supported Army National Guard (ARNG) Readiness Centers (Readiness Centers), also known as "armories," in all fifty States, Puerto Rico, the U.S. Virgin Islands, Guam, and the District of Columbia, ("States"); and

WHEREAS, for this Programmatic Agreement (PA), "Readiness Centers" includes all structures attached to the main Readiness Center building and separate structures located within the "Area of Potential Effect" for the relevant undertakings, and some of these ARNG Readiness Centers are historic properties (as defined at 36 CFR §800.16(l)(1)) and others may be historic properties but the eligibility determination has not occurred; and,

WHEREAS, this PA, addresses solely routine maintenance and repair of Readiness Centers that are "undertakings" (as defined in 36 CFR § 800.16(y)) which could affect historic properties, subject to Section 106 review; and,

WHEREAS, for the purposes of this Programmatic Agreement, routine maintenance is defined as regular and general upkeep of a readiness center against normal wear and tear; and,



30Jun10

Nationwide Programmatic Agreement for Army National Guard Readiness Centers

WHEREAS, pursuant to AR 200-1, 13 December 2007, *Environmental Protection and Enhancement*, Subsection 1-15, (or any succeeding document), the NGB is defined as an "installation management organization" for the state ARNGs and, per Terms, Section II, each Adjutant General (TAG) is defined as the "Installation Commander" for each of the States, Territories, and DC; and,

WHEREAS, the NGB has jurisdiction over federally owned and state owned and operated facilities, including Readiness Centers, due to their receiving federal funding; and,

WHEREAS, this PA, prepared pursuant to 36 CFR §800.14(b)(2), addresses the effects of any ARNG routine maintenance and repair undertakings at Readiness Centers, and which may include the following determinations: No Historic Properties Affected (36 CFR 800.4(d)(1)), No Adverse Effect (36 CFR 800.5 (b), (c)), and Adverse Effect (36 CFR 800.5 (a)(1) (2)), and establishes a program alternative by which NGB will ensure compliance with Section 106; and,

WHEREAS, the NGB, in consultation with the U.S. Army Federal Preservation Officer (FPO), Army Environmental Command (AEC), and the ACHP determined that consultation with Native American tribes during the development of this PA was not necessary because this PA deals specifically with renovations to above ground resources and any undertakings that require ground disturbance outside of the scope of this PA require additional tribal consultation in accordance with 36 CFR 800.2(c)(ii); and,

WHEREAS, the NGB afforded the public an opportunity to comment on this PA by contacting a state-wide non-profit historic preservation organization where applicable and academic experts to obtain comments and provided access to the draft Programmatic Agreement on a project website where interested parties could provide comment; and (Appendix D),

WHEREAS, the NGB has completed *The Historic Context for Army National Guard Readiness Centers* in June 2008 to assist the NGB with applying National Register of Historic Places (NRHP) eligibility criteria contained in 36 CFR § 60.4, to its Readiness Centers and to serve as an overview of



30Jun10

Nationwide Programmatic Agreement for Army National Guard Readiness Centers

2

the different types of architecture, architects, social history, people and events that occurred throughout the United States related to Readiness Centers (Appendix A); and,

WHEREAS, the NGB has consulted with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (National Trust), the United States Department of Interior's National Park Service (NPS), cultural resources experts in academia, and has requested the ACHP, NGB, and NCSHPO to sign this PA in accordance with 36 CFR § 800.14(b)(2)(iii) and Appendix D.

NOW THEREFORE, the NGB, the ACHP and NCSHPO agree that this PA will address NGB's Section 106 compliance responsibilities for maintenance and repair at historic ARNG Readiness Centers.

#### **STIPULATIONS**

The NGB shall implement the following measures:

##### **I. Terms of the Programmatic Agreement**

A. Every state ARNG organization will be required to organize a consultation meeting with the appropriate SHPO within 90 days of the signing of this agreement. During that meeting, a state ARNG representative (the Cultural Resources Manager (CRM) or the Environmental Program Manager (EPM)) and the SHPO will determine whether to implement the alternative process outlined in this PA to meet their Section 106 responsibilities. Within 120 days of the signing of this agreement, the state ARNG EPM will formally notify the NGB in writing of the decision made during this consultation. Within 150 days following the signing of this agreement, the NGB will notify, via formal correspondence, the NCSHPO and the ACHP which state ARNGs and SHPOs will fulfill their Section 106 responsibilities in accordance with the alternative process outlined in this PA. If, during the aforementioned consultation meeting, it is determined that a state ARNG will not use the alternative



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process outlined herein, the state ARNG and SHPO will continue to meet the Section 106 consultation requirements in accordance with Subpart B of 36 CFR Part 800.

- i. State ARNGs and SHPOs that initially chose not to use the alternative procedures described herein may, in the future, reconsider this approach and implement the PA in their respective states. After reconsideration, and the state ARNG and SHPO make a preliminary determination to use the PA, they should follow the steps set forth in I. A. above to complete the process and notify the NGB as appropriate.

B. A Cultural Resources Manager (CRM) in the state, who will act as a liaison on behalf of the installation's TAG, will perform daily installation cultural resources management responsibilities and will coordinate with all internal and external stakeholders.

C. The installation's commander will ensure that the CRM has appropriate knowledge, skills, and professional training and education to carry out installation cultural resources management responsibilities. The installation commander will also ensure that all cultural resources technical work (including but not limited to identification, evaluation, and treatment of historic properties, and preparation and implementation of an Integrated Cultural Resources Management Plan (ICRMP)), is conducted by individuals who meet the applicable professional qualifications standards established by the National Park Service in 36 CFR 61, Appendix B.

D. The terms of the PA apply to NGB undertakings concerning the maintenance and repair Readiness Centers. The list of current ARNG Readiness Center properties is set forth in Appendix B attached hereto.

E. This PA does not address ARNG undertakings that could cause ground disturbance or that may affect archaeological sites, except those areas previously designated as easements (e.g., natural gas, telephone, and water lines) or areas where disturbance has already occurred (e.g., sidewalks, driveways, paths) for the first six inches depth of ground disturbance. For excavation work deeper



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than six inches on Readiness Center properties, the standard 36 CFR Part 800 consultation process must be followed.

F. This PA does not apply on "tribal lands" as defined under 36 CFR § 800.16(x).

G. This PA does not apply to replacement or repair of wall insulation. Any action to this insulation will require compliance with the standard 36 CFR 800 consultation process.

## **II. Exemptions**

The CRM will determine whether a proposed activity meets the definition of one of the exempted activities listed below. If the CRM determines the proposed activity meets one or more of the definitions listed below, the proposed activity is then exempt from further Section 106 review. For each instance in which the installation CRM employs any of these exemptions, the CRM shall prepare written documentation to be retained in the CRM's records and used in the annual report. The CRM will specifically identify which of the exempt category(ies) was utilized.

Exterior and interior work is exempted from Section 106 review when it:

- i. Affects those materials listed under Exemption II.A and II.B below;
- ii. Is routine maintenance, defined as regular and general upkeep of a readiness center against normal wear and tear;
- iii. Involves repair or replacement with in-kind materials when the material being repaired or replaced has been identified as contributing to the historic significance of the building; and,
- iv. Non-historic/non-character defining exemptions will apply to both exterior and interior maintenance and repair of non-historic or non-character defining materials only when historic or character defining features or materials are not destroyed, obscured, concealed, or altered or otherwise compromised. These exemptions only apply to Readiness Centers when a



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formal study by qualified professionals have evaluated and identified those elements that are historic or character defining and those that are non-historic or non-character defining materials and that the appropriate SHPO has concurred with those findings.

- v. Meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, and Reconstructing Historic Buildings* (Weeks, Kay. D and Grimmer, Anne E, 1995, [http://www.nps.gov/history/hps/tps/standards/standards\\_complete.pdf](http://www.nps.gov/history/hps/tps/standards/standards_complete.pdf)) when repair or replacement will occur to those materials identified as contributing to the historic significance of the building.

**A. Exterior Exemptions Apply to:**

1. Painting on previously painted surfaces using similar color
2. Paint removal by means that will not damage or adversely affect the historic fabric of the building
3. Repair of existing walkways
4. Repair of existing parking areas within the existing footprint and not involving lighting and landscaping changes
5. Repair of existing above ground fuel storage facilities
6. Placement of temporary, or not permanently fixed, barriers for compliance with DoD Minimum Antiterrorism Standards for Buildings (UFC 4-010-01 8 October 2003)
7. Building exterior repairs that matches existing details, form, and materials and meet the requirements as specified above in II i-iv
8. Building exterior replacement that matches existing details, form, and materials, meets the requirements as specified above in II 1-iv, and only when deterioration of the material is beyond repair

**B. Interior Exemptions Apply to:**



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1. Insulation (ceilings, attics, basement spaces, plumbing pipes, hot water heaters, and ductwork)
2. Electrical systems
3. Telecommunications equipment
4. Security systems
5. Fire suppression systems
6. Non-destructive asbestos removal and abatement
7. Non-destructive lead paint abatement

### **III. Section 106 Review Process for Readiness Center Undertakings**

CRMs shall carry out the following process for each undertaking under the scope of this PA:

#### **A. Identification and Evaluation of Readiness Centers**

1. CRMs shall consult Appendix B and the PRIDE (Planning Resource Infrastructure Development and Evaluation (PRIDE) is the ARNG's real property database) to determine the historic property status for the relevant ARNG Readiness Center. If an installation has not been evaluated an ARNG Readiness Center for NRHP eligibility, the Readiness Center's eligibility will be determined per 36 CFR 800.4.
2.
  - a. If the relevant Readiness Center is a "historic property," or eligible for or listed on the NRHP, then the installation will proceed to Stipulation III B.
  - b. If the relevant Readiness Center is not a historic property, then no further Section 106 review is necessary. The CRM shall document this determination and proceed accordingly.



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## **B. Consultation with Indian Tribes and Native Hawaiian Organizations**

1. The CRM will consult with Indian tribes or Native Hawaiian organizations for a proposed Readiness Center project if the CRM, through their regular, yearly consultation efforts, identifies a Federally-recognized Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to a historic property affected by the proposed undertaking or is otherwise interested in a particular Readiness Center. Consultation with Indian tribes or Native Hawaiian organizations regarding the undertaking will take place through formal government to government consultation unless another agreement is in place such as a formal Memorandum of Understanding (MOU) that specifically outlines other consultation protocol. All tribal consultation will begin at the same time that consultation with the SHPO occurs.

## **C. Determination of Effect on Historic Readiness Centers**

If a proposed undertaking does not meet the definition of an exempted activity as defined in Section II, then the CRM will follow the process as stipulated within 1 and 2 below.

1. No Adverse Effect—36 CFR §800.5 (b) and (c)
  - a. If the CRM determines that a proposed undertaking will not adversely affect a Readiness Center that is an historic property because the Secretary of Interior Standards (36 CFR 68) will be followed, the CRM will:
    - (i) Notify the SHPO in writing for each undertaking and include the documentation specified in 36 CFR §800.11(e) and request concurrence with the CRM's finding of no adverse effect.
      - (aa) If SHPO concurs in writing within thirty days of the receipt of the CRM's finding and appropriate documentation, the proposed Readiness Center undertaking will proceed.



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(bb) If SHPO does not reply to the CRM within thirty days of receipt of the CRM's request and appropriate documentation in writing, the CRM's no adverse effect finding will become final and the proposed Readiness Center undertaking will proceed without further Section 106 review.

(cc) If the SHPO replies to the CRM's finding within thirty days of receipt of the CRM's finding request and appropriate documentation in writing, but does not concur with the CRM's finding of no adverse effect, the CRM and the SHPO will attempt to resolve the disagreement. When the CRM determines that an agreement on the finding cannot be reached, the CRM shall refer the matter to the NGB and:

(dd) The NGB shall determine whether to revise the CRM's effect finding.

a. If the NGB revises the CRM's finding to meet SHPO's position, the CRM will move on to Stipulation III.C.2.

b. If the NGB decides not to revise the CRM's effect finding, the parties will exercise the Dispute Resolution procedures set forth in Administrative Stipulation V.

2. Adverse Effect— (36 CFR §800.5 (a)(1) and (2).) The following procedure shall serve as a substitute for the process set forth in 36 CFR §800.6, *Resolution of Adverse Effects*, and specifically 36 CFR §800.6 (c), *Memorandum of Agreement*:

a. If the CRM, after considering alternative actions, determines that a proposed project may adversely affect a Readiness Center that is an historic property, the CRM will:

(i) Notify the SHPO in writing of the undertaking, including the information as specified in 36 CFR §800.11(e), the alternatives that were considered to avoid the Adverse Effect and why they were not possible to implement, proposed appropriate mitigation, and to request



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the SHPO's concurrence on the finding. Proposed mitigation may involve HABS/HAER Level III documentation as described in Appendix C of this PA, though HABS/HAER Level I and II and/or other mitigation measures may be more acceptable and should be considered on a case by case basis based on the specific undertaking.

(aa) If the SHPO concurs in writing within thirty days of the receipt of the CRM's finding of adverse effect and recommended mitigation, the proposed project will proceed in accordance with the CRM's suggested mitigation measures.

(bb) If the SHPO does not respond in writing to the CRM within thirty days of receipt of the CRM's finding of adverse effect and recommended mitigation, the proposed Readiness Center project will proceed in accordance with the CRM's suggested mitigation measures.

(cc) If the SHPO responds in writing to the CRM within the thirty day time period, but does not agree with the CRM's recommended mitigation measures, the CRM, the NGB, and the SHPO will consult further to attempt to reach an agreement.

(dd) If agreement regarding mitigation measures or any other matter related to the adverse effect determination cannot be reached, the parties will exercise the Dispute Resolution procedures set forth in Administrative Stipulation V.

(ii) Notify the interested public of the undertaking and the adverse effect determination either on the State ARNG's or State SHPO's website(s) or in other means by which the state ARNG feels is an appropriate means of notifying interested parties of the undertaking. The State ARNG will take into account ARNG any comments received by the interested public.

(aa) Notification of the public should occur at the same time that the CRM notifies the SHPO of the CRM's finding of adverse effect and recommended mitigation.



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## **Administrative Stipulations**

### **I. Personnel**

The State ARNG's Facilities Management Officer (FMO) or Construction and Facilities Management Officer (CFMO) will include the CRM in their state's planning for proposed projects and activities related to the maintenance and repair of Readiness Centers that are historic properties early in the planning process. After participating in the state-level planning process, the CRM will coordinate with the state SHPO for all non-exempt undertakings.

### **II. Anti-Deficiency Act Compliance**

All requirements set forth in this PA requiring expenditure of U.S. Army funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken under the terms of the PA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose. Should the requirements of the Anti-Deficiency Act apply, the NGB will consult with the ACHP and NCSHPO, according to the amendment and termination procedures found in Administrative Stipulations VII and VIII.

### **III. Readiness Center Reporting, Annual Review and Preparation of Annual Report by NGB**

1. For those states in which the state ARNG CRMs reviewed an undertaking pursuant to this PA, the NGB will provide a nationwide annual report to the ACHP and the NCSHPO. The NCSHPO will send a copy of the annual report to all SHPOs upon receipt. NGB will provide any other interested parties copies of the annual report upon written request.
  - a. The annual reports will consist of the previous fiscal year's (October 1 – September 30) activities and will be available on or before January 31 of each year.



- b. Annual reports will include a list of projects and program activities on Readiness Centers that are historic properties in which this Programmatic Agreement was utilized including those projects that have no adverse effect, those with an adverse effect, and those in which an exemption as listed in Stipulation II was utilized.
- c. The NGB reports will summarize consultation, alternatives, mitigation, and treatment measures that were implemented to address the adverse effects and include the number of exemptions per category.
  - (i). The nationwide summary will include the views of SHPOs and other consulting parties who were involved with the project or activity.
  - (ii). Determinations of Eligibility on Readiness Centers completed in the previous year will also be summarized in the NGB nationwide annual report.
  - (iii). NGB will prepare nationwide annual reports for the life of this PA. This annual report will include revisions, if any, to Appendix B. Revisions/amendments to Appendix B will not require amendment to this PA.

#### **IV. Unanticipated Discovery Resulting from Readiness Center Projects Addressed in this PA**

A. If, during the Section 106 process at a Readiness Center, a proposed project leads to discovery of other historic properties or has unanticipated effects on historic properties, the CRM shall be contacted immediately by the Superintendent of the Readiness Center. All work within a fifty (50) foot buffer around the discovery shall be suspended by the Superintendent of the Readiness Center. The CRM will immediately notify the NGB of the unanticipated discovery. The work will not resume without the written authorization of the NGB.

- B. The CRM shall then proceed in accordance with 36 CFR 800.13(b).



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C. The NGB shall only authorize resumption of the Readiness Center project following satisfactory completion of any necessary field investigations.

#### **V. Dispute Resolution**

A. Should any individual SHPO, NCSHPO, and/or other signatories to this agreement object in writing to any actions carried out or proposed pursuant to this PA, the NGB will consult with the objecting party and signatories to resolve the objection. If the NGB determines that the objection cannot be resolved, the NGB shall forward all documentation relevant to the dispute to the ACHP, including the NGB's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP, after consulting with the objecting party, will either:

1. Advise the NGB in writing that the ACHP concurs with the NGB's proposed response to the objection, whereupon the NGB will respond to the objection accordingly; or
2. Provide the NGB with recommendations in writing, which the NGB will take into account in reaching a final decision regarding the disputes.
3. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the NGB may assume the ACHP's concurrence in its proposed response to the objection and proceed accordingly.

B. Any written recommendations or comment provided by the ACHP pursuant to this stipulation will pertain only to the subject of the dispute; the NGB's responsibility to carry out all other actions under this agreement that are not subjects of the dispute will remain unchanged.

#### **VI. Monitoring of Programmatic Agreement**

Individual SHPOs, the NCSHPO and the ACHP may review any activities carried out pursuant to this PA upon official request. The NGB will facilitate any requests from individual SHPOs, the NCSHPO and the ACHP to monitor or to review project files or on-site activities for Readiness Center projects pursuant to this PA.



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The NCSHPO, at their discretion, may solicit comments annually from individual SHPOs on how they believe the agreement document is working.

## **VII. Termination of the Programmatic Agreement**

A. If the NGB determines that it is unable to comply with the terms of this PA, or if NCSHPO, the NGB, or the ACHP determine that the PA is not being properly implemented, the NGB, the NCSHPO, or the ACHP may propose to the other parties to this PA that it be terminated.

B. The party proposing termination will so notify all parties to this PA in writing, explaining the reasons for proposing termination and affording them at least thirty (30) days to consult and seek alternatives to termination. If, at the end of said period, the party proposing termination has not retracted its proposal to terminate, the PA shall be deemed terminated. At that time, the NGB will notify the state ARNG, SHPO, NCSHPO, and the ACHP, in writing, regarding the termination.

C. If the PA is terminated, the NGB will:

1. Consult according to 36 CFR § 800.14(b) to develop a new PA or,
2. Comply with 36 CFR Part 800 with regard to each undertaking at a Readiness Center.

D. If a specific SHPO determines that the PA is not being properly implemented in its State, that SHPO shall follow the steps in Administrative Stipulation VII. A. and B. above. If such a process leads to a termination, the PA shall no longer apply to the relevant State. However, the other States will continue to follow the PA. The NGB will notify the state ARNG, SHPO, NCSHPO, and the ACHP, in writing, regarding the state-wide termination as part of the annual review and reporting requirement, as described in Administrative Stipulation III.

## **VIII. Amendment of the Programmatic Agreement**



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Any signatory to this PA may propose in writing to the NGB that the PA be amended, whereupon the NGB will consult with the signatories to this PA to consider such amendment. The Amendment will go into effect upon written agreement by all signatories.

#### **IX. Expiration and Renewal of the Programmatic Agreement**

This PA will take effect on the date it is signed by the last signatory and will remain in effect for 10 years. No extension or modification will be effective unless all signatories have agreed in writing within the 10 year time period. All signatories will meet six months prior to sunset of the Programmatic Agreement to ascertain if renewal and/or revision is desirable.

#### **X. Execution and Implementation**

Execution and implementation of this PA evidences that the NGB has afforded the ACHP a reasonable opportunity to comment on the maintenance and repair of Readiness Centers that are historic properties, and that the NGB has taken into account the effects of the undertaking(s) on these historic properties. Execution and compliance with this PA fulfills the NGB's Section 106 responsibilities regarding the maintenance and repair of the Readiness Centers addressed in this PA.



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**NATIONWIDE PROGRAMMATIC AGREEMENT**

**For**

**ARMY NATIONAL GUARD READINESS CENTERS MAINTENANCE AND REPAIR**

**Among**

**The NATIONAL GUARD BUREAU**

**The NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**

**The ARMY FEDERAL PRESERVATION OFFICER**

**And**

**The ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: *R. W. Carpenter* Date: 22 OCT 2010  
Raymond W. Carpenter

Major General, US Army

Acting Director, Army National Guard

By: *Ruth A. Pierpont* Date: 11/19/10

Ms. Ruth Pierpont

President

National Conference of State Historic Preservation Officers

By: *John M. Fowler* Date: 12/10/10

Mr. John M. Fowler

Executive Director

Advisory Council on Historic Preservation



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## **Appendices**

Appendix A – Nationwide Historic Context

Appendix B – Listing of Historic Armories Nationwide

Appendix C – Information Regarding HABS III Documentation Standards

Appendix D – Consultation Documentation



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## **Appendix A**

### **Nationwide Armory Historic Context**

Can be downloaded in its entirety at:

<https://gkoportal.ngb.army.mil/sites/ARE/C/Cultural/Historic%20Contexts%20Document%20Library/Forms/AllItems.aspx?RootFolder=%2fsites%2fARE%2fC%2fCultural%2fHistoric%20Contexts%20Document%20Library%2fNationwide%20Armory%20Historic%20Context&View=%7bE3C1372E%2d733C%2d43DC%2dBE1B%2d69BDCD311673%7d>



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## **Appendix B**

### **Nationwide Listing of Historic Armories**



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## **Appendix C**

### **Information Regarding HABS Level III Documentation Standards**

Can be downloaded in its entirety at:

<http://www.nps.gov/history/hdp/standards/standards.pdf>



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**Appendix D**  
**Consultation Documentation**

**Details regarding comments associated with the development of the Nationwide PA are available at NGB as part of the Administrative Record, Jul 2008 compiled by Burns and McDonnell**



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## Implementation of the Nationwide Programmatic Agreement for Army National Guard Readiness Centers

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**NATIONAL GUARD BUREAU**  
111 SOUTH GEORGE MASON DRIVE  
ARLINGTON VA 22204-1382

ARNG-ILE

MEMORANDUM FOR The Environmental Program Managers of all States, Puerto Rico, the US Virgin Islands, Guam, and The District Of Columbia

SUBJECT: Implementation of the Nationwide Programmatic Agreement (PA) for Army National Guard Readiness Centers - Maintenance and Repair

1. References.

a. "Nationwide Programmatic Agreement for Army National Guard Readiness Centers Maintenance and Repair among The National Guard Bureau, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation," December 11, 2010

b. AR 200-1, Environmental Protection and Enhancement (2007), December 13, 2007

c. 36 CFR Part 800, Protection of Historic Properties, incorporating amendments effective August 5, 2004

d. 16 USC 470-470w, National Historic Preservation Act of 1966

2. Purpose. This Programmatic Agreement provides a program alternative for state Army National Guard organizations (state ARNG) to use, if they so choose, to address the effects of ARNG routine maintenance and repair at Readiness Centers eligible for or listed on the National Register of Historic Places.

3. Goal. By utilizing this program alternative, the ARNG will comply with the National Historic Preservation Act (NHPA) Section 106 process for these types of actions in a streamlined way that will prevent delays to mission essential maintenance and repair actions at Readiness Centers.

4. Requirements:

a. Every state ARNG must organize a consultation meeting with their State Historic Preservation Office (SHPO) *NLT 7 MAR 11* (90 days following the signing of this agreement). During this meeting the state ARNG and SHPO will determine whether they will utilize the PA in their state.

b. Every state ARNG must notify Army National Guard Directorate, Environmental Programs Division's Cultural Resources Program Manager, in a formal letter, *NLT 6 APR 11* (120 days following the signing of this agreement) as to whether or not they will implement this PA in their respective state.

ARNG-ILE

SUBJECT: Implementation of the Nationwide Programmatic Agreement (PA) for Army National Guard Readiness Centers - Maintenance and Repair

5. Guidance.

a. This PA does not address ground disturbance in undisturbed areas or any disturbance beyond six inches of depth in previously disturbed areas (sidewalks, driveways, paths, etc) at Readiness Center property.

b. The Adjutant General (TAG) will ensure that all cultural resources technical work, including identification, evaluation, and treatment of properties eligible for or listed on the National Register of Historic Places, is conducted by individuals who meet the professional qualification standards established by the National Park Service in 36 CFR Part 61 Appendix B [see Page 2].

c. Selected interior and exterior work at historic Readiness Centers is exempt from further Section 106 review for all state ARNGs who choose to employ this PA. The state ARNG must, however, maintain a record of the number and type of exemptions that occur each year and be able to report this data to the Army National Guard Directorate, Environmental Programs Division as necessary [See Section II].

d. For maintenance and repair activities that are not exempted, the state ARNG will consult with the SHPO and must adhere to the streamlined approach to Section 106 consultation found within the PA [See Section III].

i. "No adverse effect" determinations – the state ARNG will submit their determination of effect and appropriate documentation as specified in 36 CFR §800.11(e) to the SHPO and request their concurrence (See Section III.C.1 for full description of requirements).

ii. "Adverse effect" determinations – Procedures set forth in this Programmatic Agreement will substitute the process set forth in 36 CFR §800.6, *Resolution of Adverse Effects*, and specifically 36 CFR §800.6 (c), *Memorandum of Agreement*. The state ARNG will notify the SHPO in writing of the undertaking, the alternatives considered to avoid the adverse effect and why they were not possible, and the state ARNG's proposed mitigation measures and request the SHPO's concurrence. If the SHPO concurs with the approach and the proposed mitigation within 30 days, the state ARNG may move forward with completing the mitigation and implementing the undertaking with *no Memorandum of Agreement (MOA)*, as ordinarily required in the regular Section 106 process. (See Section III.C. for full description of requirements).

6. Reporting: All state ARNGs implementing this PA will be required to submit an annual report to the Army National Guard Directorate, Environmental Programs Division, to include a list of projects/undertakings and program activities which occurred on Readiness Centers utilizing the streamlined approach during the prior Fiscal Year (October 1 – September 30). This annual report must be submitted NLT than November 1 of each year. The state ARNG must complete the entire annual report template, attached hereto, in order to report nationwide trends and effectiveness of the

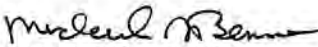
ARNG-ILE

SUBJECT: Implementation of the Nationwide Programmatic Agreement (PA) for Army National Guard Readiness Centers - Maintenance and Repair

PA. If the report is not received, the PA may no longer be implemented by that state ARNG and the Army National Guard Directorate will formally notify the respective SHPO, the National Council of SHPO and the ACHP that the state ARNG will continue all future consultation activities in accordance with the standard procedures set forth in 36 CFR Part 800.

7. The point of contact is Kristin Leahy, Army National Guard Directorate, Environmental Programs Division Cultural Resource Program Manager, at 703-607-7190 or Kristin.Leahy@us.army.mil.

Encl  
as

  
MICHAEL J. BENNETT  
COL, LG  
Chief, Environmental  
Programs Division

CF:  
Each State Cultural Resources Manager

## **Appendix N: Statement of Work Guidance**



## **Appendix N: Statement of Work Guidance**

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### **Statement of Work**

Determining and creating the Statement of Work (SOW) for ARNG archaeological investigations is the first step in inventorying and evaluating a project area. A clearly defined SOW allows contractors to understand the investigation's objectives. The SOW should include detailed descriptions of the following elements:

- Purpose of the project and objectives (include maps or GIS shape files of project areas);
- Type of work required (survey, testing, or excavation) and any performance standards (such as shovel test intervals; transect intervals; percent of site to be tested or excavated, preferred methods);
- Applicable Federal and state regulations;
- Description of the deliverables and timeframe;
  - Include GIS requirements;
  - Record-keeping and artifact-collection and curatorial requirements;
  - Number of final reports and format; and
  - Qualification for those performing the work.

## **GUIDELINES TO WRITING A STATEMENT OF WORK**

### **TITLE of PROJECT/Work to Perform**

The title summarizes the name of the proposed project. This should include “who” (state ARNG) and “what” work is requested.

### **INTRODUCTION / BACKGROUND**

Provide a short description of the State ARNG cultural resources program and the operational requirement for which the statement of work is submitted. Describe the main objective or focus of the project. Additional important information to include is the reason or regulatory drivers to initiate and complete the project. Include the state ARNG’s objective during and after completion of the project.

If applicable, identify if the project is one-time only project, the first in a series of requirements/projects, a phase within a larger project, or a multi– phase project. If the project is recurring or multi-phase, describe what has been completed and the results.

### **PROJECT OBJECTIVE**

List project objectives including overall outcome or results of contracted work. This provides a clear understanding to the contractor and enforces the expectation of work performed. Objectives should include wording such as “contractor will supply necessary items, labor, material, supervision, transportation, equipment, and/or supplies to complete each project task.”

If applicable, list quantities (# of acres, buildings, etc.) within the summary for the contractor to include in their proposal.

### **APPLICABLE REGULATIONS**

List all Federal regulations that apply to this project and its objectives. List State laws if applicable.

### **STATEMENT OF WORK**

The SOW helps the contractor understand the work required and develop a responsive proposal. More specifically, it describes the boundaries of work to take place by describing tasks the contractor is required to complete. Do not over-specify how to complete the tasks by suggesting methods or approaches.

For each task described to complete, identify a schedule and if a deliverable is required.

An opportunity for the contractor to amend the scope is often accepted. It allows the contractor to include additional scope parameters or technical requirements if needed.

### **DELIVERABLES**

The deliverables can be associated with tasks and/or as a final result of the task(s) completed. Deliverables are tangible products that contractors often use as milestones to submit invoice payments.

Deliverables need to be clearly identified with required contents, format, hard or soft copies, software, size, number of copies, delivery directions, and required period of submittal and reviews.



## **PAYMENT/INVOICE**

Clearly identify when payment will occur and the amount of payment. For example, a percentage of the overall contract value will be submitted upon invoice of each milestone or task deliverable; payment upon completion of the deliverable; payment upon monthly invoice.

## **CONTRACTOR REQUIREMENTS and QUALIFICATIONS**

Identify how the contractor is required to undertake the project by specifying the type of skill sets and accountability the contractor is required to deploy. This establishes a foundation of qualified contractors to apply to the selection and evaluation criteria of selecting a contractor.

Assessing contractor qualification includes listing Federal guideline qualifications that apply to the proposed work. This may include skills and experience needed to meet qualification standards. If Federal guidelines do not apply to the project, identify specific skills or experience the contractor must possess to complete the work.

### **Reference:**

RFP Solutions, Inc

2009 *Statement of Work (SOW) Writing Guide*. RFP Solutions, Inc., Ottawa, Canada.

### ***TIPS to Writing a Statement of Work (RFP Solutions, Inc 2009)***

- *When writing a Statement of Work (SOW), think ahead to the contract management stage as a way to communicate mutual expectations of the project/contract, and to easily describe the project. A well written SOW will minimize potential misunderstandings.*
- *Write the SOW with details that provide a base understanding of goals. The goals can be used to develop your criteria to help to differentiate competing proposals.*
- *The criteria must have a foundation within the text of the SOW.*
- *Be descriptive of project requirements, but try to leave flexibility for the contractor to offer innovative strategies with goals and responsibilities.*
- *Group SOW information or tasks in a logical format.*
- *Use plain and simple language. Spell out acronyms and include definitions of technical or unique terms.*
- *Use the present/active tense when writing a SOW.*

*“The words “will” and “shall” have specific, legally interpreted meanings within a SOW. The word “Shall” is always used to convey a binding provision on the Contractor (i.e., “The Contractor shall supply ,...” ). The word “Will” is always used to convey a declaration of future action by the Buyer/Government (i.e., “The Department will provide the Contractor with...” ).”*

- *Avoid jargon, vague terms, run on sentences, and writing all possible expectations.*

*“There is a tendency to want to cover-off all possible contingencies in a SOW and to establish the basis for an irontight, no-risk, enforceable contract, this often leads to excessive ‘legalese’ with the document, creating confusion, misunderstandings and contradictions.”*



## Appendix O: Relevant Laws, Regulations, and Policies

<b>Federal Regulations</b> .....	O-3
Advisory Council on Historic Preservation (36 CFR 800) .....	O-3
Archeological Resources Protection Act (16 USC 470).....	O-19
Protection of Archeological Resources (32 CFR 229) .....	O-33
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Curation of Federally-Owned and Administered Archaeological Collections (36 CFR 79).....	O-117
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Policy Guidance for Management of Historic Properties within the Army National Guard (NGB Memorandum 29 April 2010).....	O-307
Applicability of National Historic Preservation Act Consultation Requirements to Disposal, Change in Use or Demolition of Historic Readiness Centers (NGB Memorandum 15 February 2011).....	O-315
National Historic Preservation Act (NHPA) Section 106 Requirements for National Environmental Policy Act (NEPA) Record of Environmental Consideration (REC) Forms (NGB Memorandum 25 May 2012) .....	O-319
<b>Native American Regulations</b> .....	O-325
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Government-to-Government Relations with Native American Tribal Governments (29 April 1994 Presidential Memorandum) .....	O-385



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**Federal Regulations**

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**Advisory Council on Historic Preservation (36 CFR 800)**

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# Federal Register

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Tuesday,  
December 12, 2000

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**Part II**

**Advisory Council on  
Historic Preservation**

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36 CFR Part 800

Protection of Historic Properties; Final  
Rule

course of a Federal agency's compliance with section 106 of the NHPA, must be considered and evaluated by that Federal agency.

