

**Department of Justice**

**§ 61.1**

- (6) Department of Transportation:  
U.S. Coast Guard  
Office of Inspector General, Department of Transportation
- (7) Department of the Treasury:  
Bureau of Alcohol, Tobacco, and Firearms  
Executive Protective Service  
Internal Revenue Service  
Criminal Investigation Division  
Internal Security Division, Inspection Service  
U.S. Customs Service  
U.S. Secret Service
- (8) U.S. Postal Service:  
Inspection Service  
Office of Inspector General
- (9) Department of Commerce: Office of Export Enforcement
- (10) Small Business Administration: Investigations Division of the Office of Inspector General
- (11) Department of State: Diplomatic Security Service
- (12) Department of Labor: Office of Investigations and Office of Labor Racketeering of the Office of Inspector General
- (13) General Services Administration: Office of Inspector General
- (14) Department of Housing and Urban Development: Office of Inspector General
- (15) Department of the Interior: Office of Inspector General
- (16) Veterans Administration: Office of Inspector General
- (17) Environmental Protection Agency: Office of Criminal Investigations
- (18) Social Security Administration, Office of Inspector General
  - (b) *Local Law Enforcement Agencies:*
    - (1) District of Columbia Metropolitan Police Department
    - (2) Law Enforcement Forces and Customs Agencies of Guam, The Virgin Islands, and the Canal Zone.

[Order No. 826-79, 44 FR 21785, Apr. 12, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT**

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AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order No. 11991.

SOURCE: Order No. 927-81, 46 FR 7953, Jan. 26, 1981, unless otherwise noted.

**Subpart A—General**

**§ 61.1 Background.**

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such

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goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on proposals for legislation significantly affecting the quality of the human environment and on other major federal actions significantly affecting the quality of the human environment.

(b) Executive Order No. 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations, 40 CFR parts 1500–1508, (“The NEPA regulations”). These regulations provide that each federal agency shall, as necessary, adopt implementing procedures to supplement the regulations. The NEPA regulations identify those sections of the regulations which must be addressed in agency procedures.

### §61.2 Purpose.

The purpose of this part is to establish Department of Justice procedures which supplement the relevant provisions of the NEPA regulations and to provide for the implementation of those provisions identified in 40 CFR 1507.3(b).

### §61.3 Applicability.

The procedures set forth in this part, with the exception of the appendices, apply to all organizational elements of the Department of Justice. Internal procedures applicable, respectively, to the Bureau of Prisons, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Office of Justice Assistance, Research and Statistics are set forth in the appendices to this part, for informational purposes.

### §61.4 Major federal action.

The NEPA regulations define “major federal action.” “Major federal action” does not include action taken by the Department of Justice within the framework of judicial or administrative enforcement proceedings or civil or criminal litigation, including but not limited to the submission of consent or settlement agreements and in-

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vestigations. Neither does “major federal action” include the rendering of legal advice.

## Subpart B—Implementing Procedures

### §61.5 Typical classes of action.

(a) The NEPA regulations require agencies to establish three typical classes of action for similar treatment under NEPA. These classes are: actions normally requiring environmental impact statements (EIS), actions normally not requiring assessments or EIS, and actions normally requiring assessments but not necessarily EIS. Typical Department of Justice actions falling within each class have been identified as follows:

(1) *Actions normally requiring EIS.* None, except as noted in the appendices to this part.

(2) *Actions normally not requiring assessments or EIS.* Actions not significantly affecting the human environment.

(3) *Actions normally requiring assessments but not necessarily EIS.* (i) Proposals for major federal action;

(ii) Proposals for legislation developed by or with the significant cooperation and support of the Department of Justice and for which the Department has primary responsibility for the subject matter.

(b) The Department of Justice shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

### §61.6 Consideration of environmental documents in decisionmaking.

The NEPA regulations contain requirements to ensure adequate consideration of environmental documents in agency decisionmaking. To implement these requirements, the Department of Justice shall:

(a) Consider from the earliest possible point in the process all relevant

environmental documents in evaluating proposals for Department action;

(b) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Department review processes;

(c) Consider those alternatives encompassed by the range of alternatives discussed when evaluating proposals for Department action, or if it is desirable to consider substantially different alternatives, first supplement the environmental document to include analysis of the additional alternatives;

(d) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

#### § 61.7 Legislative proposals.

(a) Each subunit of the Department of Justice which develops or significantly cooperates and supports a bill or legislative proposal to Congress which may have an effect on the environment shall, in the early stages of development of the bill or proposal, undertake an assessment to determine whether the legislation will significantly affect the environment. The Office of Legislative Affairs shall monitor legislative proposals to assure that Department procedures for legislation are complied with. Requests for appropriations need not be so analyzed.

(b) If the Department of Justice has primary responsibility for the subject matter involved and if the subunit affected finds that the bill or legislative proposal has a significant impact on the environment, that subunit shall prepare a legislative environmental impact statement in compliance with 40 CFR 1506.8.

#### § 61.8 Classified proposals.

If an environmental document includes classified matter, a version containing only unclassified material shall be prepared unless the head of the office, board, bureau or division determines that preparation of an unclassified version is not feasible.

#### § 61.9 Emergencies.

CEQ shall be consulted when emergency circumstances make it necessary

to take a major federal action with significant environmental impact without following otherwise applicable procedural requirements under NEPA.

#### § 61.10 Ensuring Department NEPA compliance.

The Land and Natural Resources Division shall have final responsibility for ensuring compliance with the requirements of the procedures set forth in this part.

#### § 61.11 Environmental information.

Interested persons may contact the Land and Natural Resources Division for information regarding Department Justice compliance with NEPA.

#### APPENDIX A TO PART 61—BUREAU OF PRISONS PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. *Authority:* (CEQ Regulations) NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977.)

2. *Purpose:* This guide shall apply to efforts associated with the leasing, purchase, design, construction, management, operation and maintenance of new and existing Bureau of Prisons facilities as well as the closing of existing Bureau of Prisons institutions. These procedures shall be used by the Regional Facilities Administration staff as well as the Central Office of Facilities Development and Operations staff. Activities concerning Bureau of Prisons compliance with NEPA shall be handled by and coordinated with these staff members and coordinated by Central Office Personnel. (Reference shall be made to Part 1507—Agency Compliance of the CEQ Regulations.)

3. *Agency Description:* The Bureau of Prisons, a component of the U.S. Department of Justice, is responsible for providing custody and care to committed Federal offenders in an integrated system of correctional institutions across the nation.

The Bureau of Prisons performs its mission of protecting society by implementing the judgments of the Federal courts and safeguarding Federal offenders committed to the custody of the Attorney General.

The administration of the Federal Prison System consists of six divisions. The central

office in Washington, DC, is supplemented by five regional offices located in Atlanta, San Francisco, Dallas, Kansas City, and Philadelphia.

4. (Reference: §1501.2(d)(1)—CEQ Regulations) The Bureau of Prisons shall make available the necessary technical staff to review proposals and prepare feasibility studies for facilities under consideration for possible use as Federal correctional institutions. (Reference: §1501.2(d)(2)—CEQ Regulations) At the appropriate time after project funding approval, the Bureau of Prisons, having identified a preferred general area for a new facility, will inform the members of Congress representing the affected locale of the intent to pursue the establishment of a Federal correctional institution in the area. This activation might include but not be limited to: (1) The construction of a new facility; (2) or Surplus Federal, state, or local facility to the Bureau of Prisons for prior use. The Bureau of Prisons shall advise and inform interested parties concerning proposed plans which might result in implementation of the NEPA regulations. After initial informal contacts have been made, the Bureau of Prisons will with the aid of local area officials, begin to identify desired locations for the proposed new facility. In the event of proposed activation of an existing facility for prison use, the Bureau of Prisons shall seek initial involvement among local officials and advice on alternative courses of action.

