

## DEPARTMENT OF HOMELAND SECURITY

### Environmental Planning Program

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice of final directive.

**SUMMARY:** The purpose of this Notice is to inform the public that the Department of Homeland Security (DHS or the Department) is issuing its final policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and related executive orders and requirements. This Notice also responds to the comments received on the draft Management Directive (draft Directive), published on June 14, 2004.

**DATES:** This Directive will be effective on April 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Reese, Office of Safety and Environment, Department of Homeland Security, 202.692.4224.

#### SUPPLEMENTARY INFORMATION:

#### Table of Abbreviations

CATEX—Categorical Exclusion  
 CEQ—Council on Environmental Quality  
 CFR—Code of Federal Regulations  
 DHS—Department of Homeland Security  
 Department—Department of Homeland Security  
 EA—Environmental Assessment  
 E.O.—Executive Order  
 FEMA—Federal Emergency Management Agency  
 FLETC—Federal Law Enforcement Training Centers  
 FONSI—Finding of No Significant Impact  
 FSE—Full Scale Exercise  
 FR—Federal Register  
 NEPA—National Environmental Policy Act  
 ODP—Office of Domestic Preparedness  
 ROD—Record of Decision  
 U.S.C.—United States Code  
 USCG—United States Coast Guard

#### Table of Contents

Background  
 Scope and Applicability  
 General Comments and Responses  
 Section by Section Comments, Responses, and Other Changes  
 Specific Comments on Categorical Exclusions and Responses  
 Management Directive 5100.1, Environmental Planning Program  
 Management Directive 5100.1, Appendix A, Timely and Effective Environmental Planning in the Department of Homeland Security  
 Planning in the Department of Homeland Security  
 Management Directive 5100.1, Glossary

#### Background

DHS has the mission to lead the unified national effort to secure the

United States of America. It has the responsibility to prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. As a part of this mission, the Department ensures safe and secure borders, facilitates lawful immigrants and visitors, and promotes the free flow of commerce among nations.

This Directive establishes policy and procedures to ensure the integration of environmental considerations into the unique mission of the Department. It outlines roles and responsibilities for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and other laws and requirements for stewardship of the environment. This Directive also establishes a framework for the detailed, balanced, and systematic consideration of environmental stewardship in the planning and execution of DHS activities.

NEPA is the basic charter and foundation for stewardship of environmental resources by the agencies of the Federal government within the United States. It establishes policy, sets goals, and provides a tool for carrying out national environmental policy. NEPA requires agencies to use all practical means within their authority to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. 42 U.S.C. 4331.

This Directive includes processes for preparing Environmental Assessments (EA), Findings of No Significant Impact (FONSI), and Environmental Impact Statements (EIS). It also includes procedures for DHS to establish new or revised Categorical Exclusions (CATEX). DHS will use this Directive in conjunction with NEPA, the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508, and other pertinent environmental laws, regulations, and Executive Orders (E.O.).

The Department published a draft Directive and a request for comments in the **Federal Register** on June 14, 2004. 69 FR 33043; *see also* 69 FR 42760 (Jul. 16, 2004) reopening comment period. The draft Directive proposed DHS policy for meeting the requirements under NEPA, including a proposed list of categories of DHS actions excluded from further consideration under NEPA, known as categorical exclusions.

More than 7,500 letters and e-mails were received during the comment period. The vast majority of those comments consisted of identical letters and e-mails, where only the name and

address differed. The Department received fewer than 100 unique comments. The Department has posted all unique comments and an example of each identical form comment on the DHS public web site, listed below. These comments are categorized and discussed below. This final Directive incorporates clarifications and limitations added in consideration of the public comments.

A copy of this publication, the draft Directive, all unique comments received during the comment period, examples of form comments, and a summary of the administrative record are available at <http://www.dhs.gov/dhspublic/display?theme=13&content=5278>.

#### Scope and Applicability

This Directive applies to all of DHS, including its components. Components may supplement this Directive, provided that any supplements are consistent with the Directive. This Directive shall prevail in case of any inconsistencies between this directive and supplementary procedures. Currently, FEMA has NEPA regulations, 44 CFR Part 10, and the U.S. Coast Guard has a Commandant's Instruction Manual on NEPA, 16475.1 series. These components will amend their procedures to conform to this Directive.

#### General Comments and Responses

The draft Directive contained proposed policy and procedures for DHS to comply with NEPA and ensure the integration of environmental considerations into mission planning and project decision making. It also proposed the means for DHS to follow the letter and spirit of NEPA and comply fully with CEQ regulations. Both the draft and final Directive encompass requirements in addition to NEPA and establish the DHS Environmental Planning Program. The final Directive contains a detailed set of policy and procedural requirements to implement NEPA and the environmental planning function in a reliable, timely, and cost-effective manner.

Following is a discussion of the comments. Comments of a general nature are addressed first, followed by comments on specific sections of the Directive. Since there were many comments on specific proposed CATEXs, these comments and responses have been placed into a separate grouping and are addressed one-by-one in the last section of comments and responses.