#### *The Paperwork Reduction Act*

The final regulations do not impose reporting or recordkeeping requirements or the collection of information as defined in the Paperwork Reduction Act.

#### *The National Environmental Policy Act*

In accordance with 36 CFR part 805, the Council initiated the NEPA compliance process for the Council's regulations implementing section 106 of the NHPA prior to publication of the proposed rule in the **Federal Register** on September 13, 1996. On July 11, 2000, through a notice of availability on the **Federal Register** (65 FR 42850), the Council sought public comment on its Environmental Assessment and preliminary Finding of No Significant Impact. The Council has considered such comments, and has confirmed its finding of no significant impact on the human environment. A notice of availability of the Environmental Assessment and Finding of No Significant Impact has been published in the **Federal Register**.

#### *Executive Orders 12866 and 12875*

The Council is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The Council also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994. The rule does not mandate State, local, or tribal governments to participate in the section 106 process. Instead, State, local, and tribal governments may decline to participate. State Historic Preservation Officers do advise and assist Federal agencies, as appropriate, as part of their duties under section 101(b)(3)(E) of the NHPA, as a condition of their Federal grant assistance. In addition, in accordance with Executive Order 12875, the rule includes several flexible approaches to consideration of historic properties in Federal agency decision making, such as those under § 800.14 of the rule. The rule promotes flexibility and cost effective compliance by providing for alternate procedures, categorical exemptions, standard treatments, program comments, and programmatic agreements.

#### *The Unfunded Mandates Reform Act of 1995*

The final rule implementing section 106 of the NHPA does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The Council thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

#### *Executive Order 12898*

The final rule implementing section 106 of the NHPA does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by this rule seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The Council considers environmental justice issues in reviewing analysis of alternatives and mitigation options particularly when section 106 compliance is coordinated with NEPA compliance. Guidance and training is being developed to assist public understanding and use of this rule.

#### *Memorandum Concerning Government-to-Government Relations With Native American Tribal Governments*

The Council has fully complied with this Memorandum. A Native American/ Native Hawaiian representative has served on the Council. As better detailed in the preamble to the rule adopted in 1999, the Council has consulted at length with Tribes in developing the substance of what became the proposed rule in this rulemaking. The rule enhances the opportunity for Native American involvement in the section 106 process and clarifies the obligation of Federal agencies to consult with Native Americans. The rule also enhances the Government-to-Government intentions of the memorandum.

#### *Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Council will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 11, 2001.

#### **List of Subjects in 36 CFR Part 800**

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

For the reasons discussed in the preamble, the Advisory Council on Historic Preservation amends 36 CFR chapter VIII by revising part 800 to read as follows:

### **PART 800—PROTECTION OF HISTORIC PROPERTIES**

#### **Subpart A—Purposes and Participants**

- Sec.
- 800.1 Purposes.
- 800.2 Participants in the Section 106 process.

#### **Subpart B—The Section 106 Process**

- 800.3 Initiation of the section 106 process.
- 800.4 Identification of historic properties.
- 800.5 Assessment of adverse effects.
- 800.6 Resolution of adverse effects.
- 800.7 Failure to resolve adverse effects.
- 800.8 Coordination with the National Environmental Policy Act.
- 800.9 Council review of Section 106 compliance.
- 800.10 Special requirements for protecting National Historic Landmarks.
- 800.11 Documentation standards.
- 800.12 Emergency situations.
- 800.13 Post-review discoveries.

#### **Subpart C—Program Alternatives**

- 800.14 Federal agency program alternatives.
- 800.15 Tribal, State, and local program alternatives. [Reserved]
- 800.16 Definitions.
- Appendix A to Part 800—Criteria for Council involvement in reviewing individual section 106 cases

Authority: 16 U.S.C. 470s.

#### **Subpart A—Purposes and Participants**

##### **§ 800.1 Purposes.**

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a

reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

#### **§ 800.2 Participants in the Section 106 process.**

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval

authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to

fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.*

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.*

(i) *Consultation on tribal lands.*



(A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may

notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses, and other approvals.* An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may



also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

#### Subpart B—The section 106 Process

##### § 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on

any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or

affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

##### § 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data

concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to

conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the

identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant

to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

#### § 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all

qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.*

Adverse effects on historic properties include, but are not limited to:

- (i) Physical destruction of or damage to all or part of the property;
- (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
- (iii) Removal of the property from its historic location;
- (iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- (v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
- (vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- (vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.*

Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and

applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with § 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's

determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

**§ 800.6 Resolution of adverse effects.**

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation

is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed

pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.



(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

**§ 800.7 Failure to resolve adverse effects.**

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

**§ 800.8 Coordination With the National Environmental Policy Act.**

(a) *General principles.*

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality

of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's

consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

**(2) Review of environmental documents.**

(i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) **Resolution of objections.** Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with § 800.6(b)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) **Approval of the undertaking.** If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in: (A) The ROD, if such measures were proposed in a DEIS or EIS; or (B) An MOA drafted in compliance with § 800.6(c); or

(ii) The Council has commented under § 800.7 and received the agency's response to such comments.

(5) **Modification of the undertaking.** If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

**§ 800.9 Council review of section 106 compliance.**

(a) **Assessment of agency official compliance for individual undertakings.** The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) **Agency foreclosure of the Council's opportunity to comment.** Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official

and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

**(c) Intentional adverse effects by applicants.**

(1) **Agency responsibility.** Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) **Consultation with the Council.** When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

**§ 800.10 Special requirements for protecting National Historic Landmarks.**

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give

special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

**§ 800.11 Documentation standards.**

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance

pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.* When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement.*

*Documentation shall include:*

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

#### § 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes

an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

#### § 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.*

When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National



Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

#### Subpart C—Program Alternatives

##### § 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures. publish notice of the availability of proposed alternate procedures in the *Federal Register* and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final

alternate procedures in the *Federal Register*.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider

the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the

provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the

methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The agency official shall publish notice of any approved exemption in the **Federal Register**.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the **Federal Register**.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the **Federal**

Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views

into account in reaching a final decision on the proposed program alternative.

**§ 800.15 Tribal, State, and local program alternatives. [Reserved]**

**§ 800.16 Definitions.**

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day or days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site,

building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and

conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance;

those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

#### **Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual section 106 Cases**

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will

set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

**John M. Fowler,**

*Executive Director.*

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## Archeological Resources Protection Act (16 USC 470)

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### Archaeological Resources Protection Act of 1979

AS AMENDED

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This Act became law on October 31, 1979 (Public Law 96-95; 16 U.S.C. 470aa-mm), and has been amended four times. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the “Act” (meaning the Act, as amended) rather than to the “subchapter” or the “title” of the Code.

16 U.S.C. 470aa,  
Findings and purpose

#### Section 2

(a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation’s heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for non-commercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act].

16 U.S.C. 470bb,  
Definitions

#### Section 3

As used in this Act—

(1) the term “**archaeological resource**” means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not

## Archaeological Resources Protection Act of 1979

be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term “**Federal land manager**” means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term “Federal land manager” means the Secretary of the Interior.

(3) The term “**public lands**” means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

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(4) The term “**Indian lands**” means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term “**Indian tribe**” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(6) The term “**person**” means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term “**State**” means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

16 U.S.C. 470cc,  
Excavation and  
removal

### Section 4

16 U.S.C. 470cc(a),  
Application for permit

(a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

16 U.S.C. 470cc(b),  
Determinations by  
Federal land manager  
prerequisite to issuance of permit

(b) A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

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	(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and
	(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.
16 U.S.C. 470cc(c), Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance	(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of this Act.
16 U.S.C. 470cc(d), Terms and conditions of permit	(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.
16 U.S.C. 470cc(e), Identification of individuals responsible for complying with permit terms and conditions and other applicable laws	(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.
16 U.S.C. 470cc(f), Suspension or revocation of permits, grounds	(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6 of this Act. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 of this Act against the permittee or upon the permittee's conviction under section 6 of this Act.
16 U.S.C. 470cc(g), Excavation or removal by Indian tribes or tribe members, excavation or removal of resources located on Indian lands	(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain permit under this section.



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(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

16 U.S.C. 470cc(h),  
Permits issued under  
Antiquities Act of 1906

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 [16 U.S.C. 431-433], shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before October 31, 1979 [the date of the enactment of this Act] which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

16 U.S.C. 470cc(i),  
Compliance with  
provisions relating to  
undertakings on prop-  
erties listed in National  
Register not required

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the National Historic Preservation Act, as amended [16 U.S.C. 470f].

16 U.S.C. 470cc(j),  
Issuance of permits  
to State governors  
for archaeological  
activities on behalf of  
States or their educa-  
tional institutions

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

16 U.S.C. 470dd,  
Custody of archaeo-  
logical resources

### Section 5

The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

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(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, also known as the Archeological and Historic Preservation Act of 1974 [16 U.S.C. 469-469c-1] or the Act of June 8, 1906 [the Antiquity Act of 1906, as amended, 16 U.S.C. 431-433].

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

16 U.S.C. 470ee,  
Prohibited acts and  
criminal penalties

16 U.S.C. 470 ee(a),  
Unauthorized excavation,  
removal, damage,  
alteration, or defacement  
of archaeological  
resources

16 U.S.C. 470ee(b),  
Trafficking in archaeological  
resources:  
Federal law

16 U.S.C. 470ee(c),  
Trafficking in illegal  
interstate or foreign  
commerce in archaeological  
resources:  
State or local law

### Section 6

(a) No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4 of this Act, a permit referred to in section 4(h)(2) of this Act, or the exemption contained in section 4(g)(1) of this Act.

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a) of this section, or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

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16 U.S.C. 470ee(d),  
Penalties

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

16 U.S.C. 470ee(e),  
Effective date

(e) The prohibitions contained in this section shall take effect on October 31, 1979 [the date of the enactment of this Act].

16 U.S.C. 470ee(f),  
Prospective application

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to any archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

16 U.S.C. 470ee(g),  
Removal of arrow-  
heads located on  
ground surface

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

16 U.S.C. 470ff,  
Civil penalties

### Section 7

16 U.S.C. 470ff(a),  
Assessment by Federal  
land managers

(a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

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(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed any amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

16 U.S.C. 470ff(b),  
Judicial review of  
assessed penalties,  
collection of unpaid  
assessments

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide

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	any such action. In such action, the validity and amount of such penalty shall not be subject to review.
16 U.S.C. 470ff(c), Hearings	(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5 [of the United States Code].
Subpoenas	The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths.
Witness fees	Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.
16 U.S.C. 470gg, Enforcement	<b>Section 8</b>
16 U.S.C. 470gg(a), Rewards	(a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under section 6 and 7 of this Act an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the findings of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.



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16 U.S.C. 470gg(b),  
Forfeitures

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 of this Act occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6 of this Act,

(2) assessment of a civil penalty against such person under section 7 of this Act with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

16 U.S.C. 470gg(c),  
Disposition of penalties  
collected and items for-  
feited in cases involv-  
ing archaeological  
resources excavated or  
removed from Indian  
lands

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 of this Act involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 of this Act and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

16 U.S.C. 470hh,  
Confidentiality of  
information concern-  
ing nature and  
location of archaeo-  
logical resources

### Section 9

(a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 [of the United States Code] or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, 16 U.S.C. 469-469c-1] and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

16 U.S.C. 470hh(b),  
Request for disclosure  
by Governors

(b) Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state—

## Archaeological Resources Protection Act of 1979

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

16 U.S.C. 470ii,  
Rules and regulations,  
intergovernmental  
coordination

16 U.S.C. 470ii(a),  
Promulgation,  
effective date

### Section 10

(a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat.469; 42 U.S.C. 1996 and 1996a).

Submittal to congressional committees

Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Natural Resources of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

16 U.S.C. 470ii(b),  
Federal lands  
managers' rules

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a) of this section, as may be appropriate for the carrying out of his functions and authorities under this Act.

## Archaeological Resources Protection Act of 1979

16 U.S.C. 470ii(c),  
Federal land  
managers' public  
awareness program  
of archaeological  
resources

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources.

16 U.S.C. 470jj,  
Cooperation with  
private individuals

### Section 11

The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act], and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

16 U.S.C. 470kk,  
Savings provisions

### Section 12

16 U.S.C. 470kk(a),  
Mining, mineral leasing,  
reclamation, and  
other multiple uses

(a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

16 U.S.C. 470kk(b),  
Private collections

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1) of this Act.



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16 U.S.C. 470kk(c),  
Lands within Act

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

16 U.S.C. 470ll,  
Annual report to  
Congress

### Section 13

As part of the annual report required to be submitted by the specified committees of the Congress pursuant to section 5(c) of the Act of June 17, 1960 [the Reservoir Salvage Act, as amended, 74 Stat. 220; 16 U.S.C. 469a-3(c)], the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

16 U.S.C. 470mm,  
Surveying of lands,  
reporting of violations

### Section 14

The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.



## Protection of Archeological Resources (32 CFR 229)



### § 228.12

#### § 228.12 Physical protection of facilities.

The willful destruction of, or damage to any protected property, or any buildings or personal property thereon, is prohibited. The theft of any personal property, the creation of any hazard on protected property to persons or things, and the throwing of articles of any kind at buildings or persons on protected property is prohibited. The improper disposal of trash or rubbish, or any unauthorized or hazardous materials on protected property is also prohibited.

#### § 228.13 Disturbances on protected property.

Any conduct which impedes or threatens the security of protected property, or any buildings or persons thereon, or which disrupts the performance of official duties by Agency employees, or which interferes with ingress to or egress from protected property is prohibited. Also prohibited is any disorderly conduct, any failure to obey an order to depart the premises, any unwarranted loitering, any behavior which creates loud or unusual noise or nuisance, or any conduct which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots.

#### § 228.14 Prohibition on gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery, or the selling or purchasing of numbers tickets, in or on protected property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph Sheppard Act, as amended (20 U.S.C. 107(a)(5)).

#### § 228.15 Restriction regarding animals.

No animals except guide dogs for the blind or hearing impaired, or guard or search dogs used by authorized state or federal officials, shall be brought upon protected property, except as authorized by the NSA Director of Security or his designee at each Agency facility.

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#### § 228.16 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on protected property is prohibited. This does not apply to:

- (a) National or local drives for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 12353, 47 FR 12785, 3 CFR, 1982 Comp., p. 139, or by other federal laws or regulations; and
- (b) Authorized employee notices posted on Agency bulletin boards.

#### § 228.17 Distribution of unauthorized materials.

Distributing, posting or affixing materials, such as pamphlets, handbills, or flyers, on protected property is prohibited, except as provided by § 228.16, as authorized by the NSA Director of Security or his designee at each Agency facility, or when conducted as part of authorized Government activities.

#### § 228.18 Penalties and the effect on other laws.

Whoever shall be found guilty of violating any provision of these regulations is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both. In the case of traffic and parking violations, fines assessed shall be in accordance with the schedule(s) of fines adopted by the United States District Court for the District where the offense occurred. Nothing in these regulations shall be construed to abrogate or supersede any other Federal laws or any State or local laws or regulations applicable to any area in which the protected property is situated.

### PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

- Sec.
- 229.1 Purpose.
- 229.2 Authority.
- 229.3 Definitions.

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- 229.4 Prohibited acts and criminal penalties.
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- 229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
- 229.8 Issuance of permits.
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- 229.10 Suspension and revocation of permits.
- 229.11 Appeals relating to permits.
- 229.12 Relationship to section 106 of the National Historic Preservation Act.
- 229.13 Custody of archaeological resources.
- 229.14 Determination of archaeological or commercial value and cost of restoration and repair.
- 229.15 Assessment of civil penalties.
- 229.16 Civil penalty amounts.
- 229.17 Other penalties and rewards.
- 229.18 Confidentiality of archaeological resource information.
- 229.19 Report.
- 229.20 Public awareness programs.
- 229.21 Surveys and schedules.

NOTE: The information collection and reporting requirements in this part were approved by the Office of Management and Budget under control number 1024-0037.

AUTHORITY: Pub. L. 96-95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa-mm) (Sec. 10(a); Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1027, Jan. 6, 1984, unless otherwise noted.

### § 229.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of

archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

### § 229.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

### § 229.3 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

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(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(6) For the disposition following lawful removal or excavations of Native American human remains and "cultural items", as defined by the Native American Graves Protection and Repatriation Act (NAGPRA; Pub. L. 101-601; 104 Stat. 3050; 25 U.S.C. 3001-13), the Federal land manager is referred to NAGPRA and its implementing regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Federal land manager* means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act, and with the consent of the Secretary of the Interior,

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delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) *Public lands* means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) *Indian lands* means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) *Indian tribe* as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe,

or of any State or political subdivision thereof.

(h) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm).

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984; 60 FR 5260, Jan. 26, 1995]

**§ 229.4 Prohibited acts and criminal penalties.**

(a) Under section 6(a) of the Act, no person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 229.8 or exempted by § 229.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Under section (d) of the Act, any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in section 6 (a), (b), or (c) of the Act will, upon conviction, be fined not more than \$10,000.00 or imprisoned not more than one year, or both; provided, however, that if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$500.00, such person will be fined not more than \$20,000.00 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person will be fined not more than \$100,000.00, or imprisoned not more than five years, or both.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

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**§ 229.5 Permit requirements and exceptions.**

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 229.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that

in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part.

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 229.6. However, the Federal land manager shall insure that provisions of § 229.8 and § 229.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under § 229.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §§ 229.5(b)(5), 229.7, 229.8(a)(3), (4), (5), (6), and (7), 229.9, 229.10, 229.12, and 229.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and



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Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

**§ 229.6 Application for permits and information collection.**

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 229.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized

official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in this section of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.



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**§ 229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.**

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 229.9.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location

and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification might include the discovery of human remains. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager will include a requirement in the terms and conditions of permits, under § 229.9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager will notify and consult with the tribe or group as appropriate. In cases involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to NAGPRA and its implementing regulations.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

**§ 229.8 Issuance of permits.**

(a) The Federal land manager may issue a permit, for a specified period of

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time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with

other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a) (2) and (3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land manager shall coordinate the review and

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evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

**§ 229.9 Terms and conditions of permits.**

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 229.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

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**§ 229.10 Suspension and revocation of permits.**

(a) *Suspension or revocation for cause.*

(1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 229.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under § 229.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

**§ 229.11 Appeals relating to permits.**

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

**§ 229.12 Relationship to section 106 of the National Historic Preservation Act.**

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act.

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of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

**§ 229.13 Custody of archaeological resources.**

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager will follow the procedures required by NAGPRA and its implementing regulations for determining the disposition of Native American human remains and other "cultural items", as defined by NAGPRA, that have been excavated, removed, or discovered on public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

**§ 229.14 Determination of archaeological or commercial value and cost of restoration and repair.**

(a) *Archaeological value.* For purposes of this part, the archaeological value of

any archaeological resource involved in a violation of the prohibitions in § 229.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 229.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;
- (3) Ground contour reconstruction and surface stabilization;
- (4) Research necessary to carry out reconstruction or stabilization;
- (5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

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(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

**§ 229.15 Assessment of civil penalties.**

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 229.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty

amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 229.16.

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(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 229.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 229.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 229.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 229.4 or of any term or condition included in a permit issued pursuant to

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this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior

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to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1027, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

§ 229.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under § 229.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 229.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the U.S. Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm



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to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 229.19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, will submit such information as is necessary to enable the Secretary to comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

(b) The Secretary of the Interior will include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under § 229.20(b). Such submittal will fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also will include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, will submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

§ 229.20 Public awareness programs.

(a) Each Federal land manager will establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.

(b) Each Federal land manager annually will submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

§ 229.21 Surveys and schedules.

(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority will develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C. 470 *et seq.* Survey plans prepared under this section will be designed to comply with the purpose of the Act regarding the protection of archaeological resources.

(b) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will prepare schedules for surveying lands under each agency's control that are likely to contain the most scientifically valuable archaeological resources pursuant to section 14(b) of the Act. Such schedules will be developed based on objectives and information identified in survey plans described in paragraph (a) of this section and implemented systematically to cover areas where the most scientifically valuable archaeological resources are likely to exist.

(c) Guidance for the activities undertaken as part of paragraphs (a) through (b) of this section is provided by the Secretary of the Interior's Standards



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and Guidelines for Archeology and Historic Preservation.

(d) Other Federal land managing agencies are encouraged to develop plans for surveying lands under their jurisdictions and prepare schedules for surveying to improve protection and management of archaeological resources.

(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system will reference a set of procedures for use by officers, employees, or agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report will be based upon the system developed by each Federal land manager for documenting suspected violations.

[60 FR 5260, 5261, Jan. 26, 1995]

**PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DOD INSTALLATIONS**

Sec.

230.1 Purpose.

230.2 Applicability and scope.

230.3 Definitions.

230.4 Responsibilities.

230.5 General operating policies and procedures.

APPENDIX A TO PART 230—PROCEDURES FOR ESTABLISHING, SUPPORTING, AND TERMINATING ON-BASE BANKING OFFICES

APPENDIX B TO PART 230—OPERATIONS OF ON-BASE BANKING OFFICES

AUTHORITY: 10 U.S.C. 136.

SOURCE: 54 FR 33506, Aug. 15, 1989, unless otherwise noted.

**§ 230.1 Purpose.**

This part reissues DoD Instruction 1000.12<sup>1</sup> (32 CFR part 230) and provides procedural guidance to supplement DoD Directive 1000.11<sup>2</sup> (32 CFR part 231) concerning relations with banking offices serving on DoD installations.

**§ 230.2 Applicability and scope.**

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff and supporting Joint Agencies, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

(b) All banking institutions and military exchange outlets that operate on DoD installations.

**§ 230.3 Definitions.**

Terms used in this Instruction are defined in 32 CFR part 231.

**§ 230.4 Responsibilities.**

(a) The Comptroller of the Department of Defense (C, DoD), or designee, the Deputy Comptroller (Management Systems) (DC(MS)), shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas banking facilities and specify the charges or fees, or the basis for these, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas

<sup>1</sup> Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code J053, 5801 Tabor Avenue, Philadelphia, PA 19120.

<sup>2</sup> See footnote 1 to § 286.1.



# National Environmental Protection Act: Environmental Analysis of Army Actions (AR 200-2) (32 CFR 651)



## SUBCHAPTER K—ENVIRONMENTAL QUALITY

### PART 651—ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200-2)

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APPENDIX E TO PART 651—CONTENT OF THE ENVIRONMENTAL IMPACT STATEMENT  
APPENDIX F TO PART 651—GLOSSARY

AUTHORITY: 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500-1506; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

SOURCE: 67 FR 15291, Mar. 29, 2002, unless otherwise noted.

#### Subpart A—Introduction

##### § 651.1 Purpose.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA), setting forth the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

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(b) This part requires environmental analysis of Army actions affecting human health and the environment; providing criteria and guidance on actions normally requiring Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and listing Army actions that are categorically excluded from such requirements, provided specific criteria are met.

(c) This part supplements the regulations of the Council on Environmental Quality (CEQ) in the Code of Federal Regulations (CFR) (40 CFR parts 1500-1508) for Army actions, and must be read in conjunction with them.

(d) All Army acquisition programs must use this part in conjunction with Department of Defense (DOD) 5000.2-R (Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems).

(e) This part applies to actions of the Active Army and Army Reserve, to functions of the Army National Guard (ARNG) involving federal funding, and to functions for which the Army is the DOD executive agent. It 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. Operations Other Than War (OOTW) or Stability and Support Operations (SASO) are subject to the provisions of this part as specified in Subpart H of this part. 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. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. This regulation also applies to actions in the Commonwealths of Puerto Rico and the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia and Palau (Republic of Belau). In addition, this part addresses the responsibility of the Army for the assessment and consideration of environmental effects for peacetime SASO operations worldwide. Throughout this

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part, emphasis is placed upon quality analysis of environmental effects, not the production of documents. Documentation is necessary to present and staff results of the analyses, but the objective of NEPA and Army NEPA policy is quality analysis in support of the Army decision maker. The term "analysis" also includes any required documentation to support the analysis, coordinate NEPA requirements, and inform the public and the decision maker.

### § 651.2 References.

Required and related publications and referenced forms are listed in Appendix A of this part.

### § 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary in Appendix F of this part.

### § 651.4 Responsibilities.

(a) *The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E)).* ASA(I&E) is designated by the Secretary of the Army (SA) as the Army's responsible official for NEPA policy, guidance, and oversight. In meeting these responsibilities, ASA(I&E) will:

(1) Maintain liaison with the Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), Congressional oversight committees, and other federal, state, and local agencies on Army environmental policies.

(2) Review NEPA training at all levels of the Army, including curricula at Army, DOD, other service, other agency, and private institutions; and ensure adequacy of NEPA training of Army personnel at all levels.

(3) Establish an Army library for EAs and EISs, which will serve as:

(i) A means to ascertain adherence to the policies set forth in this part, as well as potential process improvements; and

(ii) A technical resource for proponents and preparers of NEPA documentation.

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(b) The Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(AL&T)). ASA(AL&T) will:

(1) Under oversight of the ASA(AL&E), execute those NEPA policy provisions contained herein that pertain to the ASA(AL&T) responsibilities in the Army materiel development process, as described in Army Regulation (AR) 70-1, Army Acquisition Policy.

(2) Prepare policy for the Army Acquisition Executive (AAE) to develop and administer a process of review and approval of environmental analyses during the Army materiel development process.

(3) Prepare research, development, test, and evaluation (RDT&E) and procurement budget justifications to support Materiel Developer (MATDEV) implementation of NEPA provisions.

(c) The Army Acquisition Executive (AAE). The AAE will, under the Army oversight responsibilities assigned to ASA(AL&E):

(1) Administer a process to:

(i) Execute all those NEPA policy provisions contained herein that pertain to all acquisition category (ACAT) programs, projects, and products;

(ii) Ensure that Milestone Decision Authorities (MDAs), at all levels, assess the effectiveness of environmental analysis in all phases of the system acquisition process, including legal review of these requirements;

(iii) Establish resource requirements and program, plan, and budget exhibits for inclusion in annual budget decisions;

(iv) Review and approve NEPA documentation at appropriate times during materiel development, in conjunction with acquisition phases and milestone reviews as established in the Acquisition Strategy; and

(v) Establish NEPA responsibility and awareness training requirements for Army Acquisition Corps personnel.

(2) Ensure Program Executive Officers (PEOs), Deputies for Systems Acquisition (DSAs), and direct-reporting Program Managers (PMs) will:

(i) Supervise assigned programs, projects, and products to ensure that each environmental analysis addresses all applicable environmental laws, executive orders, and regulations.

(ii) Ensure that environmental considerations are integrated into system acquisition plans/strategies, Test and Evaluation Master Plans (TEMPs) and Materiel Fielding Plans, Demilitarization/Disposal Plans, system engineering reviews/Integrated Process Team (IPT) processes, and Overarching Integrated Process Team (OIPT) milestone review processes.

(iii) Coordinate environmental analysis with appropriate organizations to include environmental offices such as Army Acquisition Pollution Prevention Support Office (AAPPSO) and U.S. Army Environmental Center (USAEC) and operational offices and organizations such as testers (developmental/operational), producers, users, and disposal offices.

(3) Ensure Program, Project, Product Managers, and other MATDEVs will:

(i) Initiate the environmental analysis process prescribed herein upon receiving the project office charter to commence the materiel development process, and designate a NEPA point of contact (POC) to the Director of Environmental Programs (DEP).

(ii) Integrate the system's environmental analysis (including NEPA) into the system acquisition strategy, milestone review planning, system engineering, and preliminary design, critical design, and production readiness reviews.

(iii) Apply policies and procedures set forth in this part to programs and actions within their organizational and staff responsibility.

(iv) Coordinate with installation managers and incorporate comments and positions of others (such as the Assistant Chief of Staff for Installation Management (ACSIM) and environmental offices of the development or operational testers, producers, users, and disposers) into the decision-making process.

(v) Initiate the analysis of environmental considerations, assess the environmental consequences of proposed programs and projects, and undergo environmental analysis, as appropriate.

(vi) Maintain the administrative record of the program's environmental analysis in accordance with this part.

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(vii) Coordinate with local citizens and other affected parties, and incorporate appropriate comments into NEPA analyses.

(viii) Coordinate with ASA(I&E) when NEPA analyses for actions under AAE purview require publication in the FEDERAL REGISTER (FR).

(d) *The Deputy Chief of Staff for Operations and Plans (DCSOPS)*. DCSOPS is the proponent for Training and Operations activities. DCSOPS will ensure that Major Army Commands (MACOMs) support and/or perform, as appropriate, NEPA analysis of fielding issues related to specific local or regional concerns when reviewing Materiel Fielding Plans prepared by Combat Developers (CBTDEVs) or MATDEVs. This duty will include the coordination of CBTDEV and MATDEV information with appropriate MACOMs and Deputy Chief of Staff for Logistics (DCSLOG).

(e) *The Assistant Chief of Staff for Installation Management (ACSIM)*. ACSIM is responsible for coordinating, monitoring, and evaluating NEPA activities within the Army. The Environmental Programs Directorate is the Army Staff (ARSTAF) POC for environmental matters and serves as the Army staff advocate for the Army NEPA requirements contained in this part. The ACSIM will:

(1) Encourage environmental responsibility and awareness among Army personnel to most effectively implement the spirit of NEPA.

(2) Establish and maintain the capability (personnel and other resources) to comply with the requirements of this part. This responsibility includes the provision of an adequately trained and educated staff to ensure adherence to the policies and procedures specified by this part.

(f) *The Director of Environmental Programs*. The director, with support of the U.S. Army Environmental Center, and under the ACSIM, will:

(1) Advise Army agencies in the preparation of NEPA analyses, upon request.

(2) Review, as requested, NEPA analyses submitted by the Army, other DOD components, and other federal agencies.

(3) Monitor proposed Army policy and program documents that have en-

vironmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making and adaptive management processes.

(4) Propose and develop Army NEPA guidance pursuant to policies formulated by ASA(I&E).

(5) Advise project proponents regarding support and defense of Army NEPA requirements through the budgeting process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Oversee proponent implementation and execution of NEPA requirements, and develop and execute programs and initiatives to address problem areas.

(8) Assist the ASA(I&E) in the evaluation of formal requests for the delegation of NEPA responsibilities on a case-by-case basis. This assistance will include:

(i) Determination of technical sufficiency of the description of proposed action and alternatives (DOPAA) when submitted as part of the formal delegation request (§ 651.7).

(ii) Coordination of the action with the MACOM requesting the delegation.

(9) Periodically provide ASA(I&E) with a summary analysis and recommendations on needed improvements in policy and guidance to Army activities concerning NEPA implementation, in support of ASA(I&E) oversight responsibilities.

(10) Advise headquarters proponents on how to secure funding and develop programmatic NEPA analyses to address actions that are Army-wide, where a programmatic approach would be appropriate to address the action.

(11) Designate a NEPA PM to coordinate the Army NEPA program and notify ASA(I&E) of the designation.

(12) Maintain manuals and guidance for NEPA analyses for major Army programs in hard copy and make this guidance available on the World Wide Web (WWW) and other electronic means.

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

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(14) Forward electronic copies of all EAs, and EISs to AEC to ensure inclusion in the Army NEPA library; and ensure those same documents are forwarded to the Defense Technical Information Center (DTIC).

(g) *Heads of Headquarters, Army agencies.* The heads of headquarters, Army agencies will:

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for state-funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of NEPA analyses and documentation.

(3) Initiate the preparation of necessary NEPA analyses, assess proposed programs and projects to determine their environmental consequences, and initiate NEPA documentation for circulation and review along with other planning or decision-making documents. These other documents include, as appropriate, completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folders, Acquisition Strategies, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate NEPA analyses with ARSTAF agencies.

(5) Designate, record, and report to the DEP the identity of the agency's single POC for NEPA considerations.