In either case, if the issues appear significantly controversial, an informal public hearing will be held to present the issues to the community and seek their involvement in the planning process. Upon completion of the preliminary groundwork described above, the Bureau of Prisons will issue an A-95 letter of intent to (1) either file an EIS; (2) file an EIA; or (3) discontinue the efforts of locating a facility in the proposed area.

5. *Public Involvement:* (Reference: Part 1506.6(3)—CEQ Regulations) Information regarding the policies of the Bureau of Prisons for implementing the NEPA process can be obtained from: Bureau of Prisons Facilities Development and Operations Office, 320 First Street, NW., Washington, DC 20534.

6. *Supplemental Statements:* (Reference: Part 1502.9(c)(3)—CEQ Regulations) If it is necessary to prepare a supplement to a Draft or Final Environmental Impact Statement, the supplement shall be introduced into the project administrative record.

7. *Bureau of Prisons Decisionmaking Procedures:* (Reference: Part 1501.1 (a) through (e)—CEQ Regulations) Major decision points likely to involve the NEPA process:

- (1) Construction of a new Federal correctional institution.
- (2) Closing of an existing Federal correctional institution.

(3) Activation of a surplus facility for conversion to a Federal correctional institution.

(4) Significant change from the original mission of a Federal correctional institution.

(5) New construction at an existing Federal correctional institution which might significantly impact upon the existing community environment.

When the inclusion of certain voluminous data in environmental documents would prove impractical, the Bureau of Prisons will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in Environmental Impact Statements, and upon written request or court order copies of specified material will be provided. A charge may be made for copying, in accordance with current Department of Justice guidelines for reproduction of records.

Decisionmakers shall verify the consideration of all available options in the EIS with a comparative analysis of the alternatives to be considered in the decisionmaking process.

8. *Those Actions Which Normally Do Require Environmental Impact Statements:* (Reference: §1507.3(b)(2)(ii)—CEQ Regulations) (1) New Federal correctional institution construction projects.

(2) Acquisition of surplus facilities for conversion to Federal correctional institutions, if the impact upon the quality of the human environment is likely to be significant.

(3) The closing of an existing Federal correctional institution, if that is likely to have a significant impact upon the quality of the human environment.

(4) Significant change from the original mission of a Federal correctional institution when the issue is likely to have an impact upon the quality of the human environment.

(5) New construction at an existing Federal correctional institution which would significantly affect the physical capacity, when the action is likely to have an impact upon the quality of the human environment.

(6) New construction at an existing Federal correctional institution which would significantly impact upon the quality of the community environment.

9. *Those Actions Which Normally do not Require Either an Environmental Impact Statement or an Environmental Assessment:* (Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations) (1) Increase or decrease in population of a facility, above or below its physical capacity.

(2) Construction projects for existing facilities, including but not limited to: additions and remodeling; replacement of building systems and components; maintenance and operations, repairs, and general improvements; when such projects do not significantly alter the program of the facility or

significantly impact upon the quality of the environment in the community.

(3) Contracts for halfway houses, community corrections centers, comprehensive sanction centers, community detention centers, or other similar facilities.

10. *Those Actions Which Normally Require Environmental Assessments but not Necessarily Environmental Impact Statements:* (Reference: § 1507.3(b)(2)(iii)—CEQ Regulations) (1) Acquisition of surplus facilities for conversion to Federal correctional institution.

(2) Construction of additional facilities at an existing institution when the impact on the local environment is not seen to be significant, but when the alteration of programs or operations may be controversial.

(3) The closing of an institution or significant reduction in population of an institution when the impact on the local environment is not seen to be significant.

11. *Emergency Actions:* (Reference: Part 1506.11—CEQ Regulations). After consultation with the Council on Environmental Quality regarding alternative courses of action, the Bureau of Prisons may take action without observing the provisions of the CEQ Regulations and these Bureau of Prisons Procedures in the following cases:

(1) When the replacement of suddenly unavailable local utilities services, and/or resources, due to circumstances beyond the control of the Bureau of Prisons, is vital to the lives and safety of inmates and staff or protection of U.S. Government property.

(2) When unforeseen circumstances, such as greatly increased judicial commitments, suddenly dictate the activation of facilities to house increased numbers of Federal offenders and detainees significantly above the physical capacity of the combined Bureau of Prisons facilities in order to insure the lives and safety of inmates and staff or protection of U.S. Government property.

(3) When the sudden destruction of or damage to institutions dictates immediate re-

placement in order to protect the lives and safety of inmates and staff and protection of U.S. Government property.

12. Review.

(1) If a proposed action is not covered by Sections 8 through 10 of this appendix, the Bureau of Prisons will independently determine whether to prepare either an environmental impact statement or an environmental assessment.

(2) When a proposed action that could be classified as a categorical exclusion under Section 9 of this appendix involves extraordinary circumstances that may affect the environment, the Bureau shall conduct appropriate environmental studies to determine if the categorical exclusion classification is proper for that proposed action.

[Order No. 927-81, 46 FR 7953, Jan. 26, 1981, as amended by Order No. 2142-98, 63 FR 11121, Mar. 6, 1998]

APPENDIX B TO PART 61—DRUG ENFORCEMENT ADMINISTRATION PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. Applicability.

2. Typical Classes of Action Requiring Similar Treatment Under NEPA.

3. Environmental Information.

1. *Applicability.*

This part applies to all organizational elements of the Drug Enforcement Administration [DEA].

2. *Typical Classes of Action Requiring Similar Treatment Under NEPA.*

(a) Section 1507.3(c)(2) in conjunction with §1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS	(2) Actions normally not requiring environmental assessments or EIS (Categorical exclusions)	(3) Actions normally requiring environmental assessments but not necessarily EIS
None .....	Scheduling of drugs as controlled substances .....	Chemical eradication of plant species from which controlled substances may be extracted.
	Establishing quotas for controlled substances. Registration of persons authorized to handle controlled substances. Storage and destruction of controlled substances. Manual eradication of plant species from which controlled substances may be extracted.	

(b) For the principal DEA program requiring environmental review, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key agency officials or offices re-

quired to consider environmental documents in their decisionmaking.

Principal program	Start of NEPA process	Completion of NEPA process	Key officials or offices required to consider environmental documents
Eradication of plant species from which controlled substances may be extracted.	Prepare an environmental assessment.	Final review of environmental assessment or Environmental Impact Statement.	Office of Science and Technology.

(c) The DEA shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action in (a) above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

3. *Environmental Information*

Interested persons may contact the Office of Science and Technology for information regarding the DEA compliance with NEPA.

APPENDIX C TO PART 61—IMMIGRATION AND NATURALIZATION SERVICE PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. *General.* These procedures are published pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

2. *Purpose.* These procedures shall apply to efforts associated with the leasing, purchase, design, construction, and maintenance of new and existing INS facilities. All activities concerning the Immigration and Naturalization Service's compliance with NEPA shall be coordinated with Central Office Engineering staff.

3. *Agency Description.* The INS administers and enforces the immigration and nationality laws. This includes determining the admissibility of persons seeking entry into the United States and adjudicating requests for benefits and privileges under the immigration and nationality laws. The enforcement actions of INS involve the prevention of illegal entry of persons into the United States and the investigation and apprehension of aliens already in the country who because of inadmissibility at entry or misconduct committed following entry may be subject to deportation.

In carrying out its statutory enforcement responsibilities, the INS is authorized to arrest and detain aliens believed to be deport-

able and to effectuate removal from the U.S. of aliens found deportable after hearing.

4. *Designation of Responsible Official.* The Chief Engineer, Facilities and Engineering Branch shall be the liaison official for INS with the Council on Environmental Quality, the Environmental Protection Agency, and the other departments and agencies concerning environmental matters. Duties of the Chief Engineer include:

(a) Insuring compliance with the requirements of NEPA and that the actions with respect to the fulfillment of NEPA are coordinated;

(b) Providing for procedural and substantive training on environmental issues, policy, procedures and clearance requirements;

(c) Providing guidance in the preparation and processing of Environmental Impact Statements; and

(d) Participating in policy formulation, as necessary, in the application of the requirements of the National Environmental Policy Act of 1969.

