

PROACT FACT SHEET



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The National Environmental Policy Act (NEPA)

Introduction

The National Environmental Policy Act of 1969 (NEPA) establishes a national environmental policy with goals for the protection, maintenance, and enhancement of the environment, and provides a process for implementing these goals within federal agencies. This policy recognizes humankind's impact on the biosphere and the importance of restoring and maintaining the overall quality of our natural environment. NEPA essentially encompasses sound planning practices designed to minimize damage to the environment. It provides federal agencies with a systematic, interdisciplinary approach to planning, thereby ensuring the "widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences." NEPA requires federal agencies to consider, as part of planning and decision-making processes, the impact(s) of their actions on the environment. NEPA's purpose is not to generate paperwork, but to foster agency action through informed decision-making.

The purpose of this fact sheet is to provide Air Force personnel with a general overview of NEPA and how it applies to Air Force activities. It includes a discussion of the Environmental Impact Analysis Process (EIAP), which is the Air Force's program for implementing the provisions of NEPA, points of contact for obtaining assistance applying EIAP provisions, and sources of additional information.

Background

The main objective of NEPA is to create a better decision-making process for implementing projects and programs that could adversely impact the environment. NEPA requires federal agencies to incorporate environmental considerations in their planning and decision-making process, and requires the use of a systematic and interdisciplinary approach. Specifically, federal agencies must formally assess the environmental impacts of their actions and consider all reasonable alternatives. Section 101(b) of NEPA states "it is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy to

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improve and coordinate federal plans, functions, program, and resources" in order to assure safe and healthful surroundings for all Americans; preserve important historic, cultural and natural aspects of our national heritage; achieve a balance between population and resource; and enhance the quality of renewable resources. To meet this responsibility, NEPA prescribes certain procedural measures to ensure that unquantified environmental qualities and values may be given appropriate consideration along with economic and technical considerations. For any major federal action that has the potential to significantly affect the quality of the environment, the responsible official must prepare a detailed statement that identifies environmental impacts and evaluates reasonable alternatives prior to making a decision and implementing the action.

The Council on Environmental Quality

NEPA established the Council on Environmental Quality (CEQ), which is charged with the development of implementing regulations and ensuring federal agency compliance with NEPA. In 1978, the CEQ promulgated guidelines to implement NEPA, and in November 1979 these guidelines became regulations (40 Code of Federal Regulations (CFR) Parts 1500-1508) referred to in this document as the "CEQ regulations," which are applicable to all federal agencies.

The CEQ regulations mandate that all federal agencies use a systematic interdisciplinary approach to environmental planning and the evaluation of actions that may affect the environment. The CEQ regulations outline a detailed process for preparing Environmental Impact Statements (EISs) (discussed in detail below) and discuss the use of Environmental Assessments (EAs). This process is intended to assist federal agency officials in decision-making based on an understanding of the potential environmental consequences, and to take actions that protect, restore, and enhance the environment. The level of analysis required to

meet NEPA requirements will depend on the scope and severity of the environmental impacts threatened by the proposed action.

The Environmental Impact Analysis Process (EIAP)

Air Force Policy Directive 32-70, Environmental Quality, 20 July 1994, states “the Air Force will conduct its activities according to national environmental policy,” and all personnel are accountable for the environmental consequences of their actions. The Air Force, in its mission to achieve and maintain environmental quality, is committed to conserving natural and cultural resources through effective planning and integrating, into all levels of decision-making, the environmental consequences of proposed actions and alternatives.

32 CFR 989

The Air Force, like all federal agencies, is required to develop its own rules implementing the CEQ regulations. Air Force Instruction 32-7061, as promulgated at 32 CFR Part 989, Environmental Impact Analysis Process (EIAP), provides the required procedures for implementing the Air Force’s NEPA compliance program.

The EIAP regulation, 32 CFR Part 989, outlines the steps for the analysis of environmental impacts on installations in the United States and abroad. The policies and procedures set forth in the instruction and regulation are designed to ensure Air Force compliance with NEPA and the CEQ regulations.

At every level of command, the Environmental Planning Function (EPF) is one of the key Air Force participants in the EIAP. The EPF can be the Environmental Flight (CEV) within a Civil Engineer Squadron, a separate Environmental Management office at an installation, the CEV at Major Commands (MAJCOMS), or an equivalent environmental function located with a program office. Any office formally initiating an action (the “proponent”) must notify the EPF of the proposed action by submitting an AF Form 813 to begin the environmental impact analysis process.

AF Form 813

The AF Form 813, Request for Environmental Impact Analysis, is used for documenting the need to conduct an environmental analysis or the application of certain Categorical Exclusions (CATEXs). The proponent of the proposed action completes Section I of the form and submits it to the EPF for review. Section I

describes the purpose and need for the proposed action, the nature of the proposed action, alternatives, and the need for the environmental analysis. It is critical that the information is accurate since the form establishes the rationale for considering or not considering environmental impacts. AF Form 813s must be retained with EAs or EISs to record the “focusing of environmental issues.”