(6) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the DEP.

(8) 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.

(h) *The Assistant Secretary of the Army for Financial Management (ASA(FM)).* ASA(FM) will establish procedures to ensure that NEPA requirements are supported in annual authorization requests.

(i) *The Judge Advocate General (TJAG).* TJAG will provide legal advice to the Army Staff and assistance in NEPA in-

terpretation, federal implementing regulations, and other applicable legal authority; determine the legal sufficiency for Army NEPA documentation; and interface with the Army General Counsel (GC) and the Department of Justice on NEPA-related litigation.

(j) *The Army General Counsel.* The Army General Counsel will provide legal advice to the Secretary of the Army on all environmental matters, to include interpretation and compliance with NEPA and federal implementing regulations and other applicable legal authority.

(k) *The Surgeon General.* The Surgeon General will provide technical expertise and guidance to NEPA proponents in the Army, as requested, in order to assess public health, industrial hygiene, and other health aspects of proposed programs and projects.

(l) *The Chief, Public Affairs.* The Chief, Public Affairs will:

(1) Provide guidance on issuing public announcements such as Findings of No Significant Impact (FNSIs), Notices of Intent (NOIs), scoping procedures, Notices of Availability (NOAs), and other public involvement activities; and establish Army procedures for issuing/announcing releases in the FR.

(2) Review and coordinate planned announcements on actions of national interest with appropriate ARSTAF elements and the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)).

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

(4) Provide assistance to MACOM and installation Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(m) *The Chief of Legislative Liaison.* The Chief of Legislative Liaison will notify Members of Congress of impending proposed actions of national concern or interest. The Chief will:

(1) Provide guidance to proponents at all levels on issuing Congressional notifications on actions of national concern or interest.

(2) Review planned congressional notifications on actions of national concern or interest.



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(3) Prior to (and in concert with) the issuance of press releases and publications in the FR, assist in the issuance of congressional notifications on actions of national concern or interest.

(n) *Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander.* Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander will:

(1) Monitor proposed actions and programs within their commands to ensure compliance with this part, including mitigation monitoring, utilizing Environmental Compliance Assessment System (ECAS), Installation Status Report (ISR), or other mechanisms.

(2) Task the proponent of the proposed action with funding and preparation of NEPA documentation and involvement of the public.

(3) Ensure that any proponent at the MACOM level initiates the required environmental analysis early in the planning process, plans the preparation of necessary NEPA documentation, and uses the analysis to aid in the final decision.

(4) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(5) Maintain official record copies of all NEPA documentation for which they are the proponent, and file electronic copies of those EAs, and final EISs with AEC.

(6) Provide coordination with Headquarters, Department of the Army (HQDA) for proposed actions that have either significant impacts requiring an EIS or are of national interest. This process will require defining the purpose and need for the action, alternatives to be considered, and other information, as requested by HQDA. It also must occur early in the process and prior to an irrevocable commitment of resources that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). When delegated signature authority by HQDA, this process also includes the responsibility for complying with this part and associated Army environmental policy.

(7) Approve and forward NEPA documentation, as appropriate, for actions under their purview.

(8) In the case of the Director, ARNG, or his designee, approve all federal NEPA documentation prepared by all ARNG activities.

(9) Ensure environmental information received from MATDEVs is provided to appropriate field sites to support site-specific environmental analysis and NEPA requirements.

(10) Designate a NEPA PM to coordinate the MACOM NEPA program and maintain quality control of NEPA analyses and documentation that are processed through the command.

(11) Budget for resources to maintain oversight of NEPA and this part.

(o) *Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard.* Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard will:

(1) Establish an installation (command organization) NEPA program and evaluate its performance through the Environmental Quality Control Committee (EQCC) as required by AR 200-1, Environmental Protection and Enhancement.

(2) Designate a NEPA POC to coordinate and manage the installation's (command organization's) NEPA program, integrating it into all activities and programs at the installation. The installation commander will notify the MACOM of the designation.

(3) Establish a process that ensures coordination with the MACOM, other installation staff elements (to include PACs and tenants) and others to incorporate NEPA requirements early in the planning of projects and activities.

(4) Ensure that actions subject to NEPA are coordinated with appropriate installation organizations responsible for such activities as master planning, natural and cultural resources management, or other installation activities and programs.

(5) Ensure that funding for environmental analysis is prioritized and planned, or otherwise arranged by the proponent, and that preparation of NEPA analyses, including the involvement of the public, is consistent with the requirements of this part.



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(6) Approve NEPA analyses for actions under their purview. The Adjutant General will review and endorse documents and forward to the NGB for final approval.

(7) Ensure the proponent initiates the NEPA analysis of environmental consequences and assesses the environmental consequences of proposed programs and projects early in the planning process.

(8) Assist in the review of NEPA analyses affecting the installation or activity, and those prepared by DOD and other Army or federal agencies, as requested.

(9) Provide information through the chain of command on proposed actions of national interest to higher headquarters prior to initiation of NEPA documentation.

(10) Maintain official record copies of all NEPA documentation for which they are the proponent and forward electronic copies of those final EISs and EAs through the MACOM to AEC.

(11) Ensure that the installation proponents initiate required environmental analyses early in the planning process and plan the preparation of necessary NEPA documentation.

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

(13) Solicit support from MACOMs, CBTDEVs, and MATDEVs, as appropriate, in preparing site-specific environmental analysis.

(14) Ensure that local citizens are aware of and, where appropriate, involved in NEPA analyses, and that public comments are obtained and considered in decisions regarding proposals.

(15) Use environmental impact analyses to determine the best alternatives from an environmental perspective, and to ensure that these determinations are part of the Army decision process.

(p) *Environmental Officers.* Environmental officers (at the Installation, MACOM, and Army activity level) shall, under the authority of the Installation Commander; Commanders of U.S. Army Reserves Regional Support

Commands; and Director NGB-ARE (Installation Commanders):

(1) Represent the Installation, MACOM, or activity Commander on NEPA matters.

(2) Advise the proponent on the selection, preparation, and completion of NEPA analyses and documentation. This approach will include oversight on behalf of the proponent to ensure adequacy and support for the proposed action, including mitigation monitoring.

(3) Develop and publish local guidance and procedures for use by NEPA proponents to ensure that NEPA documentation is procedurally and technically correct. (This includes approval of Records of Environmental Consideration (RECs).)

(4) Identify any additional environmental information needed to support informed Army decision-making.

(5) Budget for resources to maintain oversight with NEPA and this part.

(6) Assist proponents, as necessary, to identify issues, impacts, and possible alternatives and/or mitigations relevant to specific proposed actions.

(7) Assist, as required, in monitoring to ensure that specified mitigation measures in NEPA analyses are accomplished. This monitoring includes assessing the effectiveness of the mitigations.

(8) Ensure completion of agency and community coordination.

(q) *Proponents.* Proponents at all levels will:

(1) Identify the proposed action, the purpose and need, and reasonable alternatives for accomplishing the action.

(2) Fund and prepare NEPA analyses and documentation for their proposed actions. This responsibility will include negotiation for matrix support and services outside the chain of command when additional expertise is needed to prepare, review, or otherwise support the development and approval of NEPA analyses and documentation. These NEPA costs may be borne by successful contract offerors.

(3) Ensure accuracy and adequacy of NEPA analyses, regardless of the author. This work includes incorporation of comments from appropriate servicing Army environmental and legal staffs.

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(4) Ensure adequate opportunities for public review and comment on proposed NEPA actions, in accordance with applicable laws and EOs as discussed in § 651.14 (e). This step includes the incorporation of public and agency input into the decision-making process.

(5) Ensure that NEPA analysis is prepared and staffed sufficiently to comply with the intent and requirements of federal laws and Army policy. These documents will provide enough information to ensure that Army decision makers (at all levels) are informed in the performance of their duties (40 CFR 1501.2, 1505.1). This result requires coordination and resolution of important issues developed during the environmental analysis process, especially when the proposed action may involve significant environmental impacts, and includes the incorporation of comments from an affected installation's environmental office in recommendations made to decision makers.

(6) Adequately fund and implement the decision including all mitigation actions and effectiveness monitoring.

(7) Prepare and maintain the official record copy of all NEPA analyses and documentation for which they are the proponent. This step will include the provision of electronic copies of all EAs, final EISs, and Records of Decision (RODs), through their chain of command, to AEC, and forwarding of those same documents to the Defense Technical Information Center (DTIC) as part of their public distribution procedures. In addition, copies of all EAs and FNSIs (in electronic copy) will be provided to ODEP. A copy of the documentation should be maintained for six years after signature of the FNSI/ROD.

(8) Maintain the administrative record for the environmental analysis performed. The administrative record shall be retained by the proponent for a period of six years after completion of the action, unless the action is controversial or of a nature that warrants keeping it longer. The administrative record includes all documents and information used to make the decision. This administrative record should contain, but is not limited to, the following types of records:

(i) Technical information used to develop the description of the proposed

action, purpose and need, and the range of alternatives.

(ii) Studies and inventories of affected environmental baselines.

(iii) Correspondence with regulatory agencies.

(iv) Correspondence with, and comments from, private citizens, Native American tribes, Alaskan Natives, local governments, and other individuals and agencies contacted during public involvement.

(v) Maps used in baseline studies.

(vi) Maps and graphics prepared for use in the analysis.

(vii) Affidavits of publications and transcripts of any public participation.

(viii) Other written records that document the preparation of the NEPA analysis.

(ix) An index or table of contents for the administrative record.

(9) Identify other requirements that can be integrated and coordinated within the NEPA process. After doing so, the proponent should establish a strategy for concurrent, not sequential, compliance; sharing similar data, studies, and analyses; and consolidating opportunities for public participation. Examples of relevant statutory and regulatory processes are given in § 651.14 (e).

(10) Identify and coordinate with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a resource that might be impacted. Coordination should be accomplished in cooperation with the Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities. Applicable agencies include, but are not limited to:

(i) State Historic Preservation Officer.

(ii) Tribal Historic Preservation Officer.

(iii) U.S. Fish and Wildlife Service.

(iv) Regional offices of the EPA.

(v) State agencies charged with protection of the environment, natural resources, and fish and wildlife.

(vi) USACE Civil Works regulatory functions, including Clean Water Act, Section 404, permitting and wetland protection.

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(vii) National Marine Fisheries Service.

(viii) Local agencies and/or governing bodies.

(ix) Environmental interest groups.

(x) Minority, low-income, and disabled populations.

(xi) Tribal governments.

(xii) Existing advisory groups (for example, Restoration Advisory Boards, Citizens Advisory Commissions, etc.).

(1) Identify and coordinate, in concert with environmental offices, proposed actions and supporting environmental analyses with local and/or regional ecosystem management initiatives such as the Mojave Desert Ecosystem Management Initiative or the Chesapeake Bay Initiative.

(2) Review Army policies, including AR 200-1 (Environmental Protection and Enhancement), AR 200-3 (Natural Resources—Land, Forest, and Wildlife Management), and AR 200-4 (Cultural Resources Management) to ensure that the proposed action is coordinated with appropriate resource managers, operators, and planners, and is consistent with existing Army plans and their supporting NEPA analyses.

(3) Identify potential impacts to (and consult with as appropriate) American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures (for example, sacred sites, traditional cultural properties, treaty rights, subsistence hunting or fishing rights, or cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA)). All consultation shall be conducted on a Government-to-Government basis in accordance with the Presidential Memorandum on Government-to-Government Relations with Tribal Governments (April 29, 1994) (3 CFR, 1994 Comp., p. 1007) and AR 200-4 (Cultural Resources Management). Proponents shall consider, as appropriate, executing Memoranda of Agreements (MOAs) with interested Native American groups and tribes to facilitate timely and effective participation in the NEPA process. These agreements should be accomplished in cooperation with Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities.

(4) Review NEPA documentation that relies upon mitigations that were not accomplished to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unaccomplished mitigation was used to support a FNSI. Additional public notice/involvement must accompany any rewrites.

(r) *The Commander, U.S. Army Training and Doctrine Command (TRADOC)*. The Commander, TRADOC will:

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

(2) Integrate environmental considerations into doctrine, training, leader development, organization, materiel, and soldier (DTLOMS) processes.

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

(4) Ensure that TRADOC CBTDEVs retain and transfer any environmental analysis or related data (such as alternatives analysis) to the MATDEV upon approval of a materiel need. This information and data will serve as the basis for the MATDEV's Acquisition Strategy and subsequent NEPA analyses.

(5) Ensure that environmental considerations are incorporated into the Mission Needs Statements (MNSs) and Operational Requirements Documents (ORDs).

§ 651.5 Army policies.

(a) NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The

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depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

(b) The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

(c) Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by federal and DOD orders, directives, and policy guidance. Some examples are in § 651.14 (e). Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

(d) The Army will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the military mission in project planning and decision-making. Efficiency will be promoted through the following:

(1) Awareness and involvement of the proponent in the NEPA process.

(2) NEPA technical and awareness training, as appropriate, at all decision levels of the Army.

(3) Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

(4) Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision-making at hand.

(5) Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

(6) Early integration of the NEPA process into all aspects of Army planning, so as to prevent disruption in the decision-making process; ensuring that NEPA personnel function as team members, supporting the Army planning process and sound Army decision-making. All NEPA analyses will be prepared by an interdisciplinary team.

(7) Partnering or coordinating with agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

(8) Oversight of the NEPA program to ensure continuous process improvement. NEPA requirements will be integrated into other environmental reporting requirements, such as the ISR.

(9) Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

(10) Environmental analysis of strategic plans based on:

(i) Scoping thoroughly with agencies, organizations, and the public;

(ii) Setting specific goals for important environmental resources;

(iii) Monitoring of impacts to these resources;

(iv) Reporting of monitoring results to the public; and

(v) Adaptive management of Army operations to stay on course with the strategic plan's specific resource goals.

(11) Responsive staffing through HQDA and the Secretariat. To the extent possible, documents and transmittal packages will be acted upon within 30 calendar days of receipt by each office through which they are staffed. These actions will be approved

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and transmitted, if the subject material is adequate; or returned with comment in those cases where additional work is required. Cases where these policies are violated should be identified to ASA (I&E) for resolution.

(e) Army leadership and commanders at all levels are required to:

(1) Establish and maintain the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this part. This should include the use of the PPBES, EPR, and other established resourcing processes. This capability can be provided through the use of a given mechanism or mix of mechanisms (contracts, matrix support, and full-time permanent (FTP) staff), but sufficient FTP staff involvement is required to ensure:

(i) Army cognizance of the analyses and decisions being made; and

(ii) Sufficient institutional knowledge of the NEPA analysis to ensure that Army NEPA responsibilities (pre- and post-decision) are met. Every person preparing, implementing, supervising, and managing projects involving NEPA analysis must be familiar with the requirements of NEPA and the provisions of this part.

(2) Ensure environmental responsibility and awareness among personnel to most effectively implement the spirit of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, notification through the chain of command, and training and education will NEPA goals be realized.

(f) The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for Army decisions involving activities outside the United States (see § 651.1(e)) will be accomplished pursuant to Executive Order

12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), host country final governing standards, DOD Directive (DODD) 6050.7 (Environmental Effects Abroad of Major DOD Actions), DOD Instructions (DODIs), and the requirements of this part. An environmental planning and evaluation process will be incorporated into Army actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

(g) Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

(1) Supplemental NEPA documentation is required when:

(i) The Army makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

(2) This review requires that the proponent merely initiate another "hard look" to ascertain the adequacy of the previous analyses and documentation in light of the conditions listed in paragraph (g)(i) of this section. If this review indicates no need for new or supplemental documentation, a REC can be produced in accordance with this part. Proponents are required to periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review in a REC format.

(h) Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also avoid extensive, time-consuming, and costly analyses or revisions. Project proponents and NEPA program managers must be continuously informed and involved.

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(i) When appropriate, NEPA analyses will reflect review for operations security principles and procedures, described in AR 530-1 (Operations Security (OPSEC)), on the cover sheet or signature page.

(j) Environmental analyses and associated investigations are advanced project planning, and will be funded from sources other than military construction (MILCON) funds, Operations and Maintenance Army (OMA), Operations and Maintenance, Army Reserve (OMAR), and Operations and Maintenance, Army National Guard (OMANG), RDT&E, or other operating funds are the proper sources of funds for such analysis and documentation. Alternative Environmental Compliance Achievement Program (non-ECAP) funds will be identified for NEPA documentation, monitoring, and other required studies as part of the MILCON approval process.

(k) Costs of design and construction mitigation measures required as a direct result of MILCON projects will be paid from MILCON funds, which will be included in the cost estimate and description of work on DD Form 1391, Military Construction Project Data.

(l) Response actions implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not legally subject to NEPA and do not require separate NEPA analysis. As a matter of Army policy, CERCLA and RCRA analysis and documentation should incorporate the values of NEPA and:

(1) Establish the scope of the analysis through full and open public participation;

(2) Analyze all reasonable alternative remedies, evaluating the significance of impacts resulting from the alternatives examined; and

(3) Consider public comments in the selection of the remedy. The decision maker shall ensure that issues involving substantive environmental impacts are addressed by an interdisciplinary team.

(m) MATDEVs, scientists and technologists, and CBTDEVs are responsible for ensuring that their programs

comply with NEPA as directed in this part.

(1) Prior to assignment of a MATDEV to plan, execute, and manage a potential acquisition program, CBTDEVs will retain environmental analyses and data from requirements determination activities, and Science and Technology (S&T) organizations will develop and retain data for their technologies. These data will transition to the MATDEV upon assignment to plan, execute, and manage an acquisition program. These data (collected and produced), as well as the decisions made by the CBTDEVs, will serve as a foundation for the environment, safety, and health (ESH) evaluation of the program and the incorporation of program-specific NEPA requirements into the Acquisition Strategy. Programmatic ESH evaluation is considered during the development of the Acquisition Strategy as required by DOD 5000.2-R for all ACAT programs. Programmatic ESH evaluation is not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this part are integrated. Environmental analysis must be a continuous process throughout the materiel development program. During this continuous process, NEPA analysis and documentation may be required to support decision-making prior to any decision that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). In accordance with DOD 5000.2-R, the MATDEV is responsible for environmental analysis of acquisition life-cycle activities (including disposal). Planning to accomplish these responsibilities will be included in the appropriate section of the Acquisition Strategy.

(2) MATDEVs are responsible for the documentation regarding general environmental effects of all aspects of the system (including operation, fielding, and disposal) and the specific effects for all activities for which he/she is the proponent.

(3) MATDEVs will include, in their Acquisition Strategy, provisions for developing and supplementing their NEPA analyses and documentation,

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and provide data to support supplemental analyses, as required, throughout the life cycle of the system. The MATDEV will coordinate with ASA (AL&T) or MACOM proponent office, ACSIM, and ASA(I&E), identifying NEPA analyses and documentation needed to support milestone decisions. This requirement will be identified in the Acquisition Strategy and the status will be provided to the ACSIM representative prior to milestone review. The Acquisition Strategy will outline the system-specific plans for NEPA compliance, which will be reviewed and approved by the appropriate MDA and ACSIM. Compliance with this plan will be addressed at Milestone Reviews.

(n) AR 700-142 requires that environmental requirements be met to support materiel fielding. During the development of the Materiel Fielding Plan (MFP), and Materiel Fielding Agreement (MFA), the MATDEV and the materiel receiving command will identify environmental information needed to support fielding decisions. The development of generic system environmental and NEPA analyses for the system under evaluation, including military construction requirements and new equipment training issues, will be the responsibility of the MATDEV. The development of site-specific environmental analyses and NEPA documentation (EAs/EISs), using generic system environmental analyses supplied by the MATDEV, will be the responsibility of the receiving Command.

(o) Army proponents are encouraged to draw upon the special expertise available within the Office of the Surgeon General (OSG) (including the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM)), and USACE District Environmental Staff to identify and evaluate environmental health impacts, and other agencies, such as USAEC, can be used to assess potential environmental impacts). In addition, other special expertise is available in the Army, DOD, other federal agencies, state and local agencies, tribes, and other organizations and individuals. Their participation and assistance is also encouraged.

§ 651.6 NEPA analysis staffing.

(a) NEPA analyses will be prepared by the proponent using appropriate resources (funds and manpower). The proponent, in coordination with the appropriate NEPA program manager, shall determine what proposal requires NEPA analysis, when to initiate NEPA analysis, and what level of NEPA analysis is initially appropriate. The proponent shall remain intimately involved in determining appropriate milestones, timelines, and inputs required for the successful conduct of the NEPA process, including the use of scoping to define the breadth and depth of analysis required. In cases where the document addresses impacts to an environment whose management is not in the proponents' chain of command (for example, installation management of a range for MATDEV testing or installation management of a fielding location), the proponent shall coordinate the analysis and preparation of the document and identify the resources needed for its preparation and staffing through the command structure of that affected activity.

(b) The approving official is responsible for approving NEPA documentation and ensuring completion of the action, including any mitigation actions needed. The approving official may be an installation commander; or, in the case of combat/materiel development, the MATDEV, MDA, or AAE.

(c) Approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process. Funding needed to accomplish the review shall be negotiated with the proponent, if required. Lead reviewer may be an installation EC or a NEPA POC designated by an MDA for a combat/materiel development program.

(d) The most important document is the initial NEPA document (draft EA or draft EIS) being processed. Army reviewers are accountable for ensuring thorough early review of draft NEPA analyses. Any organization that raises new concerns or comments during final staffing will explain why issues were not raised earlier. NEPA analyses requiring public release in the FR will be forwarded to ASA(I&E), through the



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chain of command, for review. This includes all EISs and all EAs that are of national interest or concern. The activities needed to support public release will be coordinated with ASA(I&E). Public release will not proceed without ASA(I&E) approval.

(c) Public release of NEPA analyses in the FR should be limited to EISs, or EAs that are environmentally controversial or of national interest or concern. When analyses address actions affecting numerous sites throughout the Continental United States (CONUS), the proponent will carefully evaluate the need for publishing an NOA in the FR, as this requires an extensive review process, as well as supporting documentation alerting EPA and members of Congress of the action. At a minimum, and depending on the proponent's command structure, the following reviews must be accomplished:

(1) The NEPA analysis must be reviewed by the MACOM Legal Counsel or TJAG, ACSIM, ASA(I&E), and Office of General Counsel (OGC).

(2) The supporting documentation must be reviewed by Office of the Chief of Legislative Liaison (OCLL) and Office of the Chief of Public Affairs (OCPA).

(3) Proponents must allow a minimum of 30 days to review the documentation and must allow sufficient time to address comments from these offices prior to publishing the NOA.

(4) The proponent may consider publishing the NOA in local publication resources near each site. Proponents are strongly advised to seek the assistance of the local environmental office and command structure in addressing the need for such notification.

#### § 651.7 Delegation of authority for non-acquisition systems.

(a) MACOMs can request delegation authority and responsibility for an EA of national concern or an EIS from ASA(I&E). The proponent, through the appropriate chain of command, and with the concurrence of environmental offices, forwards to HQDA (ODEP) the request to propose, prepare, and finalize an EA and FNSI or EIS through the ROD stage. The request must include, at a minimum, the following:

(1) A description of the purpose and need for the action.

(2) A description of the proposed action and a preliminary list of alternatives to that proposed action, including the "no action" alternative. This constitutes the DOPAA.

(3) An explanation of funding requirements, including cost estimates, and how they will be met.

(4) A brief description of potential issues of concern or controversy, including any issues of potential Army-wide impact.

(5) A plan for scoping and public participation.

(6) A timeline, with milestones for the EIS action.

(b) If granted, a formal letter will be provided by ASA(I&E) outlining extent, conditions, and requirements for the NEPA action. Only the ASA(I&E) can delegate this authority and responsibility. When delegated signature authority by HQDA, the MACOM will be responsible for complying with this part and associated Army environmental policy. This delegation, at the discretion of ASA(I&E), can include specific authority and responsibility for coordination and staffing of:

(1) EAs and FNSIs, and associated transmittal packages, as specified in § 651.35(c).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45. Such delegation will specify requirements for coordination with ODEP and ASA (I&E).

#### § 651.8 Disposition of final documents.

All NEPA documentation and supporting administrative records shall be retained by the proponent's office for a minimum of six years after signature of the FNSI/ROD or the completion of the action, whichever is greater. Copies of EAs, and final EISs will be forwarded to AEC for cataloging and retention in the Army NEPA library. The DEIS and FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACSIM shall forward copies of all FEISs to DTIC, the National Archives, and Records Administration.



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**Subpart B—National Environmental Policy Act and the Decision Process**

**§ 651.9 Introduction.**

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

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

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

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

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

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

federal, tribal, state, and local agencies, and the general public.

**§ 651.10 Actions requiring environmental analysis.**

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

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

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

(c) Projects involving facilities construction.

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

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

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

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

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

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

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

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

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

(l) Projects involving chemical weapons/munitions.

#### § 651.11 Environmental review categories.

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

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

(b) *Emergencies.* In the event of an emergency, the Army will, as necessary, take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property, without the specific documentation and procedural requirements of other sections of this part. In such cases, at the earliest practicable time, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Installations and Environment (DUSD(IE)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions nec-

essary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this part or the CEQ regulations. However, the Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this notification requirement. After action reports may be required at the discretion of the ASA(I&E).

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

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

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EA is a valuable planning tool to discuss and document environmental impacts, alternatives, and controversial actions, providing public and agency participation, and identifying mitigation measures.

(e) *EIS*. When an action clearly has significant impacts or when an EA cannot be concluded by a FNSI, an EIS must be prepared. An EIS is initiated by the NOI (§651.22), and will examine the significant environmental effects of the proposed action as well as accompanying measures to mitigate those impacts. This process requires

formal interaction with the public, a formal "scoping" process, and specified timelines for public review of the documentation and the incorporation of public comments. The format and requirements for the EIS are addressed in subpart F of this part (see §651.42 for actions normally requiring an EIS).

**§651.12 Determining appropriate level of NEPA analysis.**

(a) The flow chart shown in Figure 1 summarizes the process for determining documentation requirements, as follows:

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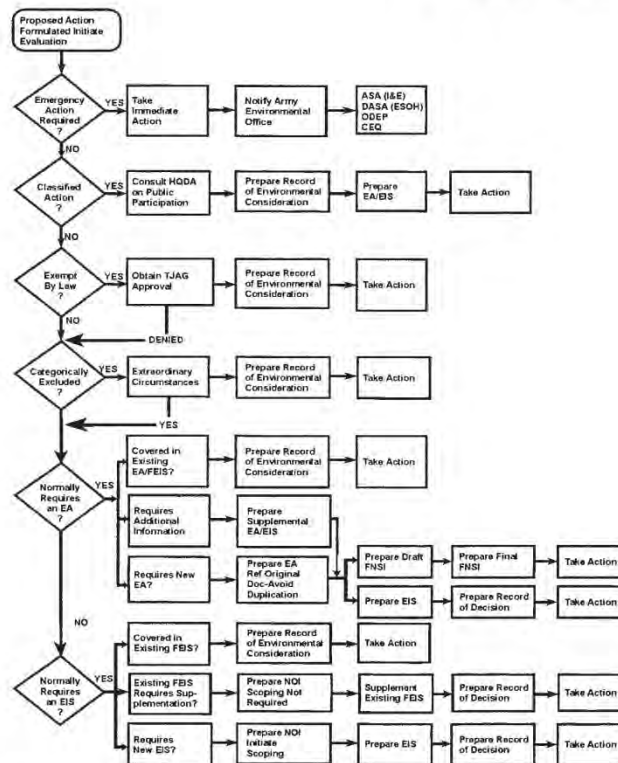


Figure 1. Flow chart summarizing process for determination of document requirements.

(1) If the proposed action qualifies as a CX (subpart D of this part), and the screening criteria are met (§651.29), the action can proceed. Some CXs require a REC.

(2) If the proposed action is adequately covered within an existing EA or EIS, a REC is prepared to that effect. The REC should state the applicable EA or EIS title and date, and iden-

tify where it may be reviewed (§651.19, Figure 3). The REC is then attached to the proponent's record copy of that EA or EIS.

(3) If the proposed action is within the general scope of an existing EA or

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EIS, but requires additional information, a supplement is prepared, considering the new, modified, or missing information. Existing documents are incorporated by reference and conclusions are published as either a FNSI or NOI to supplement the EIS.

(4) If the proposed action is not covered adequately in any existing EA or EIS, or is of a significantly larger scope than that described in the existing document, an EA is prepared, followed by either a FNSI or NOI to prepare an EIS. Initiation of an EIS may proceed without first preparing an EA, if deemed appropriate by the proponent.

(5) If the proposed action is not within the scope of any existing EA or EIS, then the proponent must begin the preparation of a new EA or EIS, as appropriate.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will document their use in a REC FNSI, or ROD.

### § 651.13 Classified actions.

(a) For proposed actions and NEPA analyses involving classified information, AR 380-5 (Department of the Army Information Security Program) will be followed.

(b) Classification does not relieve a proponent of the requirement to assess and document the environmental effects of a proposed action.

(c) When classified information can be reasonably separated from other information and a meaningful environmental analysis produced, unclassified documents will be prepared and processed in accordance with this part. Classified portions will be kept separate and provided to reviewers and decision makers in accordance with AR 380-5.

(d) When classified information is such an integral part of the analysis of a proposal that a meaningful unclassified NEPA analysis cannot be produced, the proponent, in consultation with the appropriate security and environmental offices, will form a team to review classified NEPA analysis. This interdisciplinary team will include en-

vironmental professionals to ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA, including public participation requirements for those aspects which are not classified.

### § 651.14 Integration with Army planning.

(a) *Early integration.* The Army goal is to concurrently integrate environmental reviews with other Army planning and decision-making actions, thereby avoiding delays in mission accomplishment. To achieve this goal, proponents shall complete NEPA analysis as part of any recommendation or report to decision makers prior to the decision (subject to 40 CFR 1506.1). Early planning (inclusion in Installation Master Plans, INRMPs, ICRMPs, Acquisition Strategies, strategic plans, etc.) will allow efficient program or project execution later in the process.

(1) The planning process will identify issues that are likely to have an effect on the environment, or to be controversial. In most cases, local citizens and/or existing advisory groups should assist in identifying potentially controversial issues during the planning process. The planning process also identifies minor issues that have little or no measurable environmental effect, and it is sound NEPA practice to reduce or eliminate discussion of minor issues to help focus analyses. Such an approach will minimize unnecessary analysis and discussion in the NEPA process and documents.

(2) Decision makers will be informed of and consider the environmental consequences at the same time as other factors such as mission requirements, schedule, and cost. If permits or coordination are required (for example, Section 404 of the Clean Water Act, Endangered Species Act consultation, Section 106 of the National Historic Preservation Act (NHPA), etc.), they should be initiated no later than the scoping phase of the process and should run parallel to the NEPA process, not sequential to it. This practice is in accordance with the recommendations

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presented in the CEQ publication entitled "The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years."<sup>1</sup>

(3) NEPA documentation will accompany the proposal through the Army review and decision-making processes. These documents will be forwarded to the planners, designers, and/or implementers, ensuring that the recommendations and mitigations upon which the decision was based are being carried out. The implementation process will provide necessary feedback for adaptive environmental management; responding to inaccuracies or uncertainties in the Army's ability to accurately predict impacts, changing field conditions, or unexpected results from monitoring. The integration of NEPA into the ongoing planning activities of the Army can produce considerable savings to the Army.<sup>2</sup>

(b) *Time limits.* The timing of the preparation, circulation, submission,

and public availability of NEPA documentation is important to ensure that environmental values are integrated into Army planning and decisions.

(1) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (subpart D and appendix B of this part), the proponent may proceed immediately with that action upon receipt of all necessary approvals, (including local environmental office confirmation that the CX applies to the proposal) and the preparation of a REC, if required.

(2) *Findings of no significant impact.* (i) A proponent will make an EA and draft FNSI available to the public for review and comment for a minimum of 30 days prior to making a final decision and proceeding with an action. If the proposed action is one of national concern, is unprecedented, or normally requires an EIS (§651.42), the FNSI must be published in the FR. Otherwise, the FNSI must be published in local newspapers and be made widely available. The FNSI must articulate the deadline for receipt of comments, availability of the EA for review, and steps required to obtain the EA. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism. (In no cases will the only coordination mechanism be a website.) At the conclusion of the appropriate comment period, as specified in Figure 2, the decision maker may sign the FNSI and take immediate action, unless sufficient public comments are received to warrant more time for their resolution. Figure 2 follows:

<sup>1</sup> For example, a well-executed EA or EIS on an Installation Master Plan can eliminate the need for many case-by-case analyses and documentation for construction projects. After the approval of an adequate comprehensive plan (which adequately addresses the potential for environmental effects), subsequent projects can tier off of the Master Plan NEPA analysis (AR 210-20). Other integration of the NEPA process and broad-level planning can lead to the "tiering" of NEPA, allowing the proponent to minimize the effort spent on individual projects, and "incorporating by reference" the broader level environmental considerations. This tiering allows the development of program level (programmatic) EAs and EISs, which can introduce greater economies of scale. These assessments are addressed in more detail in paragraph (c) of this section.