5. *NEPA and INS Planning.* (a) INS will make available to the public proposals and feasibility studies for facilities under consideration for possible use as INS facilities.

(b) Interested parties identified as such by the local clearinghouse (as established by the Office of Management and Budget Circular No. A-95) will be advised and informed concerning proposed plans which might involve NEPA regulations.

(c) Upon completion of the preliminary groundwork described above, INS will issue an A-95 Letter of Intent to:

(1) File an Environmental Impact Assessment (EIA);

(2) File an Environmental Impact Statement (EIS). (Reference: 1501.2—CEQ Regulations.)

6. *Public Involvement.* Information regarding the policies of INS for implementing the NEPA process can be obtained from: Immigration and Naturalization Service, Facilities and Engineering Branch, 425 I Street NW., Washington, DC 20536. (Reference: Part 1506.6(3)—CEQ Regulations.)

7. *Supplemental Statements.* If it is necessary to prepare a supplement to a draft or a Final Environmental Impact Statement, the supplement shall be introduced into the administrative record pertaining to the project. (Reference: Part 1502.9(c)(3)—CEQ Regulations.)

8. *INS Decisionmaking Procedure. (a) Policy*—(1) The Chief Engineer will consider all practical means, including the “no-action” alternative and other alternatives to the proposed action, which will enhance, protect, and preserve the quality of the environment, restore environmental quality previously lost, and minimize and mitigate unavoidable adverse effects. He will analyze and study the environment together with engineering, economic, social and other considerations to insure balanced decisionmaking in the overall public interest.

(2) During INS project planning and the related decisionmaking process, environmental effects will be weighed together with the engineering, economic and social and other considerations affecting the public interest.

(b) *Preparation of the environmental impact statements.* (1) Situations where Environmental Impact Statements (EIS) are required are described in section 102(2)(C) of NEPA. EIS constitute an integral of the plan formulation process and serve as a summation and evaluation of the effects, both beneficial and adverse, that each alternative action would have on the environment, and as an explanation and objective evaluation of the plan which is finally recommended.

(2) Should the Chief Engineer determine in assessing the impact of a minor action that an environmental statement is not required, the determination to that effect will be placed in the project file. This negative determination shall be made available to the public as required in §1506.6 of the CEQ regulations and shall include a statement of the facts and the basis for the decision.

(3) When inclusion of certain voluminous data in an EIS would prove to be impractical, INS will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in the EIS, and upon written request or court order, copies of specified material will be provided. A charge for the reproduction of records may be made in accordance with current Department of Justice guidelines. (Reference: Part 1505 CEQ Regulations.)

9. *Actions Which Normally Do Require Environmental Impact Statements:* (a) Construction of a new INS facility which would have a significant impact upon the environment.

(b) Construction of a new addition to an existing INS facility which would significantly affect the physical capacity and which would have a significant impact upon the environment. (Reference: §1507.3(b)(2)(i)—CEQ Regulations.)

10. *Actions Which Normally Do Not Require Either An Environmental Impact Statement Or An Environmental Assessment:* (a) Construction projects for existing facilities including but not limited to: Remodeling; replacement of building systems and components; maintenance

and operations repairs and general improvements when such projects do not significantly alter the initial occupancy and program of the facility or significantly impact upon the environment.

(b) Increase or decrease in population of a facility within its physical capacity. (Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations.)

11. *Actions Which Normally Require An Environmental Assessment But Not Necessarily Environmental Impact Statements:*

(a) Construction of a new addition to an existing INS facility which may affect the physical capacity and may have some impact upon the environment.

(b) Closing of an INS facility which may have some impact on the environment. (Reference: §1507.3(b)(2)(iii)—CEQ Regulations.)

#### APPENDIX D TO PART 61—OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

##### 1. AUTHORITY

These procedures are issued pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*, Regulations of the Council on Environmental Quality, 40 CFR part 1500, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, “Protection and Enhancement of Environmental Quality,” March 5, 1970, as amended by Executive Order 11991, March 24, 1977.

##### 2. PURPOSE

It is the purpose of these procedures to supplement the procedures of the Department of Justice so as to insure compliance with NEPA. These procedures supersede the regulations contained in 28 CFR part 19.

##### 3. AGENCY DESCRIPTION

The Office of Justice Assistance, Research, and Statistics (OJARS) assists State and local units of government in strengthening and improving law enforcement and criminal justice by providing financial assistance and funding research and statistical programs. OJARS will coordinate the activities and provide the staff support for three Department of Justice Federal financial assistance offices: the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics.

Each of the assistance offices has the authority to award grants, contracts and cooperative agreements pursuant to the Justice System Improvement Act of 1979, Public Law 96-157 (December 27, 1979).

4. TYPICAL CLASSES OF ACTION UNDERTAKEN

(a) Actions which normally require an environmental impact statement.

(1) None.

(b) Actions which normally do not require either an environmental impact statement or an environmental assessment.

(1) The bulk of the funded efforts; training programs, court improvement projects, research, and gathering statistical data.

(2) Minor renovation projects or remodeling.

(c) Actions which normally require environmental assessments but not necessarily environmental impact statements.

(1) Renovations which change the basic prior use of a facility or significantly change the size.

(2) New construction.

(3) Research and technology whose anticipated and future application could be expected to have an effect on the environment.

(4) Implementation of programs involving the use of chemicals.

(5) Other actions in which it is determined by the Administrator, Law Enforcement Assistance Administration; the Director, Bureau of Justice Statistics; or the Director, National Institute of Justice, to be necessary and appropriate.

5. AGENCY PROCEDURES

An environmental coordinator shall be designated in the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, and in the National Institute of Justice. Duties of the environmental coordinator shall include:

(a) Insuring that adequate environmental assessments are prepared at the earliest possible time by applicants on all programs or projects that may have a significant impact on the environment. The assessments shall contain documentation from independent parties with expertise in the particular environmental matter when deemed appropriate. The coordinator shall return assessments that are found to be inadequate.

(b) Reviewing the environmental assessments and determining whether an Environmental Impact Statement is required or preparing a "Finding of No Significant Impact."

(c) Coordinating the efforts for the preparation of an Environmental Impact Statement consistent with the requirements of 40 CFR part 1502.

(d) Cooperating and coordinating efforts with other Federal agencies.

(e) Providing for agency training on environmental matters.

6. COMPLIANCE WITH OTHER ENVIRONMENTAL STATUTES

To the extent possible an environmental assessment, as well as an environmental impact statement, shall include information necessary to assure compliance with the following:

Fish and Wildlife Coordination Act, 16 U.S.C. 661, *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*; Flood Disaster Protection Act of 1973, 42 U.S.C. 400, *et seq.*; Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. 1857, *et seq.*; 33 U.S.C. 1251, *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300, *et seq.*; Wild and Scenic Rivers Act, 16 U.S.C. 1271, *et seq.*; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451, *et seq.*; and other environmental review laws and executive orders.

7. ACTIONS PLANNED BY PRIVATE APPLICANTS OR OTHER NON-FEDERAL ENTITIES

Where actions are planned by private applicants or other non-Federal entities before Federal involvement:

(a) The Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Ave., Washington, DC 20531, Telephone: 202/724-7659, will be available to advise potential applicants of studies or other information foreseeably required for later Federal action;

(b) OJARS will consult early with appropriate State and local agencies and with interested private persons and organizations when its own involvement is reasonably foreseeable;

(c) OJARS will commence its NEPA process at the earliest possible time (Ref. § 1501.2(d) CEQ Regulations).

