

section 3306(r)(2) of the Code, relating to the Federal Unemployment Tax Act (FUTA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans (61 FR 2214). The proposed regulations under section 3306(r)(2) cross-reference the provisions of the proposed regulations under section 3121(v)(2), including the proposed general effective date. Consequently, the extension of the effective date under the proposed regulations under section 3121(v)(2) automatically applies to the proposed regulations under section 3306(r)(2).

The project numbers assigned to the notices of proposed rulemaking setting forth the proposed regulations under section 3121(v)(2) and section 3306(r)(2) were EE-142-87 and EE-55-95, respectively. Due to changes in the Internal Revenue Service's regulations numbering system, the project numbers for this notice of proposed rulemaking have been changed to REG-209484-87 and REG-209807-95, respectively, as reflected at the beginning of this document.

**Explanation of Provisions**

Section 31.3121(v)(2)-1(g)(1)(i) of the proposed regulations provides that the proposed general effective date of the regulations is January 1, 1997. Because the final regulations have not been issued, this document contains an amendment to the proposed regulations to extend the proposed general effective date to January 1, 1998. This extension of the proposed general effective date also applies to § 31.3306(r)(2)-1 of the proposed regulations due to the cross-reference therein to the provisions in the proposed regulations under section 3121(v)(2).

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before this revision to the proposed regulations is adopted as part of the final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of this revision to the proposed regulations is Janine Cook, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment tax, Withholding.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 31.3121(v)(2)-1 as proposed to be added at 61 FR 2199, January 25, 1996, is amended by revising paragraph (g)(1)(i) to read as follows:

**§ 31.3121(v)(2)-1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.**

\* \* \* \* \*

(g) *Effective date and transition rules—(1) General effective date—(i) Effective date.* Except as otherwise provided in this paragraph (g) or in § 31.3121(v)-2, this section is effective

for amounts deferred and benefits paid on or after January 1, 1998.

\* \* \* \* \*

**Michael P. Dolan,**  
Deputy Commissioner of Internal Revenue.  
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**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**32 CFR Part 989**

RIN 0701-AA56

**Environmental Impact Analysis Process (EIAP)**

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Air Force proposes to revise its instruction to improve the Air Force process for compliance with the National Environmental Policy Act (NEPA) and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. The revisions integrate environmental analysis and align environmental document approval levels with the Air Force decision-making process. It also expands Air Force environmental participants and responsibilities of the Environmental Planning Function (EPF) and the proponent of an action. The public is invited to submit comments on these changes to the point of contact listed below.

**DATES:** Comments must be received no later than February 23, 1998.

**ADDRESSES:** Comments should be submitted to HQ USAF/ILEVP, 1260 Air Force Pentagon, Washington, DC 20330-1260.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth L. Reinertson or Mr. Jack C. Bush, (703) 695-8942.

**SUPPLEMENTARY INFORMATION:**

**Discussion of Major Issues**

a. References to procurement publications that provide separate procedures for application of NEPA in the acquisition area are updated.

b. References to office symbols are updated.

c. Specific guidance is provided in section 989.3(c)(3) for application of NEPA to single manager acquisition programs, specifying, among other things, that the Air Force Acquisition Executive Office is the final approval authority for all system-related NEPA documents.

d. More specific reference is provided in section 989.3(c)(4) as to who are key Air Force participants and to the need for an integrated team effort involving other federal agencies, state, Tribal, and local governments, and interested members of the public.

e. More specific guidance is provided in section 989.3(d)(1) to ensure the EIAP is integrated early in the planning stages of an action.

f. Specific guidance is provided in section 989.3(d)(4) to promote early internal scoping in order to determine what level of environmental analysis is performed.

g. In section 989.3(e), the environmental planning function (EPF) is designated as the primary support to the proponent in EIAP actions. The EPF's responsibilities are specifically explained.

h. Section 989.3(h) provides for increased participation of the public affairs office in the EIAP process.

i. Throughout the instruction, whenever participation of state and local governments is provided for, Tribal governments have been added.

j. In section 989.5(b), certain continuing internal reporting requirements regarding aircraft beddown and unit realignment actions are eliminated.

k. In section 989.8(c), additional language notes that only in rare instances is the no-action alternative excused by law from analysis.

l. In section 989.13(c), additional language notes the distinction, in cases of analysis abroad, between exemptions under DoDD 6050.7 and categorical exclusions (CATEXs). The exemptions are provided by Executive Order 12114. CATEXs are provided by the implementing agency.

m. In section 989.14(d), additional guidance is provided to promote substantive but brief EIAP analyses so as to avoid unnecessary data and keep documents to a usable length.

n. In section 989.14(k), hazardous waste disposal sites have been deleted from the list of actions normally requiring an EA.

o. The provision for abbreviated EAs has been deleted. As noted above, analyses should be as lengthy as necessary but no more so; no provision for a special type of EA is necessary.

p. In section 989.14(l), the proponent is now required to involve other interested federal agencies, state, Tribal, and local governments, and the public in preparing an EA.

q. In section 989.15(e), requirements regarding public review of EAs and findings of no significant impact (FONSI) are clarified to ensure the

public understands that the FONSI has not been signed prior to public review.