1. *Categorical Exclusions: Too Many and Too Broad.* About 70 commenters noted that the Department's draft

Directive had an exceptionally large number of components responsible for a vast array of activities and operations under its purview. It was generally argued that many of these activities have a clear potential for significant adverse environmental impacts. These comments indicated a concern that the draft ignored what some commenters defined as an accepted practice that the use of Categorical Exclusions be limited primarily to routine administrative actions. Some comments stated that the draft attempted to create a number of overly broad and vague Categorical Exclusions for activities with the potential for significant adverse environmental effects. Other comments noted that, while federal agencies are accorded a degree of deference in creating their Categorical Exclusions, they must still provide a sound and factually supported basis for finding that certain agency actions will not individually or cumulatively have a significant impact on the environment. Some commenters also generally argued that some proposed Categorical Exclusions go far beyond what is authorized by CEQ regulations and relevant case law.

In response to these comments, DHS recognizes that the creation of a Cabinet-level Department from numerous agencies and elements of other agencies is certainly an historic and complex event. In addition, DHS was mandated by the Homeland Security Act to functionally integrate its activities to establish consistent business processes throughout the Department. Numerous functional areas such as financial management, procurement, human resources management, and asset management, either have or are actively completing the establishment of common rules and operating procedures throughout DHS. From an environmental planning perspective, this meant establishing a common set of policy, guidance, and implementing procedures for use by all DHS components.

To respond to this challenge, DHS used a very lengthy and complex series of deliberations to create and support the CATEXs included in this NEPA Directive. The Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act contemplates that CATEXs will serve as a tool for agencies to conserve time and effort by defining categories of actions that do not individually or cumulatively have a significant effect on the human environment and are therefore exempt from the requirement to prepare further analysis in an

environmental assessment or an environmental impact statement. 40 CFR 1500.4(p). This Directive and the NEPA directives of most agencies include a list of CATEXs that extend beyond routine administrative actions. The Department empanelled a group of federal employees from its components with sufficient expertise and experience to identify such categories of actions most relevant to DHS, hereinafter referred to as the Panel. That Panel critically analyzed the actions within the categories that they identified to ensure that only actions with no potential for individual or cumulative significant impact would be included in the list of CATEXs. The Panel also took pains to ensure that the actions were sufficiently limited to actions for which the Department maintained a demonstrated history of successful performance with no significant effect on the human environment. The CATEXs were developed on the basis of an administrative record from the components that comprise the Department and the experiences of the Panel members.

2. *Alleged Conflict between NEPA Scoping Requirements and Consultation Requirements under Section 106 of the National Historic Preservation Act.* One set of comments stated that the scoping provisions that require involvement of other federal agencies, non-federal interests, and the general public in defining the scope of potential environmental impacts from a proposed activity do not adequately fulfill requirements to consult with federally-recognized Indian Tribes and Native Hawaiian organizations under Section 106 of the National Historic Preservation Act when the proposal may impact a historic property and could become a source of conflict.

DHS disagrees. These comments refer to an issue that was not referenced, expanded, or limited by the draft Directive. Neither the CEQ regulations that implement NEPA nor the draft Directive prescribe a standard scoping process. Furthermore, the Advisory Council on Historic Preservation's regulations for implementing Section 106 of the National Historic Preservation Act, at 36 CFR part 800, provide for coordinating Section 106 reviews with the NEPA process or using the NEPA process to fulfill the requirements of Section 106. More specifically, 36 CFR 800.2(c)(2), requires consultation with federally recognized Indian Tribes and Native Hawaiian organizations in fulfilling Section 106 review requirements.

The Department's Directive defines the need to coordinate with federally-

recognized Indian Tribes and Native Hawaiian organizations during the NEPA process in Section 6. That policy is further reinforced in Sections 1 and 2 of Appendix A, which states that the Department's policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in the environmental planning process. Furthermore, Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" dated November 9, 2000, directs all federal departments to, among other things, "strengthen the United States government-to-government relationships with Indian tribes and establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications \* \* \*" Each component in DHS provides the framework by which they consult and coordinate with tribes concerning their specific program areas, including any environmental planning activities that may involve tribes.

3. *General Administrative and Editorial Changes.* Names and titles of offices and positions have been changed to reflect the current organizational structure, program responsibilities, and nomenclature within DHS. The abbreviation used for the term "Categorical Exclusion" has been changed from "CE," the term used in the draft, to "CATEX" to avoid confusion with other commonly abbreviated terms used in DHS. Other changes have been made in coordination with CEQ to clarify language to ensure that this Directive would conform to CEQ regulations. Redundancies have been eliminated. Grammatical changes, structural changes, and clarifications have been made that are not intended to change any of the draft's meaning or intent.

### **Section By Section Comments, Responses, and Other Changes**

1. *Management Directive, Section 6.F.* There were no comments on this specific section. However, language in this section has been changed to clarify that no actions will be taken that limit alternatives considered for any proposed action for which an EA or EIS process is being conducted. These changes would not change the obligation for DHS to ensure that the Record of Decision (ROD) and the FONSI are public documents and will reflect the final decision.