8. SUPPLEMENTING AN EIS

If it is necessary to prepare a supplement to a draft or a final EIS, the supplement shall be introduced into the administrative record pertaining to the project. (Ref. § 1502.9(c)(3) CEQ Regulations).

9. AVAILABILITY OF INFORMATION

Information regarding status reports on EIS's and other elements of the NEPA process and policies of the agencies can be obtained from: Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Avenue, Washington, DC 20531, Telephone: 202/724-7659.

APPENDIX E TO PART 61—UNITED STATES MARSHALS SERVICE PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. AUTHORITY

These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, *et seq.*, regulations of the Department of Justice (DOJ), 28 CFR part 61, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. PURPOSE

These provisions supplement existing DOJ and CEQ regulations and outline internal USMS procedures to ensure compliance with NEPA. Through these provisions, the USMS shall promote the environment by minimizing the use of natural resources, and by improving planning and decision-making processes to avoid excess pollution and environmental degradation.

The USMS' Environmental Assessments (EAs) and Environmental Impact Statements (EISs) shall be as concise as possible and EISs should be limited to approximately 150 pages in normal circumstances or 300 pages for proposals of unusual scope or complexity. The USMS shall, whenever possible, jointly prepare documents with State and local governments and, when appropriate, avoid duplicative work by adopting, or incorporating by reference, existing USMS and other agencies' analyses and documentation.

In developing an EA or EIS, the USMS shall comply with CEQ regulations, observing that EAs and EISs should (1) Be analytic, rather than encyclopedic, (2) be written in plain language, (3) follow a clear, standard format in accordance with CEQ regulations, (4) follow a scoping process to distinguish the significant issues from the insignificant issues, (5) include a brief summary, (6) emphasize the more useful sections of the document, such as the discussions of alternatives and their environmental consequences, while minimizing the discussion of less useful background information, (7) scrutinize existing NEPA documentation for relevant analyses of programs, policies, or other proposals that guide future action to eliminate repetition, (8) where appropriate, incorporate material by reference, with citations and brief descriptions, to avoid excessive length, and (9) integrate NEPA requirements with other environmental review and consultation re-

quirements mandated by law, Executive Order, Department of Justice policy, or USMS policy. When preparing an EA or EIS, the USMS shall request comments to be as specific as possible.

To ensure compliance with NEPA, the USMS shall make efforts to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including, (1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values, and to head off potential conflicts and/or delays, (2) emphasizing inter-agency cooperation before the environmental analysis and documentation is prepared, (3) ensuring the swift and fair resolution of any dispute over the designation of the lead agency, (4) employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis, (5) setting deadlines for the NEPA process as appropriate for individual proposed actions, (6) initiating the NEPA analysis as early as possible to coincide with the agency's consideration of a proposal by another party, and (7) using accelerated procedures, as described in the CEQ regulations, for legislative proposals.

3. AGENCY DESCRIPTION

The USMS is a Federal law enforcement agency. The agency performs numerous law enforcement activities, including judicial security, warrant investigations, witness protection, custody of individuals arrested by Federal agencies, prisoner transportation, management of seized assets, and other law enforcement missions.

4. TYPICAL CLASSES OF USMS ACTIONS

(a) The general types of proposed actions and projects that the USMS undertakes are as follows:

(1) Operational concepts and programs, including logistics procurement, personnel assignment, real property and facility management, and environmental programs,

(2) Transfers or disposal of equipment or property,

(3) Leases or entitlement for use, including donation or exchange,

(4) Federal contracts, actions, or agreements for detentions services. A detention facility may be a facility (A) owned and/or operated by a contractor, or (B) owned and/or operated by a State or local government, and

(5) General law enforcement activities that are exempt from NEPA analysis under CEQ regulation 40 CFR 1508.18 that involve bringing judicial, administrative, civil, or criminal enforcement actions.

(b) Scope of Analysis.

(1) Some USMS projects, contracts, and agreements may propose a USMS action that

is one component of a larger project involving a private action or an action by a local or State government. The USMS' NEPA analysis and document (*e.g.*, the EA or EIS) should address the impact of the specific USMS activity and those portions of the entire project over which the USMS has sufficient control and responsibility to warrant Federal review.

(2) The USMS has control and responsibility for portions of a project beyond the limits of USMS jurisdiction where the environmental consequences of the larger project are essentially products of USMS specific action. This control turns an otherwise non-federal project into a Federal action.

(3) Sufficient control and responsibility for a facility is a site-specific determination based on the extent to which an entire project will be within the agency's jurisdiction and on other factors that determine the extent of Federal control and responsibility. For example, for construction of a facility, other factors would include, but not be limited to, the length of the contract for construction or use of the facility, the extent of government control and funding in the construction or use of the facility, whether the facility is being built solely for Federal requirements, the extent to which the costs of construction or use will be paid with Federal funds, the extent to which the facility will be used for non-Federal purposes, and whether the project should proceed without USMS action.

(4) Some USMS projects, contracts, and agreements may propose a USMS action that is one component of a larger project involving actions by other Federal agencies. Federal control and responsibility determines whether the total Federal involvement of the USMS and other Federal agencies is sufficient to grant legal control over additional portions of the project. NEPA review would be extended to an entire project when the environmental consequences of the additional portions of the project are essentially products of Federal financing, assistance, direction, regulation, or approval. The USMS shall contact the other Federal agencies involved in the action to determine their respective roles (*i.e.*, whether to be a lead or cooperating agency).

(5) Once the scope of analysis has been defined, the NEPA analysis for an action should include direct, indirect, and cumulative impacts of all Federal proposals within the purview of NEPA. Whenever practicable, the USMS can incorporate by reference, and rely upon, the environmental analyses and reviews of other Federal, tribal, State, and local agencies.

#### 5. ENVIRONMENTAL IMPACT STATEMENT (EIS)

(a) An EIS is a document required of Federal agencies for proposals significantly affecting the quality of the human environ-

ment. EIS describes the positive and negative effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) will be published in the FEDERAL REGISTER as soon as practicable after a decision to prepare an EIS is made and before the scoping process is initiated. An EIS shall describe how alternatives considered in it, and the decisions based on it, will or will not achieve the goals of NEPA to prevent damage to the environment and promote human health. Additionally, an EIS shall describe how the USMS will comply with relevant environmental laws and policies. The format and content of an EIS are set out at 40 CFR part 1502. The USMS may prepare an EIS without prior preparation of an EA.

(b) A Record of Decision (ROD) will be prepared at the time a decision is made regarding a proposal that is analyzed and documented in an EIS. The ROD will state the decision, discuss the alternatives considered, and state whether all alternative practicable means to avoid or minimize environmental harms have been adopted, or if not, why they were not adopted. Where applicable, the ROD will also describe and adopt a monitoring and enforcement program for any mitigation.

(c) Actions that normally require preparing an EIS include:

(1) USMS actions that are likely to have a significant environmental impact on the human environment, or

(2) Construction of a major facility on a previously undisturbed site.

#### 6. ENVIRONMENTAL ASSESSMENT (EA)

(a) An EA is a concise public document that is prepared for actions that do not normally require preparation of an EIS, but do not meet the requirements of a Categorical Exclusion (CE). An EA serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI), aid in complying with NEPA when an EIS is not necessary, and facilitate preparation of an EIS when one is required. The EA results in either a determination that a proposed action may have a significant impact on the human environment, and therefore, requires further study in an EIS, or the issuance of a FONSI. The contents of an EA are described at 40 CFR 1508.9.

(b) A FONSI will include the EA or a summary of the EA. The FONSI will be prepared and made available to the public through means described in paragraph 9 of this Appendix, including publication in local newspapers and in the FEDERAL REGISTER for matters of national concern. The FONSI will be available for review and comment for 30 days prior to signature and the initiation of the action, unless special circumstances warrant reducing the public comment period to

15 days. Implementing the action can proceed after consideration of public comments and the decision-maker signs the FONSI.