Levels of Environmental Analysis

After the AF Form 813 has been reviewed by the EPF, the proposed action will meet with one of three outcomes: the action may qualify for a CATEX; it may require the completion of an environmental assessment (EA); or it may require the completion of an environmental impact statement (EIS). The level of analysis conducted is largely determined by the nature of the action, and the potential for environmental impacts. Other factors include the level of controversy, and any existing environmental damage. The three levels of analysis, as specified in the CEQ regulations, are illustrated in Figure 1 and discussed in the following sections.

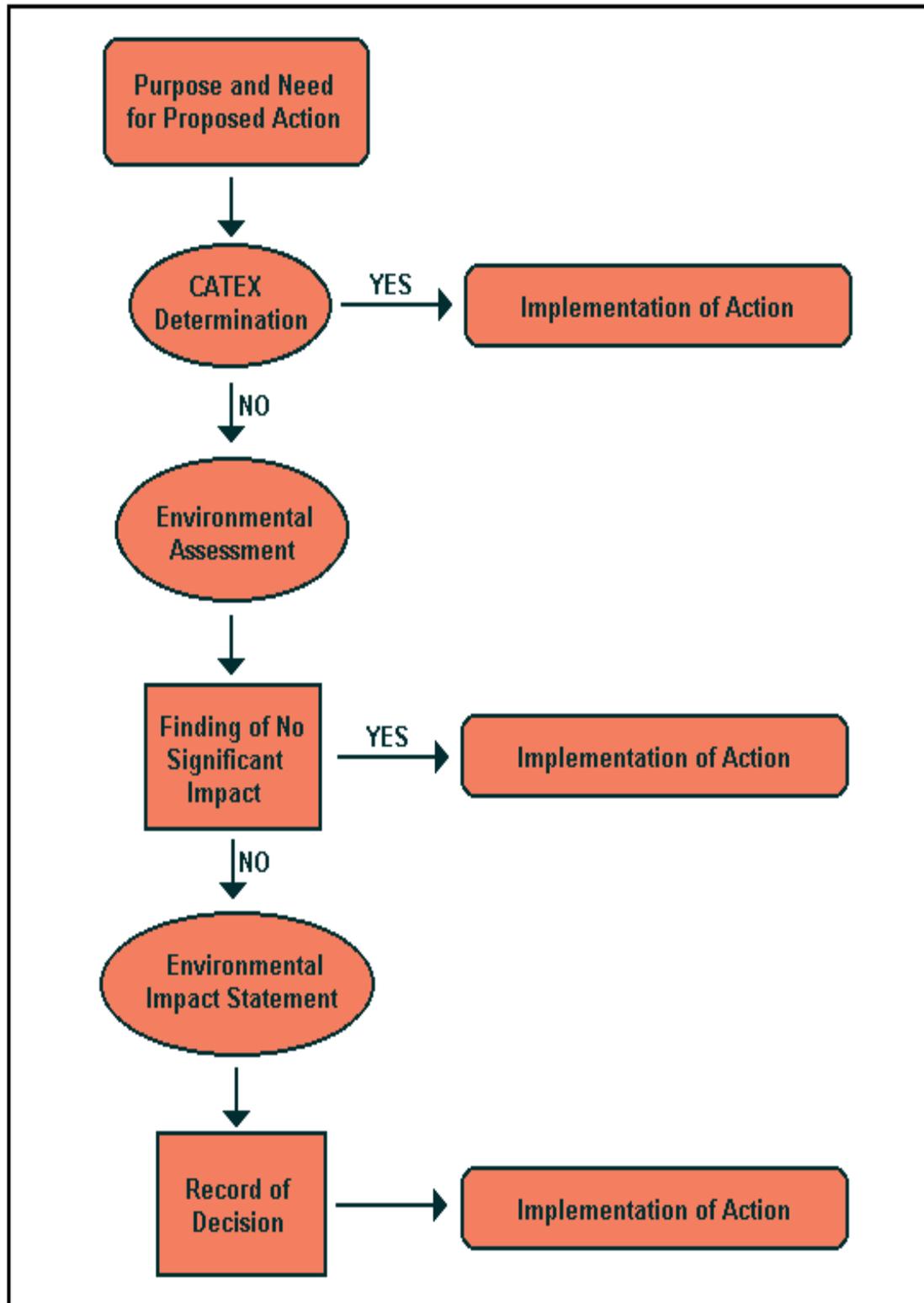
Categorical Exclusions

A CATEX is an action that has been previously demonstrated to have no potential for significant effect, individually or cumulatively, on the environment. Federal agencies are authorized to submit a list of actions believed to qualify for categorical exclusions to the CEQ for approval. The list of Air Force approved CATEXs is contained in 32 CFR 989, Attachment B. **Note: Supplements to 32 CFR Part 989 may not add CATEXs or expand the scope of any existing approved CATEX.**

An action that meets the approved CATEX criteria needs no further environmental analysis and is relieved of the requirement for an EA or EIS under NEPA. However, if the action involves unique circumstances, such as the presence of endangered species, wetlands, floodplains, historical sites, or a high level of public interest, a CATEX is not applicable and further analysis of the potential impacts would be required.