2. *Appendix A, Section 2.6., Public Involvement.* There were no comments

on this section; however, the opening paragraph was modified to more clearly express DHS policy on public involvement in environmental planning.

3. *Appendix A, Section 2.6.A, Public Involvement.* There were no comments on this section; however, consideration of some comments on Appendix A, Section 4.0 resulted in changes here. The extent of public comment and involvement in the EA and FONSI process is defined in 40 CFR 1501.4(b) which states, "The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by section 1508.9(a)(1)" (where the referenced section refers to environmental assessments). Neither NEPA nor CEQ regulations prescribe a set period of public comment required in the EA and FONSI process—apart from the FONSI publication required in the special situations described in 40 CFR 1501.4(e)(2)—leaving it up to the agencies themselves to define the degree of public involvement deemed practicable under the circumstances. Appendix A, Section 2.6.A has been revised, in consultation with CEQ, to clarify that public involvement is required in the environmental impact evaluation process that would be documented in an environmental assessment under NEPA. Other changes have been made to clarify the relationship of this section to other sections in the Directive.

4. *Appendix A, Section 3.2, paragraph B.* There were no comments on this section; however, several commenters expressed a general concern over the potential for CATEXs to be applied to smaller repetitive actions in a manner that could avoid a more in-depth review under NEPA of the potential for significant cumulative environmental impacts. The wording of this section has been modified to more clearly state that the CATEXs are not intended to be used in this repetitive manner.

5. *Appendix A, Section 3.2, paragraph C.* Commenters objected to the treatment of "extraordinary circumstances" in connection with Categorical Exclusions. Categorical Exclusions are categories of actions that can be shown to have no potential for significant impact on the human environment under normal circumstances and would require no further analysis under NEPA. However, in recognition of the variety of situations where DHS may take action, DHS had proposed a series of extraordinary circumstances where an otherwise categorically excludable action may have potential for significant

adverse impact to the human environment and would require further analysis under NEPA. Commenters claimed that the draft Directive erroneously used a significance test when legal precedent has established that a CATEX may not be used if there is the potential for "any adverse effect."

DHS disagrees. Upon further review of the language in this Directive, including consultation with the Council on Environmental Quality, DHS believes that the manner in which it will apply "extraordinary circumstances" in this Directive is in conformance with appropriate precedent. CEQ regulations specify that a CATEX may be used if there is no significant effect on the human environment, with exceptions to provide for those situations when there are "extraordinary circumstances." 40 CFR 1508.4. Section 3.2 of the Directive clearly defines that there are to be three "tests" by which the application of any CATEX to a particular action are viewed on a case-by-case basis. Sub-section (C) within section 3.2 defines one of those tests as that of ensuring that no "extraordinary circumstances" exist. That particular test requires that, in a matter that might otherwise be subject to a particular CATEX, "\* \* \* [n]o extraordinary circumstances with potentially significant impacts relating to the proposed action exist \* \* \*". Therefore, if potentially significant impacts related to the proposed action exist, the CATEX may not be applied. The consideration of this and the other "tests" contemplated by Section 3.2 ensure that, where "\* \* \* the proposed action does not meet these conditions or a statute does not exempt it or an emergency provision does not apply, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) must be prepared before the action may proceed."

The concern addressed by the comments in this area suggests that the language in the Directive that states, "\* \* \* [s]pecific actions that might otherwise be categorically excluded, but are associated with one or more extraordinary circumstances, should be carefully evaluated to determine whether a CATEX is appropriate \* \* \*". would allow the application of a CATEX to a particular action with foreseeable significant impact on the environment even where not exempted by a statute or emergency provision. The wording of this section has been revised to ensure that DHS will evaluate whether extraordinary circumstances may exist and have a record of the consideration of those extraordinary circumstances. Likewise, the language of Section 3.3.B has been modified to clarify this intent.

Subparagraph (4) in this section has been revised from a lengthy list of possible natural resources and other geographic designations to simply require that procedures for applying categorical exclusions take into account the potential to effect an environmentally sensitive area. The effect of this change is to lengthen the list of concerns that must be considered under this subparagraph. Consideration of the extraordinary circumstances contained in Subparagraph (4) was previously limited to only those subjects listed. The term "environmentally sensitive area" has been defined in the Glossary to be more comprehensive in its inclusion of various types of natural resources and geographic areas of special interest in an environmental impact evaluation process. The effect of this change is to ensure that a broader range of subjects will be addressed when Subparagraph (4) is used in consideration of extraordinary circumstances.

A new subparagraph (11) has been added in consideration of public comments and to conform to CEQ regulations to ensure that CATEXs are not used in situations where a proposed DHS action is related to other actions with individually insignificant, but cumulatively significant, impacts.

6. *Appendix A, Section 3.3.B, Record of Environmental Consideration.* There were no specific comments on this section. This section has been revised to clarify the purpose and use of a Record of Environmental Consideration and to conform to the changes in Appendix A, Section 3.2.C, Extraordinary Circumstances.