(c) Actions that normally require preparation of an EA include:

- (1) Proposals to conduct an expansion of an existing facility,
- (2) Awarding a contract or entering into an agreement for new construction at a previously developed site, or an expansion of an existing facility, or
- (3) Projects or other proposed actions that are activities described in categorical exclusions, but do not qualify for a categorical exclusion because they involve extraordinary circumstances.

#### 7. CATEGORICAL EXCLUSIONS (CE)

(a) CEs are certain categories of activities determined not to have individual or cumulative significant effects on the human environment, and absent extraordinary circumstances, are excluded from preparation of an EA, or EIS, under NEPA. Using CEs for such activities reduces unnecessary paperwork and delay. Such activities are not excluded from compliance with other applicable local, State, or Federal environmental laws.

(b) Extraordinary circumstances must be considered before relying upon a CE to determine whether the proposed action may have a significant environmental effect. Any of the following circumstances preclude the use of a CE:

- (1) The project may have effects on the quality of the environment that are likely to be highly controversial;
- (2) The scope or size of the project is greater than normally experienced for a particular action described in subsection (c) below;
- (3) There is potential for degradation, even if slight, of already-existing poor environmental conditions;
- (4) A degrading influence, activity, or effect is initiated in an area not already significantly modified from its natural condition;
- (5) There is a potential for adverse effects on areas of critical environmental concern or other protected resources including, but not limited to, threatened or endangered species or their habitats, significant archaeological materials, prime or unique agricultural lands, wetlands, coastal zones, sole source aquifers, 100-year-old flood plains, places listed, proposed, or eligible for listing on the National Register of Historic Places, natural landmarks listed, proposed, or eligible for listing on the National Registry of Natural Landmarks, Wilderness Areas or wilderness study areas, or Wild and Scenic River areas; or
- (6) Possible significant direct, indirect, or cumulative environmental impacts exist.

(c) Actions that normally qualify for a CE include:

- (1) Minor renovations or repairs within an existing facility, unless the project would adversely affect a structure listed in the National Register of Historic Places or is eligible for listing in the register,
- (2) Facility expansion, or construction of a limited addition to an existing structure, or facility, and new construction or reconstruction of a small facility on a previously developed site. The exclusion applies only if:
  - (i) The structure and proposed use comply with local planning and zoning and any applicable State or Federal requirements; and
  - (ii) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.
- (3) Security upgrades of existing facility grounds and perimeter fences, not including such upgrades as adding lethal fences or major increases in height or lighting of a perimeter fence in a residential area or other area sensitive to the visual impacts resulting from height or lighting changes,
- (4) Federal contracts or agreements for detentions services, including actions such as procuring guards for detention services or leasing bed space (which may include operational costs) from an existing facility operated by a State or a local government or a private correctional corporation,
- (5) General administrative activities that involve a limited commitment of resources, such as personnel actions or policy related to personnel issues, organizational changes, procurement of office supplies and systems, and commitment or reallocation of funds for previously reviewed and approved programs or activities,
- (6) Change in contractor or Federal operators at an existing contractor-operated correctional or detention facility,
- (7) Transferring, leasing, maintaining, acquiring, or disposing of interests in land where there is no change in the current scope and intensity of land use, including management and disposal of seized assets pursuant to Federal laws,
- (8) Transferring, leasing, maintaining, acquiring, or disposing of equipment, personal property, or vessels that do not increase the current scope and intensity of USMS activities, including management and disposal of seized assets pursuant to Federal forfeiture laws,
- (9) Routine procurement of goods and services to support operations and infrastructure that are conducted in accordance with Department of Justice energy efficiency policies and applicable Executive Orders, such as E.O. 13148,
- (10) Routine transportation of prisoners or detainees between facilities and flying activities in compliance with Federal Aviation Administration Regulations, only applicable

where the activity is in accordance with normal flight patterns and elevations for the facility and where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been the subject of a NEPA review, and

(1) Lease extensions, renewals, or succeeding leases where there is no change in the intensity of the facility's use.

#### 8. RESPONSIBILITIES

(a) The Director of the USMS, in conjunction with the Senior Environmental Advisor, possesses authority over the USMS NEPA compliance.

(b) The Senior Environmental Advisor's duties include:

(1) Advising the Director or other USMS decisionmakers on USMS NEPA procedures and compliance,

(2) Supervising the Environmental Coordinator,

(3) Acting as NEPA liaison to CEQ for the Director and other USMS decisionmakers on important decisions outside the authority of the Environmental Coordinator,

(4) Consulting with CEQ regarding alternative NEPA procedures requiring the preparation of an EIS in emergency situations, and

(5) Consulting with CEQ and officials of other Federal agencies to settle agency disputes over the NEPA process, including designating lead and cooperating agencies.

(c) The USMS Environmental Coordinator will act as the agency's NEPA contact, and will be responsible for:

(1) Ensuring that adequate EAs and EISs are prepared at the earliest possible time, ensuring that decisions are made in accordance with the general policies and purposes of NEPA, verifying information provided by applicants, evaluating environmental effects; assuring that, when appropriate, EAs and EISs contain documentation from independent parties with expertise in particular environmental matters, taking responsibility for the scope and content of EAs prepared by applicants, and returning EAs and EISs that are found to be inadequate,

(2) Ensuring that the USMS conducts an independent evaluation, and where appropriate, prepares a FONSI, a NOI, and/or a ROD,

(3) Coordinating the efforts for preparation of an EIS consistent with the requirements of the CEQ regulations at 40 CFR part 1500–1508,

(4) Cooperating and coordinating planning efforts with other Federal agencies, and

(5) Providing for agency training on environmental matters.

(d) The agency shall ensure compliance with NEPA for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement.

The USMS, through the Environmental Coordinator shall:

(1) Identify types of actions initiated by private parties, State and local agencies and other non-Federal entities for which agency involvement is reasonably foreseeable,

(2) Provide (A) full public notice that agency advice on such matters is available, (B) detailed written publications containing that advice, and (C) early consultation in cases where agency involvement is reasonably foreseeable, and

(3) Consult early with appropriate Indian tribes, State and local agencies, and interested private persons and organizations on those projects in which the USMS involvement is reasonably foreseeable.

(e) To assist in ensuring that all Federal agencies' decisions are made in accordance with the general policies and purposes of NEPA, the USMS, through the Environmental Coordinator shall:

(1) Comment within the specified time period on other Federal agencies' EISs, where the USMS has jurisdiction by law regarding a project, and make such comments as specific as possible with regard to adequacy of the document, the merits of the alternatives, or both,

(2) Where the USMS is the lead agency on a project, coordinate with other Federal agencies and supervise the development of and retain responsibility for the EIS,

(3) Where the USMS is a cooperating agency on a project, cooperate with any other Federal agency acting as lead agency through information sharing and staff support,

(4) Independently evaluate, provide guidance on, and take responsibility for scope and contents of NEPA analyses performed by contractors or applicants used by USMS. When the USMS is the lead agency, USMS will choose the contractor to prepare an EIS, require the contractor to execute a disclosure statement stating that the contractor has no financial or other interest in the outcome of the project, and participate in the preparation of the EIS by providing guidance and an independent evaluation prior to approval,

(5) Consider alternatives to a proposed action where it involves unresolved conflicts concerning available resources. The USMS shall make available to the public, prior to a final decision, any NEPA documents and additional decision documents, or parts thereof, addressing alternatives,

(6) Conduct appropriate NEPA procedures for the proposed action as early as possible for consideration by the appropriate decision-maker, and ensure that all relevant environmental documents, comments, and responses accompany the proposal through the agency review process for the final decision,

(7) Include, as part of the administrative record, relevant environmental documents,

comments, and responses in formal rule-making or adjudicatory proceedings, and

(8) Where emergency circumstances require taking action that will result in a significant environmental impact, contact CEQ via the USMS Senior Environmental Advisor for consultation on alternative arrangements, which will be limited to those necessary to control the immediate impacts of the emergency.

