

State, the Council on Environmental Quality, other interested Federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E.6., of this enclosure) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:  
(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change substantially the normal content of the environmental review;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export pro-

motion factors. This refers to the requirements to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DoD procedures (32 CFR 159) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this part.

## PART 188—ENVIRONMENTAL EFFECTS IN THE UNITED STATES OF DoD ACTIONS

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ENCLOSURE 1—DoD IMPLEMENTING PROCEDURES

ANNEX A—DoD LIST OF CATEGORICAL EXCLUSIONS

AUTHORITY: 42 U.S.C. 4321.

SOURCE: 44 FR 46842, Aug. 9, 1979, unless otherwise noted. Redesignated at 56 FR 64481, Dec. 10, 1991.

### § 188.1 Reissuance and purpose.

This part implements the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508), and provides policy and procedures to enable DoD officials to be informed of and take into account environmental considerations when considering the authorization or approval of major DoD actions in the United States. The CEQ regulations implement section 102(2) of the National Environmental Policy Act (NEPA) of 1969, Pub. L. No. 91-190 (1970), 42 U.S.C. 4321, 4331-4335, 4341-4347 (1976) (and Executive Order 11514, as amended).

### § 188.2 Applicability and scope.

(a) This part applies 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").

(b) This part is limited to DoD actions with environmental effects in the United States.

(c) The civil works activities under the jurisdiction of the Secretary of the Army and the Chief of Engineers are excluded from this part.

**§ 188.3 Definitions.**

(a) *United States* means all States, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. For the purpose of this Directive, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas.

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

**§ 188.4 Policy.**

(a) The Department of Defense must act with care to ensure to the maximum extent possible that, in carrying out its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. Care must be taken to ensure that, consistent with other considerations of national policy and with national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the

sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The Department of Defense shall:

(1) Assess environmental consequences of proposed DoD actions that could affect the quality of the environment in the United States in accordance with enclosure 1 and 40 CFR parts 1500–1508.

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment.

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to States, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Utilize ecological information in planning and developing resource-oriented projects.

**§ 188.5 Responsibilities.**

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall: (1) Serve as the responsible official for all DoD environmental matters;

(2) Modify or supplement enclosure 1 of this part, when required, in a manner consistent with the policies set forth here;

(3) Provide assistance in the preparation of environmental assessments and statements, and assign, in consultation with appropriate Assistant Secretaries of Defense and heads of DoD Components, lead agency responsibility to prepare environmental documentation when more than one DoD Component is involved and agreement among the Components cannot be reached;