The final decision to categorically exclude a proposed action is determined by the EPF or other authorized decision-maker. Note: SAF/AQRE is the sole approval authority for acquisition-related actions. Although a CATEX action may not require further environmental analysis under NEPA, the action is still subject to compliance with other applicable environmental regulations such as the need to meet Clean Air Act Air Conformity requirements. If it is decided that the proposed action involves unique circumstances, or has the potential to affect the

Figure 1 - The Environmental Impact Analysis Process



environment, the EPF will deny the CATEX and further environmental analysis will be required.

Environmental Assessment

If a proposed action is not categorically excluded, but is one that does not usually require an environmental impact statement (EIS), an environmental assessment (EA) is prepared. In situations where it is not clear whether the action would result in significant impacts, an EA may be prepared to definitely determine if an EIS is required based on the analysis of environmental impacts. If significant impacts are not identified, the decision maker may sign a Finding of No Significant Impact (FONSI). In some instances, however, the preparation of an EA may be bypassed in favor of the preparation of an EIS if a proposed action is known to have significant impacts on the environment or is potentially controversial.

The information contained in a completed EA allows a threshold decision to be made regarding the proposed action and any identified alternatives. The EA discusses the need for the proposed action, possible alternatives including the no action alternative, the potential environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. The no action alternative must always be included as an alternative in an EA (and EIS). The no action alternative is used to establish a baseline for the current environmental conditions, without which a valid comparison between the proposed action and alternative actions could not be made.

The Air Force requires that an EA be approved by the Deputy Assistant Secretary of the Air Force for Environmental, Safety, and Occupational Health (SAF/IEE) when topics of special interest or importance are involved. The EPF must forward EAs requiring Clean Air Act General Conformity Determinations to SAF/IEE through the office of the Air Force Civil Engineer (HQ AF/ILEPB) for approval.

For Single Manager Acquisition Programs the proponent Single Manager for all programs, regardless of acquisition category, must comply with DoD Regulation 5000.2-R. SAF/AQR, the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. The Single Manager must obtain the appropriate Product Center Environmental Protection Committee (EPC) approval prior to forwarding necessary EIAP documents (i.e. Notices of Intent, CATEX's, preliminary draft and final EAs and EISs) to SAF/AQR.

In summary, an EA identifies the potential environmental impacts of a proposed action, possible alternatives, and determines if further environmental analysis is required. In the final analysis, every EA must be resolved with a Finding of No Significant Impact (FONSI), a determination that an EIS is required, or a no action decision. In all cases, the proponent is the final governing agent and must be prepared to defend its actions and decisions as being in compliance with applicable CEQ regulations.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) documents why an action would not have a significant effect on the environment, and therefore, would not require further environmental analysis. A FONSI is a factual statement of the finding why no significant environmental impacts will occur as a result of an action. 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 when the document must be signed by SAF/IEE.

A FONSI must summarize the EA, including any mitigation measures, or preferably, have the EA attached. A final draft of the EA and the unsigned FONSI must be made available to the affected public, organizations and individuals requesting them, and to whomever the proponent or the EPF has reason to believe is interested in the action. Before the FONSI is signed and any action implemented, the EPF and proponent must 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. Note: Public review and comments are not required if public disclosure is prohibited for security classification reasons.

Environmental Impact Statement

An Environmental Impact Statement (EIS) is the most detailed and comprehensive environmental analysis specified under NEPA and focuses on significant environmental impacts of the proposed action and/or alternatives, including short-term and long-term effects. If the proposed action has the potential for significant degradation of the environment, poses a significant threat to public health or safety, is attended by substantial environmental controversy, and/or if a preceding EA for the action is not resolved with a FONSI, an EIS must be prepared for the proposed action.

Prior to the preparation of an EIS, a Notice of Intent (NOI) must be published in the Federal Register (FR)

as required under 40 CFR 1501.7, Scoping, 40 CFR 1508.22, Notice of Intent, and 32 CFR 989.17, Notice of Intent, and 989.18, Scoping. It is also required that the NOI be provided to newspapers and other media in the area potentially affected by the proposed action. The NOI announces to the public the intent of the Air Force to prepare an EIS for a project. After the NOI is published, the EPF initiates the public scoping process.