r. In section 989.15(e)(2), the list of instances when mandatory 30 day public review of an EA and FONSI is required now includes those that would have a disproportionately high and adverse environmental effect on minority and low-income populations.

s. In section 989.18(a), more detailed guidance is provided to improve the scoping process for environmental impact statements (EISs). The guidance provides for an early, continuing, iterative process involving other governmental entities, Congress, and the public in a more meaningful manner. It also provides for scoping to continue through preparation of the draft EIS.

t. In section 989.18(b), specific provision is made to include minority and low-income populations in the scoping process.

u. In section 989.19(c)(3), specific provision is made to include minority and low-income populations in the public review process of EISs.

v. In section 989.27, the statement that compliance with OSHA standards will mitigate hazards has been deleted.

w. A new Section 989.32 addresses aircraft noise data used in EIAP analysis.

x. A new Section 989.33 requires compliance with E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

y. In section 989.34(b), guidance is clarified regarding emergency situations and the need to still comply with NEPA. Compliance is still required, but emergency responses may take place while completing the EIAP.

z. In section 989.35(b), authority is provided to utilize the internet to distribute documents and notices.

aa. A new Section 989.36 is included to address waivers for unusual circumstances and to allow experimentation to help the EIAP process grow. These waivers can only be approved by the Air Force Secretariat.

ab. The definition of "scoping" is changed to include affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

ac. In section A2.2.8, an additional example dealing with proposals having a significant adverse effect on minority and low-income populations is included in the list of examples where use of a categorical exclusion is likely to require additional analysis.

ad. In section A2.3, categorical exclusion A2.3.10 is changed to include lead-based paint as an additional example.

ae. In section A2.3, categorical exclusion A2.3.18 is changed to clarify that it does not apply in the case of a transfer to GSA.

af. In section A2.3, categorical exclusion A2.3.26 is changed to refer to the Defense Environmental Restoration Program and RCRA Corrective Action sites in place of a generic reference. Additionally, the reference to the categorical exclusion not applying to the selection of a remedial action is eliminated.

ag. In section A2.3, categorical exclusion A2.3.30 is changed by deleting the reference to separate evaluation for long term cleanup and remediation activities.

ah. In section A2.3, categorical exclusion A2.3.31 is changed by restricting its use to non-repetitive situations. It also requires documentation of its use.

ai. In section A2.3, categorical exclusion A2.3.36 is changed by adding an additional limitation of 3000 feet above ground level.

aj. In section A3.1.3, flexibility is provided to public hearing formats by allowing experimentation with different formats than normally used, depending on the circumstances. Approval for deviations must be approved by the Air Force Secretariat.

ak. In section A3.2.1.3, the public affairs office will now always purchase a public advertisement to advise public hearings.

al. In section A3.6, responsibility for preparing and checking the transcript of a public hearing is shifted from the military trial judge to the EIS preparation team.

am. The provision for organizing speakers by subject at a public hearing has been deleted.

an. In addition to the above specific items, there have been numerous grammatical changes and minor clarifications made to the instruction.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of \$100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use.

#### List of Subjects in 32 CFR Part 989

Environmental protection,  
Environmental impact statements.

For the reasons stated in the preamble, the United States Air Force proposes to revise 32 CFR part 989 as follows:

**PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)**

- Sec.
- 989.1 Purpose.
- 989.2 Concept.
- 989.3 Responsibilities.
- 989.4 Initial considerations.
- 989.5 Organizational relationships.
- 989.6 Budgeting and funding.
- 989.7 Requests from non-Air Force agencies or entities.
- 989.8 Analysis of alternatives.
- 989.9 Cooperation and adoption.
- 989.10 Tiering.
- 989.11 Combining EIAP with other documentation.
- 989.12 Air Force Form 813 Request for Environmental Impact Analysis.
- 989.13 Categorical exclusion.
- 989.14 Environmental assessment.
- 989.15 Finding of no significant impact.
- 989.16 Environmental impact statement.
- 989.17 Notice of intent.
- 989.18 Scoping.
- 989.19 Draft EIS.
- 989.20 Final EIS.
- 989.21 Record of decision (ROD).
- 989.22 Mitigation.
- 989.23 Contractor prepared documents.
- 989.24 Public notification.
- 989.25 Base closure and realignment.
- 989.26 Classified actions (40 CFR 1507.3(c)).
- 989.27 Occupational safety and health.
- 989.28 Airspace and range proposals.
- 989.29 Force structure and unit move proposals.
- 989.30 Air quality.
- 989.31 Pollution prevention.
- 989.32 Noise.
- 989.33 Environmental justice.
- 989.34 Special and emergency procedures.
- 989.35 Reporting requirements.
- 989.36 Waivers.
- 989.37 Procedures for analysis abroad
- 989.38 Requirements for analysis abroad.

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

Attachment 2 to Part 989—Categorical Exclusions.

