

Department of Justice

will require the preparation of an environmental assessment unless the proposal will clearly have a significant environmental impact in which case an environmental impact statement can be initiated immediately without the preparation of an environmental assessment.

§91.57 Actions that normally require the preparation of an environmental impact statement.

Significant impact. For the proposed construction of a new correctional facility or the proposed expansion of an existing facility, if the proposal is large or complex and/or controversial because of the nature of possible environmental impacts, and/or if any EA determines that the project will have a significant impact on the environment, an environmental impact statement (EIS) will be required. For those projects that clearly will have significant environmental impact, a grantee can save time and resources by initiating the EIS immediately without going through the EA process.

ENVIRONMENTAL REVIEW PROCEDURES

§91.58 Timing of the environmental review process.

(a) *Initial planning and site selection phase.* The NEPA procedures must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin.

(b) *Early consultation with OJP.* As grantees identify proposed, new projects, the grantees must inform OJP and after consulting OJP's *Program Guidance on Environmental Protection Requirements*, must recommend to OJP whether:

- (1) The proposed project meets the criteria of a categorical exclusion;
- (2) An environmental assessment should be initiated;
- (3) Because of the project size and/or anticipated environmental impacts, an environmental impact statement should be initiated.

(c) *Design phase.* Projects currently in the planning and design phase must complete the NEPA procedures and no further decisions or new commitments

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of resources can be made on these projects by the State or local entity that would either have an adverse impact on the environment or limit the choice of reasonable alternative sites.

(d) *Prohibited pre-analysis activities.* None of the following actions can be taken until the NEPA analysis is completed for the affected project:

- (1) Starting construction;
- (2) Accepting construction bids;
- (3) Advertising for construction bids;
- (4) Initiating the development of or approving final plans and specifications; or
- (5) Purchasing property.

(e) *Ongoing or completed construction projects.* For grant-funded projects under construction, OJP will work with the States to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. For completed grant-funded projects, OJP will work with the States to determine whether those projects may pose continuing environmental problems. For example, NEPA issues may exist due to excessive noise, light pollution, excessive water consumption or draw down on an important stream, or adverse visual impact due to an inappropriate facade color in an environmentally scenic area. Consequently, performing an analysis for those VOI/TIS VOI/TIS projects for which construction is completed may still serve the useful purpose of determining the extent of a project's continuing adverse environmental impacts, and the feasibility of mitigation measures.

(f) *Avoiding duplication of efforts.* If an EA or EIS was completed on an original structure, any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated in any required environmental impact analysis for proposed modifications or additions to that structure.

§91.59 OJP's responsibilities.

(a) *In general.* All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain

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with OJP. Therefore, OJP, as the Federal agency sponsoring the major federal action, shall determine if a proposed project qualifies for a categorical exclusion, if a finding of no significant impact can be issued based on the EA, or if an EIS will be required.

(b) *Specific duties.* As part of its role in the NEPA process, OJP shall:

(1) Issue guidance on the preparation of environmental documents and the NEPA process.

(2) Review all draft documents.

(3) Participate in giving notice to state and federal agencies, as well as to the public, and attend public meetings with the grantee, as appropriate.

(4) Identify and solicit appropriate state, local, and tribal agencies to be a cooperating or joint lead agency, as appropriate.

(5) Prepare a written assessment of any environmental impacts that another state or federal land management or environmental protection agency believes have not been adequately addressed through the NEPA process.

(6) Monitor implementation by the states to ensure the completion of any required mitigation measures.

(7) Develop a sample Statement of Work for preparing an EIS that States employing their own contractor can use to ensure that the services provided meet the requirements.

§91.60 Grantee's responsibilities.

Specific duties. As part of its role in the NEPA process, the grantee agency must:

(a) Work closely with OJP on the development and review of the environmental documents, and follow the NEPA process, with the full participation of OJP.

(b) Issue the documents for public comment jointly with OJP.

(c) Solicit comment from other state and federal agencies, interested organizations, and the public.

(d) Refrain from purchasing land, beginning bidding process, or starting construction on any project until all environmental work has been completed.

(e) Complete a project Status Report form for all projects under construc-

tion or completed prior to the effective date of this subpart.

(f) Ensure that appropriate environmental analysis, as determined by OJP, is completed for all projects and that appropriate alternatives are considered and mitigation measures are implemented to reduce the impact of identified environmental impacts, if any.

(g) Identify and inform OJP of all applicable state and local environmental impact review requirements.

(h) Notify all subgrantees of the requirements of this subpart in the initial planning and site selection phase.

§91.61 Subgrantee's responsibilities.

If delegated by the grantee, the subgrantee shall:

(a) Prepare (if the required expertise exists) or contract for the preparation of an environmental assessment (EA); and

(b) Submit all environmental assessments through the grantee to OJP for review and the issuance of a draft finding of no significant impact (FONSI) or a determination that an environmental impact statement (EIS) is required. If OJP issues a draft FONSI, the grantee agency shall make the draft FONSI and the underlying EA available for public comment.

§91.62 Preparing an Environmental Assessment.

(a) *In general.* An Environmental Assessment (EA) is a concise public document that provides sufficient evidence and analysis for determining whether OJP should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Completing an EA requires considering all potential impacts associated with the construction of the correctional facility project, its operation and maintenance, any related projects including those off-site, and the attainment of