7. *Appendix A, Section 4.0, Environmental Assessments.* Commenters urged DHS to adopt a policy that would favor seeking public comment on both Environmental Assessments and Environmental Impact Statements, especially where issues are likely to be controversial.

Consideration of this recommendation resulted in several changes to Appendix A, section 2.6.A, as described earlier. Appendix A, section 4.0, has also been revised to more clearly reflect a policy of involving the public in EAs and to more clearly provide direction on the appropriate public involvement process. A new section 4.1 has been added to clearly describe the purpose of an environmental assessment and the former section 4.1 was renumbered to section 4.2, with some edits and clarifying language. The text that provided direction on alternatives, the internal review process within DHS, the FONSI, and the public involvement requirements has been moved to a new

section 4.3, Considerations in Preparation of an EA or a Programmatic EA.

8. *Appendix A, Section 4.3., Considerations in Preparation of an EA or a Programmatic EA.* This is a new section of the Directive. Consideration of comments urging DHS to adopt a policy that would favor seeking public comment on Environmental Assessments resulted in the consolidation of information from several parts of the Directive into this new section and the addition of some clarifying language. The language in paragraphs A, E, and F now clearly emphasizes the policy to encourage public involvement in the preparation of an EA. This section now clearly describes its relationship to the public involvement factors listed in section 2.6, and provides options to achieve the public involvement policy. The legal importance of the FONSI and any mitigation measures that may be in the FONSI have been clarified. The responsibility of the agency to implement mitigation measures contained in a FONSI has also been more clearly stated.

The sections following 4.3 have been renumbered to 4.4, 4.5, and 4.6, with appropriate editorial and language clarifications, to reflect the addition of the two new sections 4.1 and 4.3.

9. *Appendix A, Section 6.2, Classified or Protected Information.* Many comments stated that the draft Directive asserted unqualified authority to keep potentially large amounts of information on the environmental impacts of DHS operations secret and out of public view in contravention of the disclosure requirements of NEPA and CEQ regulations. The commenters argued that DHS should limit the Directive's nondisclosure provisions strictly to information that unambiguously qualifies for withholding pursuant to a Freedom of Information Act (FOIA) exemption. They further contended that to do otherwise would violate the provisions of NEPA and CEQ regulations governing the disclosure and nondisclosure of information. The comments also conveyed concern that certain provisions of the draft Directive, as well as new categories of information endorsed in the draft Directive, such as Critical Infrastructure Information (CII) and Sensitive Security Information (SSI), will be used to withhold information about the environmental impacts of DHS operations from the public. Some comments argued specifically that the manner in which CII and SSI were applied in the draft Directive exceeded the statutory mandate. In general, these comments

claimed that the draft Directive was seeking to unacceptably restrict currently available types of information relevant to the health, safety, and well-being of the public in violation of the spirit and letter of NEPA.

The Department carefully reviewed the comments received regarding public disclosure of information in environmental impact assessments and other documents prepared under NEPA and determined that the intention of the initial formulation of policy required clarification. DHS intends to comply with all applicable statutes and regulations aimed at securing the homeland and making environmental documents publicly available. The Department has many responsibilities, including the protection of certain information under statutes such as the Homeland Security Act, 6 U.S.C. 101, the Aviation Transportation Security Act, 49 U.S.C. 114, and the Maritime Transportation Security Act, 46 U.S.C. 701. The Department also has responsibilities under FOIA, 5 U.S.C. 552, to make information available to the public.

DHS will appropriately share information that was relied upon to formulate decisions that have environmental implications. DHS recognizes that there may be instances where we cannot disclose all information that supports environmental determinations because the information is otherwise protected from disclosure under the mandates that the Department must follow. For example, classified information may not be released pursuant to FOIA. *See* 5 U.S.C. 552(b)(1). Likewise, SSI and Protected CII are exempted from disclosure under FOIA, pursuant to 5 U.S.C. 552(b)(3). *See* 49 U.S.C. 114(s), 49 CFR part 1520, 6 U.S.C. 133(a), 6 CFR part 29. Other information will be available to the public in accordance with FOIA. Section 6.2 has been revised to clarify that FOIA will be followed in public disclosure of environmental impact assessments and other documents prepared under NEPA.

#### **Specific Comments on Categorical Exclusions and Responses**

*Categorical Exclusion A4.* CATEX A4 governs certain administrative and regulatory activities. This CATEX has been revised, in consultation with CEQ, in order to avoid the potential for confusion in its application and to ensure that it is not applied to the development of documents that may recommend activities with potential to significantly impact the quality of the human environment. Specifically, the Department has limited the types of

actions contemplated by this CATEX to ensure that if activities under this CATEX result in proposals for further action, this CATEX may only apply if those proposals are already contemplated by another DHS CATEX. Upon further review, it was found that this CATEX could be interpreted in a manner to include the development of documents containing proposals with potential to significantly impact the quality of the human environment. In particular the development of documents, such as those cited in the examples, could be interpreted broadly to include documents such as reports on levels of business activity or plans for physical infrastructure development that may have greater potential to significantly impact the quality of the human environment. The Department intends that the change will clarify the narrow focus of this CATEX by expressly excluding from its contemplation the development of any proposals for actions where the actions themselves would not be covered by a CATEX.