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

**Authority:** 10 U.S.C. 8013.

**§ 989.1 Purpose.**

(a) This part implements the Air Force Environmental Impact Analysis Process (EIAP) and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the EIAP differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of

this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190, 42 United States Code (U.S.C.) 4321-4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508, referred to as the "CEQ Regulations"). Further requirements are contained in the Department of Defense Directive (DoDD) 4715.1, Environmental Security, Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis, DoDD 5000.1, Defense Acquisition, and Department of Defense 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information Systems (MAIS) Acquisition Programs with Change 1.<sup>1</sup> To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, Executive Order 12114, and 32 CFR Part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979). To comply with E.O. 12114 and complete the EIAP, the Executive Order, 32 CFR part 187, and this part must be used together.

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

**§ 989.2 Concept.**

(a) This part provides a framework on how to comply with NEPA and Executive Order 12114 according to Air Force Policy Directive (AFPD) 32-70.<sup>2</sup> The Air Force specific procedures and requirements in this part are intended to be used by Air Force decision makers to fully comply with NEPA and the EIAP.

(b) Major Commands (MAJCOM) provide additional implementing guidance in their supplemental

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

**§ 989.3 Responsibilities.**

(a) Office of the Secretary of the Air Force.

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

(i) Develops environmental planning policy and provides oversight of the EIAP program.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified, except as specified in (c)(3) of this section.

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

(iv) Ensures appropriate offices in the Office of the Secretary of Defense are kept informed on EIAP matters of Defense-wide interest.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environment, Safety and Occupational Health Committee (ESOHC) on EIAP issues.

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

(i) Assists with narrowing and defining key issues by arranging consultations with congressional delegations on potentially sensitive actions.

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

(iii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

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

(i) Reviews and clears environmental documents in accordance with Air Force Instruction 35-205, Air Force Security and Policy Review,<sup>3</sup> prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary

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

<sup>2</sup> See footnote 1 to § 989.1.

<sup>3</sup> See footnote 1 to § 989.1.

Division (AFLSA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and Air Force Instruction (AFI) 35-202, Environmental Community Involvement<sup>4</sup>.

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

(b) Headquarters US Air Force (HQ USAF). The Civil Engineer (HQ USAF/ILE) is responsible for execution of the EIAP program. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) MAJCOMs, the Air National Guard, Field Operating Agencies (FOAs), and Single Manager Programs. These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands or areas of responsibility.

(1) Air Force Center for Environmental Excellence (AFCEE). The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) is available to provide technical assistance and has the capability to provide contract support to the proponent, EPF, and MAJCOMs in developing EIAP documents.

(2) Air Force Regional Environmental Offices (REOs). REOs review non-Air Force environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper REO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The REO:

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

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

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

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

(3) Single Manager Acquisition Programs (system-related NEPA). The

proponent Single Manager (i.e., System Program Director, Materiel Group Managers, and Product Group Managers) for all programs, regardless of acquisition category, shall comply with DoD 5000.2-R.<sup>5</sup> SAF/AQR, as the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. SAF/AQR is responsible for accomplishing appropriate Headquarters EPC/ESOHHC review. The Single Manager will obtain appropriate Product Center EPC approval prior to forwarding necessary EIAP documents (i.e., NOIs and preliminary draft and final EAs and EISs) to SAF/AQR. The Single Manager will allow for concurrent review of EIAP documents by HQ AFMC/ILEV and the Operational Command (HQ ACC, HQ AMC, HQ AFSPC, etc.). The Single Manager is responsible for budgeting and funding EIAP efforts, including EIAP for research, development, testing, and evaluation activities.

(4) Key Air Force Environmental Participants. The EIAP must be approached as an integrated team effort including key participants within the Air Force and also involving outside federal agencies, state, Tribal, and local governments, interested outside parties, citizens groups, and the general public. Key Air Force participants may include the following functional areas, as well as others:

Proponent  
Civil Engineers/Environmental Planning Function  
Staff Judge Advocate  
Public Affairs  
Medical Service (Bioenvironmental Engineer)  
Safety Office  
Range and Airspace Managers  
Bases and Units  
Plans and Programs  
Logistics  
Personnel  
Legislative Liaison

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

(1) The EIAP and shall ensure integration of the EIAP during the initial planning stages of proposed actions so that planning and decisions reflect environmental values, delays are avoided later in the process, and potential conflicts are precluded.

(2) Notifying the EPF of a pending action and completion Section I of AF Form 813. Prepare the Description Of Proposed Action and Alternatives (DOPAA) through an interdisciplinary team approach including the EPF and other key Air Force participants.

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

(4) Determining, with the EPF, as early as possible whether to prepare an EIS. The proponent and the EPF will conduct an early internal scoping process as part of the EIAP process. The internal scoping process should involve key Air Force environmental participants (See § 989.3(c)(4)) and other Air Force offices as needed and conclude with preparation of a DOPAA. For complex or detailed EAs or EISs, an outside facilitator trained in EIAP may be used to focus and guide the discussion. Department of the Air Force personnel, rather than contractors, should generally be used to prepare the DOPAA.

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

(6) Coordinating with the EPF, Public Affairs, and Staff Judge Advocate prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(7) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft Notice of Intent (NOI) to prepare an EIS. All NOIs must be forwarded through the MAJCOM EPF to HQ USAF/ILEV for review and publication in the **Federal Register**. Publication in the **Federal Register** is accomplished in accordance with AFI 37-120, **Federal Register**.<sup>6</sup> (See § 989.17.)