9. PUBLIC INVOLVEMENT

(a) In accordance with NEPA and CEQ regulations and to ensure public involvement in decision-making regarding environmental impact on local communities, the USMS shall also engage in the following procedures during its NEPA process:

(1) When preparing an EA, EIS, or FONSI, USMS personnel in charge of preparing the document will invite comment from affected Federal, tribal, State, local agencies, and other interested persons, as early as the scoping process;

(2) The USMS will disseminate information to potentially interested or affected parties, such as local communities and Indian tribes, through such means as news releases to various local media, announcements to local citizens groups, public hearings, and posted signs near the affected area;

(3) The USMS will mail notice to those individuals or groups who have requested one on a specific action or similar actions;

(4) For matters of national concern, the USMS will publish notification in the FEDERAL REGISTER, and will send notification by mail to national organizations reasonably expected to be interested;

(5) If a decision is made to develop an EIS, the USMS will publish a NOI in the FEDERAL REGISTER as soon as possible;

(6) The personnel in charge of preparing the NEPA analysis and documentation will invite public comment and maintain two-way communication channels throughout the NEPA process, provide explanations of where interested parties can obtain information on status reports of the NEPA process and other relevant documents, and keep all public affairs officers informed;

(7) The USMS will establish a Web site to keep the public informed; and

(8) During the NEPA process, responsible personnel will consult with local government and tribal officials, leaders of citizen groups, and members of identifiable population segments within the potentially affected environment, such as farmers and ranchers, homeowners, small business owners, minority and disadvantaged communities, and tribal members.

10. SCOPING

Prior to starting the NEPA analysis, USMS personnel responsible for preparing ei-

ther an EA or EIS, shall engage in an early scoping process to identify the significant issues to be examined in depth, and to identify and eliminate from detailed study those issues which are not significant or which have been adequately addressed by prior environmental review. The scoping process should identify any other environmental analyses being conducted relevant to the proposed action, address timing and set time limits with respect to the NEPA process, set page limits, designate respective responsibilities among the lead and cooperating agencies, identify any other environmental review and consultation requirements to allow for integration with the NEPA analysis, and hold an early scoping meeting that may be integrated with other initial planning meetings.

11. MITIGATION AND MONITORING

USMS personnel, who are responsible for preparing NEPA analyses and documents, will consider mitigation measures to avoid or minimize environmental harm. EAs and EISs will consider reasonable mitigation measures relevant to the proposed action and alternatives. Paragraph 5(b) of this Appendix describes the requirements for documenting mitigation measures in a ROD.

12. SUPPLEMENTING AN EA OR EIS

When substantial changes are made to a proposed action that is relevant to environmental concerns, a supplement will be prepared for an EA or a draft or a final EIS. A supplement will also be prepared when significant new circumstances arise or new relevant information surfaces concerning and bearing upon the proposed action or its impacts. Any necessary supplement shall be processed in the same way as an original EA or EIS, with the exception that new scoping is not required. Any supplement shall be added to the formal administrative record, if such record exists.

13. COMPLIANCE WITH OTHER ENVIRONMENTAL STATUTES

To the extent practicable, a NEPA document shall include information necessary to assure compliance with all applicable environmental statutes.

[71 FR 71048, Dec. 8, 2006]

APPENDIX F TO PART 61— FEDERAL BUREAU OF INVESTIGATION PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. AUTHORITY

These procedures are issued pursuant to the National Environmental Policy Act of

1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, regulations of the Department of Justice (DOJ), 28 CFR part 61, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

## 2. PURPOSE

The Federal Bureau of Investigation (FBI) NEPA Program has been established to assist the FBI in integrating environmental considerations into the FBI's mission and activities. The FBI NEPA regulations have been developed to supplement CEQ and DOJ NEPA regulations by outlining internal FBI policy and procedures. Through these provisions, the FBI shall promote compliance with NEPA and CEQ's implementing regulations, encourage environmental sustainability by integrating environmental considerations into mission and planning activities, and ensure that environmental analyses reflect consideration of non-regulatory requirements included in Federal orders, directives, and policy guidance.

## 3. AGENCY DESCRIPTION

The FBI is an intelligence-driven national security and law enforcement component within DOJ. The FBI's mission is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to Federal, state, municipal, and international agencies and partners. General types of FBI actions include:

(a) Operational activities, including the detection, investigation, and prosecution of crimes against the United States and the collection of intelligence.

(b) Training activities, including the training of Federal, state, local, and foreign law enforcement personnel.

(c) Real estate activities, including acquisitions and transfers of land and facilities and leasing.

(d) Construction, including new construction, renovations, repair, and demolition of facilities, infrastructure, utilities systems, and other systems.

(e) Property maintenance and management activities, including maintenance of facilities, equipment, and grounds and management of natural resources.

(f) Administrative and regulatory activities, including personnel management, procurement of goods and services, and preparation of regulations and policy guidance.

## 4. NEPA DOCUMENTATION AND DECISION MAKING

The FBI will use the NEPA process as a tool to ensure an interdisciplinary review of its actions and to ensure that impacts of those actions on the quality of the human environment are given appropriate consideration in FBI decisions; to identify and assess reasonable alternatives to its actions; and to facilitate early and open communication, when practicable, with the public and other agencies and organizations.

(a) *Level of NEPA Analysis.* The level of NEPA analysis will depend on the context and intensity of the environmental impacts associated with the proposed action. Environmental Assessments (EAs) and Environmental Impact Statements (EISs) should include a range of reasonable alternatives, as well as other alternatives that are eliminated from detailed study with a brief discussion of the reasons for eliminating them. If there are no reasonable alternatives, the EA or EIS must explain why no reasonable alternative exists. The decision maker must consider all the alternatives discussed in the EA or EIS. The decision maker may choose an alternative that is not expressly described in a draft EA or EIS, provided it is qualitatively within the spectrum of alternatives that were discussed in the draft.

(b) *Responsibility for NEPA Analysis.* (1) The FBI's responsibility for NEPA review of actions shall be determined on a case-by-case basis depending on the extent to which the entire project is within the FBI's jurisdiction and on other factors. For example, factors relevant to whether construction of a facility is within FBI's jurisdiction include the following: The extent of FBI control and funding in the construction or use of the facility, whether the facility is being built solely for FBI requirements, and whether the project would proceed without FBI action.

(2) The extent of the FBI's responsibility for NEPA review of joint Federal actions, where the FBI and another Federal agency are cooperating on a project, shall be determined on a case-by-case basis depending on which agency is designated as the lead agency and which is the cooperating agency.

(3) In cases where FBI actions are a component of a larger project involving a private action or an action by a local or state government, the FBI's proposed action analyzed in the NEPA document shall include only the portions of the project over which the FBI has sufficient control and responsibility to warrant Federal review. However, the cumulative impacts analysis shall account for past, present, and reasonably foreseeable future activities affecting the same natural resources as the FBI project. When actions are planned by private or other non-Federal entities, the FBI shall provide the potential applicant reasonably foreseeable requirements

for studies or other information for subsequent FBI action. In addition, the FBI shall consult early with appropriate state and local agencies, tribal entities, interested private persons, and organizations when its own involvement is reasonably foreseeable.

(4) Whenever appropriate and practicable, the FBI shall incorporate by reference and rely upon the environmental analyses and reviews of other Federal, tribal, state, and local agencies.

#### 5. CATEGORICAL EXCLUSIONS

(a) *Categorical Exclusion (CATEX) Criteria (40 CFR 1508.4)*. A CATEX is a category of actions which, barring extraordinary circumstances, does not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. Such activities are not excluded from compliance with other applicable Federal, state, or local environmental laws. To qualify for a CATEX, an action must meet all of the following criteria:

(1) The proposed action fits entirely within one or more of the CATEXs;

(2) The proposed action has not been segmented and is not a piece of a larger action. For purposes of NEPA, actions must be considered in the same review if it is reasonably foreseeable that the actions are connected (*e.g.*, where one action depends on another).