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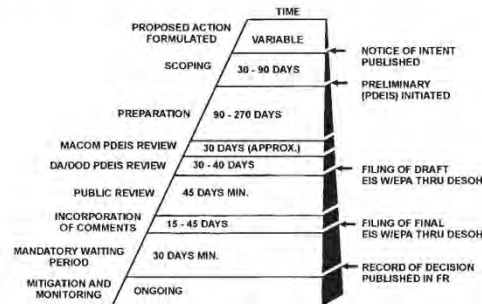


Figure 2. Time involved for preparing and processing an environmental impact statement.

(ii) A news release is required to publicize the availability of the EA and draft FNSI, and a simultaneous announcement that includes publication in the FR must be made by HQDA, if warranted (see § 651.35 (e)). The 30-day waiting period begins at the time that the draft FNSI is publicized (40 CFR 1506.6(b)).

(iii) In cases where the 30-day comment period jeopardizes the project and the full comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority (such as a MACOM). In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days. A deadline and POC for receipt of comments must be included in the draft FNSI and the news release.

(3) *EIS*. The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. An NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. Failure to deliver an NOA to EPA by close of business on Friday will result in an additional one-week delay. A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods, calculated from the publica-

tion date of the EPA notice, will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506(c)(2)).

(iii) Not less than 90 days from filing the DEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and (d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) Because the entire EIS process could require more than one year (Figure 2 in paragraph (b)(2)(i) of this section), the process must begin as soon as the project is sufficiently mature to allow analysis of alternatives and the proponent must coordinate with all staff elements with a role to play in the NEPA process. DEIS preparation and response to comments constitute the largest portion of time to prepare an FEIS.

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(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. After the availability of the ROD is announced, the action may proceed. This announcement must be made through the FR for those EISs for which HQDA signs the ROD. For other EISs, announcements in the local press are adequate. Figure 2 in paragraph (b)(2)(1) of this section indicates typical and required time periods for EISs.

(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to analyze actions at a programmatic level for those programs that are similar in nature or broad in scope (40 CFR 1502.4(c), 1502.20, and 1506.23). This level of analysis will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad programmatic EA or EIS has been prepared, any subsequent EIS or EA on an action included within the entire program or policy (particularly a site-specific action) need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action.<sup>3</sup> This subsequent document will state where the earlier document is available.

(2) Army proponents are normally required to prepare many types of management plans that must include or be accompanied by appropriate NEPA analysis. NEPA analysis for these types of plans can often be accomplished with a programmatic approach, creating an analysis that covers a number of smaller projects or activities. In cases where such activities are adequately assessed as part of these normal planning activities, a REC can be prepared for smaller actions that cite the document in which the activities were previously assessed. Care

must be taken to ensure that site-specific or case-specific conditions are adequately addressed in the existing programmatic document before a REC can be used, and the REC must reflect this consideration. If additional analyses are required, they can "tier" off the original analyses, eliminating duplication. Tiering, in this manner, is often applicable to Army actions that are long-term, multi-faceted, or multi-site.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS, the proponent initiates the scoping process (see Subpart G of this part for procedures and actions). This process 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 (40 CFR 1506.25). For an individual action, the scope may depend on the relationship of the proposed action to other NEPA documents. The scoping phase of the NEPA process, as part of project planning, will identify aspects of the proposal that are likely to have an effect or be controversial; and will ensure that the NEPA analyses are useful for a decision maker. For example, the early identification and initiation of permit or coordination actions can facilitate problem resolution, and, similarly, cumulative effects can be addressed early in the process and at the appropriate spatial and temporal scales.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include:

- (i) The size and type of the proposed action.
- (ii) Whether the proposed action is of regional or national interest.
- (iii) Degree of any associated environmental controversy.
- (iv) Size of the affected environmental parameters.
- (v) Significance of any effects on them.
- (vi) Extent of prior environmental review.
- (vii) Involvement of any substantive time limits.

<sup>3</sup>As an example, an appropriate way to address diverse weapon system deployments would be to produce site-specific EAs or EISs for each major deployment installation, using the generic environmental effects of the weapon system identified in a programmatic EA or EIS prepared by the MATDEV.



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(viii) Requirements by other laws for environmental review.

(ix) Cumulative impacts.

(3) Through scoping, many future controversies can be eliminated, and public involvement can be used to narrow the scope of the study, concentrating on those aspects of the analysis that are truly important.

(4) The proponent may incorporate scoping as part of the EA process, as well. If the proponent chooses a public involvement strategy, the extent of scoping incorporated is at the proponent's discretion.

(c) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the "umbrella" that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

(1) Clean Air Act, as amended (General Conformity Rule, 40 CFR parts 51 and 93).

(2) Endangered Species Act.

(3) NHPA, sections 106 and 110.

(4) NAGPRA (Public Law 101-601, 104 Stat. 3048).

(5) Clean Water Act, including Section 404(b)(1).

(6) American Indian Religious Freedom Act.

(7) Fish and Wildlife Coordination Act.

(8) Comprehensive Environmental Response, Compensation, and Liability Act.

(9) Resource Conservation and Recovery Act.

(10) Pollution Prevention Act.

(11) The Sikes Act, Public Law 86-797, 74 Stat. 1052.

(12) Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (Executive Order 12856, 3 CFR, 1993 Comp., p. 616).

(13) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898, 3 CFR, 1994 Comp., p. 859).

(14) Indian Sacred Sites (Executive Order 13007, 3 CFR, 1996 Comp., p. 196).

(15) Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045, 3 CFR, 1997 Comp., p. 198).

(16) Federal Support of Community Efforts Along American Heritage Rivers (Executive Order 13061, 3 CFR, 1997 Comp., p. 221).

(17) Floodplain Management (Executive Order 11988, 3 CFR, 1977 Comp., p. 117).

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

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

(20) Invasive Species (Executive Order 13112, 3 CFR, 1999 Comp., p. 159).

(21) AR 200-3, Natural Resources—Land, Forest, and Wildlife Management.

(22) Environmental analysis and documentation required by various state laws.

(23) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(24) Any permitting and licensing procedures required by federal and state law.

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(25) Any installation and Army master planning functions and plans.

(26) Any installation management plans, particularly those that deal directly with the environment.

(27) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(28) Environmental Noise Management Program.

(29) Hazardous waste management plans.

(30) Integrated Cultural Resource Management Plan as required by AR 200-4 and DODD 4700.4, Natural Resources Management Program.

(31) Asbestos Management Plans.

(32) Integrated Natural Resource Management Plans, AR 200-3, Natural Resources—Land, Forest, and Wildlife Management, and DODD 4700.4, Natural Resources Management Program.

(33) Environmental Baseline Surveys.

(34) Programmatic Environment, Safety, and Health Evaluation (PESHE) as required by DOD 5000.2-R and DA Pamphlet 70-3, Army Acquisition Procedures, supporting AR 70-1, Acquisition Policy.

(35) The DOD MOU to Foster the Ecosystem Approach signed by CEQ, and DOD, on 15 December 1995; establishing the importance of “non-listed,” “non-game,” and “non-protected” species.

(36) Other requirements (such as health risk assessments), when efficiencies in the overall Army environmental program will result.

(f) *Integration into Army acquisition.* The Army acquisition community will integrate environmental analyses into decision-making, as required in this part ensuring that environmental considerations become an integral part of total program planning and budgeting, PEOs, and Program, Product, and Project Managers integrate the NEPA process early, and acquisition planning and decisions reflect national and Army environmental values and considerations. By integrating pollution prevention and other aspects of any environmental analysis early into the materiel acquisition process, the PEO and PM facilitate the identification of environmental cost drivers at a time when they can be most effectively controlled. NEPA program coordinators should refer to DA Pamphlet 70-3,

Army Acquisition Procedures, and the Defense Acquisition Deskbook (DAD) for current specific implementation guidance, procedures, and POCs.

(g) *Relations with local, state, regional, and tribal agencies.* (1) Army installation, agency, or activity environmental officers or planners should establish a continuing relationship with other agencies, including the staffs of adjacent local, state, regional, and tribal governments and agencies. This relationship will promote cooperation and resolution of mutual land use and environment-related problems, and promote the concept of regional ecosystem management as well as general cooperative problem solving. Many of these “partners” will have specialized expertise and access to environmental baseline data, which will assist the Army in day-to-day planning as well as NEPA-related issues. MOUs are encouraged to identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from state and area-wide planning and development agencies. Through this process, the proponent may gain insights on other agencies’ approaches to EAs, surveys, and studies applicable to the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

(2) In some cases, local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to reasonable alternatives or significant environmental, social, or economic impacts associated with a proposed action. When appropriate, proponents of an action should determine whether these entities have an interest in becoming a cooperating agency (§651.45 (b) and 40 CFR 1501.6). If cooperating agency status is established, a memorandum of agreement 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 may use their own funds, and the designation of cooperating agency status

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neither enlarges nor diminishes the decision-making status of any federal or non-federal entities (see CEQ Memorandum for Heads of Federal Agencies entitled "Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act" dated 28 July 1999, available from the President's Council on Environmental Quality (CEQ), Executive Office of the President of the U.S.). In determining sufficient jurisdiction or expertise, CEQ regulations can be used as guidance.

(h) *The Army as a cooperating agency.* Often, other agencies take actions that can negatively impact the Army mission. In such cases, the Army may have some special or unique expertise or jurisdiction.

(1) The Army may be a cooperating agency (40 CFR 1501.6) in order to:

(i) Provide information or technical expertise to a lead agency.

(ii) Approve portions of a proposed action.

(iii) Ensure the Army has an opportunity to be involved in an action of another federal agency that will affect the Army.

(iv) Provide review and approval of the portions of EISs and RODs that affect the Army.

(2) Adequacy of an EIS is primarily the responsibility of the lead agency. However, as a cooperating agency with approval authority over portions of a proposal, the Army may adopt an EIS if review concludes the EIS adequately satisfies the Army's comments and suggestions.

(3) If the Army is a major approval authority for the proposed action, the appropriate Army official may sign the ROD prepared by the lead agency, or prepare a separate, more focused ROD. If the Army's approval authority is only a minor aspect of the overall proposal, such as issuing a temporary use permit, the Army need not sign the lead agency's ROD or prepare a separate ROD.

(4) The magnitude of the Army's involvement in the proposal will determine the appropriate level and scope of Army review of NEPA documents. If the Army is a major approval authority or may be severely impacted by the

proposal or an alternative, the Army should undertake the same level of review as if it were the lead agency. If the involvement is limited, the review may be substantially less. The lead agency is responsible for overall supervision of the EIS, and the Army will attempt to meet all reasonable time frames imposed by the lead agency.

(5) If an installation (or other Army organization) should become aware of an EIS being prepared by another federal agency in which they may be involved within the discussion of the document, they should notify ASA(I&E) through the chain of command. ASA(I&E) will advise regarding appropriate Army participation as a cooperating agency, which may simply involve local coordination.

§ 651.15 Mitigation and monitoring.

(a) Throughout the environmental analysis process, the proponent will consider mitigation measures to avoid or minimize environmental harm. Mitigation measures include:

(1) Avoiding the impact altogether, by eliminating the action or parts of the action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect on the environment.

(4) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact, by replacing or providing substitute resources or environments. (Examples and further clarification are presented in appendix C of this part.)

(b) When the analysis proceeds to an EA or EIS, mitigation measures will be clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process. The mitigation shall become a line item in the proponent's

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budget or other funding document, if appropriate, or included in the legal document implementing the action (for example, contracts, leases, or grants). Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document, will be budgeted and funded (or funding arranged) by the proponent, and will be identified, with the appropriate fund code, in the EPR (AR 200-1). Mitigations will be monitored through environmental compliance reporting, such as the ISR (AR 200-1) or the Environmental Quality Report. Mitigation measures are identified and funded in accordance with applicable laws, regulations, or other media area requirements.

(c) Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigation measures in such a manner, the FNSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the proponent must publish an NOI and prepare an EIS.

(d) Potential mitigation measures that appear practical, and are unobtainable within expected Army resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis to the maximum extent practicable. A number of factors determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality. Although mission conflicts are inevitable, they are not necessarily insurmountable; and the proponent should be cautious about declaring all mitigations impractical and carefully consider any manpower

requirements. The key point concerning both the manpower and cost constraints is that, unless money is actually budgeted and manpower assigned, the mitigation does not exist. Coordination by the proponent early in the process will be required to allow ample time to get the mitigation activities into the budget cycle. The project cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(e) Mitigation measures that were considered but rejected, including those that can be accomplished by other agencies, must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated impacts are significant.

(f) Proponents may request assistance with mitigation from cooperating non-Army agencies, when appropriate. Such assistance is appropriate when the requested agency was a cooperating agency during preparation of a NEPA document, or has the technology, expertise, time, funds, or familiarity with the project or the local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(g) The proponent agency or other appropriate cooperating agency will implement mitigations and other conditions established in the EA or EIS, or commitments made in the FNSI or ROD. Legal documents implementing the action (such as contracts, permits, grants) will specify mitigation measures to be performed. Penalties against a contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(h) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation (see appendix C of this part for guidelines on implementing such a program). Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and

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whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(1) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(2) The outcome of the mitigation measure is uncertain (for example, new technology);

(3) Major environmental controversy remains associated with the selected alternative; or

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources). Proponents must follow local installation environmental office procedures to coordinate with appropriate federal, tribal, state, or local agencies responsible for a particular program to determine what would constitute "adverse effects."

(i) Monitoring is an integral part of any mitigation system.

(1) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, and required provisions are enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, or an in-house (Army) lead agency. Detailed guidance is contained in Appendix C of this part. The proponent is ultimately responsible for performing any mitigation activities. All monitoring results will be sent to the installation Environmental Office; in the case of the Army Reserves, the Regional Support Commands (RSCs); and, in the case of the National Guard, the NGB.

(2) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect.

While quantitative measurements are desired, qualitative measures may be required. The objective is to obtain enough information to judge the effect of the mitigation. In establishing the monitoring system, the responsible agent should coordinate the monitoring with the Environmental Office. Specific steps and guidelines are included in appendix C of this part.

(j) The monitoring program, in most cases, should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated. Technical results from the analysis should be summarized by the proponent and coordinated with the installation Environmental Office. Subsequent coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the Environmental Office.

(k) If the mitigations are effective, the monitoring should be continued as long as the mitigations are needed to address impacts of the initial action. If the mitigations are ineffective, the proponent and the responsible group should re-examine the mitigation measures, in consultation with the Environmental Office and appropriate experts, and resolve the inadequacies of the mitigation or monitoring. Professionals with specialized and recognized expertise in the topic or issue, as well as concerned citizens, are essential to the credibility of this review. If a different program is required, then a new system must be established. If ineffective mitigations are identified which were required to reduce impact below significance levels (§651.35 (g)), the proponent may be required to publish an NOI and prepare an EIS (paragraph (c) of this section).

(l) *Environmental monitoring report.* An environmental monitoring report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects. Further

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guidance and clarification are included in appendix C of this part.

##### § 651.16 Cumulative impacts.

(a) NEPA analyses must assess cumulative effects, which are the impact on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by federal, non-federal agencies, and private parties must be considered (40 CFR 1508.7).

(b) The scoping process should be used to identify possible cumulative impacts. The proponent should also contact appropriate off-post officials, such as tribal, state, county, or local planning officials, to identify other actions that should be considered in the cumulative effects analysis.

(c) A suggested cumulative effects approach is as follows:

(1) Identify the boundary of each resource category. Boundaries may be geographic or temporal. For example, the Air Quality Control Region (AQCR) might be the appropriate boundary for the air quality analysis, while a watershed could be the boundary for the water quality analysis. Depending upon the circumstances, these boundaries could be different and could extend off the installation.

(2) Describe the threshold level of significance for that resource category. For example, a violation of air quality standards within the AQCR would be an appropriate threshold level.

(3) Determine the environmental consequence of the action. The analysis should identify the cause and effect relationships, determine the magnitude and significance of cumulative effects, and identify possible mitigation measures.

##### § 651.17 Environmental justice.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Popu-

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lations, 11 February 1994, 3 CFR, 1994 Comp., p. 859) requires the proponent to determine whether the proposed action will have a disproportionate impact on minority or low-income communities, both off-post and on-post.

### Subpart C—Records and Documents

##### § 651.18 Introduction.

NEPA documentation will be prepared and published double-sided on recycled paper. The recycled paper symbol should be presented on the inside of document covers.

##### § 651.19 Record of environmental consideration.

A Record of Environmental Consideration (REC) is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX, or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the above information is included. To reduce paperwork, a REC can reference such documents as real estate Environmental Baseline Studies (EBSS) and other documents, as long as they are readily available for review. While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental laws and regulations. Figure 3 illustrates a possible format for the REC as follows:

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Record of Environmental Consideration (REC)	
To: (Environmental Officer)	
From: (Proponent)	
Project title:	
Brief description:	
Anticipated date and/or duration of proposed action: (Month/year)	
Reason for using record of environmental consideration (choose one):	
a. Adequately covered in an (EA, EIS) entitled _____, dated _____	
The EA/EIS may be reviewed at _____, (location)	
OR,	
b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because _____	
_____	
_____	
Date _____	Project Proponent _____
Date _____	Installation Environmental Coordinator _____
Variation from this format is acceptable provided basic information and approvals are included in any modified document.	

Figure 3. Suggested format for Record of Environmental Consideration.

#### § 651.20 Environmental assessment.

An EA is intended to assist agency planning and decision-making. While required to assess environmental impacts and evaluate their significance, it is routinely used as a planning document to evaluate environmental impacts, develop alternatives and mitigation measures, and allow for agency and public participation. It:

- Briefly provides the decision maker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.
- Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.
- Facilitates preparation of an EIS, if required.
- Includes brief discussions of the need for the proposed action, alternatives to the proposed action (NEPA, section 102(2)(e)), environmental impacts, and a listing of persons and agencies consulted (see Subpart E of this part for requirements).
- The EA provides the proponent, the public, and the decision maker with sufficient evidence and analysis for determining whether environ-

mental impacts of a proposed action are potentially significant. An EA is substantially less rigorous and costly than an EIS, but requires sufficient detail to identify and ascertain the significance of expected impacts associated with the proposed action and its alternatives. The EA can often provide the required "hard look" at the potential environmental effects of an action, program, or policy within 1 to 25 pages, depending upon the nature of the action and project-specific conditions.

#### § 651.21 Finding of no significant impact.

A Finding of No Significant Impact (FNSI) is a document that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, that an EIS will not be prepared. The FNSI includes a summary of the EA and notes any related NEPA documentation. If the EA is attached, the FNSI need not repeat any of the EA discussion, but may incorporate it by reference. The draft FNSI will be made available to the public for review and comment for



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30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in § 651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

#### § 651.22 Notice of intent.

A Notice of Intent (NOI) is a public notice that an EIS will be prepared. The NOI will briefly:

- (a) Describe the proposed and alternative actions.
- (b) Describe the proposed scoping process, including when and where any public meetings will be held.
- (c) State the name and address of the POC who can answer questions on the proposed action and the EIS (see § 651.45(a) and § 651.49 for application).

#### § 651.23 Environmental impact statement.

An Environmental Impact statement (EIS) is a detailed written statement required by NEPA for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321). A more complete discussion of EIS requirements is presented in subpart F of this part.

#### § 651.24 Supplemental EAs and supplemental EISs.

As detailed in § 651.5(g) and in 40 CFR 1502.9(c), proposed actions may require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

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#### § 651.25 Notice of availability.

The Notice of Availability (NOA) is published by the Army to inform the public and others that a NEPA document is available for review. A NOA will be published in the FR, coordinating with EPA for draft and final EISs (including supplements), for RODs, and for EAs and FNSIs which are of national concern, are unprecedented, or normally require an EIS. EAs and FNSIs of local concern will be made available in accordance with § 651.36. This agency NOA should not be confused with the EPA's notice of availability of weekly receipts (NWR)<sup>3</sup> of EISs.

#### § 651.26 Record of decision.

The Record of Decision (ROD) is a concise public document summarizing the findings in the EIS and the basis for the decision. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS (see § 651.45 (j) for application). The ROD must identify mitigations which were important in supporting decisions, such as those mitigations which reduce otherwise significant impacts, and ensure that appropriate monitoring procedures are implemented (see § 651.15 for application).

#### § 651.27 Programmatic NEPA analyses.

These analyses, in the form of an EA or EIS, are useful to examine impacts of actions that are similar in nature or broad in scope. These documents allow the "tiering" of future NEPA documentation in cases where future decisions or unknown future conditions preclude complete NEPA analyses in one step. These documents are discussed further in § 651.14(c).

### Subpart D—Categorical Exclusions

#### § 651.28 Introduction.

Categorical Exclusions (CXs) are categories of actions with no individual or

<sup>3</sup>This notice is published by the EPA and officially begins the public review period. The NWR is published each Friday, and lists the EISs that were filed the previous week.



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cumulative 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.

**§ 651.29 Determining when to use a CX (screening criteria).**

(a) To use a CX, the proponent must satisfy the following three screening conditions:

(1) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions (see § 651.51(a)).

(2) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CX (see paragraphs (b) (1) through (14) of this section).

(3) One (or more) CX encompasses the proposed action. Identify a CX (or multiple CXs) that potentially encompasses the proposed action (Appendix B of this part). If no CX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(b) Extraordinary circumstances that preclude the use of a CX are:

(1) Reasonable likelihood of significant effects on public health, safety, or the environment.

(2) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(3) Imposition of uncertain or unique environmental risks.

(4) Greater scope or size than is normal for this category of action.

(5) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(6) Releases of petroleum, oils, and lubricants (POL) except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(7) When a review of an action that might otherwise qualify for a Record of Non-applicability (RONA) reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(8) Reasonable likelihood of violating any federal, state, or local law or requirements imposed for the protection of the environment.

(9) Unresolved effect on environmentally sensitive resources, as defined in paragraph (c) of this section.

(10) Involving effects on the quality of the environment that are likely to be highly controversial.

(11) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(12) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(13) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(14) Introduction/employment of unproven technology.

(c) If a proposed action would adversely affect "environmentally sensitive" resources, unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.) a CX cannot be used (see paragraph (e) of this section). Environmentally sensitive resources include:

(1) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(2) Properties listed or eligible for listing on the National Register of Historic Places (AR 200-4).

(3) Areas having special designation or recognition such as prime or unique

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agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(d) Cultural Resources as defined in AR 200-4.

(d) The use of a CX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CX screening criteria.

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC. This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows:

- (1) "USFWS concurred in informal coordination that E/T species will not be affected".
- (2) "Corps of Engineers determined action is covered by nationwide general permit".
- (3) "SHPO concurred with action".
- (4) "State Department of Natural Resources concurred that no effect to state sensitive species is expected".

#### § 651.30 CX actions.

Types of actions that normally qualify for CX are listed in Appendix B of this part.

#### § 651.31 Modification of the CX list.

The Army list of CXs is subject to continual review and modification, in consultation with GEQ. Additional modifications can be implemented through submission, through channels, to ASA (I&E) for consideration and consultation. Subordinate Army head-

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quarters may not modify the CX list through supplements to this part. Upon approval, proposed modifications to the list of CXs will be published in the FEDERAL REGISTER, providing an opportunity for public review and comment.

### Subpart E—Environmental Assessment

#### § 651.32 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making, helping proponents and other decision makers understand the potential extent of environmental impacts of a proposed action and its alternatives, and whether those impacts (or cumulative impacts) are significant. The EA can aid in Army compliance with NEPA when no EIS is necessary. An EA will be prepared if a proposed action:

- (1) Is not an emergency (§ 651.11(b)).
- (2) Is not exempt from (or an exception to) NEPA (§ 651.11(a)).
- (3) Does not qualify as a CX (§ 651.11(c)).
- (4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19).
- (5) Does not normally require an EIS (§ 651.42).

(b) An EA can be 1 to 25 pages in length and be adequate to meet the requirements of this part, depending upon site-specific circumstances and conditions. Any analysis that exceeds 25 pages in length should be evaluated to consider whether the action and its effects are significant and thus warrant an EIS.

#### § 651.33 Actions normally requiring an EA.

The following Army actions normally require an EA, unless they qualify for the use of a CX.

(a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.

(b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.

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(c) Changes to established installation land use that generate impacts on the environment.

(d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.

(e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.

(f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedent (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.

(g) Development and approval of installation master plans.

(h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).

(i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

(j) Field activities on land not controlled by the military, except those that do not alter land use to substantially change the environment (for example, patrolling activities in a forest). This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also in-

cludes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level, and helicopters, at any speed, below 500 feet above ground level.

(k) An action with substantial adverse local or regional effects on energy or water availability. Such impacts can only be adequately identified with input from local agencies and/or citizens.

(l) Production of hazardous or toxic materials.

(m) Changes to established airspace use that generate impacts on the environment or socioeconomic systems, or create a hazard to non-participants.

(n) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program/plan.

(o) Acquisition, construction, or alteration of (or space for) a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(p) An activity that affects a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(q) Substantial proposed changes in Army-wide doctrine or policy that potentially have an adverse effect on the environment (40 CFR 1508.18 (b)(i)).

(r) An action that may threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment.

(s) The construction and operation of major new fixed facilities or the substantial commitment of installation natural resources supporting new materiel at the installation.

§ 651.34 EA components.

EAs should be 1 to 25 pages in length, and will include:

(a) Signature (Review and Approval) page.

(b) Purpose and need for the action.

(c) Description of the proposed action.

(d) *Alternatives considered.* The alternatives considered, including appropriate consideration of the "No Action" alternative, the "Proposed Action," and all other appropriate and

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reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

(e) *Affected environment.* This section must address 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 focusing on specific aspects of the environment that may be impacted by the alternatives, EBSS and similar real estate or construction environmental baseline documents, or their equivalent, may be incorporated and/or referenced.

(f) *Environmental consequences.* Environmental consequences of the proposed action and the alternatives. The document must state and assess the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment, and what practical mitigation is available to minimize these impacts. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and is not merely a quantification of facts.

(g) *Conclusions regarding the impacts of the proposed action.* A clear statement will be provided regarding whether or not the described impacts are significant. If the EA identifies potential significant impacts associated with the proposed action, the conclusion should clearly state that an EIS will be prepared before the proposed action is implemented. If no significant impacts are associated with the project, the conclusion should state that a FNSI will be prepared. Any mitigations that reduce adverse impacts must be clearly presented. If the EA depends upon mitigations to support a resultant FNSI, these mitigations must be clearly identified as a subsection of the Conclusions.

(h) *Listing of preparers, and agencies and persons consulted.* Copies of correspondence to and from agencies and persons contacted during the prepara-

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tion of the EA will be available in the administrative record and may be included in the EA as appendices. In addition, the list of analysts/preparers will be presented.

(i) *References.* These provide bibliographic information for cited sources. Draft documents should not be cited as references without the expressed permission of the proponent of the draft material.

#### § 651.35 Decision process.

(a) An EA results in either a FNSI or an NOI to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such determination as soon as possible.

(b) The FNSI is a document (40 CFR 1506.13) that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, an EIS will not be prepared. It summarizes the EA, noting any NEPA documents that are related to, but are not part of, the scope of the EA under consideration. If the EA is attached, the FNSI may incorporate the EA's discussion by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action (see § 651.14(b)(2)(iii) for an exception). Following the comment period, the decision maker signs the FNSI, and the action can proceed. It is important that the final FNSI reflect the decision made, the response to public comments, and the basis for the final decision.

(c) The FNSI must contain the following:

- (1) The name of the action.
- (2) A brief description of the action (including any alternatives considered).
- (3) A short discussion of the anticipated environmental effects.
- (4) The facts and conclusions that have led to the FNSI.
- (5) A deadline and POC for further information or receipt of public comments (see § 651.47).
- (d) The FNSI is normally no more than two typewritten pages in length.

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(e) The draft FNSI will be made available to the public prior to initiation of the proposed action, unless it is a classified action (see § 651.13 for security exclusions). Draft FNSIs that have national interest should be submitted with the proposed press release, along with a Questions and Answers (Q&A) package, through command channels to ASA(I&E) for approval and subsequent publication in the FR. Draft FNSIs having national interest will be coordinated with OCPA. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(f) For actions of only regional or local interest, the draft FNSI will be publicized in accordance with § 651.14(b)(2). Distribution of the draft FNSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(g) Some FNSIs will require the implementation of mitigation measures to reduce potential impacts below significance levels, thereby eliminating the requirement for an EIS. In such instances, the following steps must be taken:

(1) The EA must be made readily available to the public for review through traditional publication and distribution, and through the World Wide Web (WWW) or similar technology. This distribution must be planned to ensure that all appropriate entities and stakeholders have easy access to the material. Ensuring this availability may necessitate the distribution of printed information at locations that are readily accessible and frequented by those who are affected or interested.

(2) Any identified mitigations must be tracked to ensure implementation, similar to those specified in an EIS and ROD.

(3) The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that are individually or cumulatively significant.

(h) The proponent is responsible for funding the preparation, staffing, and distribution of the draft FNSI and EA package, and the incorporation of pub-

lic/agency review and comment. The proponent shall also ensure appropriate public and agency meetings, which may be required to facilitate the NEPA process in completing the EA. The decision maker will approve and sign the EA and FNSI documents. Proponents will ensure that the EA and FNSI, to include drafts, are provided in electronic format to allow for maximum information flow throughout the process.

(i) The proponent should ensure that the decision maker is continuously informed of key findings during the EA process, particularly with respect to potential impacts and controversy related to the proposed action.

§ 651.36 Public involvement.

(a) The involvement of other agencies, organizations, and individuals in the development of EAs and EISs enhances collaborative issue identification and problem solving. Such involvement demonstrates that the Army is committed to open decision-making and builds the necessary community trust that sustains the Army in the long term. Public involvement is mandatory for EISs (see § 651.47 and Appendix D of this part for information on public involvement requirements).

(b) Environmental agencies and the public will be involved to the extent practicable in the preparation of an EA. If the proponent elects to involve the public in the development of an EA, § 651.47 and Appendix D of this part may be used as guidance. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), factors to be weighed include:

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis,

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and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

(d) Copies of public notices, "scoping" letters, EAs, draft FNSIs, FNSIs, and other documents routinely sent to the public will be sent directly to appropriate congressional, state, and district offices.

(e) To ensure early incorporation of the public into the process, a plan to include all interested or affected parties should be developed at the beginning of the analysis and documentation process. Open communication with the public is encouraged as a matter of Army policy, and the degree of public involvement varies. Appropriate public notice of the availability of the completed EA/draft FNSI shall be made (see § 651.35) (see also AR 360-5 (Public Information)). The plan will include the following:

- (1) Dissemination of information to local and installation communities.
- (2) Invitation and incorporation of public comments on Army actions.
- (3) Consultation with appropriate persons and agencies.
- (f) Further guidance on public participation requirements (to potentially be used for EAs and EISs, depending on circumstances) is presented in Appendix D of this part.

#### § 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

#### § 651.38 Existing environmental assessments.

EAs are dynamic documents. To ensure that the described setting, actions, and effects remain substantially accurate, the proponent or installation Environmental Officer is encouraged to periodically review existing documentation that is still relevant or supporting current action. If an action is

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not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5 (g).

#### § 651.39 Significance.

(a) If the proposed action may or will result in significant impacts to the environment, an EIS is prepared to provide more comprehensive analyses and conclusions about the impacts. Significant impacts of socioeconomic consequence alone do not merit an EIS.

(b) Significance of impacts is determined by examining both the context and intensity of the proposed action (40 CFR 1508.27). The analysis should establish, by resource category, the threshold at which significance is reached. For example, an action that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods; or cause irreparable harm to animal or plant life could be determined significant. Significant beneficial effects also occur and must be addressed, if applicable.

(c) The proponent should use appropriate methods to identify and ascertain the "significance" of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available to the public, is encouraged.<sup>4</sup> In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

### Subpart F—Environmental Impact Statement

#### § 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that

<sup>4</sup>EIFS is one such Army system for evaluating regional economic impacts under NEPA. This system is mandated, as Army policy, for use in NEPA analyses. Other similar tools may be mandated for use in the Army, and will be documented in guidance published pursuant to this part.

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may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making.

(b) The NEPA process should support sound, informed, and timely (early) decision-making; not produce encyclopedic documents. CEQ guidance (40 CFR 1502.7) should be followed, establishing a page limit of 150 pages (300 pages for complex projects). To the extent practicable, EISs will "incorporate by reference" any material that is reasonably available for inspection by potentially interested persons within the time allowed for comment. The incorporated material shall be cited in the EIS and its content will be briefly described. Material based on proprietary data, that is itself not available for review and comment, shall not be incorporated by reference.