(8) Ensuring that proposed actions are implemented as described in the final EIAP decision documents.

(e) Environmental Planning Function (EPF). At every level of command, the EPF is one of the key Air Force participants responsible for the EIAP. The EPF can be the environmental flight within a civil engineer squadron, a separate environmental management office at an installation, the ILEV at MAJCOMs, or an equivalent environmental function located with a program office. The EPF:

(1) Supports the EIAP by bringing key participants in at the beginning of a proposed action and involving them throughout the EIAP. Key participants

<sup>4</sup> See footnote 1 to § 989.1.

<sup>5</sup> See footnote 1 to § 989.1.

<sup>6</sup> See footnote 1 of § 989.1.

play an important role in defining and focusing key issues at the initial stage.

(2) At the request of the proponent, prepares environmental documents using an interdisciplinary approach, or obtains technical assistance through Air Force channels on contract support. Assists the proponent in obtaining review of environmental documents.

(3) Assists the proponent in preparing a (DOPAA) and actively supports the proponent during all phases of the EIAP.

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

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

(6) Supports the proponent in preparing environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

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

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

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

(10) Submits one hard copy and one electronic copy of the final EA/Finding Of No Significant Impact (FONSI) and EIS/Record of Decision (ROD) to the Defense Technical Information Center.

(f) Environmental Protection Committee (EPC). The EPC helps commanders assess, review and approve EIAP documents in accordance with AFI 32-7005, Environmental Protection Committee.<sup>8</sup>

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

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

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

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and Temporary Duty (TDY) costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures.

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

(h) Public Affairs Officer. This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs activities on proposed actions and reviews environmental documents for public involvement issues;

(2) Advises the EPF of issues and competing interests that should be addressed in the EIS or EA.

(3) Assists in preparation of and attends public meetings or media sessions on environmental issues.

(4) Prepares, coordinates, and distributes news releases and other public information materials related to the proposal and associated EIAP documents.

(5) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge. The EPF will fund the required advertisements.

(6) Determines and ensures Security Review requirements are met for all information proposed for public release.

(7) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35-202.<sup>9</sup>

(i) Medical Service. The Medical Service, represented by the Bioenvironmental Engineer, provides technical assistance to EPF's in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

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

#### § 989.4 Initial considerations.

Air Force personnel will:  
(a) Consider and document environmental effects on proposed Air

Force actions through AF Forms 813, EAs, FONSI's, EISs, EIS (RODs), and documents prepared according to E.O. 12114.

(b) Evaluate proposed actions for possible CATEX from environmental impact analysis (attachment 2).

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

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

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

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

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

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

#### § 989.5 Organizational relationships.

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

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

<sup>7</sup> See footnote 1 to § 989.1.

<sup>8</sup> See footnote 1 to § 989.1.

<sup>9</sup> See footnote 1 to § 989.1.

agreements should provide specific procedures to ensure host oversight of tenant compliance, tenant funding or reimbursement of host EIAP costs, and tenant compliance with the EIAP regardless of the tenant not being an Air Force organization.

(b) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Programs Change Requests must include AF Form 813.

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

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses.

#### § 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF programs for anticipated out-year EIAP workloads based on inputs from command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

#### § 989.7 Requests from Non-Air Force agencies or entities.

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

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

(b) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to

submit draft EAs for their proposed actions, except for actions described in § 989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

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

#### § 989.8 Analysis of alternatives.

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

(a) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(b) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards

suitable to a particular project). In consultation with the EPF, proponents may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

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

#### § 989.9 Cooperation and adoption.

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

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

circulating the EA or EIS as a draft and then preparing the final EA or EIS.

#### § 989.10 Tiering.

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

#### § 989.11 Combining EIAP with other documentation.

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

(b) The EPF must integrate comprehensive planning (AFI 32-7062, Air Force Comprehensive Planning<sup>10</sup>) with the requirements of the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

#### § 989.12 Air Form 813, Request for Environmental Impact Analysis.

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

#### § 989.13 Categorical exclusion.

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

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

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

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

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

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

#### § 989.14 Environmental assessment.

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

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

(c) An EA is a written analysis that:

(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.

(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) The length of an EA should be as short and concise as possible, while matching the magnitude of the proposal. An EA briefly discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation. The EA should not contain long descriptions or lengthy, detailed data. Rather, incorporate by reference background data to support the concise discussion of the proposal and relevant issues.

(e) The format for the EA may be the same as the EIS. The alternatives section of an EA and an EIS are similar and

should follow the alternatives analysis guidance outlined in § 989.8.

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

(g) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990) require SAF/MIQ approval. As a finding contained in the draft FONSI, a Finding of No Practicable Alternative (FONPA) must be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP when the alternative selected is located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. See AFI 32-7064, *Integrated Natural Resources Management*<sup>11</sup>.