*Categorical Exclusion A6.*<sup>1</sup> This CATEX was the subject of comments concerning: (1) The references to waste disposal and (2) public information regarding the use of chemicals and low level radio nuclides for analytical testing and research. Commenters expressed concern that the analysis of impacts from waste disposal for permitted landfills may have been done in the past, but that may not account for new waste. Commenters also stated that using the existing categorical exclusions from the Federal Emergency Management Agency and the United States Coast Guard as a basis for this Categorical Exclusion was not appropriate, since those CATEXs were limited to procurement and storage of such materials and not to disposal. Commenters also expressed concern that the public should not be limited in its ability to access information regarding the use of chemicals and low level radio nuclides for analytical testing and research. One comment, for example, wanted DHS to demonstrate or document how “\* \* \* Chemicals and low level radio nuclides for analytical testing and research \* \* \*” are being used safely.

To address the concern that the analysis of impacts from waste disposal for permitted landfills may have been done in the past, but that may not account for new waste, DHS included

<sup>1</sup> The proposed categorical exclusion A5 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the A section were renumbered, beginning with the current categorical exclusion A5, to reflect this deletion.

language in example (g) that limits this CATEX to apply to only activities of waste disposal in established, permitted landfills and authorized facilities; thereby, emphasizing that the Department is held to all of the same requirements that are applicable to commercial and other federal generators of non-hazardous waste.

To address the concern that existing CATEXs from the Federal Emergency Management Agency and the United States Coast Guard were not appropriate to use as a basis for this CATEX, the following explanation is provided. During the development of these CATEX, the Panel found that various components of the Department, procure non-hazardous goods and services and store, recycle, and dispose of non-hazardous goods during the normal course of their activities in a manner like that of FEMA and the United States Coast Guard. Activities of a similar nature, scope, and intensity were found to be common throughout the Department in both administrative and operational activities. The vast majority of procurements, in conformance with procurement priorities, were found to consist of commercially available goods and services. A more limited number of procurements were for goods that were provided by commercial sources specifically for military (which could include the U.S. Coast Guard) or law enforcement purposes. Unique procurements were extremely infrequent and mostly adaptations of commercially available goods and services. It was also noted that other agencies have CATEX for similar activities that are sufficiently descriptive such that it could be determined that they included a much broader range of activities and encompassed activities of generally greater scope and intensity than any in DHS. In addition, all federal agencies, with very few limitations, must meet the same requirements to protect the environment. For example, the volume of goods and services procured and wastes disposed by other agencies dwarf those of DHS and are performed under the same regulatory policies with no significant impacts to the quality of the human environment.

To address the concern that the public should not be limited in its ability to access information regarding the use of chemicals and low level radio nuclides for analytical testing and research, DHS modified Example (e) within this CATEX to further define "analytical testing and research" by clarifying that the intent for including examples of those types of non-hazardous materials would be "for laboratory use" and

would thus be subject to the detailed requirements for the handling of such materials in established laboratories and similar facilities. Changes to Section 6 of the Directive, described elsewhere in this Notice, will also address this concern. *Categorical Exclusion A7*.<sup>2</sup> When A7 was published in the draft Directive, it was the subject of comments concerning the availability of public information generally. The Department considered the comments regarding public information and these concerns are addressed in the Department's response to comments on section 6 of the Directive.

Upon consideration of the scope of this CATEX, two other changes were made. A new limitation was added to state that "If any of these commitments result in proposals for further action, those proposals must be covered by an appropriate CATEX" to ensure that, if surveys or other actions contemplated under these CATEX result in recommendations for further action, those further actions will be appropriately evaluated under NEPA. Example (c) was modified and limited by removing the phrase "Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices \* \* \*" from the descriptive examples to ensure that this CATEX was limited to audits, surveys, and data collection of a minimally intrusive nature. These additions and changes will better address the studies and other administrative activities contemplated by this CATEX. *Categorical Exclusion B2*. CATEX B2 was the subject of comments concerning the danger to the environment raised by access to observation posts. The chief concern expressed was regarding the risk that establishment of and access to observation posts might pose to the endangered Sonoran Pronghorn antelope. Specifically, one representative comment stated that "\* \* \* a well-established record overwhelmingly demonstrates that construction, use of, and access to such observation posts is clearly not appropriate for the [categorical exclusion]."

The Department considered the comments and concluded that this CATEX does not encompass the development of new access roads or observation posts. To emphasize the

<sup>2</sup>The proposed categorical exclusion A5 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the A section were subsequently renumbered to reflect this deletion.

Department's concern in this area, the Panel specifically limited the CATEX to, "\* \* \* existing roads or established jeep trails." In order to further stress the intent of the Department that this CATEX not be extended to areas where there is potential for significant impacts on the quality of the human environment, the language of this CATEX was modified to expressly limit the use of jeep trails to those established by a governmental authority which would have shared or primary responsibility for regulating the roads or trails.