§ 651.41 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to:

- (a) Significantly affect environmental quality, or public health or safety.
- (b) Significantly affect historic (listed or eligible for listing in the National Register of Historic Places, maintained by the National Park Service, Department of Interior), or cultural, archaeological, or scientific resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.
- (c) Significantly impact prime and unique farmlands located off-post, wetlands, floodplains, coastal zones, or ecologically important areas, or other areas of unique or critical environmental sensitivity.
- (d) Result in significant or uncertain environmental effects, or unique or unknown environmental risks.
- (e) Significantly affect a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.
- (f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials that may have significant environmental impact.

(i) Be highly controversial from an environmental standpoint.

(j) Cause loss or destruction of significant scientific, cultural, or historical resources.

§ 651.42 Actions normally requiring an EIS.

The following actions normally require an EIS:

- (a) Significant expansion of a military facility or installation.
- (b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.
- (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 impact.
- (d) Land acquisition, leasing, or other actions that may lead to significant changes in land use.
- (e) Realignment or stationing of a brigade or larger table of organization equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic, with no significant biophysical environmental impact).
- (f) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.
- (g) Major changes in the mission or facilities either affecting environmentally sensitive resources (see § 651.29(c)) or causing significant environmental impact (see § 651.39).

§ 651.43 Format of the EIS.

The EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following (detailed content is discussed in appendix E of this part):

- (a) Cover sheet.
- (b) Summary.



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- (c) Table of contents.
- (d) Purpose of and need for the action.
- (e) Alternatives considered, including proposed action and no-action alternative.
- (f) Affected environment (baseline conditions) that may be impacted.
- (g) Environmental and socioeconomic consequences.
- (h) List of preparers.
- (i) Distribution list.
- (j) Index.
- (k) Appendices (as appropriate).

#### § 651.44 Incomplete information.

When the proposed action will have significant adverse effects on the human environment, and there is incomplete or unavailable information, the proponent will ensure that the EIS addresses 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 proponent will include in the EIS:
  - (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.

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#### § 651.45 Steps in preparing and processing an EIS.

(a) *NOI*. The NOI initiates the formal scoping process and is prepared by the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The OCLL will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) The NOI transmittal package includes the NOI, the press release, information for Members of Congress, memorandum for correspondents, and a "questions and answers" (Q&A) package. The NOI shall clearly state the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(3) The proponent forwards the NOI and the transmittal package to the appropriate HQDA (ARSTAF) proponent for coordination and staffing prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (ODEP), OCLL, TJAG, OGC, OCPA, relevant MACOMs, and others. Only the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA/ESOH) can authorize release of an NOI to the FR for publication, unless that authority has been delegated. A cover letter (similar to Figure 5 in § 651.46) will accompany the NOI. An example NOI is shown in Figure 6 in § 651.46.

(b) *Lead and cooperating agency determination*. As soon as possible after the decision is made to prepare an EIS, the proponent will contact appropriate federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In the case of State ARNG actions that have federal funding, the NGB will be the lead agency for the purpose of federal compliance with NEPA. The State may be either a



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joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping.* The proponent will begin the scoping process described in § 651.43. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS preparation and processing.* Prior to publication of a DEIS, the proponent can prepare a PDEIS, allowing for internal organization and the resolution of internal Army consideration, prior to a formal request for comments.

(1) *PDEIS.* Based on information obtained and decisions made during the scoping process, the proponent may prepare the PDEIS. To expedite headquarters review, a summary document is also required to present the purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring. This summary will be forwarded, through the chain of command, to ODEP, the DASA(ESOH), and other interested offices for review and comment. If requested by these offices, a draft PDEIS can be provided following review of the summary. The PDEIS is not normally made available to the public and should be stamped "For Internal Use Only-Deliberative Process."

(2) *DEIS.* The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review and those for filing with the EPA. Distribution may include interested congressional delegations and committees, governors, national environmental organizations, the DOD and federal agency headquarters, and other selected entities. The Army proponent will finalize the FR NOA, the proposed news release, and the EPA filing letter for signature of the DASA(ESOH). A revised process summary of the contents (purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring) will accompany the DEIS to HQDA for review and comment. If the action has been delegated by the ASA(I&E), only the process summary is required, unless the DEIS is requested by HQDA.

(i) When the DEIS has been formally approved, the preparer can distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneously with, filing with EPA. The list includes federal, state, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(ii) Following approval, the proponent will forward five copies of the DEIS to EPA for filing and notice in the FR; publication of EPA's NWR commences the public comment period. The proponent will distribute the DEIS prior to, or simultaneously with, filing with EPA. Distribution will include appropriate federal, state, regional, and local agencies; Native American tribes; and organizations and private citizens who have expressed interest in the proposed action.

(iii) For proposed actions that are environmentally controversial, or of national interest, the OCLL shall be notified of the pending action so that appropriate congressional coordination may be effected. The OCPA will coordinate public announcements through its chain of command. Proponents will ensure that the DEIS and subsequent NEPA documents are provided in electronic format to allow for maximum information flow throughout the process.

(e) *Public review of DEIS.* The DEIS public comment period will be no less than 45 days. If the statement is unusually long, a summary of the DEIS may be circulated, with an attached list of locations where the entire DEIS may be reviewed (for example, local public libraries). Distribution of the complete DEIS should be accompanied by the announcement of availability in established newspapers of major circulation, and must include the following:

(1) Any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.

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(2) The applicant, if the proposed action involves any application of proposal for the use of Army resources.

(3) Any person, organization, or agency requesting the entire DEIS.

(4) Any Indian tribes, Native Alaskan organizations, or Native Hawaiian organizations potentially impacted by the proposed action.

(5) Chairs/co-chairs of any existing citizen advisory groups (for example, Restoration Advisory Boards).

(f) *Public meetings or hearings.* Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6(c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings at least 15 days prior to the meeting.

(g) *Response to comments.* Comments will be incorporated in the DEIS by modification of the text and/or written explanation. Where possible, similar comments will be grouped for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(h) *The FEIS.* 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 draft EIS. Coordination, approval, filing, and public notice of an abbreviated FEIS are the same as for a draft DEIS. If extensive modifications are warranted, the proponent will prepare a new, complete FEIS. Preparation, coordination, approval, filing, and public notice of the FEIS are the same as the process outlined for the DEIS. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. One copy (electronic) of the FEIS will be forwarded to ODEP. The FEIS will clearly identify the Army's

preferred alternative unless prohibited by law.

(i) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published the NWR of the FEIS in the FR, or 90 days after the NWR of the DEIS, whichever is later. EPA publishes NWRs weekly. Those NWRs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(j) *ROD.* The ROD documents the decision made and the basis for that decision.

(1) The proponent will prepare a ROD for the decision maker's signature, which will:

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

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

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

(iv) Discuss how those considerations entered into the final decision.

(v) 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.

(vi) Identify or incorporate by reference the mitigation measures that were incorporated into the decision.

(2) Implementation of the decision may begin immediately after approval of the ROD.

(3) The proponent will prepare an NOA to be published in the FR by the HQDA proponent, following congressional notification. Processing and approval of the NOA is the same as for an NOI.

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(4) RODs will be distributed to agencies with authority or oversight over aspects of the proposal, cooperating agencies, appropriate congressional, state, and district offices, all parties that are directly affected, and others upon request.

(5) One electronic copy of the ROD will be forwarded to ODEP.

(6) A monitoring and enforcement program will be adopted and summarized for any mitigation (see Appendix C of this part).

(k) *Pre-decision referrals.* 40 CFR part 1504 specifies procedures to resolve federal agency disagreements on the environmental effects of a proposed action. Pre-decision referrals apply to inter-agency disagreement on a proposed action's potential unsatisfactory effects.

(l) *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 any environmental document or prepare new documentation as necessary.

(m) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS and the ROD. Implementation of the mitigation plan is the responsibility of the proponent (see Appendix C of this part). The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action. For weapon system acquisition programs, the proponent will coordinate with the appropriate responsible parties before identifying potential mitigations in the EIS/ROD.

(n) *Implementing the decision.* The proponent will provide for monitoring to assure that decisions are carried out, particularly in controversial cases or environmentally sensitive areas (Appendix C of this part). Mitigation and other conditions that have been identified in the EIS, or during its review and comment period, and made part of the decision (and ROD), will be implemented by the lead agency or other appropriate consenting agency. The proponent will:

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

(2) Ensure that the proponent's project budget includes provisions for mitigations.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(5) Make results of relevant monitoring available to citizens advisory groups, and others that expressed such interest during the EIS process.

§ 651.46 Existing EISs.

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this part. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3. Figures 4 through 8 to Subpart F of part 651 follow:

Pt. 651, Subpt. F, Figs.

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FIGURES 4 THROUGH 8 TO SUBPART F OF PART 651

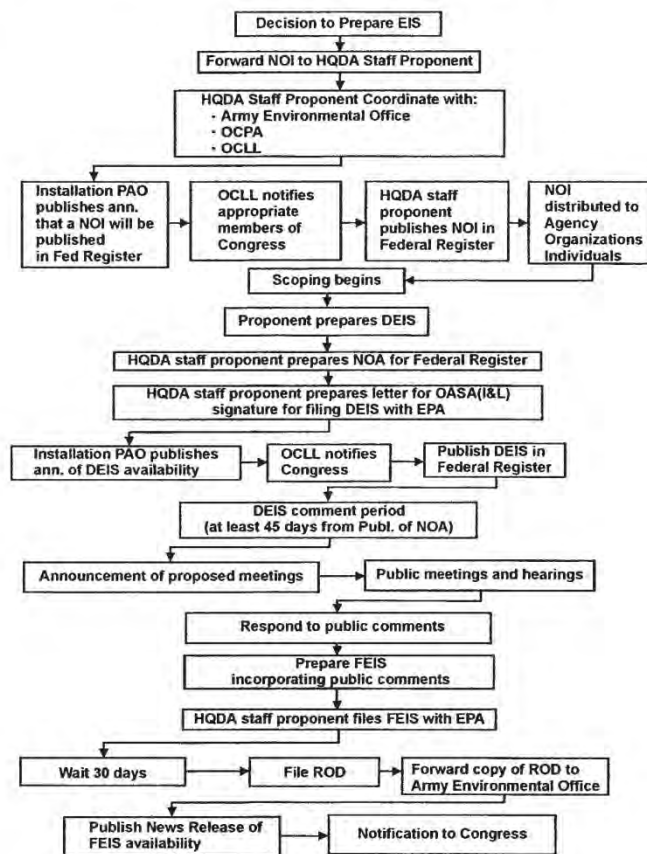


Figure 4. Steps in preparing and processing an environmental impact statement.

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Pt. 651, Subpt. F, Figs.



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110

January 14, 1999

Director  
Office of the Federal Register  
National Archives and Records  
Administration  
Washington, D. C. 20408

Dear Sir:

The enclosed notice of intent (NOI) to prepare an Environmental Impact Statement for the Fort Sill Real Property Master Plan is submitted for publication in the Notice section of the Federal Register.

Please publish this NOI in the earliest possible edition of the Federal Register. This notice is required for the Department of the Army to perform its military mission and to comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

To confirm publication date of this notice or for further information, please contact Mr. Greg Brewer at (703) 692-9220.

Please bill this to charge code 3710-08-M.

Sincerely,

Raymond J. Fatz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I,L&E)

Enclosure

Figure 5. Sample Notice of Intent Transmittal Letter.

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32 CFR Ch. V (7-1-09 Edition)

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, Okla.

AGENCY: Department of the Army, DOD

ACTION: Notice of Intent

**SUMMARY:** This announced the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Okla., to prepare an Environmental Impact Statement (EIS) in support of revisions to the installations' Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

**ADDRESSES:** Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT-PE-E (J. Randolph), P.O. Box 61, Tulsa, Okla. 74121-0061.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at (580) 442-3409.

**SUPPLEMENTARY INFORMATION:** The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS that will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternative locations for specific projects, partial implementation of the specific project, or other modifications of the specific project. The alternatives will be developed during preparation of the Draft EIS (DEIS) as a result of public input and of environmental analysis of the proposals within the plan.

**SIGNIFICANT ISSUES:** The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited with the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze will include the following:

1. Development of a large deployment marshaling area near an existing railhead facility; Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.
2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.
3. Probably construction projects: Whereby, the following projects would be complete: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a contingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

DATED: January 14, 1999

  
Raymond J. Fitz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(USC)

Figure 6. Sample of Notice of Intent.

Department of the Army, DoD

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DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110

March 25, 1999

Director  
Office of Federal Activities  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D. C. 20044


Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement for the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the national Environmental Policy Act (40 CFR, Parts 1500-1508).

The point of contact for this action is Ms. Theresa Persick-Arnold at (703) 697-0216.

Sincerely,

  
Raymond J. Fatz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Enclosures

Figure 7. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Environmental Protection Agency.

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DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
INSTALLATIONS LOGISTICS AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE  
(ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

A handwritten signature in black ink, appearing to read "Ray Falz".

Raymond J. Falz  
Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

**Subpart G—Public Involvement  
and the Scoping Process**

**§ 651.47 Public involvement.**

(a) As a matter of Army policy, public involvement is required for all EISs, and is strongly encouraged for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate adjustments

as it proceeds (AR 360-5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels



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will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with White House Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton

League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335-15).

§ 651.48 Scoping process.

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will

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go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process should:

(1) Eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) Make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decisionmaking process.

(c) Proper scoping will reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 04, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.49, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process

(including public involvement) will depend upon:

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

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

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in §§ 651.49, 651.50, and 651.51, respectively.

§ 651.49 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

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(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including:

- (1) The scoping process itself.
- (2) Collection or analysis of environmental data, including required studies.
- (3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.
- (4) Filing of the ROD.
- (5) Taking the action.
- (6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

**§ 651.50 Public interaction phase.**

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified in paragraph (a) of this section, participants should include the following:

- (1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.
- (2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.
- (3) Experts in various environmental disciplines, in any technical area where foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with

as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of "any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will

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clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

##### § 651.51 The final phase.

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS

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under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 651.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

##### § 651.52 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web

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(WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating "virtual" public participation, as well as the dissemination of analyses and information as they evolve.

**§651.53 Modifications of the scoping process.**

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

**Subpart H—Environmental Effects of Major Army Action Abroad**

**§651.54 Introduction.**

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp. p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With

the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts 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.

**§651.55 Categorical exclusions.**

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2-5(c).

**§651.56 Responsibilities.**

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(IE) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

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

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed

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on those actions reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) on significant or sensitive actions affecting relations with another nation.

(d) TJAG, in coordination with the OGC, will provide advice and assistance concerning the requirements of Executive Order 12114 and DODD 6050.7.

(e) The Chief of Public Affairs will provide advice and assistance on public affairs as necessary.

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 addresses 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 360-5

Army Public Affairs, Public Information.

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.

AR 5-10

Reduction and Realignment Actions.

AR 11-27

Army Energy Program.

AR 95-50

Airspace and Special Military Operation Requirements.

AR 140-475

Real Estate Selection and Acquisition: Procedures and Criteria.

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AR 200-1

Environmental Protection and Enhancement.

AR 200-3

Natural Resources—Land, Forest, and Wildlife Management.

AR 200-4

Cultural Resources Management.

AR 210-10

Administration.

AR 210-20

Master Planning for Army Installations.

AR 335-15

Management Information Control System.

AR 380-5

Department of the Army Information Security Program.

AR 385-10

Army Safety Program.

AR 530-1

Operations Security (OPSEC).

DA PAM 70-3

Army Acquisition Procedures.

Defense Acquisition Deskhook

An electronic knowledge presentation system available through the Deputy Under Secretary of Defense (Acquisition Reform) and the Office of the Under Secretary of Defense (Acquisition and Technology).

DOD 5000.2-R

Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

DODD 4100.15

Commercial Activities Program.

DODD 4700.4

Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).

DODD 0050.7

Environmental Effects Abroad of Major Department of Defense Actions.

DODI 4715.8

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Executive Order 11988	As amended (CERCLA, Superfund) (42 U.S.C. 9601 <i>et seq.</i> ) Endangered Species Act of 1973.
Floodplain Management, 3 CFR, 1977 Comp., p. 117	Public Law 93-205, 87 Stat. 884.
Executive Order 11990	Fish and Wildlife Coordination Act
Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.	Public Law 85-624, Sec. 2, 72 Stat. 563 and Public Law 89-72, Sec. 6(b), 79 Stat. 216.
Executive Order 12114	National Environmental Policy Act of 1969
Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 comp., p. 356.	Public Law 91-190, 83 Stat. 852.
Executive Order 12778	National Historic Preservation Act
Civil Justice Reform, 3 CFR, 1991 Comp., p. 359.	Public Law 89-665, 80 Stat. 915.
Executive Order 12856	Native American Graves Protection and Repatriation Act
Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 CFR, 1993 Comp., p. 616.	Public Law 101-601, 104 Stat. 3048.
Executive Order 12861	Pollution Prevention Act of 1990
Elimination of One-Half of Executive Branch Internal Regulations, 3 CFR, 1993 Comp., p. 630.	Public Law 101-508, Title VI, Subtitle G, 104 Stat. 13880-321.
Executive Order 12866	Resource Conservation and Recovery Act of 1976
Regulatory Planning and Review, 3 CFR, 1993 Comp., p. 638.	Public Law 94-580, 90 Stat. 2795.
Executive Order 12898	Sikes Act
Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 3 CFR, 1994 Comp., p. 859.	Public Law 86-797, 74 Stat. 1052.
Executive Order 13007	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.
Indian Sacred Sites, 3 CFR, 1986 Comp., p. 196.	36 CFR Part 800
Executive Order 13045	Advisory Council on Historic Preservation.
Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR, 1997 Comp., p. 193.	40 CFR Parts 1500-1508
Executive Order 13061	Council on Environmental Quality.
Federal Support of Community Efforts Along American Heritage Rivers, 3 CFR, 1997 Comp., p. 221.	Section III—Prescribed Forms
Executive Order 13083	This section contains no entries.
Federalism, 3 CFR, 1998 Comp., p. 146.	Section IV—Referenced Forms
Public Laws: American Indian Religious Freedom Act, 42 U.S.C. 1996.	DA Form 2028
Clean Air Act	Recommended Changes to Publications and Blank Forms.
As amended (42 U.S.C. 7401, <i>et seq.</i> ).	DD Form 1391
Clean Water Act of 1977	Military Construction Project Data.
Public Law 95-217, 91 Stat. 1566 and Public Law 96-148, Sec. 1(a)-(c), 93 Stat. 1088.	APPENDIX B TO PART 651—CATEGORICAL EXCLUSIONS
Comprehensive Environmental Response, Compensation, and Liability Act of 1980.	Section I—Screening Criteria
	Before any CXs can be used, Screening Criteria as referenced in §651.29 must be met.
	Section II—List of CXs
	(a) For convenience only, the CXs are grouped under common types of activities



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(for example, administration/operation, construction/demolition, and repair and maintenance). Certain CXs require a REC, which will be completed and signed by the proponent. Concurrence on the use of a CX is required from the appropriate environmental officer (EO), and that signature is required on the REC. The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be sent, through channels, to the ASA (I&E). Subordinate Army headquarters may not modify the CX list through supplements to this part. Proposed modifications to the list of CXs will be published in the FR by HQDA, to provide opportunity for public comment.

(b) Administration/operation activities:

(1) Routine law and order activities performed by military/military police and physical plant protection and security personnel, and civilian natural resources and environmental law officers.

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

(3) Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated (subject to previous NEPA review).

(4) Proposed activities and operations to be conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will remain within established permit limits, if any (REC required).

(5) Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

(6) Routinely conducted recreation and welfare activities not involving off-road recreational vehicles.

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

(8) Preparation of administrative or personnel related studies, reports, or investigations.

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

(10) Non-construction activities in support of other agencies/organizations involving

community participation projects and law enforcement activities.

(11) Ceremonies, funerals, and concerts. This includes events such as state funerals, to include flyovers.

(12) Reductions and realignments of civilian and/or military personnel that fall below the thresholds for reportable actions as prescribed by statute (10 U.S.C. 2697) and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to implement (REC required). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations (REC required).

(13) Actions affecting Army property that fall under another federal agency's list of categorical exclusions when the other federal agency is the lead agency (decision maker), or joint actions on another federal agency's property that fall under that agency's list of categorical exclusions (REC required).

(14) Relocation of personnel into existing federally-owned (or state-owned in the case of ARNG) or commercially-leased space, which does not involve a substantial change in the supporting infrastructure (for example, an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase is an example of substantial change) (REC required).

(c) Construction and demolition:

(1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

(2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

(d) Cultural and natural resource management activities:

(1) Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).



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(2) Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with USACE permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and stormwater control structures (REC required).

(3) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations.

(4) Studies, data collection, monitoring and information gathering that do not involve major surface disturbance. Examples include topographic surveys, bird counts, wetland mapping, and other resources inventories (REC required).

(5) Maintenance of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs.

(e) Procurement and contract activities:

(1) Routine procurement of goods and services (complying with applicable procedures for sustainable or "green" procurement) to support operations and infrastructure, including routine utility services and contracts.

(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable 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. 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, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (Title 10, U.S.C., Section 2493, "Major weapon systems: Contractor guarantees"), and 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 items and products for military application (for example, sportsman's products and wear such as holsters, shotguns, sidearms, protective shields, etc.), as long as modifications do not alter the normal impact to the environment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers and industry (such as rubber bullets, stun grenades, smoke bombs, etc.) 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 which are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) Real estate activities:

(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (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 GSA for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for those 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 current or ongoing 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).

(g) Repair and maintenance activities:

(1) Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to: 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 or work on historic structures).

(2) Routine repairs and maintenance of 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 and cleaning culverts; and minor soil stabilization activities.

(3) Routine repair and maintenance of equipment and vehicles (for example, autos,

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tractors, lawn equipment, military vehicles, etc.) which 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.

(h) Hazardous materials/hazardous waste management and operations:

(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 or hazardous materials/substances; or 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 (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance) are present (REC required).

(4) Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance), and/or hazardous waste that complies with EPA, Army, or other regulatory agency requirements. This CX is not applicable to new construction of facilities for such management purposes.

(5) Research, testing, and operations conducted at existing enclosed facilities consistent with previously established safety levels and in compliance with applicable federal, state, and local standards. For facilities without existing NEPA analysis, including contractor-operated facilities, if the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.

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

(i) Training and testing:

(1) Simulated war games (classroom setting) and on-post tactical and logistical exercises involving units of battalion size or smaller, and where tracked vehicles will not be used (REC required to demonstrate coordination with installation range control and environmental office).

(2) Training entirely of an administrative or classroom nature.

(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, Federal Aviation Administration (FAA) approved aerial overflights, and small unit level training.

(j) Aircraft and airfield activities:

(1) Infrequent, temporary (less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate (REC required).

(2) Flying activities in compliance with Federal Aviation Administration Regulations and in accordance with normal flight patterns and elevations for that facility, where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been subject to NEPA public review.

(3) Installation, repair, or upgrade of airfield equipment (for example, runway visual range equipment, visual approach slope indicators).

(4) Army participation in established air shows sponsored or conducted by non-Army entities on other than Army property.

APPENDIX C TO PART 651—MITIGATION AND MONITORING

(a) The CERQ regulations (40 CFR parts 1500-1508) recognize the following five means of mitigating an environmental impact. These five approaches to mitigation are presented in order of desirability.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action. This method avoids environmental impact by eliminating certain activities in certain areas. As an example, the Army's Integrated Training Area Management (ITAM) program accounts for training requirements and activities while considering natural and cultural resource conditions on ranges and training land. This program allows informed management decisions associated with the use of these lands, and has mitigated potential impacts by limiting activities to areas that are compatible with Army training needs. Sensitive habitats and other resources are thus protected, while the mission requirements are still met.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. Limiting the degree or magnitude of the action can reduce the extent of

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an impact. For example, changing the firing time or the number of rounds fired on artillery ranges will reduce the noise impact on nearby residents. Using the previous ITAM example, the conditions of ranges can be monitored, and, when the conditions on the land warrant, the intensity or magnitude of the training on that parcel can be modified through a variety of decisions.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. Either reseeding or replanting the areas with native plants after the exercise can mitigate this impact.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, deer habitat in the project area can be replaced with deer habitat in another area; an in-kind replacement at a different location. This replacement can occur either on the impact site or at another location. This type of mitigation is often used in water resources projects.

(b) The identification and evaluation of mitigations involves the use of experts familiar with the predicted environmental impacts. Many potential sources of information are available for assistance. These include sources within the Army such as the USACHPPM, the USAEC, the MACOM environmental office, the ODEP, COE research laboratories, COE districts and divisions, and DoD Regional Support Centers. State agencies are another potential source of information, and the appropriate POC within these agencies may be obtained from the installation environmental office. Local interest groups may also be able to help identify potential mitigation measures. Other suggested sources of assistance include:

- (1) Aesthetics:
  - (i) Installation Landscape Architect.
  - (ii) COE District Landscape Architects.
- (2) Air Quality:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Preventive Medicine Officer.
- (3) Airspace:

- (i) Installation Air Traffic and Airspace Officers.
- (ii) DA Regional Representative to the FAA.
- (iii) DA Aeronautical Services.
- (iv) Military Airspace Management System Office.
- (v) Installation Range Control Officer.
- (4) Earth Science:
  - (i) Installation Environmental Specialist.
  - (ii) USACE District Geotechnical Staff.
- (5) Ecology:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Wildlife Officer.
  - (iii) Installation Forester.
  - (iv) Installation Natural Resource Committee.
  - (v) USACE District Environmental Staff.
- (6) Energy/Resource Conservation: Installation Environmental Specialist.
- (7) Health and Safety:
  - (i) Installation Preventive Medicine Officer.
  - (ii) Installation Safety Officer.
  - (iii) Installation Hospital.
  - (iv) Installation Mental Hygiene or Psychiatry Officer.
  - (v) Chaplain's Office.
- (8) Historic/Archaeological Resources:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Historian or Architect.
  - (iii) USACE District Archaeologist.
- (9) Land Use Impacts: (i) Installation Master Planner.
- (ii) USACE District Community Planners.
- (10) Socioeconomics:
  - (i) Personnel Office.
  - (ii) Public Information Officer.
  - (iii) USACE District Economic Planning Staff.
- (11) Water Quality:
  - (i) Installation Environmental Specialist.
  - (ii) Installation Preventive Medicine Officer.
- (12) Noise:
  - (i) USACE District Environmental Staff.
  - (ii) Preventive Medicine Officer.
  - (iii) Directorate of Public Works.
  - (iv) Installation Master Planner.
- (13) Training Impacts:
  - (i) Installation Director of Plans, Training, and Mobilization.

(c) Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

- (1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.
- (2) Aerial seeding has been done on some installations to reduce erosion problems.
- (3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of

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day, or even day of the week for various activities. These changes avoid noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly re-seeding areas after construction.

(d) Monitoring and enforcement programs are applicable (40 CFR 1505.2(c)) and the specific adopted action is an important case (40 CFR 1505.3) if:

(1) There is a change in environmental conditions or project activities that were assumed in the EIS, such that original predictions of the extent of adverse environmental impacts may be too limited.

(2) The outcome of the mitigation measure is uncertain, such as in the case of the application of new technology.

(3) Major environmental controversy remains associated with the selected alternative.

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal- or state-listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm must be made in coordination with the appropriate federal, state, or local agency responsible for each particular program.

(e) Five basic considerations affect the establishment of monitoring programs:

(1) *Legal requirements.* Permits for some actions will require that a monitoring system be established (for example, dredge and fill permits from the USACE). These permits will generally require both enforcement and effectiveness monitoring programs.

(2) *Protected resources.* These include federal- or state-listed endangered or threatened species, important historic or archaeological sites (whether or not these are listed or eligible for listing on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement-monitoring program must be undertaken in conjunction with the federal, state, or local agency that manages the type of resource.

(3) *Major environmental controversy.* If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring

program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(4) *Mitigation outcome.* The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, which may have worked successfully in one area, may not work in another.

(5) *Changed conditions.* The final consideration is whether any condition, such as the environmental setting, has changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental document (see §§651.5(g) and 651.24) and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

(f) *Enforcement monitoring program.* The development of an enforcement monitoring program is governed by who will actually perform the mitigation; a contractor, a co-operating agency, or an in-house (Army) lead agency. The lead agency is ultimately responsible for performing any mitigation activities.

(1) *Contract performance.* Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provision.

(2) *Cooperating agency performance.* The lead agency must ensure that, if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

(3) *Lead agency performance.* If the lead agency performs the mitigation, the proponent must ensure that needed tasks are performed, provide appropriate funding in the project budget, arrange for necessary manpower allocations, and make any necessary changes in the agency (installation) regulations (such as environmental or range regulations).

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(c) Effectiveness monitoring. Effectiveness monitoring is often difficult to establish. The first step is to determine what must be monitored, based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post or may be obtained from an outside source. After a source of expertise is located, the program can be established using the following criteria:

(1) Any technical parameters used must be measurable; for example, the monitoring program must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decision maker can take any necessary corrective action before the effects are irreversible.

(6) Not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

APPENDIX D TO PART 651—PUBLIC  
PARTICIPATION PLAN

The objective of the plan will be to encourage the full and open discussion of issues related to Army actions. Some NEPA actions will be very limited in scope, and may not require full public participation and involvement. Other NEPA actions will obviously be of interest, not only to the local community, but to others across the country as well.

(a) To accomplish this objective, the plan will require:

(1) Dissemination of information to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters. Such information may

be subject to Freedom of Information Act and operations security review.

(2) The invitation of public comments through two-way communication channels that will be kept open through various means.

(3) The use of fully informed public affairs officers at all levels.

(4) Preparation of EAs which incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(5) Consultation of persons and agencies such as:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service) or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Native Americans.

(v) Members and officials of those identifiable interest groups of local or national scope that may have an interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(b) Public involvement should be solicited using the following processes and procedures:

(1) Direct individual contact. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of a very limited scope. This contact should identify:

(i) Persons expected to express an opinion and later participate.

(ii) Preliminary positions of such persons on the scope of issues that the analysis must address.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues, inviting the public to express views on the proposed courses of action. Public suggestions or additional alternative courses

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of action may be expressed at these gatherings which need not be formal public hearings.

(4) Any other processes and procedures to accomplish the appropriate level of public involvement.

(c) Scoping Guidance. All affected parties must be included in the scoping process (AR 300-5). The plan must include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(5) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(6) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(7) Persons and agencies to be consulted include the following:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action, (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(v) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(8) The public involvement processes and procedures by which participation may be solicited include the following:

(i) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(ii) Small workshops or discussion groups.

(iii) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(iv) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(9) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of (a) of this appendix.

(10) Public surveys or polls to identify public opinion of a proposed action will be performed (AR 335-15, chapter 10).

(d) Preparing the Notice of Intent. In preparing the NOI, the proponent will:

(1) In the NOI, identify the significant issues to be analyzed in the EIS.

(2) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(3) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(4) Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

(5) Identify the proposed method for accomplishing the scoping procedure.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(i) The scoping process itself.

(ii) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(iii) Preparation of DEISs and FEISs.

(iv) Filing of the ROD.

(v) Taking the action.

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(7) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(8) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

APPENDIX E TO PART 651—CONTENT OF THE ENVIRONMENTAL IMPACT STATEMENT

(a) EISs will:

(1) Be analytic rather than encyclopedic. Impacts will be discussed in proportion to their significance; and insignificant impacts will only be briefly discussed, sufficient to show why more analysis is not warranted.

(2) Be kept concise and no longer than absolutely necessary to comply with NEPA, CEQ regulations, and this part. Length should be determined by potential environmental issues, not project size. The EIS should be no longer than 300 pages.

(3) Describe the criteria for selecting alternatives, and discuss those alternatives, including the "no action" alternative, to be considered by the ultimate decision maker.

(4) Serve as a means to assess environmental impacts of proposed military actions, rather than justifying decisions.

(b) The EIS will consist of the following:

(1) *Cover sheet.* The cover sheet will not exceed one page (40 CFR 1502.11) and will be accompanied by a signature page for the proponent, designated as preparer; the installation environmental office (or other source of NEPA expertise), designated as reviewer; and the Installation Commander (or other Activity Commander), designated as approver. It will include:

(i) The following statement: "The material contained in the attached (final or draft) EIS is for internal coordination use only and may not be released to non-Department of Defense agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority." This sheet will be removed prior to filing the document with the EPA.

(ii) A list of responsible agencies including the lead agency and any cooperating agency.

(iii) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with state and county (or other jurisdiction as applicable) where the action is located.

(iv) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

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

(vi) A one-paragraph abstract of the statement that describes only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(vii) The date by which comments must be received, computed in cooperation with the EPA.

(2) *Summary.* The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. The summary presentation will focus on the scope of the EIS, including issues that will not be evaluated in detail. It should list all federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other federal environmental protection laws will be included (40 CFR 1502.25). To simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. The EIS summary should be written at the standard middle school reading level. This summary should not exceed 15 pages. An additional summary document will be prepared for separate submission to the DEP and the ASA(I&E). This will identify progress "to the date," in addition to the standard EIS summary which:

(i) Summarizes the content of the document (from an oversight perspective).