(h) EAs and accompanying FONSI that require the Air Force to make Clean Air Act General Conformity Determinations shall be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP for SAF/MIQ approval. SAF/MIQ signs all General Conformity Determinations and will also sign the companion FONSI, when requested by the MAJCOM (see § 989.30).

(i) In cases potentially involving a high degree of controversy or Air force-wide concern, the MAJCOM, after consultation with HQ USAF/ILEVP, may request HQ USAF ESOHC review and approval of an EA, or HQ USAF may direct the MAJCOM to forward an EA (five hard copies and an electronic version) for HQ USAF ESOHC review and approval.

(j) As a minimum, the following EAs require MAJCOM approval because they involve topics of special importance or interest. Unless directed otherwise by HQ USAF/ILEVP, the installation EPF must forward the following types of EAs to the MAJCOM EPF, along with an unsigned draft FONSI: (MAJCOMs can require other EAs receive MAJCOM approval in addition to those types specified here.)

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

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

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

<sup>10</sup>See footnote 1 to § 989.1.

<sup>11</sup>See footnote 1 to § 989.1.

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) New building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(l) The Air Force proponent will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of EAs (40 CFR 1501.4(b) and 1506.6). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.24.

#### § 989.15 Finding of no significant impact.

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

(b) If the EA is not incorporated by reference, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSI as brief as possible. Only rarely should FONSI exceed two typewritten pages. Stand-alone FONSI without an attached EA may be longer.

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

(e) The EPF must make the EA and unsigned FONSI available to the affected public and provide the EA and unsigned FONSI to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the

action, unless disclosure is precluded for security classification reasons. Draft EAs and unsigned draft FONSI will be clearly identified as drafts and distributed via cover letter which will explain their purpose and need. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The FONSI transmittal date (date of letter of transmittal) to the state SPOC or other equivalent agency is the official notification date.

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

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

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

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

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

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

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

(vi) If the proposed action would have a disproportionately high and adverse environmental effect on minority and low-income populations.

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

#### § 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts normally require preparation of an EIS (40 CFR part 1501.4). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

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

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

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

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

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

(3) Site selection of new airfields.

(4) Site selection of major installations.

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

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

(7) Disposal and reuse of closing installations.

#### § 989.17 Notice of intent.

The EPF must furnish, through the MAJCOM, to HQ USAF/ILEV the NOI (40 CFR 1508.22) describing the proposed action for congressional notification and publication in the **Federal Register**. The EPF, through the host base public affairs office, will also provide the approved NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the SPOC and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPPA, through the MAJCOM, to HQ USAF for information.

#### § 989.18 Scoping.

(a) After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments

to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The scoping process is an iterative, proactive process of communicating with individual citizens, neighborhood, community, and local leaders, public interest groups, congressional delegations, state, Tribal, and local governments, and federal agencies. The scoping process must start prior to official public scoping meetings and continue through to preparation of the draft EIS. The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). Additionally, scoping allows early and more meaningful participation by the public. The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.125). The EPF must send plans for scoping meetings to AF/ILEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see attachment 3). Public scoping meetings should generally be held at locations not on the installation.

(b) Where it is anticipated the proposed action and its alternatives will affect minority and low-income populations, special efforts shall be made to reach these populations. This might include special informational meetings or notices in minority and low-income areas concerning the regular scoping process.

#### § 989.19 Draft EIS.

(a) Preliminary draft. The EPF supports the proponent in preparation of a Preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs normally contain fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/ILEV for HQ USAF ESOHC security and policy review in each member's area of responsibility and to AFCEE/EC for technical review.

(b) Review of draft EIS. After the HQ USAF ESOHC review, the EPF assists the proponent in making any necessary revisions to the PDEIS and forwards it to HQ USAF/ILEV as a draft EIS to ensure completion of all security and policy reviews and to certify releasability. Once the draft EIS is

approved, HQ USAF/ILEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies at least seven calendar days prior to publication of the Notice of Availability (NOA) in the Federal Register. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/ILEV then files the document with the U.S. Environmental Protection Agency (USEPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) Public review of draft EIS (40 CFR 1502.19 and 1506.6):

(1) The public comment period for the draft EIS is at least 45 days starting from the publication date of the NOA of the draft EIS in the **Federal Register**. USEPA publishes in the **Federal Register** NOAs of EISs filed during the preceding week. This public comment period may be extended by the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19 and 1506.6).

(2) The EPF sponsors public hearings on the draft EIS according to the procedures in attachment 3. Hearings take place no sooner than 15 days after the **Federal Register** publication of the NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing plans to HQ USAF/ILEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. Public hearings should generally be held at off-base locations. Submit requests to deviate from procedures in attachment 3 to HQ USAF/ILEV for SAF/MIQ approval.

(3) Where analyses indicate that a proposed action will potentially have a disproportionate impact on minority or low-income populations, the EPF should make special efforts to ensure that these potentially impacted populations are brought into the review process.