Scoping

The scoping process is designed to define the scope of issues that need to be addressed in the EIS. The goal is to de-emphasize insignificant issues and focus the scope of the analysis on significant issues. Scoping allows early and meaningful participation by the public. It must start prior to official public scoping meetings and continue through preparation of the draft EIS.

Methods of scoping range from soliciting written comments to conducting public scoping meetings. It is an iterative proactive process of communicating with the individual citizens; neighborhood, community and local leaders; public interest groups; congressional delegations; State, Tribal, and local governments; and federal agencies. Where it is anticipated the proposed action and its alternatives will have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, special efforts shall be made to reach these populations.

Draft and Final EIS Procedures

The EPF provides a Preliminary Draft EIS to HQ USAF/ILEPB for HQ USAF Environmental Protection Committee (EPC) review, and to HQ AFCEE/EC for technical review. After these reviews of the EIS are complete, the EPF makes any necessary revisions and forwards the Draft EIS to HQ USAF/ILEPB to ensure all security and policy reviews are completed and to certify releasability to the public. After necessary changes are made and the Draft EIS is approved, it is distributed through appropriate Air Force channels, congressional delegations, and interested agencies at least seven calendar days prior to the publication of a Notice of Availability (NOA) in the Federal Register. The installation or MAJCOM responsible for the document must make the Draft EIS available to anyone requesting a copy.

After a 45-day public comment period, the EPF prepares the Final EIS, which addresses comments received during the public review period. The Final EIS is processed in the same manner as the Draft,

and the availability of the Final EIS to the public is announced by a second NOA. The Final EIS is distributed to any organizations or individuals requesting a copy. The EPF need not respond to comments received during this period, but must consider them when making the final decision. The final decision is documented in the Record of Decision.

Record of Decision

A Record of Decision (ROD) is a public document formalizing the final course of action to be taken by the proponent. The ROD discusses all environmental alternatives considered in the EIS process, provides the rationale for the alternative selected, and explains why the other alternatives were not chosen. The ROD is prepared by the MAJCOM in accordance with 32 CFR 989.21. The final ROD is verified for accuracy by HQ USAF/ILEPB, and forwarded to the final Air Force decision-maker for signature.

Environmental Analysis Time Frame

CEQ Regulations do not set a strict time frame for the entire NEPA process. Instead, they encourage federal agencies to set time limits appropriate for individual actions consistent with the time intervals described in 40 CFR 1506.10 and to list factors in determining time limits. The Air Force has made the decision not to set specific time limits for the EIAP process, preferring instead that the analysis not be constrained by artificial limits. The time intervals set out in 40 CFR 1506.10 include the mandatory 45-day minimum for the public to comment on a draft EIS, and the mandatory period before the Record of Decision can be signed: no sooner than 90 days after the NOA of the Draft EIS is filed, or 30 days after the filing of the NOA for the Final EIS. Exceptions to these timing rules are described in detail in the CFR. The Air Force EIAP regulation, 32 CFR 989.19(c)(2), includes minimum timing requirements with regards to the public hearings. Public hearings should occur no sooner than 15 days after the publication of the Federal Register NOA, and at least 15 days before the end of the comment period.

Interaction with Other Environmental Laws

NEPA directly and indirectly interacts with various environmental statutes and regulations that need to be considered when performing an environmental analysis for an EA or EIS. CEQ regulations direct federal agencies to integrate NEPA with any other applicable environmental analyses, related surveys, and studies.

Implementing NEPA does not preclude compliance with other environmental laws, and failure to comply with all applicable regulations may result in unnecessary delays and possible enforcement actions. In addition, some States have enacted regulations similar to the CEQ regulations, and coordination with all local environmental officials and agencies should be established early in the process.

Actions Abroad

Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979, directs federal agencies to comply with the intent of NEPA and apply sound environmental decision-making principles in foreign countries. Department of Defense Directive (DoDD) 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, sets forth procedures for the analysis of environmental actions abroad.

Points-of-Contact for Assistance

Questions regarding conducting the EIAP can be directed to MAJCOM EIAP Program Managers, HQ AF/ILEPB staff, or the Technical Directorate, Headquarters Air Force Center for Environmental Excellence (HQ AFCEE/TD). AFCEE provides a complete array of environmental services to installations, MAJCOMs, and the Department of Defense. For assistance, contact Mr. Charles Brown, Physical Scientist, Installation Planning, HQ AFCEE/TDI, DSN 240-4203.

References

32 CFR Part 989, "Environmental Impact Analysis Process (EIAP)"
The National Environmental Policy Act
40 CFR Parts 1500-1508
CEQ NEPA Net, <http://ceq.eh.doe.gov/nepa/nepanet.htm>
NEPA Call-In, http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=11872&contentType=GSA_OVERVIEW

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