(ii) Outlines mitigation requirements (to improve mitigation tracking and the programming of funds).

(iii) Identifies major and unresolved issues and potential controversies. For EIS actions that have been delegated by the ASA(I&E), this document will also include status of requirements and conditions established by the delegation letter.

(3) *Table of contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

(4) *Purpose of and need for the action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives. This section is designed specifically to call attention to the benefits of the proposed action. 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.



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(5) *Alternatives considered, including proposed action and no action alternative.* This section presents all reasonable alternatives and their likely environmental impacts, written in simple, nontechnical language for the lay reader. A no action alternative must be included (40 CFR 1502.14(d)). A preferred alternative need not be identified in the DEIS; although a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)). 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 the decision maker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of graphics and tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In summary, the following points are required:

(i) A description of all reasonable alternatives, including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative;

(ii) A comparative presentation of the environmental consequences of all reasonable alternative actions, including the preferred alternative;

(iii) A description of the mitigation measures and/or monitoring procedures (§ 651.15) nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated and/or monitoring procedures (§ 651.15).

(iv) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

(6) *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 (40 CFR 1502.15). 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 significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form, or referenced.

(7) *Environmental and socioeconomic consequences.* This section forms the scientific and analytic basis for the comparison of impacts. It should discuss:

- (i) Direct effects and their significance.
- (ii) Indirect effects and their significance.

(iii) Possible conflicts between the proposed action and existing land use plans, policies, and controls.

(iv) Environmental effects of the alternatives, including the proposed action and the no action alternative.

(v) Energy requirements and conservation potential of various alternatives and mitigation measures.

(vi) Irreversible and irretrievable commitments of resources associated with the proposed action.

(vii) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.

(viii) Urban quality, historic, and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(ix) Cumulative effects of the proposed action in light of other past, present, and foreseeable actions.

(x) Means to mitigate or monitor adverse environmental impacts.

(xi) Any probable adverse environmental effects that cannot be avoided.

(8) *List of preparers.* The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines) (40 CFR 1502.17), 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 people 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. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, this list will not exceed two pages. Contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. These statements will be referenced in this section of the EIS.

(9) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The distribution of the DEIS and FEIS will include the COTDEs from whom comments were requested, irrespective of whether they provided comments.

(10) *Index.* The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

(11) *Appendices (as appropriate).* If an agency prepares an appendix to an EIS, the appendix will consist of material prepared in



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connection with an EIS (distinct from material not so prepared and incorporated by reference), consist only of material that substantiates any analysis fundamental to an impact statement, be analytic and relevant to the decision to be made, and be circulated with the EIS or readily available.

APPENDIX F TO PART 651—GLOSSARY

Section I—Abbreviations

AAE  
Army Acquisition Executive.  
AAPPSO  
Army Acquisition Pollution Prevention Support Office.  
ACAT  
Acquisition Category.  
ACSIM  
Assistant Chief of Staff for Installation Management.  
ADNL  
A-weighted day-night levels.  
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(FM)  
Assistant Secretary of the Army for Financial Management.  
ASA(I&E)  
Assistant Secretary of the Army (Installations and Environment).  
ASD(ISA)  
Assistant Secretary of Defense (International Security Affairs).  
CARD  
Cost Analysis Requirements Description.  
CETDEV  
Combat Developer.

CEQ  
Council on Environmental Quality.  
CERCLA  
Comprehensive Environmental Response Compensation and Liability Act.  
CDNL  
C-Weighted Day-Night Levels.  
CFR  
Code of Federal Regulations.  
CONUS  
Continental United States.  
CX  
Categorical Exclusion.  
DA  
Department of the Army.  
DAD  
Defense Acquisition Deskbook.  
DASA(ESOH)  
Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).  
DCSLOG  
Deputy Chief of Staff for Logistics.  
DCSOPS  
Deputy Chief of Staff for Operations and Plans.  
DEIS  
Draft Environmental Impact Statement.  
DEP  
Director of Environmental Programs.  
DOD  
Department of Defense.  
DOPAA  
Description of Proposed Action and Alternatives.  
DSA  
Deputy for System Acquisition.  
DTIC  
Defense Technical Information Center.  
DTLMS  
Doctrine, Training, Leader Development, Organization, Materiel, and Soldier.

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DUSD(IE)  
Deputy Under Secretary of Defense for Installations and Environment.  
EA  
Environmental Assessment.  
EBS  
Environmental Baseline Studies.  
EC  
Environmental Coordinator.  
ECAP  
Environmental Compliance Achievement Program.  
ECAS  
Environmental Compliance Assessment System.  
EE/CA  
Engineering Evaluation/Cost Analysis.  
EICS  
Environmental Impact Computer System.  
EIFS  
Economic Impact Forecast System.  
EIS  
Environmental Impact Statement.  
EJ  
Environmental Justice.  
EOD  
Explosive Ordnance Demolition.  
EPA  
Environmental Protection Agency.  
EPR  
Environmental Program Requirements.  
EQCC  
Environmental Quality Control Committee.  
ESH  
Environment, Safety, and Health.  
FAA  
Federal Aviation Administration.  
FEIS  
Final Environmental Impact Statement.  
FNSI  
Finding of No Significant Impact.

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FR  
Federal Register.  
FS  
Feasibility Study.  
FTP  
Full-Time Permanent.  
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.  
IPT  
Integrated Process Team.  
ISCP  
Installation Spill Contingency Plan.  
ISR  
Installation Status Report.  
ITAM  
Integrated Training Area Management.  
LCED  
Life Cycle Environmental Documentation.  
MACOM  
Major Army Command.  
MATDEV  
Materiel Developer.  
MDA  
Milestone Decision Authority.  
MPA  
Materiel Fielding Agreement.  
MPP  
Materiel Fielding Plan.

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MILCON	OIPT
Military Construction.	Overarching Integrated Process Team.
MNS	OMA
Mission Needs Statement.	Operations and Maintenance Army.
MOA	OMANG
Memorandum of Agreement.	Operations and Maintenance Army Na- tional Guard.
MOU	OMAR
Memorandum of Understanding.	Operations and Maintenance Army Re- serve.
NAGPRA	OOTW
Native American Graves Protection and Repatriation Act.	Operations Other Than War.
NEPA	OPSEC
National Environmental Policy Act.	Operations Security.
NGB	ORD
National Guard Bureau.	Operating Requirements Document.
NHPA	OSD
National Historic Preservation Act.	Office of the Secretary of Defense.
NOA	OSG
Notice of Availability.	Office of the Surgeon General.
NOI	PAO
Notice of Intent.	Public Affairs Officer.
NPR	PCE
National Performance Review.	Polychlorinated Biphenyls.
NEC	PDEIS
Nuclear Regulatory Commission.	Preliminary Draft Environmental Impact Statement.
NWR	PEO
Notice of Availability of Weekly Receipts (EPA).	Program Executive Officer.
OASD(PA)	PM
Office of the Assistant Secretary of De- fense for Public Affairs.	Program Manager.
OCLL	POC
Office of the Chief of Legislative Liaison.	Point of Contact.
OCPA	POL
Office of the Chief of Public Affairs.	Petroleum, Oils, and Lubricants.
ODEP	PPBES
Office of the Director of Environmental Programs.	Program Planning and Budget Execution System.
OFS	RCRA
Officer Foundation Standards.	Resource Conservation and Recovery Act.
OGC	RDT&E
Office of General Counsel.	Research, Development, Test, and Evalua- tion.

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REC	U.S.C.
Record of Environmental Consideration.	United States Code.
ROD	<i>Section II—Terms</i>
Record of Decision.	Categorical Exclusion
RONA	A category of actions that do not require an EA or an EIS because Department of the Army (DA) has determined that the actions do not have an individual or cumulative impact on the environment.
Record of Non-Applicability.	
RSC	Environmental (or National Environmental Policy Act) Analysis
Regional Support Command.	This term, as used in this part, will include all documentation necessary to coordinate and staff analyses or present the results of the analyses to the public or decision maker.
S&T	Foreign Government
Science and Technology.	A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.
SA	Foreign Nations
Secretary of the Army.	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.
SARA	Global Commons
Superfund Amendments and Reauthorization Act.	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.
SASO	Headquarters, Department of the Army proponent
Stability and Support Operations.	As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decision-making process.
SOFA	Major Federal Action
Status of Forces Agreement.	Reinforces, but does not have a meaning independent of, "significantly affecting the environment," and will be interpreted in that context. A federal proposal with "significant effects" requires an EIS, whether it is "major" or not. Conversely, a "major federal action" without "significant effects" does not necessarily require an EIS.
SPCCP	
Spill Prevention Control and Countermeasure Plan.	
TDP	
Technical Data Package.	
TDY	
Temporary Duty.	
TEMP	
Test and Evaluation Master Plan.	
TJAG	
The Judge Advocate General.	
TOE	
Table of Organization Equipment.	
TRADOC	
U.S. Army Training and Doctrine Command.	
USACE	
U.S. Army Corps of Engineers.	
USACHPPM	
U.S. Army Center for Health Promotion and Preventive Medicine.	
USAEC	
U.S. Army Environmental Center.	

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Preparers

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent

Proponent identification depends on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Public Works becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, TRADOC becomes the proponent of a change in initial entry training; and the Program Manager becomes the proponent for a major acquisition program. The proponent may or may not be the preparer.

(2) In general, the proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly Affecting the Environment

The significance of an action's, program's, or project's effects must be evaluated in light of its context and intensity, as defined in 40 CFR 1506.27.

Section III—Special Abbreviations and Terms

This part uses the following abbreviations, brevity codes or acronyms not contained in AR 310-50. These include use for electronic publishing media and computer terminology, as follows:

WWW World Wide Web.

PARTS 652–654 [RESERVED]

PART 655—RADIATION SOURCES  
ON ARMY LAND

AUTHORITY: 10 U.S.C. 3912.

§ 655.10 Use of radiation sources by  
non-Army entities on Army land  
(AR 385-11).

(a) Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including civilian contractors) on an Army installation. Approval of the installation commander is required to obtain an Army radiation permit. For

the purposes of this section, a radiation source is:

(1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR);

(2) More than 0.1 microcurie (uCi) 3.7 kilobecquerels (kBq) of radium, except for electron tubes;

(3) More than 1 uCi (37 kBq) of any naturally occurring or accelerator produced radioactive material (NARM) other than radium, except for electron tubes;

(4) An electron tube containing more than 10 uCi (370 kBq) of any naturally occurring or accelerator produced NARM radioisotope; or

(5) A machine-produced ionizing-radiation source capable of producing an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(b) The non-Army applicant will apply by letter with supporting documentation (paragraph c of this section) through the appropriate tenant commander to the installation commander. Submit the letter so that the installation commander receives the application at least 30 calendar days before the requested start date of the permit.

(c) The Army radiation permit application will specify start and stop dates for the Army radiation permit and describe for what purposes the applicant needs the Army radiation permit. The installation commander will approve the application only if the applicant provides evidence to show that one of the following is true.

(1) The applicant possesses a valid NRC license or Department of Energy (DOE) radiological work permit that allow the applicant to use the source as specified in the Army radiation permit application;

(2) The applicant possesses a valid Agreement State license that allows the applicant to use radioactive material as specified in the Army radiation permit application, and the applicant has filed NRC Form-241, Report of Proposed Activities in Non-Agreement



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(b) If the waiver is still in effect at the time the Federal Agency Head receives recommendations from the Secretary, the Agency Head shall consider the recommendations and any comments received from the Advisory Council and the State Historic Preservation Officer before deciding whether to continue, withdraw, or modify the waiver. The Federal Agency Head shall respond to recommendations received from the Secretary either accepting or rejecting those recommendations, and, where recommendations are rejected, explaining the reasons for such a decision. Information copies of such response shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

(c) If the waiver is no longer in effect at the time the Federal Agency Head receives recommendations from the Secretary or comments from the Advisory Council or the State Historic Preservation Officer, the Federal Agency Head should consider such recommendations and comments in similar future emergencies.

### PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHAEOLOGICAL COLLECTIONS

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#### APPENDIX C TO PART 79—EXAMPLE OF A SHORT-TERM LOAN AGREEMENT FOR A FEDERALLY-OWNED COLLECTION

AUTHORITY: 16 U.S.C. 470aa-mm, 16 U.S.C. 470 et seq.

SOURCE: 55 FR 37630, Sept. 12, 1990, unless otherwise noted.

#### § 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h–2) or the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm). They establish:

(1) Procedures and guidelines to manage and preserve collections;

(2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;

(3) Standards to determine when a repository has the capability to provide long-term curatorial services; and

(4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might

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appear. They should be revised according to the:

- (i) Needs of the Federal agency and any non-Federal owner;
- (ii) Nature and content of the collection; and
- (iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

#### § 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section 110 of that Act (16 U.S.C. 470h-2), the Reservoir Salvage Act (16 U.S.C. 469-469c) and the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archaeological Resources Protection Act (16 U.S.C. 470dd) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470aa-mm), the Antiquities Act (16 U.S.C. 431-433) or the Reservoir Salvage Act (16 U.S.C. 469-469c).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that

owns or has jurisdiction over such lands.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

#### § 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) or the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license or permit.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431-433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.



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(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

#### § 79.4 Definitions.

As used for purposes of this part:

(a) *Collection* means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

(1) *Material remains* means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

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(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog and inventory records);

(ii) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar,

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magnetometers, subbottom profilers, radar and fathometers);

(iii) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(iv) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs and receipts); and

(v) Administrative records relating to the survey, excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services*. Providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging a collection;

(2) Identifying, evaluating and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing and conserving a collection in such a manner to preserve it.

(c) *Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

(d) *Indian lands* has the same meaning as in §-3(e) of uniform regulations

43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(e) *Indian tribe* has the same meaning as in §-3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(f) *Personal property* has the same meaning as in 41 CFR 100-43.001-14. Collections, equipment (e.g., a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

(g) *Public lands* has the same meaning as in §-3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(h) *Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906-028-00000-0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM-1015) and the museum technician and specialist series (GS/GM-1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM-1420), the archeologist series (GS/GM-193), the anthropologist series (GS/GM-190), and the historian series (GS/GM-170). In general, grades GS-9 and below are assistants and trainees while grades GS-11 and above are professionals at the full performance level. Grades GS-11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type and scope of the work.

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(2) The Office of Personnel Management's "Qualification Standards for Positions under the General Schedule (Handbook X-118)" (U.S. Government Printing Office, stock No. 906-030-00000-4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS-11 and above.

(3) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e., historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW., Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

(i) *Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or

spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

(j) *Repository* means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State or local Government agency or Indian tribe that can provide professional, systematic and accountable curatorial services on a long-term basis.

(k) *Repository Official* means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

(l) *Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

§ 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument

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for curatorial services for the purpose of:

(i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;

(ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and

(iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records

on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

#### § 79.6 Methods to secure curatorial services.

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering into an interagency agreement with another Federal agency for curatorial services;

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(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa-mm*), the Antiquities Act (16 U.S.C. 431–433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.* (1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains. It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

(3) Tribal Historic Preservation Officer;

(4) State Archeologist;

(5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;

(6) Indian tribal elders and religious leaders;

(7) Smithsonian Institution;

(8) American Association of Museums; and

(9) National Park Service.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

§ 79.7 Methods to fund curatorial services.

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h–2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h–2), reimbursing a State agency for curatorial costs paid by the State agency to carry out the

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historic preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469c-2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431-433) or the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting, inventorying, maintaining, and con-

serving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469c), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469c-2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

#### § 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

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(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, such terms and conditions as may have been developed pursuant to §–.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When the repository's existing operating pro-

cedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(o) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.



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### § 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection:

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog and artifact inventory lists;

(iii) Descriptive information, including field notes, site forms and reports;

(iv) Photographs, negatives and slides;

(v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government property; and

(x) Records on any deaccessions and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to properly store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of



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the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or university. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

(55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990)

§ 79.10 Use of collections.

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) *Religious uses.* Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) *Terms and conditions.* (i) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470*hh*) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 *u*-3), the Federal Agency Official shall restrict access to associated records that contain information relating to the nature, location or character

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of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section -.18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §-.18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to §-.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destroy an object in a collection unless the Federal Agency Official determines that such use is necessary for scientific studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenanced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scientific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scientific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

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**§ 79.11 Conduct of inspections and inventories.**

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official with a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is

from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioration and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository, the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

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(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to §-7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in §79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an inter-agency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b) of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

## APPENDIX A TO PART 79—EXAMPLE OF A DEED OF GIFT

### DEED OF GIFT TO THE

(Name of the Federal agency)

*Whereas*, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of artifacts, specimens and associated records that are generated in connection with its projects and programs;

*Whereas*, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recovered from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project;

*Whereas*, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and

*Whereas*, the Donor is desirous of donating the artifacts and specimens to the Recipient to ensure their continued preservation and protection;

*Now therefore*, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowledges the receipt of the artifacts and specimens.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

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Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

APPENDIX B TO PART 79—EXAMPLE OF A  
MEMORANDUM OF UNDERSTANDING  
FOR CURATORIAL SERVICES FOR A  
FEDERALLY-OWNED COLLECTION

MEMORANDUM OF UNDERSTANDING FOR  
CURATORIAL SERVICES BETWEEN THE  
(Name of the Federal agency)

AND THE  
(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

*Whereas*, the Depositor has the responsibility under Federal law to preserve for future use certain collections of archaeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

*Whereas*, the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

*Whereas*, the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

*Whereas*, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

*Now therefore*, the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town),

(name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archaeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the

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curation of federally-owned and administered archaeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or indirectly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

2. The Depositor shall:

a. On or about (month, date and year), deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archaeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: "Courtesy of the (name of the Federal agency)." The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal

property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

*In witness whereof*, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection  
Attachment B: Inventory of any other U.S. Government-owned Personal Property  
Attachment C: Terms and Conditions Required by the Depositor

### APPENDIX C TO PART 79—EXAMPLE OF A SHORT-TERM LOAN AGREEMENT FOR A FEDERALLY-OWNED COLLECTION

#### SHORT-TERM LOAN AGREEMENT

##### BETWEEN THE

(Name of the Repository)

##### AND THE

(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site

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number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archaeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and damage to, or destruction of the Collection and will, at the direction of

the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)  
Date: (date)

Signed: (signature of the Borrower)  
Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

**PARTS 80–199 [RESERVED]**





## DoD, Army, and ARNG Regulations and Policies

### Cultural Resources Management (DoDI 4715.16)



## Department of Defense INSTRUCTION

**NUMBER** 4715.16  
September 18, 2008

USD(AT&L)

**SUBJECT:** Cultural Resources Management

**References:** See Enclosure 1

1. **PURPOSE.** This Instruction establishes DoD policy and assigns responsibilities under the authority of DoD Directive (DoDD) 5134.01 (Reference (a)) and in accordance with DoDD 4715.1E (Reference (b)) to comply with applicable Federal statutory and regulatory requirements, Executive orders (E.O.s), and Presidential memorandums for the integrated management of cultural resources on DoD-managed lands.

2. **APPLICABILITY AND SCOPE.** This Instruction applies to:

a. The OSD, the Military Departments (including their Reserve Components), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

b. All DoD operations, activities, and real property in the United States, including public lands withdrawn from all forms of appropriation under public land laws and reserved for use by the Department of Defense. Overseas operations and activities will follow the policy and guidance set forth in DoD Instruction (DoDI) 4715.5 and DoD 4715.05-G (References (c) and (d)).

3. **DEFINITIONS.** See Glossary.

4. **POLICY.** It is DoD policy to:

a. Manage and maintain cultural resources under DoD control in a sustainable manner through a comprehensive program that considers the preservation of historic, archaeological, architectural, and cultural values; is mission supporting; and results in sound and responsible stewardship.

DoDI 4715.16, September 18, 2008

b. Be an international and national leader in the stewardship of cultural resources by promoting and interpreting the cultural resources it manages to inspire DoD personnel and to encourage and maintain U.S. public support for its military.

c. Consult in good faith with internal and external stakeholders and promote partnerships to manage and maintain cultural resources by developing and fostering positive partnerships with Federal, tribal, State, and local government agencies; professional and advocacy organizations; and the general public.

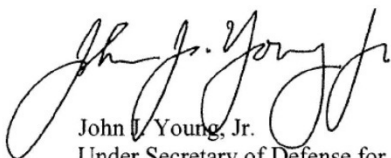
5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. INFORMATION REQUIREMENTS. The annual Real Property Inventory data submission has been assigned Report Control Symbol (RCS) DD-AT&L(A) 760 in accordance with DoD 8910.1-M (Reference (e)).

8. RELEASABILITY. UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

9. EFFECTIVE DATE. This Instruction is effective immediately.



John L. Young, Jr.  
Under Secretary of Defense for  
Acquisition, Technology, and Logistics

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Programming and Budgeting Priorities for Cultural Resources Programs
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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), December 9, 2005
- (b) DoD Directive 4715.1E, "Environment, Safety, and Occupational Health (ESOH)," March 19, 2005
- (c) DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," April 22, 1996
- (d) DoD 4715.05-G, "Overseas Environmental Baseline Guidance Document," May 1, 2007
- (e) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (f) Sections 431-433, 470 et seq., and 670 et seq., of title 16, United States Code
- (g) Executive Order 13287, "Preserve America," March 3, 2003
- (h) DoD 7000.14-R, "DoD Financial Management Regulation," as amended
- (i) DoD Instruction 4715.9, "Environmental Planning and Analysis," May 3, 1996
- (j) DoD Directive 4165.6, "Real Property," October 13, 2004
- (k) DoD Instruction 4165.70, "Real Property Management," April 6, 2005
- (l) Parts 60, 65, 79, 800, 1220, and 1228 of title 36, Code of Federal Regulations
- (m) Executive Order 13007, "Indian Sacred Sites," May 24, 1996
- (n) Section 3001 of title 25, United States Code
- (o) Part 10 of title 43, Code of Federal Regulations
- (p) DoD Instruction 4715.10, "Environmental Education, Training and Career Development," April 24, 1996
- (q) Federal Register, Volume 48, Page 44716, "Secretary of the Interior's Professional Qualification Standards," September 29, 1983
- (r) Section 1996 of title 42, United States Code
- (s) Part 229 of title 32, Code of Federal Regulations
- (t) DoD Instruction 4710.02, "DoD Interactions with Federally-Recognized Tribes," September 14, 2006
- (u) Executive Order 13327, "Federal Real Property Asset Management," February 6, 2004
- (v) Federal Real Property Council, Guidance for Real Property Inventory Reporting (Issued Annually)<sup>1</sup>
- (w) Part 334 of title 33, Code of Federal Regulations
- (x) DoD Directive 4715.11, "Environmental and Explosives Safety Management on Operational Ranges Within the United States," May 10, 2004
- (y) DoD 4245.8-H, "Value Engineering," March 17, 1986

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<sup>1</sup> Available from <http://www.gsa.gov/Portal/gsa/cp/channelView.do?pageTypeId=8203&channelId=-16603>

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ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS (USD(AT&L)). The USD(AT&L) shall oversee implementation of this Instruction.

2. DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT (DUSD(I&E)). The DUSD(I&E), under the authority, direction, and control of the USD(AT&L), shall:

- a. Establish additional cultural resources guidance, where necessary, in accordance with Reference (b).
- b. Designate responsibilities and provide procedures for implementing the DoD cultural resources program.
- c. Ensure that readiness, sustainability, and cost-effectiveness policies and the military mission are facilitated through the maximum continued and adaptive use of cultural resources.
- d. Support DoD Component cultural resources budget requirements.
- e. In coordination with the Heads of the DoD Components, establish goals and objectives for the DoD cultural resources program.
- f. Monitor implementation of this Instruction, including adherence to funding priorities for cultural resources (Enclosure 4), the use of appropriate measures of merit (Enclosure 5), and the annual review of the DoD Component cultural resources programs.
- g. Identify opportunities for improved efficiency through increased interagency and DoD Component cooperation, information sharing, technology demonstration and transfer, and public communication.
- h. Review all DoD Directives and Instructions and identify appropriate linkages between cultural resources issues and other DoD programs.
- i. Integrate the DoD cultural resources program with other installations and environment programs, including business enterprise integration, environmental management, safety, occupational health, facilities, installations requirements, and project planning programs.
- j. Mandate DoD Component use of Integrated Cultural Resource Management Plans (ICRMPs) as the DoD instrument for compliance with the statutory management requirements of the applicable references of this issuance.

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- k. Coordinate with other Federal Agencies on cultural resources matters of national or regional scope.
  - l. Consult with DoD Components to obtain technical expertise on cultural resources issues of agency-wide scope.
  - m. Coordinate cultural resources issues and policies of general DoD interest with the Installation Capability Council.
  - n. Designate a DoD Federal Preservation Officer (FPO) and DoD Deputy Federal Preservation Officer (DFPO) in accordance with section 470h-2(c) of title 16, United States Code (U.S.C.) (Reference (f)) to oversee implementation and compliance with this Instruction.
  - o. Serve as the designated Senior Policy Official as defined by E.O. 13287 (Reference (g)), with oversight responsibility for the DoD historic preservation program.
  - p. Work with the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO) to develop and implement a process to accurately account for cultural resources included in DoD Financial Management Regulation 7000.14-R (Reference (h)).
  - q. Work with the Director, Defense Research and Engineering (DDR&E), to develop and implement an integrated and coordinated science and technology program to address cultural resources program requirements.
3. DDR&E. The DDR&E, under the authority, direction, and control of the USD(AT&L), shall:
- a. Develop and implement an integrated and coordinated science and technology program to address the cultural resources program requirements identified by the DUSD(I&E).
  - b. Ensure that critical cultural resources technologies emerging from the technology base are demonstrated, validated, and certified for DoD use.
4. USD(P&R). The USD(P&R) shall:
- a. Develop policy that requires incorporation of cultural resources values into DoD education and training.
  - b. In coordination with USD(AT&L) and the Heads of the DoD Components, facilitate in identifying opportunities for efficiencies in providing cultural resources training through increased interagency and DoD Component cooperation.
5. USD(C)/CFO. The USD(C)/CFO shall work with DUSD(I&E) to develop and implement a process to accurately account for cultural resources included in Reference (h).

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6. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Ensure compliance with this Instruction, including compliance by tenant activities. Develop and implement programs to monitor, achieve, and maintain compliance with applicable Federal statutory requirements related to cultural resource management as required by applicable references of this Instruction.

b. Plan, program, budget, and execute adequate resources consistent with Enclosure 4 of this Instruction, other DoD guidance and fiscal policies, installation planning, and future deadlines.

c. Ensure that sufficient qualified personnel are available to carry out the requirements of this Instruction.

d. Develop and implement a process to fully integrate cultural resources planning processes with broader planning activities in accordance with DoDI 4715.9 (Reference (i)). Integrate cultural resources management with other facilities management systems and processes to provide the greatest overall program effectiveness and business efficiency.

e. Ensure that installations prepare, maintain, and implement provisions of their ICRMP in accordance with Enclosure 6 of this Instruction, and in consultation with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other appropriate consulting parties.

(1) Ensure that these plans are fully coordinated with appropriate installation offices responsible for preparing and maintaining training plans and master plans (including but not limited to: training and test range management plans, range complex master plans, installation master plans, integrated natural resources management plans, integrated pest management plans, endangered species recovery plans, recreational and golf course management plans, grounds maintenance plans, facilities construction site approvals, and other land use activities).

(2) Ensure that each plan is reviewed annually, updated as mission or environmental changes warrant, and revised and approved by appropriate command levels at least every 5 years.

f. Ensure that current information on known cultural resources is collected, interpreted, and disseminated to commanders and their staffs to support informed decisions about the management of cultural resources. The Department of Defense will ensure that this information is also available (subject to the appropriate confidentiality and security considerations) to consulting parties, as well as residents, visitors, scholars, and the general public, to increase awareness of the significance of archaeological resources on DoD lands as a means to protect and preserve these items of national heritage in accordance with section 470(aa-11) of Reference (f).

g. Establish a systematic process to identify and evaluate cultural resources, including the use of archeological models. Use historic contexts to determine historic significance, as appropriate.



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- h. Consider creative and alternative strategies to avoid, minimize, or mitigate adverse effects to cultural resources.
- i. Develop and implement a process to evaluate and approve nominations of DoD-managed cultural resources to the National Register of Historic Places.
- j. Employ innovative technical and design practices to preserve the fabric, systems, character, and function of historic real property assets and facilitate sustainable mission use of these assets with the minimum loss of historic integrity.
- k. Maximize reuse of historic buildings and structures, where justified by an objective analysis of life-cycle benefits and costs, before disposal, new construction, or leasing in accordance with DoDD 4165.6 and DoDI 4165.70 (References (j) and (k)).
- l. Consider systematic deconstruction and architectural salvage of historic building fabric when replacement or demolition is necessary, especially where historic fabric may be reused to preserve other similar properties in the inventory.
- m. Use non-invasive techniques, where technologically and economically appropriate, to make determinations of eligibility or significance, to protect the site, and to minimize curation needs.
- n. Provide for long-term curation for archaeological collections and associated records in repositories that provide professional, systematic, and accountable curation services that are cost-effective and provide for current and future research needs in accordance with section 79 of title 36, Code of Federal Regulations (CFR) (Reference (l)).
- o. Build stable and enduring relationships with area-affiliated Federally-recognized Indian tribes, Alaska Native entities, and Native Hawaiian organizations related to undertakings that may have the potential to affect cultural resources of interest to these groups. It is understood that some natural resources, such as certain types of plants and animals, may be included as cultural resources of interest to these groups.
- p. Provide Federally-recognized Indian tribes, Alaska Native entities, and Native Hawaiian organizations with access to and ceremonial use of sacred sites by religious practitioners on DoD-managed lands, to the extent practicable, permitted by law, and not clearly inconsistent with the military mission, and subject to safety and security considerations in accordance with E.O. 13007 (Reference (m)).
- q. Maintain complete and current information on cultural items under DoD possession and control as defined in section 3001 of title 25, U.S.C. (Reference (n)), including those uncovered through inadvertent discovery or intentional excavation. Provide for final disposition in accordance with the processes outlined in part 10 of title 43, CFR (Reference (o)).



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- r. Establish appropriate partnerships with government, public, and private organizations to promote local economic development and vitality through the use of DoD historic properties in a manner that contributes to the long-term preservation and productive use of those properties.
- s. Promote partnerships with communities to increase opportunities for public benefit from, and access to, DoD cultural resources, taking into account mission activities, sustainability, safety and security issues, and fiscal soundness.
- t. Ensure cultural resources personnel are properly qualified and trained appropriate to their responsibilities in accordance with DoDI 4715.10 and Volume 48 of the Federal Register (References (p) and (q)), and that their cultural resources responsibilities are proportionately represented in their performance evaluations.
- u. Designate an FPO and DFPO to oversee compliance with this Instruction
- v. Through the DoD FPO, advise and consult on cultural resources issues and policies of general DoD interest to DUSD(I&E).
- w. Promptly notify the DUSD(I&E), through the DoD FPO, of significant cultural resources issues.

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ENCLOSURE 3

PROCEDURES

1. Cultural resources management is a dynamic process. Each DoD installation or activity will use a cultural resources management approach that includes:

- a. Assessment of the military mission.
- b. Preparation of detailed inventories of cultural resources.
- c. Analysis and assessment of risk to the cultural resources.
- d. Preparation of management plans.
- e. Implementation of management plans.
- f. Monitoring and assessment of results.
- g. Completion of needs assessments survey.
- h. Maintaining currency of inventories.
- i. Reanalysis and reassessment of risk to cultural resources.
- j. Adjustments to the overall program, as necessary.

2. Detailed inventories of cultural resources are an essential initial step in managing an installation's cultural resources:

a. The cultural resources survey of historic properties should include, at a minimum, the identification and evaluation of all resources against the criteria of the National Register performed by a professional meeting Reference (q) standards. Objects, properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization, districts, and landscapes covered by section 470 et seq. of Reference (f) should also be included. Resources that have not yet reached 50 years of age may be identified and evaluated for significance against Consideration G of the National Register Evaluation Criteria in Part 60 of Reference (l), especially where in context with neighboring or adjoining resources over 50 years of age that share a similar mission use or originally-designed function.

b. The cultural resources survey for archaeological resources on lands available for archaeological survey (as defined in the Glossary) should include, at a minimum, a systematic analysis by a professional meeting Reference (q) standards, in sufficient detail to make generalizations about the type and distribution of archaeological properties that may be present.