(d) Response to comments (40 CFR 1503.4). The EPF must incorporate in the Final EIS its responses to comments on the Draft EIS by modifying the text and referring in the appendix to where

the comment is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

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

#### § 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent and EPF may, with the prior approval of SAF/MIQ, prepare a document containing only comments on the Draft EIS, Air Force responses, and errata sheets of changes staffed to the HQ USAF ESOHC for coordination. However, the EPF must submit the draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/ILEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, including receipt of copies of the EIS by SAF/LLP, except that the public need not be invited to comment during the 30-day post-filing waiting period. The Final EIS should be furnished to every person, organization, or agency that made substantive comments on the Draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in

the same way as the original Draft and Final EIS, except that a new scoping process is not required.

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

#### **§ 989.21 Record of decision (ROD).**

(a) The proponent and the EPF prepare a draft ROD, formally staff it through the MAJCOM EPC, to HQ USAF/ILEV for verification of adequacy, and forwards it to the final decision-maker for signature. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until 30 days after publication of the NOA of the final EIS in the **Federal Register**.

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

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

#### **§ 989.22 Mitigation.**

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. Discuss mitigation measures in terms of "will" and "would" when such measures have already been incorporated into the proposal. Use terms like "may" and "could" when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that is approved by the decision-maker. Where possible and

appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status, through the MAJCOM, to HQ USAF/ILEV when requested. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may "mitigate to insignificance" potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally-adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent prepares a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded, through the MAJCOM EPF to HQ USAF/ILEV for review within 90 days from the date of signature of the FONSI or ROD.

#### **§ 989.23 Contractor prepared documents.**

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document's list of preparers.

#### **§ 989.24 Public notification.**

Except as provided in § 989.26, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

- (1) An EA and FONSI.
- (2) An EIS NOI.
- (3) Public scoping meetings.

(4) Availability of the draft EIS.

(5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).

(6) Availability of the final EIS.

(7) The ROD for an EIS.

(b) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under § 989.15(e)(2), and for EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(c) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other equivalent agency (date of letter of notification).

#### **§ 989.25 Base closure and realignment.**

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such non-permanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

#### **§ 989.26 Classified actions (40 CFR 1507.3(c)).**

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision making process; however, Air Force staff must prepare, safeguard and disseminate these documents according to established procedures for protecting classified documents. If an EIAP

document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the **Federal Register**) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.26(b) actions, and NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For § 989.26(c) actions, the **Federal Register** will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

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

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

#### § 989.27 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. The EIAP document does not need to specify compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

#### § 989.28 Airspace and range proposals.

(a) EIAP Review. Airspace and range proposals require review by HQ USAF/XOO prior to public announcement and implementation by a proponent. Unless directed otherwise, the airspace proponent will forward the DOPAA as an attachment to the proposal sent to HQ USAF/XOO. EAs and EISs prepared as part of airspace and range proposals will be forwarded to HQ USAF/XOO for review at the preliminary draft and preliminary final stages. AF/XOO will be responsible for appropriate HQ USAF ESOHC review.

(b) Federal Aviation Administration. The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposals and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency.

The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

#### § 989.29 Force structure and unit move proposals.

Unless directed otherwise, the MAJCOM plans and programs proponent will forward a copy of all EAs for force structure and unit moves to HQ USAF/ILXB for information only at the preliminary draft and preliminary final stages.

#### § 989.30 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR part 93, subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are developed in parallel with EIAP documents, but are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP. See AFI 32-7040, Air Quality Compliance.<sup>12</sup>

#### § 989.31 Pollution prevention.

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

<sup>12</sup> See footnote 1 to § 989.1.

recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32-7080, Pollution Prevention Program<sup>13</sup>).

#### § 989.32 Noise.

Aircraft noise data files used for analysis during EIAP will be submitted to HQ AFCEE for review and validation prior to public release, and upon completion of the EIAP for database entry. Utilize the current NOISEMAP computer program for air installations and the Assessment System for Aircraft Noise for military training routes and military operating areas. Guidance on standardized Air Force noise data development and analysis procedures is available from HQ AFCEE/EC. Develop EIAP land use analysis relating to aircraft noise impacts originating from air installations following procedures in AFI 32-70653, Air Installation Compatible Use Zone.<sup>14</sup> Draft EIAP aircraft noise/land use analysis associated with air installations will be coordinated with the MAJCOM AICUZ program manager.

#### § 989.33 Environmental justice.

During the preparation of environmental analyses under this instruction, the EPF should ensure compliance with the provisions of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Memorandum of February 11, 1994, regarding E.O. 12898.

#### § 989.34 Special and emergency procedures.

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

(b) Emergency procedures (40 CFR 1506.11). Emergency situations do not exempt the Air Force from complying with NEPA, but do allow emergency response while completing the EIAP. Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this

part. If possible, promptly notify HQ USAF/ILEV, for SAF/MIQ coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

#### § 989.35 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked at bases and MAJCOMs through an appropriate environmental management system.

(b) Proponents, EPFs, and public affairs offices may utilize the world wide web, in addition to more traditional means, to notify the public of availability of EAs and EISs. When possible, allow distribution of documents electronically. Public review comments should be required in writing, rather than by electronic mail.