In addition, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that must be reviewed when applying this CATEX to a specific program or activity within DHS. These conditions and extraordinary circumstances were developed because, while the vast majority of DHS activities in this category do not have potential for significant impacts to the environment, activity proponents (Proponents) within DHS need to be alert for rare and unique conditions that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. The Directive now contains language that clearly and explicitly prevents the use of the CATEX where there is "A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, or Magnuson-Stevens Fishery Conservation and Management Act."

*Categorical Exclusion B4*. This CATEX was the subject of comments regarding the reference to training on specialized equipment. Specifically, the comments stated that it should be limited to those activities that do not disturb the surface in any way and have no potential to disturb the environment. The Department considered the comments regarding the reference to training, noting that there existed redundant coverage of training with CATEX G1. The references to training activities and training activity examples have been deleted from this CATEX. Responses to comments on CATEX G1 further address the concern regarding the reference to training on specialized equipment.

*Categorical Exclusion B5*. This CATEX was changed from the text published for public comment to clarify

that the phrase “\* \* \* Support for community participation projects \* \* \*” was intended to mean support for and participation in community projects. The Department is inherently dependent upon community involvement in providing the homeland security services required of it. The public is the key customer, beneficiary, and stakeholder for the products and services that the Department provides. It is essential that the Department engage in civic and community events that both serve the public and common good, as well as provide the Department with access to and credibility with its private sector customers. This change clarifies the nature of events and actions contemplated by this CATEX that may be undertaken for such purposes.

This CATEX was also changed to limit the nature of activities contemplated by adding the phrase “\* \* \* that do not involve significant physical alteration of the environment \* \* \*”. Although this aspect of this CATEX was not the subject of any public comments, it was determined that this limitation would serve to focus the activities undertaken by the Department and its components within this CATEX on those clearly lacking the potential to significantly impact the quality of the human environment.

*Categorical Exclusion B6.* Although not the subject of any public comments, this CATEX for the approval of recreational or public activities or events at a location typically used for that type and scope of that activity was specifically limited to ensure that the activities contemplated under this CATEX would not involve significant physical alteration of the environment. This was done to emphasize that this CATEX is not to be applied if there is potential for significant environmental impact.

*Categorical Exclusion B8.* CATEX B8 was the subject of comments regarding NEPA review of security equipment. Specifically, the comments generally stated that there are many security devices including x-rays and detection devices that include the use of dangerous chemical, biological, and radiological substances. The comments expressed the concern that the evaluation and disposal of these devices could pose an environmental risk.

Security equipment used within the department must meet the appropriate requirements of the Nuclear Regulatory Commission (NRC), the Food and Drug Administration (FDA), or the Federal Communications Commission (FCC). In addition, most of the security equipment consists of commercially available products that are also in use

by private industry and other government agencies.

Some of the security equipment contains trace amounts of chemical or radiological substances or produce X-rays as part of the screening process. These chemical and radiological substances and X-rays are encapsulated, shielded, and secured within the interior of the equipment. All of the Department's security systems must meet federal requirements for allowable levels of radiation emissions. There are no biological substances in the security equipment. In addition, all components within the Department that use these types of equipment perform periodic radiation surveys or wipe tests of all X-ray producing equipment or equipment that contains a small radioactive source to ensure compliance with 21 CFR 1020.40, Cabinet X-ray Systems, and NRC licensing requirements. The systems are also surveyed and inspected whenever they are relocated or maintenance is performed on the X-ray components and shielding.

Disposal of security equipment is consistent with Federal Property Management Regulations found at 41 CFR 101 and 102. Furthermore, DHS is also required to minimize disposal through maximum reutilization and specialized sales, and will ensure that maximum attainable recycling and recovery are achieved in accordance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992, and participation in the Department of Energy's Homeland Defense Equipment Reutilization (HDER) Program.

DHS has an agreement with DOE to refurbish, calibrate, and issue radiological detection equipment to local jurisdictions that request to participate in the HDER Program. No radioactive test sources are issued to local jurisdictions with this equipment, thereby limiting the potential for any radiological contamination. If DOE determines that equipment is not fit to refurbish, DOE is responsible for the equipment's disposition.

This CATEX was changed to further demonstrate that the Department must contemplate applicable requirements to protect the environment when determining whether the removal or disposal of security equipment to screen for or detect dangerous or illegal individuals or materials would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion B9.* CATEX B9 was the subject of comments regarding the temporary use of barriers and jersey walls. Specifically, comments sought clarification of the term “temporary.”

“Temporary,” as contemplated in this CATEX, means that the barrier is easily installed with no need to disturb soils or the surrounding areas, and that it can be easily removed or moved to another area. Additional comments indicated that “temporary” should be limited to a term of time, with a time period of a week or less. Comments on CATEX B9 also included concerns regarding: (1) The inclusion of diver/swimmer devices that could harm marine species and habitat, (2) the evaluation of blast/shock impact resistant systems in manners that could pose a risk to migratory birds, endangered species, and air quality, and (3) the reference to remote video surveillance systems that could cause significant surface disturbance.