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A cultural resources survey will usually include archival research and may include predictive modeling, remote sensing, surface inspection, and subsurface testing to allow categorization of archaeological potential or to determine presence or absence of archaeological properties.

c. In all areas that might be adversely affected by military activities, such surveys as described in paragraphs 2.a. and 2.b. of this enclosure should be followed by a systematic detailed examination designed to gather information about cultural resources sufficient to evaluate them against predetermined criteria of significance, within specific historic contexts, to determine eligibility for listing on the National Register. Sufficient analysis through research and/or consultation should also be conducted to determine if the site may also be a sacred site and/or property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization.

3. When an installation determines that the disclosure of information on the location or character of cultural resources may create a substantial risk of harm, theft, or destruction of such resources, invasion of privacy, trespass on Government property, interference with the military mission, and/or interference with the rights guaranteed to tribal groups under section 1996 of title 42, U.S.C. (Reference (r)), the installation shall ensure that documents and other data provided to the public do not disclose such information. Information may be provided to other agencies and parties in accordance with the confidentiality provisions of section 470w-3 of Reference (f) and part 229 of title 32, CFR (Reference (s)).

4. Early in the planning for any undertaking, the DoD proponent shall start consultation to explain the undertaking and work with stakeholders to define the area of potential effects, identify cultural resources, and determine potential effects to those resources. Consultation shall be undertaken with the SHPO and/or THPO and, as appropriate, with:

a. External stakeholders, including the Advisory Council on Historic Preservation, Federally-recognized Indian tribes and Alaska Native entities, Native Hawaiian organizations, and other interested organizations and individuals as defined in section 470 et seq. of Reference (f) and part 800 of Reference (l).

b. Internal stakeholders which may include, but are not limited to master planning offices, public works divisions, range management activities, facility managers, and other environmental management functions.

5. An economic analysis shall be conducted on all National Register (eligible or listed) historic properties that are being considered for demolition and replacement. The economic analysis of the historic property shall consider the life-cycle cost of the property, incorporating as required those life-cycle costs for historic elements that are significantly different from life-cycle costs for the equivalent new or replacement elements. The economic analysis of the proposed replacement property shall consider the total cost of the replacement project by whatever source funded, including (but not limited to) as appropriate, demolition and disposal of debris, new land

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acquisition, and site remediation and preparation. If the economic analysis demonstrates that the renovation and life-cycle cost of the historic property will exceed the total replacement project cost and the life-cycle cost of the new construction, replacement construction may be used. However, this threshold may be exceeded where the significance of a particular historic structure warrants special attention.

6. Consultation with Federally-recognized Indian tribes, Alaska Native entities, and Native Hawaiian organizations is required by law regarding the disposition of cultural items, as defined in Reference (n), or when a site of religious or cultural importance to tribes as defined in part 800 of Reference (l) is found on DoD property. If such items are encountered, the requirements of References (n) and (s) must be met. The installation should consult with the tribe(s) in accordance with DoDI 4710.02 (Reference (t)) at the earliest point in the planning process, and should take into account the interests of the potentially affected tribe(s) when carrying out the action.

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ENCLOSURE 4

PROGRAMMING AND BUDGETING PRIORITIES  
FOR CULTURAL RESOURCES PROGRAMS

1. RECURRING CULTURAL RESOURCES MANAGEMENT REQUIREMENTS. Includes activities needed to cover the recurring administrative, personnel, and other costs associated with managing DoD cultural resource programs. This includes activities that are necessary in achieving compliance with applicable DoD policies, Presidential memorandums, E.O.s, and Federal statutory and regulatory requirements for the integrated management of cultural resources or that are in direct support of mission. These activities include day-to-day costs of sustaining an effective cultural resources management program as well as annual requirements (those requirements that occur once per year, every year).

2. NON-RECURRING CULTURAL RESOURCES MANAGEMENT REQUIREMENTS

a. Includes projects and activities needed to manage and maintain cultural resources under DoD control through a comprehensive program that considers the preservation of historic, archaeological, architectural, and cultural values that is mission supporting and results in sound and responsible stewardship.

b. Those activities include, but are not limited to:

(1) Preserving the fabric, systems, and historic character and function of the DoD-built environment in a sustainable manner that supports the military mission and promotes the quality of life and work of the occupants and employees.

(2) Maintaining readiness while protecting U.S. heritage by incorporating cultural resources planning into installation planning at the earliest possible time.

(3) Supporting informed decisions about the management of cultural resources.

(4) Consulting in good faith with internal and external stakeholders, including Federal, State, tribal, and local government agencies; professional and advocacy organizations; and the general public by developing and fostering positive partnerships to manage and maintain cultural resources.

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ENCLOSURE 5

CULTURAL RESOURCES METRICS

I. HEALTH OF THE INVENTORY OF CULTURAL RESOURCES

a. Historic Buildings and Structures – Built Infrastructure

(1) Goal. Historic buildings and structures are maintained in good condition and used to support mission needs. Utilization (Performance Measure #1), Condition Index (Performance Measure #2), and Mission Dependency (Performance Measure #3) are three of the Office of Management and Budget performance measures in accordance with E.O. 13327 (Reference (u)) and as defined in the current edition of the Federal Real Property Council Guidance for Real Property Reporting (Reference (v)). For full analysis, compare to non-historic buildings and structures.

(2) Activities That Must Report. United States – All installations with real property assets.

(3) Potential Data Sources

(a) Federal Real Property Inventory

(b) OSD Real Property Asset Database

(4) What to Report

(a) Baseline data: number of buildings or structures that are historic properties.

(b) Any buildings or structures in the DoD Real Property Inventory with historical status data element (as defined in Reference (v)) of individually listed National Historic Landmark (NHLI), contributing element to a National Historic Landmark district (NHLC), individually listed on the National Register (NRLI), contributing element to a National Register district (NRLC), individually eligible for the National Register (NREI), or eligible as a contributing element to an eligible National Register district (NREC).

(c) UNIT – Each

1. Number of NHLI Assets

2. Number of NHLC Assets

3. Number of NRLI Assets

4. Number of NRLC Assets

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5. Number of NREI Assets

6. Number of NREC Assets

(d) Metric: Percent of historic properties that are utilized or over-utilized

1. Of the NHLI, NHLC, NRLI, NRLC, NREI, or NREC buildings or structures in the Federal Real Property Inventory, report the number that have a category of "Utilized" or "Over-Utilized."

2. UNIT – Each. (Note: There are four options in the Federal Real Property Inventory for utilization – "Over-Utilized," "Utilized," "Under-Utilized," and "Not Utilized." See part 334 of title 33, CFR (Reference (w)) for more information.

a. Number of Over-Utilized (NHLI) Assets

b. Number of Utilized (NHLI) Assets

c. Number of Over-Utilized (NHLC) Assets

d. Number of Utilized (NHLC) Assets

e. Number of Over-Utilized (NRLI) Assets

f. Number of Utilized (NRLI) Assets

g. Number of Over-Utilized (NRLC) Assets

h. Number of Utilized (NRLC) Assets

i. Number of Over-Utilized (NREI) Assets

j. Number of Utilized (NREI) Assets

k. Number of Over-Utilized (NREC) Assets

l. Number of Utilized (NREC) Assets

(e) Metric – Percent of historic properties that have a high facility physical quality code (based on Condition Index as noted in paragraph 1.a.(3) of this enclosure).

1. Of the NHLI, NHLC, NRLI, NRLC, NREI, or NREC buildings or structures in the DoD Real Property Inventory, the number that have a facility physical quality code of Quality Rating, Level 2 (Q2) or above.

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2. UNIT – Each

- a. Number of NHLI Assets at Quality Rating, Level 1 (Q1)
- b. Number of NHLI Assets at Q2
- c. Number of NHLI Assets at Q1
- d. Number of NHLI Assets at Q2
- e. Number of NHLI Assets at Q1
- f. Number of NHLI Assets at Q2
- g. Number of NHLI Assets at Q1
- h. Number of NHLI Assets at Q2
- i. Number of NHLI Assets at Q1
- j. Number of NHLI Assets at Q2

(f) Metric – Percent of historic buildings or structures used to support mission needs. Number of buildings or structures that are historic properties that are “Utilized” or “Over-Utilized.”

1. Of the NHLI, NHLI, NHLI, NHLI, NHLI, or NHLI buildings or structures in the DoD Real Property Inventory, the number that are mission critical (MC) or mission dependent, not critical (MDNC).

2. UNIT – Each

- a. Number of MC NHLI Assets
- b. Number of MDNC NHLI Assets
- c. Number of MC NHLI Assets
- d. Number of MDNC NHLI Assets
- e. Number of MC NHLI Assets
- f. Number of MDNC NHLI Assets
- g. Number of MC NHLI Assets



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h. Number of MDNC NRLC Assets

i. Number of MC NREI Assets

j. Number of MDNC NREI Assets

k. Number of MC NREC Assets

l. Number of MDNC NREC Assets

(g) Metric – Demolition of historic buildings or structures.

1. Number of buildings or structures that are historic properties that were demolished in the previous fiscal year (FY). Of the NHLI, NHLC, NRLI, NRLC, NREI, or NREC buildings or structures in the DoD Real Property Inventory, the number that were demolished during the previous FY.

2. UNIT – Each

a. Number of NHLI buildings demolished in the previous FY

b. Number of NHLC buildings demolished in the previous FY

c. Number of NRLI buildings demolished in the previous FY

d. Number of NRLC buildings demolished in the previous FY

e. Number of NREI buildings demolished in the previous FY

f. Number of NREC buildings demolished in the previous FY

b. Curation of Archaeological Collections and Associated Records

(1) Goal. Archaeological collections and associated records are curated in accordance with part 79 of Reference (1).

(2) Activities That Must Report. United States – All installations with archaeological collections and associated records.

(3) Potential Data Sources

(a) Component submissions to the Secretary of the Interior's Report to Congress on the Federal Archaeology Program

(b) Heritage Assets Report

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(4) What to Report

- (a) Metric – Compliant curation of archaeological collections and associated records.
- (b) Total volume less volume curated should be less than or equal to the volume acquired during the previous FY.
- (c) UNIT – Cubic Feet
  - 1. Volume of collections requiring curation
  - 2. Volume of collections curated to section 79 of Reference (I)
  - 3. Volume of collections acquired during the previous FY
- (d) UNIT – Linear Feet
  - 1. Associated records requiring curation
  - 2. Associated records curated to section 79 of Reference (I)
  - 3. Associated records acquired during the previous FY

2. HEALTH OF THE CULTURAL RESOURCES PROGRAM

a. Inventory and Evaluation of Historic Properties (Real Property Assets)

- (1) Goal. All real property inventory records will accurately identify historic properties (real property assets).
- (2) Activities That Must Report. United States – All installations with historic properties (real property assets).
- (3) Potential Data Sources
  - (a) Federal Real Property Report
  - (b) OSD Real Property Asset Database
- (4) What to Report
  - (a) Metric – Percent of real property assets with the appropriate Historical Status Data Element Code, compared to “not yet evaluated” (NEV) assets that are greater than or equal to 50 years old.

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(b) UNIT – Each. Note: To calculate percentage, compare first nine categories to NEV greater than or equal to 50 years old. Trend should be reduction of assets identified as NEV greater than or equal to 50 years old.

1. Number of NHLI Assets
2. Number of NHLC Assets
3. Number of NRLI Assets
4. Number of NRLC Assets
5. Number of NREI Assets
6. Number of NREC Assets
7. Number of Eligible for the Purposes of a Program Alternative Assets
8. Number of Non-contributing Element Assets
9. Number of Evaluated, Not Historic Assets
10. Number of NEV Assets greater than or equal to 50 years old
11. Number of NEV Assets less than 50 years old

b. Inventory of Historic Properties (Archaeological Sites)

(1) Goal. All DoD-managed lands that are available for survey are surveyed for archaeological sites and have the information readily available to support the process directed by section 470 et seq. of Reference (f).

(2) Activities That Must Report. United States – All installations with historic properties (archaeological sites).

(3) Potential Data Sources

(a) Component submissions to the Secretary of the Interior's Report to Congress on the Federal Archaeology Program

(b) National Environmental Policy Act (NEPA) Documents

(4) What to Report

(a) Metric – Percent of DoD-managed lands (available for survey) surveyed for archaeological sites.

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(b) UNIT –Acres

1. Number of total DoD-managed acres, by Service
2. Number of DoD-managed acres, by Service, available for survey
3. Number of DoD-managed acres, by Service, available for survey and surveyed for archaeological sites

3. ADDITIONAL INFORMATION

a. Geographic Information System (GIS)

- (1) Goal. All installations with cultural resources will have information available in a GIS.
- (2) Activities That Must Report. United States – All installations with cultural resources.
- (3) What to Report
  - (a) Metric – Archaeological site information reflected in a GIS.
  - (b) UNIT – Number of Acres.
    1. Number of DoD-managed acres, by DoD Component, with archaeological sites.
    2. Number of DoD-managed acres, by DoD Component, available for survey and surveyed for archaeological sites for which information is available through a GIS.
  - (c) Metric – Percent of installations Historic Real Property Asset information reflected in a GIS.
  - (d) UNIT – Number.
    1. Number of installations that have cultural resources.
    2. Number of installations that have historic properties (real property assets) for which information is available through a GIS.

b. ICRMPs

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(1) Goal. All installations with cultural resources will complete and update ICRMPs as per this policy. In addition, all ICRMPs will be current and implemented, in consultation and partnership with SHPOs, THPOs, and other appropriate consulting parties.

(2) Activities That Must Report. United States – All installations with cultural resources.

(3) What to Report

(a) Metric – Percent of total ICRMPs, by DoD Component, complete; and percent of total ICRMPs, by DoD Component, developed in consultation.

(b) UNIT – Number

1. Number of installations that have cultural resources and, therefore, are required to have an ICRMP.

2. Number of installations that have cultural resources that have completed ICRMPs.

3. Number of installations that have cultural resources that have completed ICRMPs that have been developed in consultation with SHPOs, THPOs, and other appropriate consulting parties.

4. Number of installations that have completed inventories and have been granted a waiver by the Service Component, in consultation with SHPOs, THPOs, and other appropriate consulting parties, to prepare an ICRMP.

c. Public Access to Cultural Resource Information

(1) Goal. All installations with cultural resources will have a public outreach program in accordance with the implementation of section 470ii(c) of Reference (f) and section 4b of Reference (g).

(2) Activities That Must Report. United States – All installations with cultural resources.

(3) What to Report

(a) Metric – Percent of installations with cultural resources that have public Web sites and/or tour programs.

(b) UNIT – Each

1. Number of installations with cultural resources.

2. Number of installations with cultural resources that have a cultural resources public Web page or a cultural resources area on an installation's main Web page.

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3. Number of installations with cultural resources that have regularly scheduled public tours of cultural resources.

4. Number of installations with cultural resources that include cultural resource information in a welcome package for new residents and/or employees and visitors.

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ENCLOSURE 6

ICRMP CONTENTS

I. GENERAL CONTENTS An ICRMP shall:

- a. Include a summary of general information about the installation's mission and history, as well as specific management information necessary for managing the installation's cultural resources.
- b. Provide cultural resources context information pertinent to the full range of cultural resources within the installation's jurisdiction.
- c. Identify all legal requirements pertinent to cultural resources management.
- d. Identify the installation's cultural resources, including areas characterized as to potential for cultural resources and a prioritized list for further identification or survey.
- e. Recommend procedures and related funding requirements for managing the installation's cultural resources in a manner that is compatible with the installation mission and satisfies legal requirements.
- f. Establish priorities and related funding requirements for cultural resources management that ensure support of the mission, compliance with legal requirements, and ongoing stewardship responsibilities.
- g. Provide management procedures for the ongoing identification, maintenance, and enhancement of cultural resources.
- h. Promote the use of cultural resources in ways that are beneficial to the military mission, the resources, and other public interests.
- i. Be thoroughly integrated with other installation plans, including but not limited to the installation master plan, the facilities maintenance plan, training and range area management plans, natural resources management plans, mobilization and deployment plans, and information management systems.
- j. Establish requirements, goals, and targets that can be easily reflected in budget documents and decision-making processes and addressed in conservation self-assessments.
- k. Address cultural resources and areas of critical or special concern from both technical and policy standpoints.

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2. SPECIFIC CONTENTS. An ICRMP shall include, as appropriate:

- a. A summary of known cultural resources information and a list and brief description of properties listed or eligible for listing in the National Register of Historic Places.
- b. Analysis of the sufficiency of the existing information on cultural resources and associated contexts to meet compliance requirements.
- c. Information on areas that have not been surveyed and a plan for completion of the surveys.
- d. Identification and prioritization of actions required to implement goals and objectives of the plan.
- e. Identification of the type and location of actions that may affect cultural resources.
- f. Procedures to ensure that actions of the installation and its tenants are planned and carried out in ways that protect and enhance its cultural resources.
- g. Identification of unique cultural resource issues confronting the installation.
- h. Preservation and mitigation strategies for threatened cultural resources.
- i. Coordination processes between the installation, regulatory agencies (such as the Advisory Council on Historic Preservation, SHPOs, and THPOs), stakeholders, and the public that help to ensure proper management of an installation's cultural resources.
- j. Provisions for permanent storage of historic property records, as required by parts 1220 and 1228 of Reference (1) and other recordkeeping requirements.
- k. Standard operating procedures for routine occurrences and where blanket statements can coordinate a process, such as inventories, repetitive maintenance and repair, unanticipated discoveries and reporting, and spill responses where cultural resources are involved and tailored for the particular conditions at the installation.
- l. Procedures for the documentation of historic properties that will be altered or destroyed as a result of DoD action or assistance, in accordance with part 800 of Reference (1).
- m. Procedures to respond to unanticipated discovery of a historic property or other cultural resource.
- n. Procedures to ensure that all archaeological collections are properly processed, maintained, and preserved in accordance with part 79 of Reference (1).



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- o. Provisions for sharing appropriate cultural resources information with Federal and State agencies, nongovernmental organizations, researchers, stakeholders, and the general public.
- p. Provisions for enforcement of cultural resource laws and regulations by professionally trained personnel.
- q. Provisions for public access to cultural resources, as appropriate.
- r. Explicit summary of the process for integrating the National Historic Preservation Act section 106 planning process with the installation's production of environmental assessment documents in accordance with References (i) and (l).
- s. Provisions to address funding priorities and protocols for the specific program requirements listed above.
- t. Procedures to proactively consider the use of innovative mitigation to satisfy the requirements of part 800 of Reference (l) when feasible and supportive of the mission.

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## GLOSSARY

### ABBREVIATIONS AND ACRONYMS

DFPO	Deputy Federal Preservation Officer
DoDD	Department of Defense Directive
FPO	Federal Preservation Officer
FY	fiscal year
GIS	Geographic Information System
ICRMP	Integrated Cultural Resource Management Plan
MC	mission critical
MDNC	mission dependent, not critical
NEPA	National Environmental Policy Act of 1969
NEV	not yet evaluated
NHLI	individually listed national historic landmark
NHLC	contributing element to a national historic landmark district
NHPA	National Historic Preservation Act of 1966
NREI	individually eligible for the National Register
NREC	eligible as a contributing element to an eligible National Register district
NRLI	individually listed on the National Register
NRLC	contributing element to a National Register district
PRV	plant replacement value
Q1	Quality Rating, Level 1
Q2	Quality Rating, Level 2
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer

### TERMS AND DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this Instruction.

alternative or creative mitigation. Alternatives to archaeological data recovery as mitigation for an undertaking's adverse effects. These approaches can be implemented as the only treatment option, or can be part of a package where different historic properties are subject to different kinds and levels of mitigation.

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archaeological survey. An examination by an individual that meets the qualification standards of Reference (q) of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of archaeological properties that may be present.

available for archaeological survey. All DoD-managed lands, excluding impact areas as defined in DoDD 4715.11 (Reference (x)); surface danger zones; lands under water that are always at least 5 feet deep on a year-round basis; and danger zones as defined in part 334 of Reference (w)

cultural resources.

Historic properties (any prehistoric or historic district, site, building, structure, or object as defined by part 800 of Reference (l) included in, or eligible for inclusion in, the National Register of Historic Places, whether or not such eligibility has been formally determined), including artifacts, records, and material remains related to such a property or resource.

cultural items as defined in Reference (n).

American Indian, Eskimo, Aleut, or Native Hawaiian sacred sites as defined in Reference (m).

archaeological resources as defined in section 470 aa-mm of Reference (f).

archaeological artifact collections and associated records as defined in part 79 of Reference (l).

facility physical quality code. A code used to depict the capability of existing facilities as measured by a condition index as defined in Enclosure 4 of DoD 4245.8-H (Reference (y)):

Q1. The sum of all necessary restoration and modernization costs is not greater than 10 percent of the replacement value of the facility (PRV).

Q2. The sum of all necessary restoration and modernization costs is greater than 10 percent but not greater than 20 percent of the PRV.

Federal Preservation Officer. A qualified official as defined by section 470h-2(c) of Reference (f).

historic property. Any prehistoric or historic district, site, building, structure, or object as defined by part 800 of Reference (l) included in, or eligible for inclusion in, the National Register of Historic Places, whether or not such eligibility has been formally determined. This may include properties of traditional religious and cultural importance to Federally-recognized Indian tribes, Alaska Native entities, and Native Hawaiian organizations.

ICRMP. A plan that defines the process for the management of cultural resources on DoD installations.

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mission dependency. The value an asset brings to the performance of the mission as determined by the governing agency in accordance with Reference (v) in one of the following categories:

MC. Without constructed asset or parcel of land, mission is compromised.

MDNC. Does not fit into MC or not mission dependent categories.

not mission dependent. Mission unaffected.

not rated. DoD and base realignment and closure properties only.

mitigation. Addressing the adverse effects an undertaking may cause relative to cultural resources. Mitigation can include: repairing, rehabilitating, restoring, or documenting the affected resource; reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action; and/or compensating for the effect by providing or preserving substitute resources or environments.

National Historic Landmark. Nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States. National Historic Landmark criteria are published in part 65 of Reference (I).

National Register of Historic Places. The official Federal list of sites, districts, buildings, structures, and objects worthy of preservation consideration because of significance in U.S. history, architecture, archaeology, engineering, or culture. Significance may be local, State, or national in scope. National Register eligibility criteria are published in part 60 of Reference (I).

needs assessment survey. An inventory of an installation's inventories, management plans, personnel, training, supplies, equipment, and other management tools to identify future actions and resources needed for the installation to comply with the requirements of this Instruction.

plant replacement value. As defined in Enclosure 4 of Reference (y), the cost to replace a facility using current standards.

stewardship. The management of resources entrusted to one's care in a way that preserves and enhances the resources and their benefits for present and future generations.

tribe. Defined in section 470bb of Reference (f).

undertaking. Any Federal, Federally-assisted, or Federally-licensed action, activity, or program, new or continuing, as per section 470 et seq. of Reference (f) and part 800 of Reference (I).

qualified cultural resources professional. An individual who meets the standards described in Reference (q).

## **Environmental Protection and Enhancement (AR 200-1)**

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**Army Regulation 200-1**

**Environmental Quality**

# **Environmental Protection and Enhancement**

Headquarters  
Department of the Army  
Washington, DC  
28 August 2007

**UNCLASSIFIED**

# SUMMARY of CHANGE

AR 200-1

Environmental Protection and Enhancement

This major revision, dated 28 August 2007----

- o Expands the responsibilities of the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) and Assistant Chief of Staff for Installation Management (ACSIM) (chap 1).
- o Describes the role of the Assistant Secretary of the Army (Installations and Environment) (ASA (I&E)) on the Cost Review Board (CRB) and Army System Acquisition Review Council (ASARC), and the support provided to the ASA (I&E) in fulfilling this function (chap 1).
- o Assigns responsibilities to the Deputy Chief of Staff, G-8, Commander, IMCOM; Commander, U.S. Army Environmental Command (USAEC); garrison commanders (GCs); senior mission commanders (SMCs); and regional environmental offices (REOs) (chap 1).
- o Changes the term "environmental compliance officer (ECO)" to "environmental officer (EO)," and eliminates the requirement for non-military tenants to appoint EOs (chap 1).
- o Requires appropriate facilities as defined by the ACSIM to develop and implement a mission enhancing ISO 14001 conforming EMS (for example, one that addresses all EMS areas, key elements, and related requirements) not later than fiscal year (FY) 09 (chaps 1, 2, 3, 15, 16, and 17).
- o Provides policy on incorporating base realignment and closure (BRAC) oversight and responsibilities through the Assistant Chief of Staff for Installation Management (ACSIM) BRAC Division (DAIM-BD) (chaps 1 and 12).
- o Identifies the legal driver (for example, (LD: 40 CFR 260) or policy driver (for example, (PD: DODI 4150.7) for selected program requirements (chaps 2 to 17).
- o Incorporates policy and related requirements from AR 200-3, AR 200-4, and AR 200-5 (chaps 4, 5, and 6).
- o Establishes policy for the environmentally sustainable operation and maintenance of operational ranges, to include munitions management (chap 8).
- o Provides policy for executing compliance-related cleanup (CC) (chap 12).
- o Provides policy on resourcing the environmental program (chap 15).
- o Provides policy on Headquarters, Department of the Army (HQDA) management reviews (chap 17).

- o Reflects realignment of the Major Army Commands to Army Commands (ACOMs), Army Service Component Commands (ASCCs), and Direct Reporting Units (DRUs) throughout this publication.
- o Implements applicable portions of Department of Defense 4150.7-M; DOD 4150.7-P; DOD 4160.21-M, DOD 4500.9-R, Department of Defense Directive 3200.15, DODD 4715.1E, DODD 4715.11, DODD 4715.12, Department of Defense Instruction 4150.7, DODI 4715.3, DODI 4715.4, DODI 4715.5, DODI 4715.6, DODI 4715.7, DODI 4715.8, and DODI 6055.6, throughout this publication.
- o Reflects realignment and control of applicable Active Army and Army Reserve installations to the Installation Management Command (IMCOM) and its subordinate Regions, within the Office of the Assistant Chief of Staff for Installation Management (OACSIM) throughout this publication.
- o Revises the terms "will" and "must" to mean that actions are mandatory. Uses the terms "should", "may", and "can" to describe actions that are desirable, permissive, or not mandatory throughout this publication.





Headquarters  
Department of the Army  
Washington, DC  
28 August 2007

**\*Army Regulation 200-1**

Effective 28 September 2007


**Environmental Quality**

**Environmental Protection and Enhancement**

By Order of the Secretary of the Army:

GEORGE W. CASEY, JR.  
General, United States Army  
Chief of Staff

Official:

  
JOYCE E. MORROW  
Administrative Assistant to the  
Secretary of the Army

**History.** This publication is a major revision.

**Summary.** This regulation covers environmental protection and enhancement and provides the framework for the Army Environmental Management System.

**Applicability.** This regulation addresses environmental responsibilities of all Army organizations and agencies. Specifically, this regulation applies to—

- (a) Active Army, Army National Guard/Army National Guard of the United States, and United States Army Reserve.
- (b) Tenants, contractors, and lessees performing functions on real property under jurisdiction of the Department of the Army (for example, Army and Air Force Exchange Service (AAFES), Defense Commissary Agency (DECA)).
- (c) Activities and operations under the purview of the Army even when performed off of installations.
- (d) Formerly used defense sites (FUDS) and other excess properties managed by the Army. As used throughout this regulation, the term Army National Guard includes the Army National Guard of the United States.

Installations and facilities in foreign countries will comply with requirements of

this regulation that specifically prescribe overseas requirements.

Contracts to operate Government-owned facilities will reference this regulation and will designate by specific citation the applicable provisions.

This regulation does not apply to civil works (CW) functions under the jurisdiction of the U.S. Army Corps of Engineers (USACE).

The terms "Army environmental programs" and "Army Environmental Program" must be read in context. All Army organizations, regardless of their organizational level or chain of command, have environmental responsibilities as part of their functions; these environmental responsibilities must be incorporated into the planning, programming, budgeting, and execution of their respective missions. The Assistant Chief of Staff for Installation Management, working through the Director of Environmental Programs (see Responsibilities, para 1-13x), has specific and more narrowly defined responsibilities that are planned, programmed, budgeted, and executed via assigned accounts. These accounts resource specifically prescribed and focused environmental efforts. Each organization must program and fund its environmental activities from the appropriate account of the proponent's operating budget, not necessarily an environmental account. Being mindful of the context in which requirements are articulated will help define the scope of the "program" being addressed and will preclude inappropriate resourcing decisions or expectations.

**Proponent and exception authority.** The proponent of this regulation is the Assistant Chief of Staff for Installation Management. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with

law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

**Army management control process.** This regulation contains management control provisions and identifies key management controls that must be evaluated.

**Supplementation.** Supplementation of this regulation and establishment of command or local forms are prohibited without prior approval from Assistant Chief of Staff for Installation Management, 600 Army Pentagon, Washington, DC 20310-0600.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) through the chain of command to HQDA, DAIRM-ED, 600 Army Pentagon, Washington, DC 20310-0600.

**Distribution.** This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States and the United States Army Reserve.

\*This regulation supersedes AR 200-1, dated 21 February 1997, AR 200-3, dated 28 February 1995, AR 200-4, dated 1 October 1998, and AR 200-5, dated 29 October 1999.

AR 200-1 • 28 August 2007

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## Chapter 1 Introduction

### Section I General

#### 1-1. Purpose

*a.* This regulation implements Federal, State, and local environmental laws and DOD policies for preserving, protecting, conserving, and restoring the quality of the environment. This regulation should be used in conjunction with 32 Code of Federal Regulations (CFR) Part 651 (32 CFR 651), which provides Army policy on National Environmental Policy Act (NEPA, 42 USC 4321–4347) requirements, and supplemental program guidance, which the proponent of this regulation may issue as needed to assure that programs remain current. Environmental stewardship includes, but is not limited to—

- (1) Environmental components of installation sustainability.
- (2) Environmental support to the Army training and testing mission.
- (3) Environmental support during deployments and contingency operations on and off the installation, and operations at Army facilities that are not officially designated as installations.
- (4) Compliance-related Cleanup (CC) Program.
- (5) Army Defense Environmental Restoration Program (DERP).
- (6) Formerly used defense sites (FUDS).
- (7) Defense and State Memoranda of Agreement/Cooperative Agreement (DSMOA/CA) Program.
- (8) Pollution prevention.
- (9) Compliance with environmental legal mandates.
- (10) Natural resources.
- (11) Cultural resources.
- (12) Environmental protection aspects of pest management.
- (13) Environmental training for military and civilian personnel.
- (14) Base realignment and closure (BRAC) environmental program.
- (15) NEPA requirements.
- (16) Operational noise.
- (17) Environmental quality technology (EQT).
- (18) Environmental Legislative/Regulatory Analysis and Monitoring Program (EL/RAMP).
- (19) Environmental reporting and information management.
- (20) Environmental considerations in real estate and materiel acquisition programs.

*b.* This regulation defines the framework for the Army Environmental Management System (EMS). All appropriate facilities were to have implemented a mission focused EMS by the end of calendar year (CY) 05, and must attain International Organization for Standardization standard 14001 (ISO 14001) conformance by the end of FY09. The Army EMS Commanders Guide, Army EMS Implementer's Guide, and Army EMS Aspects and Impact Methodology for Army Training Ranges provide detailed implementation guidance.

*c.* The chapters of this regulation reflect inclusion of the five interconnected EMS areas of policy, planning, implementation and operation, checking and corrective action, and management review.

(1) *Policy.* The Army Environmental Policy Statement reflects the Army's commitment to environmental protection and enhancement, pollution prevention, and continual improvement (chap 2).

(2) *Planning and implementation.* The Army will identify how its operations impact the environment. It will set objectives and targets for reducing impacts. It will identify and track applicable legal and other requirements, and will support operational effectiveness and improve program management (chap 3).

(3) *Program management and operation.* The Army will assign roles and responsibilities for environmental management (section II of this chap), provide required environmental training, establish procedures for communication within and outside the organization, document environmental procedures, and provide for emergency preparedness and response (chap 15).

(4) *Checking and corrective action.* The Army will monitor and measure its progress in achieving stated goals, objectives, and targets, and will identify and implement corrective actions (chap 16).

(5) *Management review.* The Army will periodically review program performance and management system implementation and ensure continual improvement (chap 17).

#### 1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

### 1-3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are explained in the glossary.

## Section II Responsibilities

### 1-4. The Secretary of the Army

The Secretary of the Army (SA) serves as trustee for the natural and cultural resources managed by the Army. The SA is responsible for protecting and sustaining the quality of the air, land, and water resources entrusted to the Army. The SA signs the Army Environmental Policy Statement and certifies that the Army Environmental Program Objective Memorandum (POM) for the Army Environmental Restoration Program (ERP) meets all legal requirements and agreements.

