

(9) Requests for special use airspace in accordance with AR 95-50 that require Federal Aviation Administration approval (new, renewal, or amendment).

(b) In addition to the above, certain activities supported by the Army through the following actions require proper environmental documentation:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government owned contractor operated industrial plants and section 801/802 Housing, Military Appropriations Act of 1984, construction, (via third-party contracting).

(2) Leases, easements, permits, licenses, certificates, or other entitlement for use (for example, grazing lease and grants of easement for highway right-of-way).

(3) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare the proper environmental documentation is that of the non-Army requester. If required, the requester will provide information needed for the Army review. The Army reviews and approves all environmental documentation before approving the request.

§ 651.9 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or Army and must prohibit, exempt, or make impossible full compliance with NEPA (40 CFR 1500.6). (See § 651.11 for security exemptions).

(b) *Emergencies.* (1) In the event of an emergency, the Army may need to take immediate actions that have environmental impacts, that may include immediate actions to promote national

defense or security and actions necessary for the protection of life or property. In such cases the HQDA proponent will notify the Army Environmental Office, which in turn will notify the Office of the Assistant Secretary of the Army, Installations and Logistics (OASA (I&L)) who will coordinate with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L)) regarding the emergency action. Time is of the essence so that OASA (I&L) may consult with the CEQ if necessary. A public affairs plan should be developed as soon as possible so that channels of communication remain open between the media, public, and the installation. In no event will Army delay an emergency action necessary for national defense, security, or preservation of human life or property to comply with this regulation or the CEQ regulations. State call-ups of ARNG during a natural disaster are excluded from this consultation requirement.

(2) These notifications apply only to actions necessary to control immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) After action reports may be required at the discretion of the OASA (I&L).

(c) *Categorical exclusions (CX).* These actions (subpart D and appendix A) normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a significant effect on the human environment. Qualification for a CX is described in subpart D of this regulation.

(d) *Environmental assessment (EA).* (See section for actions normally requiring an EA.)

(1) If the proposed action is adequately covered within an existing EA or EIS, prepare a REC to that effect. (See Figure 1).