(c) All documentation will be disposed of according to AFMAN 37-139, Records Disposition—Standards.<sup>15</sup>

#### § 989.36 Waivers.

In order to deal with unusual circumstances and to allow growth in the NEPA process, SAF/MIQ may grant waivers to those procedures contained in this instruction not required by NEPA or the CEQ Regulations. Such waivers shall not be used to limit compliance with NEPA or the CEQ Regulations but only to substitute other, more suitable procedures relative to the context of the particular action. Such waivers may also be granted on occasion to allow experimentation in procedures in order to allow growth in the EIAP. This authority may not be delegated.

#### § 989.37 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114. For analysis of Air Force actions abroad, 32 CFR part 187 will be followed.

#### § 989.38 Requirements for analysis abroad.

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

(a) For EAs dealing with global commons (geographic areas beyond the jurisdiction of the United States or any foreign nation) HQ USAF/ILEV will

review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

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

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

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

##### References—Legislative

- 10 U.S.C. 2687, Base Closures and Realignments
- 42 U.S.C. 4321-4347, National Environmental Policy Act of 1969
- 42 U.S.C. 7506(c), Clean Air Act Amendments of 1990
- 42 U.S.C. 13101(b), Pollution Prevention Act of 1990
- 43 U.S.C. 155-158, Engle Act

##### Executive Orders

- Executive Order 11988, Floodplain Management, May 24, 1977
- Executive Order 11990, Protection of Wetlands, May 24, 1977
- Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979
- Executive Order 12372, Intergovernmental Review of Federal Programs, July 14, 1982
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994

##### U.S. Government Agency Publications

- Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500-1508
- Department of Defense Directive (DoDD) 4715.1, Environmental Security
- Department of Defense Directive (DoDD) 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979 (32 CFR part 187)

<sup>13</sup> See footnote 1 to § 989.1.

<sup>14</sup> See footnote 1 to § 989.1.

<sup>15</sup> See footnote 1 to § 989.1.

Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis  
 DoDD 5000.1, Defense Acquisition  
 Department of Defense 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information Systems (MAIS) Acquisition Programs, with Change 1  
 Air Force Publications  
 AFD 32-70, Environmental Quality  
 AFI 32-1021, Planning and Programming of Facility Construction Projects  
 AFI 32-7002, Environmental Information Management System  
 AFI 32-7005, Environmental Protection Committees  
 AFI 32-7040, Air Quality Compliance  
 AFI 32-7062, Air Force Comprehensive Planning  
 AFI 32-7063, Air Installation Compatible Use Zone Program  
 AFI 32-7064, Integrated Natural Resources Management  
 AFI 32-7080, Pollution Prevention Program  
 AFI 35-202, Environmental Community Involvement  
 AFI 35-205, Air Force Security and Policy Review Program  
 AFMAN 37-139, Records Disposition—Standards  
 Abbreviations and Acronyms  
 Abbreviation or acronym, and definition:  
 AFCEE Air Force Center for Environmental Excellence  
 AFCEE/EC Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate  
 AFI Air Force Instruction  
 AFLSA/JACE Air Force Legal Services Agency/Environmental Law and Litigation Division  
 AFLSA/JAJT Air Force Legal Services Agency/Trial Judiciary Division  
 AFMAN Air Force Manual  
 AFMOA/SG Air Force Medical Operations Agency/Aerospace Medicine Office  
 AFD Air Force Policy Directive  
 AFRES Air Force Reserve  
 ANG Air National Guard  
 ANGRC Air National Guard Readiness Center  
 CATEX Categorical Exclusion  
 CEQ Council on Environmental Quality  
 CFR Code of Federal Regulations  
 DoD Department of Defense  
 DoDD Department of Defense Directive  
 DoDI Department of Defense Instruction  
 DOPAA Description of Proposed Action and Alternatives  
 EA Environmental Assessment  
 EIAP Environmental Impact Analysis Process  
 EIS Environmental Impact Statement  
 E.O. Executive Order  
 EPA Environmental Protection Agency  
 EPC Environmental Protection Committee  
 EPF Environmental Planning Function  
 ESOHC Environmental Safety and Occupational Health Committee  
 FAA Federal Aviation Administration  
 FEIS Final Environmental Impact Statement  
 FOA Field Operating Agency

FONPA Finding of No Practicable Alternative  
 FONSI Finding of No Significant Impact  
 GSA General Services Administration  
 HG AFMC Headquarters, Air Force Materiel Command  
 HQ USAF Headquarters, United States Air Force  
 HQ USAF/ILE The Air Force Civil Engineer  
 MAJCOM Major Command  
 MGM Materiel Group Manager  
 MOA Military Operating Area  
 MOU Memorandum of Understanding  
 MSL Mean Sea Level  
 NEPA National Environmental Policy Act of 1969  
 NGB-CF National Guard Bureau Air Directorate  
 NGB-JA National Guard Bureau Office of the Staff Judge Advocate  
 NGB-PA National Guard Bureau Office of Public Affairs  
 NOA Notice of Availability  
 NOI Notice of Intent  
 OSD Office of the Secretary of Defense  
 OSHA Occupational Safety and Health Administration  
 PDEIS Preliminary Draft Environmental Impact Statement  
 PGM Product Group Manager  
 REO Air Force Regional Environmental Office  
 ROD Record of Decision  
 SAF/AQR Deputy Assistant Secretary of the Air Force (Science, Technology, and Engineering)  
 SAF/GC Air Force General Counsel  
 SAF/LL Air Force Office of Legislative Liaison  
 SAF/MI Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment  
 SAF/MIQ Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)  
 SAF/PA Air Force Office of Public Affairs  
 SJA Staff Judge Advocate  
 SM Single Manager  
 SPD Single Program Director  
 SPOC Single Point of Contact  
 TDY Temporary Duty  
 U.S.C. United States Code  
 Terms