### 1-5. The Assistant Secretary of the Army (Installations and Environment)

The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E)) has primary responsibility for the Army's military environmental programs (that is, other than civil works (CW) functions of the U.S. Army Corps of Engineers (USACE)). Those responsibilities are carried out through the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA(ESOH)) who will—

a. Provide overall policy, advocacy, program direction, and oversight across installations, logistics, acquisition, and operations. This includes, but is not necessarily limited to, military operations and activities (including training, deployments, and contingency operations) on and off the installation and operations at Army facilities that are not officially designated as installations or sites.

b. Establish long-term strategy and annual AEP goals, objectives, and metrics.

c. Serve as the Army's top management representative for the Army EMS.

d. Provide policy and oversight for EMS responsibilities per ISO 14001 and this regulation.

e. Serve as the Army's senior policy level official for historic preservation in accordance with Executive Order (EO) 13287, Preserve America, and as the Federal Preservation Officer for oversight and coordination of Army activities under the National Historic Preservation Act (NHPA), including approving and signing Army National Register of Historic Places (NRHP) nominations for Federally-owned and -controlled historic properties.

f. Serve as the primary point of contact with the Office of the Secretary of Defense (OSD), Congress, other Federal and State agencies, and other components for environmental matters.

g. On behalf of the SA, carry out DOD executive agent (EA) responsibilities for the following OSD programs: Environmental Information Technology Management (EITM), FUDS, DSMOA, Low-Level Radioactive Waste (LLRW), Defense Occupational Health Program (DOHP), National Defense Center for Environmental Excellence (NDCEE), DOD regional environmental coordinators (RECs), DOD Forestry Reserve Account, and environmental-related annexes to Master Data Exchange Agreements.

h. Provide policy, advocacy, program direction, and oversight for Formerly Used Defense Sites (FUDS), Base Realignment and Closure (BRAC), and the Army's Defense Environmental Restoration Program.

i. Approve selection of Army representative(s) for inter-service and interagency environmental committees.

j. Provide oversight and coordination of strategic outreach and communication.

k. Provide policy, advocacy, program direction, and oversight of the Army EQT Program.

l. Serve as a permanent co-chair of the Environmental Technology Technical Committee (ETTC); consolidate and prioritize Army environmental technology needs and ensure the cost-effective allocation of available resources, consistent with the Army Program Guidance Memorandum (APGM).

m. Provide policy, advocacy, program direction, and oversight of environmental support to the Army acquisition process.

(1) In conjunction with the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA (ALT)), annually review Army environmental quality research, development, test, and evaluation (RDT&E) efforts.

(2) Provide representation on the Overarching Integration Product Teams (OIPT) supporting Army Systems Acquisition Review Councils (ASARC) to ensure Army material in all acquisition categories meet requisite environmental criteria prior to milestone reviews.

(3) Provide recommendations to the Milestone Decision Authority regarding program environmental quality requirements.

n. Review all Army weapons system acquisition programs for potential or real impacts to environmental quality and/or Army installations.

o. Review Army weapons system acquisition program environmental quality costs by participating on the Army Cost Review Boards (CRB) and providing representation on weapons system cost working group Integrated Product Teams (IPTs).



- p. Develop and approve funding policies for environmental programs in coordination with the Assistant Secretary of the Army (Financial Management & Comptroller) (ASA (FM&C)), and with the ASA (ALT) for RDT&E efforts.
- q. Approve Army environmental input to Program Objective Memorandum (POM) direction, priorities, and guidance.
- r. Approve AEP POM and budget submissions, resource allocations, unfinanced requirements (UFRs), and budget adjustments recommended by the ACSIM in coordination with the DCS, G-8 and the ASA (FM&C).
- s. Ensure that the Army's trust responsibility and government-to-government relationship with Federally-recognized Indian Tribes are fulfilled.
- t. Approve NHPA compliance agreements, as required.
- u. Approve and integrate the Army Environmental Policy Institute (AEPI) and U.S. Army Environmental Command (USAEC) annual work plans.
- v. Provide supervision and program direction for the AEPI, to include POM, budget, and UFR approvals.
- w. Consult with the ACSIM on selection of the Director of Environmental Programs (DEP).
- x. Serve as the intermediate rater for the DEP and Commander, USAEC, and provide input into their performance objectives.
- y. Act as co-chair with the ACSIM for the HQDA Environmental Quality Control Committee (EQCC).
- z. Provide direction and delegate specific actions to the Army DOD RECs.
- aa. Manage the operation of the regional environmental offices (REOs).
- ab. Serve a permanent co-chair of the DOD Operational and Environmental Executive Steering Committee on Munitions (OEESCM).
- ac. Report annually to the SA/CSA on AEP execution.
- ad. Serve as point of contact for external audits of the AEP.
- ae. Provide Congressional testimony and reports to Congress.
- af. Provide programmatic environmental scoping and planning to include National Environmental Policy Act (NEPA) and Strategic Environmental Assessment (SEA).
- ag. Oversee AEP support to natural and built environments, to include ranges.
- ah. Ensure the AEP addresses overseas installations and activities.
- ai. Integrate energy, pollution prevention, and EMS.
- aj. Integrate BSOH programs and activities with force protection and national security.
- ak. Execute the EL/RAMP.

#### **1-6. The Assistant Secretary of the Army (Financial Management and Comptroller)**

The Assistant Secretary of the Army (Financial Management and Comptroller) (ASA (FM&C)) will—

- a. Issue planning, programming, budgeting, and execution (PPBE) system policy, Funding Authorization Document (FAD) footnotes for the Conservation Reimbursable Forestry and Agricultural/Grazing Outlease Programs, guidance for environmental programs, and Fish and Wildlife Conservation Fund (21X5095) apportionments, in coordination with the ASA (I&E).
- b. Develop an independent cost estimate (ICE) that includes an environmental quality life cycle cost estimate (EQLCCE) for each weapons system. Reconciles differences in the EQLCCE, and the program office estimate (POE) in developing the Army cost position (ACP).
- c. Collect and report environmental liabilities for the Army's Financial Statement.

#### **1-7. The Assistant Secretary of the Army (Acquisition, Logistics, and Technology)**

The Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA (ALT)) will—

- a. Provide policy, guidance, oversight, and technical assistance to acquisition program managers and program executive offices as required to ensure integration of environmental quality considerations in all aspects of acquisition programs.
- b. Plan, program, budget, and execute the Army's Environmental Quality Technology Program (for EQT Budget Activity 1, 2, and 3 Program initiatives) in coordination with the ASA (I&E) to maximize the ability of the Army to achieve its environmental strategy.
- c. Develop policy to ensure procurement of materiel designed to minimize environmental impacts throughout its life cycle, while ensuring operational effectiveness.
- d. Develop policy in coordination with the ASA (I&E) on acquisition of hazardous material.
- e. Develop and oversee initiatives to reduce the volume and toxicity of hazardous materials and ozone depleting substances (ODS) used in Army materiel.
- f. Review annually Army environmental quality technology program RDT&E efforts in conjunction with the ASA (I&E).
- g. Designate the Director, Research and Laboratory Management, OASA(ALT), a permanent co-chair of the Environmental Technology Technical Committee (ETTC), who in conjunction with the ACSIM, consolidates and

prioritizes Army environmental technology needs and ensures the cost-effective allocation of available resources, consistent with the APGM.

*h.* Integrate environmental considerations/awareness into acquisition programs and training in accordance with DODD 5000.1.

*i.* Ensure that environmental quality life cycle costs are clearly identified in the Program Office Estimate.

*j.* Serve as the proponent for the Army Green Procurement Program (GPP) to facilitate compliance with Affirmative Procurement requirements (for recovered materials and biobased items) and encourage the acquisition and use of environmentally preferable products and services.

*k.* Ensure all requests for proposal (RFP), contracts, and contract modifications include a requirement that bidders providing goods and services to installations certify (in the Representations and Certifications component of their proposal) that operations of their team (including subcontractors) will be consistent with the installation's and the Army's EMS.

*l.* Incorporate environmental and EMS requirements into appropriate acquisition regulations, policies, and procedures, and appoint a single point of contact for coordinating this action with the ACSIM/DEP.

*m.* Provide direct support to the Army Acquisition Community, Program Executive Officers, and Program/Product/Project Managers regarding environmental and affirmative procurement initiatives, issues and concerns by—

(1) Providing recommendations to the Army Acquisition Executive (AAE) or other decision authority about environmental issues associated with materiel and ASA (ALT) mission functions.

(2) Designating a single point of contact for coordinating environmental issues related to materiel development, logistics, and technology for Headquarters, Department of the Army (HQDA) component organizations in coordination with the Office of the ASA (I&E).

(3) Ensuring execution of environmental policy by acquisition managers.

#### **1-8. The Chief of Public Affairs**

The Chief of Public Affairs (CPA) will—

*a.* Provide policy, guidance, and oversight for public affairs support to the Army's environmental programs.

*b.* Provide advice and recommendations on handling the public affairs aspects of Section 552, Title 5, United States Code (5 USC 552) requests related to the environmental program.

#### **1-9. The Deputy Chief of Staff, G-3/5/7**

The Deputy Chief of Staff, G-3/5/7 (DCS, G-3/5/7) is responsible for developing and coordinating policy, programs, and initiatives to achieve directed levels of training readiness for the Army and serves as the overall integrator of Army Transformation. The DCS, G-3/5/7 will—

*a.* Serve as the focal point for spectrum activities encompassing force development, combat development, training development, resource management, and prioritization.

*b.* Establish priorities and requirements for Army ranges and training lands.

*c.* Exercise overall supervision, direction, and management oversight for the Sustainable Range Program (SRP). Specific responsibility for the SRP resides with the Chief, Training Support Systems Division (DAMO-TRS), who will—

(1) Serve as the HQDA functional proponent for the SRP and its core programs.

(2) Formulate policies and issue administrative programmatic guidance and instructions for implementing and sustaining the core programs within Army Commands (ACOMs), Army Service Component Commands (ASCCs), and Direct Reporting Units (DRUs), the Army National Guard (ARNG), and Headquarters, Installation Management Command (HQ IMCOM).

(3) Formulate policies for planning, programming, operating, and managing ranges and training lands that specify how the Army will—

(a) Resource range operations and modernization through the Range and Training Land Program, and land management and maintenance through the Integrated Training Area Management (ITAM) Program.

(b) Integrate range requirements into the overall Army infrastructure investment strategy in conjunction with the Office of the Assistant Chief of Staff for Installation Management (OACSIM).

(c) Centrally fund unexploded ordnance (UXO) clearance for range modernization projects.

(d) Centrally fund the preparation of NEPA documentation for range modernization projects and major training land acquisitions.

(e) Coordinate and synchronize range and training land policy to preclude conflicts between range operations and military training, natural and cultural resources management, environmental management, facilities management, and master planning activities.

(4) Serve as the co-chair of the Army Range Sustainment Integration Council (ARSIC).

**1-10. The Deputy Chief of Staff, G-4**

The Deputy Chief of Staff, G-4 (DCS, G-4) will—

- a. Identify, program, and secure funds to address the environmental aspects of the functions for which the DCS, G-4 is responsible.
- b. Incorporate environmental considerations and requirements into all aspects of the DCS, G-4 mission, to include materiel management, integrated logistics support, supply, transportation, maintenance management, and logistics training.
- c. Serve as the staff proponent for policy development pertaining to hazardous materials minimization and management, to include inventory management per AR 710-2.
- d. Ensure that timely hazardous material (HM) handling, packaging, and transportation training is provided to Army personnel within the continental United States (CONUS) and overseas as required.
- e. Serve as the proponent for implementation of the Military Munitions Rule.
- f. Execute quarantine responsibilities for transport and logistics.

**1-11. The Deputy Chief of Staff, G-8**

The Deputy Chief of Staff, G-8 (DCS, G-8) will—

- a. Provide Army cross-PEG (Program Evaluation Group) funding process guidance to assure cost effective compliance with environmental legal mandates while optimizing benefits to the Army missions and operations.
- b. Assure priority is given to resource allocation that cost effectively resolves environmental aspects that impact missions and operations needed to equip, sustain and train our combat forces.
- c. Review plans and requirements of Senior Mission Commanders, Army Command/Army Service Component Command/Direct Reporting (ACOM/ASCC/DRU) commanders, acquisition program managers and garrison commanders that address compliance with legal environmental mandates and resolve environmental aspects impacting missions and operations.
- d. Review plans and requirements for the Army Environmental Program in coordination with the Assistant Chief of Staff for Installation Management (ACSIM).
- e. Conduct annual review of resources allocated to sustaining Army environmental compliance to overhead investments in the most cost effective manner.

**1-12. Commander, U.S. Army Corps of Engineers**

The Commander, U.S. Army Corps of Engineers (USACE) will—

- a. Administer the Clean Water Act (CWA) Section 404 permit program pertaining to the discharge of dredged/fill material into waters/wetlands of the United States.
- b. Provide additional environmental support to the Army and other DOD elements as requested.
- c. Provide environmental support to other Federal, State, and local agencies when tasked.
- d. Provide Army DERP execution support on a reimbursable basis to installations through Districts and the Centers of Expertise for hazardous, toxic, and radioactive waste (HTRW) and for munitions and explosives of concern (MEC).
- e. Administer the DSMOA/CA Program for the Assistant Deputy Undersecretary of Defense (Environment, Safety, and Occupational Health) (ADUSD (ESOH)).
- f. Serve as executing agency for the FUDS program, consistent with the FUDS Charter. Establish FUDS requirements and policy guidance for program management, planning, reporting, execution, data access, quality control, and performance measurement.
- g. Provide technical support by implementing sustainable design and development (SDD) practices, including incorporating SDD/sustainable project rating tool (SPiRiT) and environmental criteria into the Army's project design and construction process. (NOTE: Beginning in FY08, SPiRiT will be replaced by Leadership in Energy and Environmental Design (LEED); all new construction must meet the LEED Silver standard.)
- h. Incorporate environmental requirements into appropriate USACE activities, and appoint a single point of contact for coordinating this action with the ACSIM/DEP.
- i. Approve and integrate the USACE Engineer Research and Development Center (ERDC) EQT program and provide overall policy direction for the ERDC.

**1-13. The Assistant Chief of Staff for Installation Management**

The Assistant Chief of Staff for Installation Management (ACSIM) will—

- a. Serve as the HQDA proponent for the AEP.
- b. Establish priorities, guidance, and procedures for installation operations, real property management, and environmental stewardship for all activities and functions within Army garrisons.
- c. Promote environmental stewardship and sustainability in support of the ASA (I&E).
- d. Incorporate environmental requirements into appropriate regulations, guidance documents, and procedures to support environmental stewardship.

- e. Co-chair the HQDA annual Review and Analysis with the ASA (I&E).
- f. Issue appropriate programming and funding guidance to ACOMs, ASCCs, DRUs, NGB-ARNG, HQ IMCOM, and special installations to support development of the environmental programs component of the Program Objective Memorandum (POM).
- g. Develop and direct the planning, programming, and budget execution of the environmental components of the Installations Program Evaluation Group (II PEG) programs needed to sustain readiness and comply with appropriate Federal, State, and local laws, Executive Orders, DOD Directives overseas Final Governing Standards, international treaties and Status of Forces Agreements (SOFAs) in accordance with General Order #3 and APGM. This specifically includes base operations support (BOS) service activities addressed by the following Management Decision Packages (MDEPs):
  - (1) VENC (Environmental Compliance).
  - (2) VENN (Environmental Conservation).
  - (3) VEMR (Environmental Support to Ranges and Munitions).
  - (4) VEPP (Pollution Prevention).
  - (5) VEQT (Environmental Technology).
  - (6) ENVR (Environmental Restoration).
- h. Direct execution of the environmental components of the Installations Program Evaluation Group (II PEG) programs.
- i. Serve as proponent of the Army Compatible Use Buffer (ACUB) program.
- j. Perform the EA duties for the DOD Forestry Reserve Account in coordination with the DASA (ESOH).
- k. Provide representation for environmental and installation concerns on the Army Requirements Oversight Council (AROC).
- l. Provide guidance on incorporating BRAC oversight and responsibilities on environmental and Military Munitions Response Program (MMRP) through the ACSIM BRAC Division (DAIM-BD).
- m. As the Army's combat developer (CBTDEV) for installations, generate, validate, and prioritize environmental quality RDT&E requirements.
- n. Serve as a member of the Environmental Technology Technical Council (ETTC).
  - o. Serve as proponent for Army SDD facility policies that are incorporated into the process of planning, designing, constructing, operating, maintaining, renovating, and disposing installation facilities.
- p. Serve as the technical advisor to ASA (I&E) for all environmental matters impacting installation sustainment and materiel operation and support.
- q. Promote and integrate installation sustainability across all functional areas (for example, logistics, environment, training, engineering).
- r. Maintain an organization within the OACSIM that will—
  - (1) Provide to the ASA (I&E), and others as directed, an Environmental Quality Impact Analysis (EQIA) for major weapons systems acquisition program decision reviews.
  - (2) Provide technical support to the ASA(FM&C) for environmental quality life cycle cost estimates as part of the Army Cost Review process as required.
  - (3) Upon request, assist program managers in integrating environmental quality considerations into all aspects of the acquisition program.
- s. Issue implementing guidance to eliminate ODS use on Army installations.
- t. Issue implementing guidance with respect to endangered species critical habitat designation.
- u. Provide annual authorities for the forestry, agricultural/grazing, and hunting and fishing fee reimbursable programs.
- v. Serve as initial denial authority and acts on FOIA requests for records pertaining to environmental activities, other than litigation.
- w. Manage the Environmental Restoration, Army (ER, A) account.
- x. Manage environmental program responsibilities for base operations support (BOS) through the Office of the Director of Environmental Programs (ODEP). The ODEP will—
  - (1) Serve as the HQDA functional proponent for the Army Environmental Program (AEP).
  - (2) Provide HQDA oversight of the AEP that reflects overall Army compliance, stewardship, sustainability, and readiness priorities.
  - (3) Formulate and issue Army guidance and instructions for implementing and sustaining the AEP.
  - (4) Coordinate AEP requirements with all appropriate organizations to preclude conflicts, and to synchronize activities, among operations and training, real property management, and master planning.
  - (5) Identify, plan, program, budget, support, and defend military resource requirements for the AEP.
  - (6) Exercise primary Army staff (ARSTAF) responsibility to oversee, manage, and coordinate Army military

environmental programs as described in paragraphs 1–1a(1)–1–1a(20), including resource utilization and progress toward goals and objectives for II PEG funded programs:

- (7) Serve as the proponent for the Army Environmental Awards Program.
- (8) Establish the Configuration Control Management Board (CCMB) to advise the DEP on Army Environmental Reporting matters.
- (9) Develop guidance for implementation, utilization, and coordination of geospatial information and services within the environmental program.
- (10) Exercise primary ARSTAF responsibility to collect, coordinate, and integrate user requirements for the Army BQT Program through the Army Environmental Requirements and Technology Assessment (AERTA) process.
- (11) Participate in the EQT Teams to ensure the Army's EQT user needs are effectively addressed.
- (12) Provide guidance and recommendations on all issues directed to the ACSIM concerning policies and PPBE for the CC Program, Army DERP (including Installation Restoration Program (IRP) and MMRP), BRAC cleanup, and FUDS.
- (13) Provide general oversight, resource requirements verification, and guidance for the execution of the FUDS Program to ensure program execution consistent with the FUDS Charter.
- (14) Provide oversight of the Environmental Performance Assessment System (EPAS).
- (15) Serve as the Executive Secretary to the DOD Operational and Environmental Executive Steering Committee for Munitions (OEESCM) and the HQDA EQCC.
- (16) Serve as the chairman of the DOD Hazardous Waste Management Subcommittee.
- (17) Serve as co-chair of the ARSIC.
- (18) Execute EMS responsibilities per ISO 14001 and this regulation.
- (19) Monitor the execution of the AEP to conform to EMS.
- (20) Establish implementing guidance for Army environmental reporting systems.
- (21) Provide upward reporting on progress in meeting AEP goals and objectives to HQDA leadership, OSD, and Congress.
- (22) Develop appropriate Army-wide standards and metrics for the AEP.
- (23) Designate two ACSIM representatives as voting members on the Armed Forces Pest Management Board (AFPMB). Designate Army senior consultant (ASC) and DOD certification officials for Army civilian personnel per DOD policies and procedures.
- (24) Maintain an efficient and well-trained workforce.
- (25) Coordinate AEP strategic outreach.
- (26) Centrally manage the Conservation Reimbursable Forestry, Agricultural/Grazing Outlease, and Fish and Wildlife Conservation Programs; set installation specific Automatic Reimbursable Authority for forestry and agricultural/grazing at installations.

#### **1–14. Commander, Installation Management Command**

The Commander, Installation Management Command (IMCOM) will—

- a. Execute sustainable base operations support for all installations under its purview in compliance with applicable laws and regulations (to include Final Governing Standards (FGS), and international agreements overseas) to support the Army training and testing mission.
- b. Integrate program guidance, goals, and issue across installation functional areas (for example, logistics, environment, training, engineering, and planning).
- c. Oversee management of installation environmental programs.
- d. Provide program management reviews for the ACSIM and DASA (ESOH).
- e. Monitor and track environmental performance of Regional Offices and the US Army Reserve.
- f. Assist installations in the execution of the Army CC program.
- g. Develop an annual program management plan (PMP), consistent with the Army Cleanup Strategy and Strategic Plan, for the CC Program.
- h. Coordinate IMCOM issues that affect mission among senior mission commanders (SMCs), ACOMs, ASCCs, DRUs, and garrisons.
- i. Coordinate the execution of the EPAS Program for the active Army through USAEC.
- j. Participate in environmental awards activities as appropriate.
- k. Review, analyze, perform quality assurance/quality control (QA/QC), and approve environmental requirements and data reported by installations.
- l. Maintain an efficient and well-trained workforce.
- m. Coordinate with the DCS, G–3/5/7, ACOMs, ASCCs, DRUs, and Directorate of Plans, Training, Mobilization, and Security (DPTMS) to ensure ITAM Program requirements are implemented in accordance with DAMO–TRS resource allocations and guidance.



- n. Report progress in meeting AEP goals and objectives to HQDA leadership.
- o. Provide guidance and assistance to garrisons and monitor the execution of IMCOM's portion of the AEP in accordance with EMS.
- p. Assist IMCOM installations in negotiations with regulatory agencies to preclude adverse mission impacts or the inadvertent establishment of Army policy that may conflict with regulatory requirements.
- q. Provide AEP technical implementation support through the Commander, USAEC, who will—
  - (1) Provide environmental technical products and services in support of Army training, operations, acquisition, and sound stewardship.
  - (2) Manage assigned elements of the Army Cleanup Program in accordance with ACSIM direction and guidance. Develop and execute an annual program management plan (PMP), consistent with the Army Cleanup Strategy and Strategic Plan, for the Army DERP.
  - (3) Provide technical support for pest management.
  - (4) Program for and coordinate execution of EPAS for the active Army.
  - (5) Provide program management for the Army DERP at active installations.
  - (6) Execute policy and guidance for Army environmental reporting systems.
  - (7) Provide technical support to the Chief, Training Support Systems Division, Office of the DCS, G-3/5/7 in support of the SRP core programs.
  - (8) Provide technical support and day-to-day operational oversight for Conservation Reimbursable Forestry, Agricultural/Grazing Outlease and Fee Collection Programs.
  - (9) Provide technical support to DASA (ESOH) in support of the ASARC and CRB.
  - (10) Provide technical support to the Army's EQT Program as it relates to installation issues.
  - (11) Provide outreach support to the AEP.
  - (12) Provide public affairs support to the AEP.
  - (13) Maintain an efficient and well-trained workforce.
  - (14) Provide Hazardous Material Management Program (HMMP) operational oversight to the DCS, G-4 for environmental hazardous material management.
  - (15) Perform data collection and analyses of HMMP environmental information to measure program success.

#### **1-15. The Chief, Army Reserve**

The Chief, Army Reserve (CAR) will—

- a. Ensure environmentally sustainable operations.
- b. Serve as the primary ARSTAF adviser for all Army Reserve mission-related environmental issues.
- c. Ensure that Army environmental policy is implemented within the Army Reserve.
- d. Ensure that environmental stewardship is incorporated into all aspects of the Army Reserve mission.
- e. Coordinate with IMCOM on matters of mutual interest or concern.

#### **1-16. National Guard Bureau - Director, Army National Guard**

The National Guard Bureau - Director, Army National Guard (NGB-DARNG) will—

- a. Execute environmentally sustainable base operations support in compliance with applicable laws and regulations to support the Army training and testing mission.
- b. Ensure the NGB-DARNG acquires, manages and distributes resources; develops and administers policies and programs.
- c. Serve as the "Channel of Communication" between the Army and the National Guard of the States, Territories and the District of Columbia.
- d. Serve as the primary ARSTAF advisor for all ARNG environmental issues, and sign or appoint a designated representative to sign all ARNG Federal compliance agreements, consent orders, and environmental assessments, findings of no significant impact, and other pertinent Federal environmental documentation.
- e. Coordinate with HQDA, State ARNGs, and other organizations to fulfill the NGB-ARNG's ARSTAF role as an Army component, the NGB-ARNGs role as the installation management organization for the State ARNGs, and the NGB-ARNG's role in performing ACOM, ASCC, or DRU functions.
- f. Specific day-to-day responsibility for the environmental management program resides with the NGB-ARNG Chief of Environmental Programs (CEP). To carry out this responsibility, the NGB-ARNG CEP will—
  - (1) Ensure environmentally sustainable operations and planning.
  - (2) Ensure that Army environmental policy is implemented within the ARNG.
  - (3) Ensure that environmental stewardship is incorporated into all aspects of the ARNG mission.
  - (4) Integrate program guidance, goals, and issues across installation functional areas (for example, logistics, environment, training, engineering) and planning areas.

- (5) Submit environmental base support requirements to the OACSIM. Budget and execute environmental resources consistent with program needs.
- (6) Develop an annual program management plan (PMP), consistent with the Army Cleanup Strategy and Strategic Plan, for the Army CC Program; and provide program management reviews for the ACSIM and DASA (ESOI).
- (7) Provide supplemental implementing guidance and instructions consistent with HQDA guidance for environmental reporting to the states.
- (8) Report progress in meeting AEP goals and objectives to HQDA leadership.
- (9) Provide State ARNGs guidance and assistance, and monitor the execution of the NGB-ARNG's portion of the AEP in accordance with EMS.
- (10) Schedule and conduct all aspects of EPAS audits.
- (11) Review, analyze, perform QA/QC, and approve environmental reporting data submitted by NGB-ARNG installations.
- (12) Assist NGB-ARNG installations in negotiations with regulatory agencies to prevent adverse mission impacts due to Federal natural and cultural resources requirements.
- (13) Support environmental awards activities.
- (14) Maintain an efficient and well-trained workforce.
- (15) At Federally-owned or leased NGB-ARNG installations, facilities, activities and properties—
  - (a) Provide oversight and facilitate coordination in the remediation process.
  - (b) Assist in the management and execution of ER, A-funded NGB-ARNG remediation sites.
- (16) At Non-Federally-owned, Federally-supported NGB-ARNG installations, facilities, activities, and properties, provide guidance, planning, oversight, execution, monitoring, and reporting for NGB-ARNG cleanup sites.

#### **1-17. The Judge Advocate General**

The Judge Advocate General (TJAG) will provide legal advice to the Army on all environmental law matters, except those arising out of civil works (CW) and FUDS activities. The Chief, Environmental Law Division (ELD), will exercise those authorities on behalf of TJAG, and will specifically—

- a. Serve as legal advisor to the ACSIM and DEP with regard to all environmental matters.
- b. Advise the Army Secretariat in coordination with the General Counsel.
- c. Provide technical channel supervision, coordination, and advice to all Army lawyers involved in Army environmental matters.
- d. Monitor and provide advice regarding environmental legislation and regulatory developments that affect the Army.
- e. Review and render legal opinions on all draft environmental orders, consent agreements, and settlements with Federal, State, or local regulatory officials (except those arising from FUDS) before signature.
- f. Provide assistance to ACOMs, ASCCs, DRUs, IMCOM, NGB-ARNG, and installations in drafting or negotiating interagency agreements or orders on consent with Federal, State, and local regulators.
- g. Be responsible for representing the Army in Federal and State litigation and for communicating the Army's position in litigation and settlement with the Department of Justice subject to the general oversight of the General Counsel.
- h. Serve as agency counsel for the Army in appropriate administrative cases, hearings, and enforcement actions (BNFs).
- i. Serve as initial denial authority and act on FOIA requests for records pertaining to environmental activities when the records relate to litigation in which the United States has an interest.

#### **1-18. The Surgeon General**

The Surgeon General (TSG) will—

- a. Approve human health risk assessments and review environmental hazards and ecological risk assessments.
- b. Provide policy on the human health aspects of Army installation activities and operations, to include those aspects associated with environmental contamination.
- c. Integrate environmental awareness and technical information into the training programs sponsored by the Army Medical Department (AMEDD).
- d. Serve as the Lead Agent for the DOD and as the Army representative in negotiating services with the Agency for Toxic Substances and Disease Registry (ATSDR).
- e. Develop toxicological profiles concerning chemicals and hazardous substances commonly found on military installations. Develop and propose human health and safety environmental standards for chemical agents and explosive compounds, and other unregulated compounds when such standards do not exist.
- f. Identify pollution-related health and ecological effects topics requiring research and development; and initiate needed research in areas where AMEDD has responsibility and provides toxicological and exposure data when required to support human health risk assessments.

- g. Advise on human health aspects of environmental issues, including the "known and imminent substantial endangerment" (KISE) determination for environmental response actions overseas.
- h. Provide technical assistance relating to health and, as requested, on environmental aspects of programs and initiatives.
- i. Coordinate on the human and ecological health risk assessment portions of active installations, BRAC, and FUDS decision documents (DDs).
- j. Promulgate policy for the disposition of dental, veterinary, medical, and pharmaceutical waste.
- k. Provide two representatives as voting members on the AFPMB and designate personnel to serve as DOD pest management certification officials for Army uniformed personnel per DOD policies and procedures.
- l. Coordinate with OACSIM for surveillance, prevention, and control of medically important pests and disease vectors and occupational health exposures from pest management operations.
- m. Provide health and environmental risk communication support to all Army assets, to include training, consultation, conflict management, and facilitation.
- n. Develop policy on occupational and public health issues related to Army environmental actions.
- o. Through the U.S. Army Medical Command (MEDCOM) and the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM) will—
  - (1) Plan, organize, budget, and execute medical support to the Army environmental program.
  - (2) Serve as the decision authority for determinations of public health threat arising from Army environmental activities.
  - (3) Provide a broad range of expertise and services in environmental health, occupational health, and preventive medicine to evaluate the health aspects of the Army's environmental program.
  - (4) Provide environmental health support in all environmental media to Army and other DOD elements, as requested.
  - (5) Assist in the maintenance of the Military Item Disposal Instructions (MIDI) for the DOD.
  - (6) Provide preventive medicine leadership and services to anticipate, identify, assess and counter environmental and occupational health threats.
  - (7) Provide environmental health and occupational health expertise, products and services in support of training, operations, acquisition, research and development to assess the health risks associated with Army environmental programs and activities.
  - (8) Support USAEC with coordination and execution of the EPAS Program.

**1–19. Army Command, Army Service Component Command, and Direct Reporting Unit commanders**

The ACOM, ASCC, and DRU commanders, including those outside the continental United States (OCONUS), as used in this regulation, include the Director, NGB-ARNG when performing an ACOM, ASCC, or DRU role relative to State ARNGs, the State Adjutants General when performing an ACOM, ASCC, or DRU role relative to State ARNGs, and major subordinate commands (MSC). The ACOM, ASCC, and DRU commanders will—

- a. Consistent with HQDA policy, provide oversight, policy, guidance, and resources to subordinate commands and activities to execute mission-related aspects of the Army's environmental program, to include: training and deployments; industrial operations; research, technology, and testing activities; operations other than war; and other operations and activities not falling under the direct control of supporting Garrison/Installation commanders.
- b. Ensure that subordinate units comply with the policies and standards of the installations on which they are tenants.
- c. Ensure that all subordinate units comply with all applicable laws, regulations, internal directives and goals, EOs, and overseas FGS.
- d. Fully integrate environmental considerations into ACOM, ASCC, and DRU mission requirements.
- e. Participate in and fully support all installation internal and external assessments and audits, and implement corrective actions.
- f. Support environmental awards activities.
- g. Ensure that assigned environmental staff is efficient and well-trained.
- h. ACOM, ASCC, and DRU commanders that exercise command and control of installations will execute the same responsibilities listed under paragraph 1–13, Commander, IMCOM, with the following exceptions:
  - (1) Environmental requirements must be submitted through the ACOM, ASCC, DRU, and NGB-ARNG chain of command unless otherwise specified in the ISSA.
  - (2) ACOM, ASCC, and DRU commanders must monitor and track environmental performance at subordinate installations.
- i. Additionally, the Commander, U.S. Army North (USARNORTH) will—
  - (1) Provide, upon request, personnel/resources support to the National Response Team (NRT) or Regional Response Team (RRT) responding to an environmental emergency. The requester will reimburse the cost of the support.