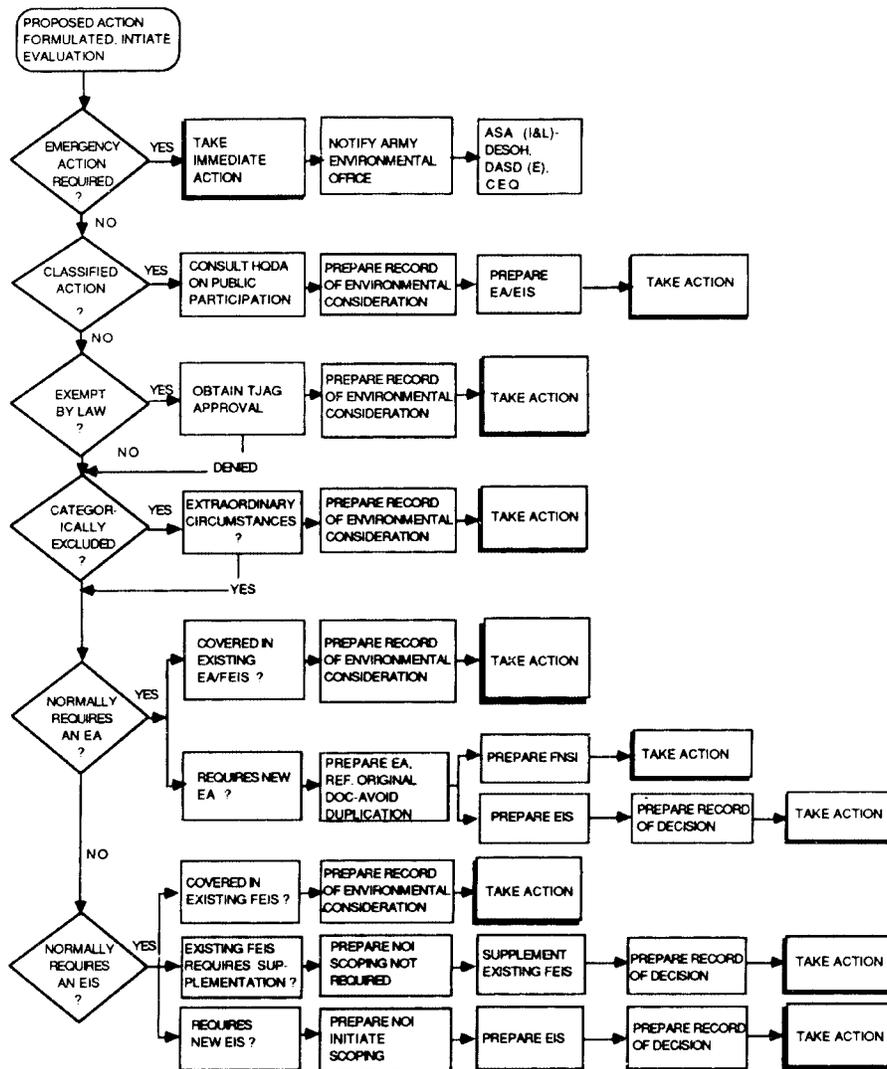


Figure 1. Flow chart summarizing process for determination of document requirements

(2) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, prepare a new environmental document that considers the new, modified, or missing information. Incorporate by reference, existing docu-

ments and publish the conclusion (FNSI or NOI).

(3) If the proposed action is not covered adequately in any existing EA or EIS, or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

(e) *Environmental Impact Statement (EIS)*. (See § 651.30 for actions normally requiring an EIS.)

(1) If it is determined that the action is covered adequately in a previously filed FEIS, the REC must so state, citing the applicable FEIS by name and date. The REC is then attached to the proponent's record copy of that FEIS. As a general rule, a FEIS older than 3 years cannot be used in this manner, but must be supplemented.

(2) If the proposed action is within the scope of an existing FEIS, but was not covered in that document or not covered adequately, then the proponent must prepare supplemental documentation to that FEIS.

(3) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

§ 651.10 Determining appropriate environmental documentation.

(a) The flowchart shown in Figure 1 summarizes the process for determining documentation requirements.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own record keeping for RECs and RODs. (See 40 CFR 1506.3 for procedures to follow when adopting other documents.)

(c) When an existing adequate EA or EIS is used in lieu of preparation of a new document, the REC should state the document title, date, and where it may be reviewed.

§ 651.11 Classified actions.

(a) For public dissemination of environmental documents containing classified information, AR 380-5 will be followed.

(b) Classified facts will be separated from unclassified facts and conclusions related to the proposed action. Unclassified portions of the action may then be processed routinely in accordance with this regulation. Classified portions will be kept separate for reviewers and decisionmakers with need-to-know as defined in AR 380-5 and (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess and document the environmental effects of the proposed action. The HQDA proponent, in coordination with the Army Environmental Office and the Deputy Chief of Staff for Intelligence, Security Division (DAMI-CIS), may select a review team. The team may be drawn from the Army agency or office not connected with the proponent agency, or from agencies outside the Army. The review team's purpose is to provide an external review of classified environmental documents.

§ 651.12 Integration with Army planning.

(a) *Early integration.* The Army goal to integrate environmental reviews concurrently with other Army planning and decisionmaking actions avoids delays in mission accomplishments. To achieve this goal, proponents should provide complete environmental documents for early inclusion with any recommendation or report to decisionmakers (Master Plan, Natural Resource Management Plan, Remedial Investigation, FS, etc.). The same documents will be forwarded to the planners, designers, and/or implementers so that recommendations and mitigations on which the decision was based may be carried out.

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in ensuring that environmental values are integrated in the planning and decision processes. It is important to remember that next to the project itself, a properly prepared EIS may require the longest time to complete.

(1) *Categorical exclusions (CX).* When a proposed action is categorically excluded from further environmental review (subpart D and appendix A), the proponent may proceed immediately with that action.

(2) *Findings of no significant impact (FNSI).*

(i) If the proposed action is one of national concern, is unprecedented, or normally requires an EIS, the proponent will make the EA and FNSI available for public review 30 or more days prior to making a final decision.