The Department does not deem “temporary” regarding the use of barriers, fences, and jersey walls to mean one week or less. The term temporary is used by the Department to refer to structures that are not permanent and that, depending upon mission concerns, are eventually removed. The Department views the reference to the temporary use of barriers, fences, and jersey walls as sufficiently narrow in that only barriers, fences, and jersey walls on or adjacent to existing facilities are included in B9. A barrier, fence or jersey wall attached to, or set adjacent to, an existing facility will not normally have an adverse effect on the natural environment since the construction and location of the barrier will normally take place on land that has already been disturbed or built upon; consequently, the text has been clarified by adding “or on land that has already been disturbed or built upon”. In addition, this CATEX has been modified to emphasize that removal and disposal must be in compliance with applicable requirements to protect the environment.

In response to the concern that activities and examples under this CATEX may adversely impact the environment, the Department notes that section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are

established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

This CATEX was changed to further demonstrate that the Department must contemplate applicable requirements to protect the environment when determining whether the removal or disposal of physical security devices or controls to enhance the physical security of existing critical assets would have the potential to significantly impact the quality of the human environment.

Finally, the phrase, “\* \* \* for land based and waterfront facilities,” was added to qualify, “\* \* \* blast/shock impact-resistant systems,” within the list of devices and controls to limit and clarify the intent of the CATEX.

*Categorical Exclusion B11.*<sup>3</sup> This CATEX was the subject of comments regarding the impact of routine monitoring patrols. Specifically, the comment indicated concern that routine monitoring patrols can have an impact on the environment depending on the intensity and number of persons involved in the patrols. The comment argued that this concern is particularly important in the case of patrols occurring in sensitive areas such as wilderness areas that may be habitat to endangered species.

The Department considered the concerns associated with this comment and noted that due to their generally more remote and undeveloped state, protected wilderness areas, national wildlife refuges, national forests, national monuments, marine sanctuaries, or critical habitat for marine mammals or endangered species tend to attract illegal entrants, smugglers, and potential terrorists who are seeking to avoid detection. The volume and frequency of this illegal activity in these environmentally sensitive areas results in harm to the natural resources that these areas have been set aside to protect. The patrols contemplated by this CATEX could serve as a deterrent to individuals who might otherwise harm sensitive natural resources. In any case, this CATEX could not be used for patrol activities that may be associated with extraordinary circumstances.

DHS considered the concern that routine monitoring patrols under this CATEX may have a significant effect on the environment, in particular wilderness areas and critical habitat for

endangered species. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity proponents need to be alert for rare and unique conditions associated with routine monitoring patrols that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion D1.* This CATEX was the subject of comments regarding the term, “minor renovations and additions.” Specifically, the comment expressed the concern that activities taking place outside of a building may have impacts on sensitive coastal resources that may be adjacent to a project. The comment expressed the desire that the categorical exclusion be limited to projects that are not located near such resources.

DHS considered this concern regarding the potential for sensitive coastal resources adjacent to a project. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA; more specifically, subparagraph (4) of section 3.2 states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is defined in the Glossary to include coastal zones and other important natural resources that may be present in coastal areas. This evaluation would include not only the immediate effect of the Department’s decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

This CATEX was changed in that the example, “\* \* \* extending an existing roadway in a developed area a short distance,” was deleted to ensure that its application would not extend to DHS activities that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion D3.* This CATEX was the subject of comments regarding: (1) pest control activities, and (2) the impact of repair and maintenance activities on sensitive coastal areas. The comment focusing on pest control activities expressed concern that there exists the need for restrictions on pest control activities to avoid the potential for a significant impact on endangered species, groundwater, and public health.

DHS considered the concern with pest control activities and notes that the reference to pest control was only an example of the type of activity envisioned by the CATEX. In providing examples, the Department does not seek to extend the CATEX to actions including extraordinary circumstances that may result in the activity having significant environmental effects. However, in response to these comments, the wording of this CATEX was narrowed to clarify its application to Department-managed properties. Pest control activities that may be conducted at Department-managed properties would be incidental to the management of the facility for mission requirements. DHS does not have a natural resources management mission that may require the general eradication of pests. Typical pest control activities would consist of but not necessarily be limited to those actions necessary to meet health requirements in and around cafeterias and residential facilities, actions to maintain the integrity of structures, or the Department’s participation as one of many other property managers in larger pest control programs run by other Federal or state agencies.

DHS also considered the comment concerning the impact of repair and maintenance activities on sensitive coastal areas. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA; more specifically, subparagraph (4) of section 3.2 states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is

<sup>3</sup> The proposed categorical exclusion B10 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the B section were renumbered, beginning with the current categorical exclusion B10, to reflect this deletion.

defined in the Glossary to include coastal zones and other important natural resources that may be present in coastal areas. This evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion D5.* This CATEX was the subject of comments regarding dredging. Specifically, several comments suggested that dredging activities can have a significant effect on marine and riparian habitats, effecting endangered species, critical habitat, water flow, flooding, waste management, and a host of other environmental concerns. Additionally, some commenters suggested limiting this categorical exclusion to the United States Coast Guard.