(3) No extraordinary circumstances exist that would cause the normally excluded proposed action to have significant environmental effects. Extraordinary circumstances are assumed to exist when the proposed action is likely to involve any of the following circumstances:

(i) An adverse effect on public health or safety;

(ii) An adverse effect on federally listed endangered or threatened species, marine mammals, or critical habitat;

(iii) An adverse effect on archaeological resources or resources listed or determined to be eligible for listing in the National Register of Historic Places;

(iv) An adverse effect on an environmentally sensitive area, including floodplains, wetlands, streams, critical migration corridors, and wildlife refuges;

(v) A material violation of a Federal, state, or local environmental law by the FBI;

(vi) An effect on the quality of the human or natural environment that is likely to be highly scientifically controversial or uncertain, or likely to involve unique or unknown environmental risks;

(vii) Establishment of precedents or decisions in principle for future actions that have the potential for significant impacts (*e.g.*, master plans, Integrated Natural Resource Management Plans, Integrated Cultural Resource Management Plans);

(viii) Significantly greater scope or size than normally experienced for a particular category of action;

(ix) Potential for substantial degradation of already existing poor environmental conditions. Also, initiation of a potentially substantial environmental degrading influence, activity, or effect in areas not already substantially modified; or

(x) A connection to other actions with individually insignificant, but cumulatively significant, impacts.

(b) *Documentation of CATEX usage*. As noted in paragraph (c) below, certain FBI actions qualifying for a CATEX have been predetermined to have a low risk of extraordinary circumstances and, as such, have been designated as not requiring preparation of a Record of Environmental Consideration (REC) Determination Form. A REC Determination Form must be prepared for all other FBI actions subject to NEPA review. The REC Determination Form shall determine if the proposed action falls within a category of actions that has been excluded from further NEPA review or if the action will require further analysis through an EA or EIS. The REC Determination Form shall also identify any extraordinary circumstances that require the FBI to perform an EA or an EIS for an action that would otherwise qualify for a CATEX.

(c) *List of No REC Determination Form Required (NR) FBI CATEXs*. (NR1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that does not result in changing the use of the space in such a way that could cause environmental effects or exceed the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(NR2) Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, contract administration, recordkeeping, budgeting, personnel actions, and travel.

(NR3) Decisions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent or control environmental impacts. This requirement excludes demolition actions.

(NR4) Preparation of policies, procedures, manuals, and other guidance documents for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and for which the applicability of the NEPA process will be evaluated upon implementation, either collectively or case by case.

(NR5) Grants of licenses, easements, or similar arrangements for use by vehicles (not to include substantial increases in the

number of vehicles loaded); electrical, telephone, and other transmission and communication lines; and pipelines, pumping stations, and facilities for water, wastewater, stormwater, and irrigation; and for similar utility and transportation uses. Construction or acquisition of new facilities is not included.

(NR6) Acquisition, installation, operation, and maintenance of temporary equipment, devices, or controls necessary to mitigate effects of the FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

- (i) Temporary sediment and erosion control measures required to meet applicable Federal, tribal, state, or local requirements;
- (ii) Installation of temporary diversion fencing to prevent earth disturbances within sensitive areas during construction activities; and
- (iii) Installation of temporary markers to delineate limits of earth disturbances in forested areas to prevent unnecessary tree removal.

(NR7) Routine flying operations and infrequent, temporary (fewer than 30 days) increases in aircraft operations up to 50 percent of the typical FBI aircraft operation rate.

(NR8) Proposed new activities and operations to be conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

(NR9) Conducting audits and surveys; data collection; data analysis; and processing, permitting, information dissemination, review, interpretation, and development of documents. If any of these activities results in proposals for further action, those proposals must be covered by an appropriate CATEX or other NEPA analysis. Examples include:

- (i) Document mailings, publication, and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions;
- (ii) Studies, reports, proposals, analyses, literature reviews, computer modeling, and intelligence gathering and sharing;
- (iii) Activities designed to support improvement or upgrade management of natural resources, such as surveys for threatened and endangered species or cultural resources; wetland delineations; and minimal water, air, waste, and soil sampling;
- (iv) Minimally intrusive geological, geophysical, and geo-technical activities, including mapping and engineering surveys;

(v) Conducting facility audits, Environmental Site Assessments, and environmental baseline surveys; and

(vi) Vulnerability, risk, and structural integrity assessments of infrastructure.

(NR10) Routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines. Examples include:

- (i) Office supplies and furniture;
- (ii) Equipment;
- (iii) Mobile assets (*i.e.*, vehicles, vessels, aircraft);
- (iv) Utility services; and
- (v) Deployable emergency response supplies and equipment.

(NR11) Routine use of hazardous materials (to include procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies. Examples include:

- (i) Use of chemicals and low-level radionuclides for laboratory applications;
- (ii) Refueling of storage tanks;
- (iii) Appropriate treatment and disposal of medical waste;
- (iv) Temporary storage and disposal of solid waste;
- (v) Disposal of radiological waste through manufacturer return and recycling programs; and
- (vi) Hazardous waste minimization activities.

(NR12) Acquisition, installation, maintenance, operation, or evaluation of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities or to enhance the physical security of existing critical assets. Examples include:

- (i) Low-level x-ray devices;
- (ii) Cameras and biometric devices;
- (iii) Passive inspection devices;
- (iv) Detection or security systems for explosive, biological, or chemical substances;
- (v) Access controls, screening devices, and traffic management systems;
- (vi) Motion detection systems;
- (vii) Impact-resistant doors and gates;
- (viii) Diver and swimmer detection systems, except sonar; and
- (ix) Blast and shock impact-resistant systems for land-based and waterfront facilities.

(NR13) Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, trash collecting, facility cleaning, and snow removal.

(NR14) Recreation and welfare activities (*e.g.*, picnics and Family Day).

(NR15) Training FBI personnel or persons external to the FBI using existing facilities and where the training occurs in accordance

with applicable permitting requirements and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, radiological, or explosive agents, except when conducted at a location designed and constructed to accommodate those materials and their associated hazards. Examples include:

- (i) Administrative or classroom training;
- (ii) Tactical training, including training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response;
- (iii) Chemical, biological, explosive, or hazardous material handling training;
- (iv) Vehicle, aircraft, and small boat operation training;
- (v) Small arms and less-than-lethal weapons training;
- (vi) Security specialties and terrorist response training;
- (vii) Crowd control training, including gas range training;
- (viii) Enforcement response, self-defense, and interdiction techniques training; and
- (ix) Fingerprinting and drug analysis training.

(NR16) Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack or a natural or manmade disaster, where the activity in question is conducted in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of live chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades or flash bang devices used to simulate an attack during exercises), unless these exercises are conducted under the auspices of existing plans or permits that have undergone NEPA review.

(d) *List of REC Determination Form Required (R) FBI CATEXs.* (R1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that results in changing the use of the space in such a way that could cause changes to environmental effects, but does not result in exceeding the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(R2) Acquisition or use of space within an existing structure, by purchase, lease, or use agreement. This requirement includes structures that are in the process of construction or were recently constructed, regardless of whether the existing structure was built to satisfy an FBI requirement and the proposed FBI use would not exceed the carrying ca-

capacity of the utilities and infrastructure for the use and access to the space. This requirement also includes associated relocation of personnel, equipment, or assets into the acquired space.

(R3) Transfer of administrative control over real property, including related personal property, between another Federal agency and the FBI that does not result in a change in the functional use of the property.