**Note:** All definitions in the CEQ Regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

*Description of Proposed Action and Alternatives (DOPAA)*—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action. The DOPAA often unfolds as writing progresses. The DOPAA can change during the internal scoping and public scoping process, especially as ideas and issues become clearer, and as new information makes changes necessary.

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

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

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

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

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

*Scoping*—A process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action. Scoping includes affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

*Single Manager*—Any one of the Air Force designated weapon system program managers, that include System Program Directors (SPDs), Product Group Managers (PGMs), and Materiel Group Managers (MGM).

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

**Attachment 2 to Part 989—Categorical Exclusions**

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

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

A2.2.1. Actions of greater scope or size than generally experienced for a particularly category of action.

A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A2.2.4. Use of unproved technology.

A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.2.8. Proposals with significant and adverse environmental effects on minority and low-income populations.

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

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

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

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

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

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

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

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

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

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

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

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

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

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

A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, not including GSA, including returning public domain lands to the Department of the Interior.

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

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

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

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

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

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

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

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of Defense Environmental Restoration Program (DERP) and Resource Conservation and Recovery Act (RCRA) corrective action sites. These activities include soil borings and sampling,

installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with legal agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

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

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

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts. The EPF must document application of this CATEX on AF Form 813.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts.

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

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

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

A2.3.36. Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level, and that also do not route air traffic over noise-

sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

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

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

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

#### A.3.1. General Information:

A3.1.1. The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings and assuring verbatim transcripts are accomplished.

A3.1.2. The EPF, with proponent, AFLSA/JAJT, and Public Affairs support, establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.).

A3.1.3. The procedures outlined below have proven themselves through many prior applications. However, there may be rare instances when circumstances warrant conducting public hearings under a different format, e.g., public/town meeting, information booths, third party moderator, etc. In these cases, forward a request with justification to deviate from these procedures to USAF/ILEVP for SAF/MIQ approval.

#### A3.2. Notice of Hearing (40 CFR 1506.6):

##### A3.2.1. Public Affairs officers:

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

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

A3.2.1.3. Place a newspaper display advertisement announcing the time and place of the hearing as well as other pertinent particulars.

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

A3.2.1.5. Develop and distribute news release.

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

A3.2.2.1. Because of the longer lead time required by the **Federal Register**, send out

notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

#### A3.2.3. The notice should include:

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

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

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

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

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

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

A3.2.3.7. A summary of the proposed action.

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

A3.3. Availability of the Draft EIS to the Public. The EPF makes copies of the Draft EIS available to the public at an Air Force installation and other reasonably accessible place in the vicinity of the proposed action and public hearing (e.g., public library).

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

#### A3.5. Hearing Officer:

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

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

A3.6. Record of the Hearing. The EIS preparation team must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The EIS preparation team should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The EIS preparation team should also append a list of persons who spoke at the hearing and

submitted written comments and a list of the organizations or interests they represent with addresses. The EIS preparation team must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

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

A3.7.1. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.2. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.3. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.4. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The EIS preparation team may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved

in debate the questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.5. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.6 Ending or Extending a Hearing. The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

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

attendees of the deadline for the commenting period of the Draft EIS.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

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## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Parts 1190 and 1191

#### Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Regulatory negotiation committee meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

**DATES:** The committee will meet on: Saturday, January 31, 1998, 2:00 p.m. to 6:00 p.m.; Sunday, February 1, 1998, 8:30 a.m. to 5:00 p.m.; and Monday, February 2, 1998, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The committee will meet at the Princess Hotel, 1404 West Vacation Road, San Diego, California.

**FOR FURTHER INFORMATION CONTACT:** Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 extension 34 (Voice); (202) 272-5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (<http://www.access-board.gov/rules/outdoor.htm>).

**SUPPLEMENTARY INFORMATION:** In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62

FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by January 15, 1998, by calling (202) 272-5434 extension 34 (voice) or (202) 272-5449 (TTY).

**Lawrence W. Roffee,**

*Executive Director.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA-203-0062; FRL-5940-7]

#### Approval and Promulgation of State

#### Implementation Plans; California; Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California relating to control measures for attaining the ozone national ambient air quality standards (NAAQS) in the Ventura County nonattainment area. The submittal revises control measure adoption schedules in the 1994 ozone SIP for Ventura County. EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA or the Act) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. **DATES:** Written comments on this proposal must be received by January 23, 1998.

**ADDRESSES:** Comments should be addressed to the USEPA contact listed below.

The rulemaking docket for this notice may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office 75 Hawthorne Street, San Francisco, CA 94105-3901

Copies of the SIP materials are also available for inspection at the addresses listed below: