

SUBCHAPTERS I-K [RESERVED] SUBCHAPTER L—ENVIRONMENT

PART 187—ENVIRONMENTAL EFFECTS ABROAD OF MAJOR DEPARTMENT OF DEFENSE ACTIONS

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ENCLOSURE 1—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS

ENCLOSURE 2—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

AUTHORITY: Title 10 U.S.C. 131.

SOURCE: 44 FR 21786, Apr. 14, 1979, unless otherwise noted. Redesignated at 56 FR 64481, Dec. 10, 1991.

§187.1 Purpose.

Executive Order 12114 provides the exclusive and complete requirement for taking account of considerations with respect to actions that do significant harm to the environment of places *outside* the United States. This part provides policy and procedures to enable Department of Defense (DoD) officials to be informed and take account of environmental considerations when authorizing or approving certain major Federal actions that do significant harm to the environment of places *outside* the United States. Its sole objective is to establish internal procedures to achieve this purpose, and nothing in it shall be construed to create a cause of action. Guidance for taking account of considerations with respect to the environment of places *within* the United States is set out in 32 CFR part 188 (under rev.) That guidance is grounded on legal and policy requirements different from those applicable to this part.

[44 FR 21786, Apr. 14, 1979. Redesignated and amended at 56 FR 64481, Dec. 10, 1991]

§187.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense,

the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as “DoD components”).

§187.3 Definitions.

(a) *Environment* means the natural and physical environment, and it excludes social, economic, and other environments. Social and economic effects do not give rise to any requirements under this part.

(b) *Federal Action* means an action that is implemented or funded directly by the United States Government. It does not include actions in which the United States participates in an advisory, information-gathering, representational, or diplomatic capacity but does not implement or fund the action; actions taken by a foreign government or in a foreign country in which the United States is a beneficiary of the action, but does not implement or fund the action; or actions in which foreign governments use funds derived indirectly from United States funding.

(c) *Foreign Nation* means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. “Foreign nation” includes contiguous zones and fisheries zones of foreign nations. “Foreign government” in this context includes governments regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

(d) *Global Commons* are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

(e) *Major Action* means an action of considerable importance involving substantial expenditures of time, money, and resources, that affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area, and that is substantially different or a significant departure from other actions, previously analyzed with respect to environmental considerations and approved, with which the action under consideration may be associated. Deployment of ships, aircraft, or other mobile military equipment is not a major action for purposes of this part.

(f) *United States* means all States, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

§ 187.4 Policy.

(a) Executive Order 12114 is based on the authority vested in the President by the Constitution and the laws of the United States. The objective of the Order is to further foreign policy and national security interests while at the same time taking into consideration important environmental concerns.

(b) The Department of Defense acts with care in the global commons because the stewardship of these areas is shared by all the nations of the world. The Department of Defense will take account of environmental considerations when it acts in the global commons in accordance with procedures set out in Enclosure 1 and its attachment.

(c) The Department of Defense also acts with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. The Department of Defense will take account of environmental considerations in accordance with Enclosure 2 and its attachments when it acts in a foreign nation.

(d) Foreign policy considerations require coordination with the Department of State on communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this part.

Informal working-level communications and arrangements are not included in this coordination requirement. Consultation with the Department of State also is required in connection with the utilization of additional exemptions from this part as specified in paragraph C.3.b. of Enclosure 2. Coordination and consultation with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

(e) Executive Order 12114, implemented by this part prescribes the exclusive and complete procedural measures and other actions to be taken by the Department of Defense to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States.

§ 187.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall:

(1) Serve as the responsible Department of Defense official for policy matters under Executive Order 12114 and this part;

(2) Modify or supplement any of the enclosures to this part in a manner consistent with the policies set forth in this part;

(3) Maintain liaison with the Council on Environmental Quality with respect to environmental documents;

(4) Participate in determining whether a recommendation should be made to the President that a natural or ecological resource of global importance be designated for protection; and

(5) Consult with the Assistant Secretary of Defense (International Security Affairs) on significant or sensitive actions or decisions affecting relations with another nation.

(b) The *Assistant Secretary of Defense (International Security Affairs)* shall:

(1) Maintain liaison and conduct consultations with the Department of State as required under this part; and