(R4) New construction (*e.g.*, facilities, roads, parking areas, trails, solar panels, and wind turbines) or improvement of land where all of the following conditions are met:

- (i) The site is in a developed or a previously disturbed area;
- (ii) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area;
- (iii) The construction or improvement will not result in exceeding the infrastructure capacity outside of FBI-managed property (*e.g.*, roads, sewer, water, and parking);
- (iv) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings; and
- (v) The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards and consistent with federally approved state coastal management programs.

(R5) Renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, airfields, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials such as polychlorinated biphenyls (PCBs), lead, or asbestos. Hazardous materials shall be disposed of at approved sites in accordance with Federal, state, and local regulations. Examples include the following:

- (i) Realigning interior spaces of an existing building;
- (ii) Adding a small storage shed to an existing building;
- (iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, installation of low-flow plumbing fixtures, and installation of drip-irrigation systems;
- (iv) Installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC's NEPA procedures allow for application of a CATEX; or
- (v) Closing and demolishing a building not eligible for listing under the National Register of Historic Places.

(R6) Acquisition, installation, reconstruction, repair by replacement, and operation of utility (*e.g.*, water, sewer, electrical), communication (*e.g.*, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way,

easements, distribution systems, or facilities.

(R7) Acquisition, installation, operation, and maintenance of permanent equipment, devices, and/or controls necessary to mitigate effects of the FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

(i) Pollution prevention and pollution control equipment required to meet applicable Federal, tribal, state, or local requirements;

(ii) Installation of fencing, including security fencing, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow;

(iii) Installation and operation of lighting devices;

(iv) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees or native vegetation for use as a noise abatement measure; and

(v) Devices to protect human or animal life, such as raptor electrocution prevention devices, and fencing and grating to prevent accidental entry to hazardous or restricted areas.

(R8) Non-routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines.

(R9) Use of hazardous materials (to include procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies, but uncharacteristic of routine FBI use, reuse, recycling, and disposal of hazardous materials and waste. Examples include:

(i) Procurement of a new type of chemical or procurement of a larger quantity of a particular chemical than generally used by the FBI; and

(ii) Disposal of items that contain PCBs (*e.g.*, carpets, lighting, caulk).

(R10) Herbicide application and pest management, including registered pesticide application, in accordance with Federal, state, and local regulations.

(R11) Natural resource management activities on FBI-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation and control of non-indigenous species, excluding the application of herbicides.

#### 6. ENVIRONMENTAL ASSESSMENT

An EA is a concise public document for actions that do not meet the requirements for applying a CATEX, but for which it is unclear whether an EIS is required. An EA

briefly provides evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI), and facilitates preparation of an EIS when one is required. The requirements and contents of an EA are described in 40 CFR 1508.9. Significance of impacts shall be determined based on the criteria outlined in 40 CFR 1508.27. The FBI will comment on other agencies' EAs when relevant to the FBI's mission, or where the FBI has jurisdiction by law or relevant special expertise.

(a) Examples of types of FBI actions that typically require an EA include the following:

(1) Long-term plans for FBI-managed properties and facilities.

(2) Proposed construction, land use, activity, or operation where it is uncertain whether the action will significantly affect environmentally sensitive areas.

(3) New activities for which the impacts are not known with certainty, but where the impacts are not expected to cause significant environmental degradation.

#### 7. ENVIRONMENTAL IMPACT STATEMENT

An EIS is a detailed, written statement Federal agencies must prepare for major Federal actions that will significantly affect the quality of the human environment, or when an EA concludes that the significance threshold of the impacts associated with a proposed action would be crossed. An EIS describes effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) is published in the FEDERAL REGISTER as soon as practicable after a decision to prepare an EIS is made. The FBI may prepare an EIS without prior preparation of an EA. The format and content of an EIS are described in 40 CFR part 1502.

(a) A Record of Decision (ROD) is prepared at the time a decision is made regarding a proposal that is analyzed and documented in an EIS. The ROD will state the decision, discuss the alternatives considered, and state whether all practicable means to avoid or minimize environmental harms have been adopted or, if not, why they were not adopted. Where applicable, the ROD will also describe and adopt a monitoring and enforcement plan for any mitigation. The FBI will comment on other agencies' EISs when relevant to the FBI's mission, or where the FBI has jurisdiction by law or relevant special expertise.

(b) Examples of types of actions that typically require an EIS include the following:

(1) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas.

(2) Change in area, scope, type, and/or frequency of operations or training that will result in significant environmental effects.

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(3) Actions where the effects of a project or operation on the human environment are likely to be highly scientifically uncertain, but are perceived to have potential for significant impacts.

### 8. SCOPING

Scoping may be used for all NEPA documents in order to streamline the NEPA process by identifying significant issues and narrowing the scope of the environmental review process. The FBI may seek agencies with specialized expertise or authority in environmental planning requirements that may be beneficial to FBI mission planning and encourage such agencies to be cooperating agencies (40 CFR 1501.6, 1508.5). In cases where an EIS is prepared in response to a finding of significant impact following preparation of an EA, the EIS scoping process shall incorporate the results of the EA development process.

### 9. PUBLIC INVOLVEMENT

The FBI may use such means as newspaper announcements, electronic media, and public hearings to disseminate information to potentially interested or affected parties about NEPA actions, as appropriate. When preparing an EIS, and in certain cases an EA, the FBI shall invite comment from affected Federal, tribal, state, and local agencies, and other interested persons in accordance with 40 CFR part 1503.

### 10. MITIGATION

(a) Mitigation measures, such as those described in 40 CFR 1508.20, may be used to offset environmental impacts associated with implementation of an action. If a FONSI or ROD is based on mitigation measures, all mitigation measures stipulated in the EA or EIS must be implemented as described in the FONSI or ROD.

(b) Mitigation measures, where applicable, must be included as conditions in grants, permits, and relevant contract documents. Funding of actions shall be contingent on performance of mitigation measures, where such measures are identified in a FONSI or ROD. If mitigation is required, a mitigation monitoring plan shall be developed prior to the initiation of the proposed action. To the extent practicable, the FBI shall make available the progress or results of monitoring upon request by the public or cooperating/commenting agencies.

### 11. PROGRAMMATIC, TIERED, AND SUPPLEMENTAL NEPA DOCUMENTS

(a) Programmatic EAs or EISs may be prepared to cover broad actions, such as programs or plans (*e.g.*, Master Plan EA).

(b) Tiered EAs or EISs may be prepared to cover narrower actions that are a component

to previously prepared Programmatic EAs or EISs as described in 40 CFR 1508.28.

(c) Supplemental EAs or EISs shall be prepared when the FBI makes substantial changes to the proposed action that are relevant to environmental concerns; when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (*e.g.*, new study has revealed rare, threatened, and endangered species in the project vicinity); or when the FBI determines that the purposes of NEPA will be furthered by doing so.

(1) Supplemental EAs may either be prepared by tracking changes in the original EA or by preparing a separate document that only discusses the changes in the project scope and/or new information and the associated changes with regard to impacts. The process concludes with a decision regarding whether to issue a revised FONSI (using one of the methods listed in section 9 of these procedures) or a decision to prepare an EIS.

(2) Supplemental EISs are prepared in the same way as an EIS. If, however, a supplemental EIS is prepared within one year of filing the ROD for the original EIS, no new scoping process is required. The process concludes with a decision regarding whether to issue a revised ROD.

[84 FR 14013, Apr. 9, 2019]

## PART 63—FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION PROCEDURES

Sec.

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- 63.2 Policy.
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- 63.5 Responsibilities.
- 63.6 Procedures.
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- 63.8 Implementation.
- 63.9 Exception.

AUTHORITY: 5 U.S.C. 301, Executive Order No. 11988 of May 24, 1977, and Executive Order No. 11990 of May 24, 1977.

SOURCE: Order No. 902-80, 45 FR 50565, July 30, 1980, unless otherwise noted.

### § 63.1 Purpose.

These guidelines set forth procedures to be followed by the Department of Justice to implement Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). (The Orders.)