The Department notes that its components do not generally have independent authority to conduct maintenance dredging without complying with the many laws and requirements established to protect the environment. This exclusion from further environmental analysis under NEPA is adequately limited by the need to secure applicable permits and any required approval for a disposal site. In the process of securing these permits, agencies such as the Army Corps of Engineers and the Environmental Protection Agency, as well as various state agencies, would perform independent environmental reviews of proposed DHS maintenance dredging activities. It is also noted that the U.S. Coast Guard maintenance dredging operations, which are the greatest in scope and intensity of any of these types of activities within DHS, have been conducted for many years without significant impact to the human environment.

DHS considered this concern regarding the potential for dredging activities to have a significant effect on various environmental resources. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. More specifically, these conditions and

extraordinary circumstances include consideration of the potential for significant effects on marine and riparian habitats, endangered species, critical habitat, water flow, flooding, waste management, and various other environmental concerns. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion E1.* CATEX E1 was the subject of a comment regarding facilities that cross tidal, coastal, or navigable waters. Specifically, the comment suggested that the activities contemplated by this categorical exclusion are not of concern in upland areas; however, if any of the facilities cross tidal, coastal, or navigable waters there is the potential for environmental impacts.

The Department considered this comment and notes that its elements do not have independent authority to conduct activities without complying with the many laws and requirements established to protect the environment. This exclusion from further environmental analysis under NEPA is adequately limited by the need to secure applicable permits and any required approvals from the appropriate federal, state, and local regulatory agencies.

However, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. More specifically, Appendix A, section 3.2, subparagraph (4) states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is defined in the Glossary to include coastal zones, tidal, coastal, or navigable waters, and other important natural resources that may be present in coastal areas. An evaluation of these extraordinary circumstances would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing that decision and the cumulative effects of the decision on the quality of the human environment.

*Categorical Exclusion E2.* CATEX E2 was the subject of comments expressing concern regarding the precise definition of, "developed area" or "previously disturbed site" which appear in

paragraph (b), and the potential for this categorical exclusion serving as a loophole permitting an infinite amount of construction.

The Department considered the comment regarding the definitions of "developed area" or "previously disturbed site." The comment specifically addressed wetland resources, stating that it was reasonable to believe that wetlands capable of restoration might be considered "disturbed areas." The comment explains by way of example that any such disturbance of a wetland in a particular state that was not related to restoration would possibly be inconsistent with the enforceable policies of the federally-approved Coastal Management Program within that state. In response to that concern, the Department modified the text by replacing the phrase, "\* \* \* local planning and zoning standards," with the phrase, "\* \* \* Federal, State, tribal, and local planning and zoning standards and consistent with federally approved state coastal management programs" as a condition precedent to any action taken under this CATEX.

The Department also considered the concern that this CATEX might be read to permit an infinite amount of construction as long as it could be artfully tailored to meet or to allegedly meet the specified criterion. In response, the Department makes reference to section 3.2 in Appendix A of the Directive which contains a list of conditions and extraordinary circumstances that must be reviewed in the application of this CATEX to a specific program or activity within the Department. These conditions and extraordinary circumstances were developed in recognition that, while the vast majority of the Department activities in this category do not have potential for significant impacts to the environment, activity Proponents within the Department need to be alert for rare and unique conditions that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment.

*Categorical Exclusion E4.* CATEX E4 was the subject of comments expressing concern regarding the destruction or disruption of adjacent habitat during demolition activities. The Department considered the comment regarding potentially significant impacts on

habitat areas adjacent to demolition activities. The comment specifically expressed a concern that the categorical exclusion needs to make provisions to prevent the destruction or disruption of adjacent habitat during demolition activities. The comment asserts that while activities may be otherwise in compliance with regulations compliance does not ensure that projects will cease when they have a significant effect on the environment.

In response to the concern that activities under this CATEX may adversely impact adjacent habitat or may otherwise have a significant effect on the environment, the Department notes that section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion E5.* CATEX E5 was the subject of comments expressing concern regarding actions that might cause imbalance to a stable ecosystem. The comment specifically addressed the concern that natural resource management activities might actually imbalance natural ecological functions and cause further environmental problems. The comment stated that restoration often causes short-term adverse effects in order to gain long-term beneficial effects and asserts that NEPA analysis is necessary to balance these competing effects in different timeframes.

In response to these comments, the Department modified the text published for public comment by replacing the phrase, “\* \* \* to enhance native flora and fauna,” with the phrase, “\* \* \* to aid in the maintenance or restoration of native flora and fauna,” and added the limiting term, “\* \* \* and control of non-indigenous species” as a natural resource management activity category within this CATEX. The Department also clarified the scope of this CATEX by adding the limiting term, “\* \* \* on

Department managed property,” to clarify that this CATEX is limited to property under the control of the Department. DHS made these changes to clarify that DHS is not a large land managing agency and the scope of activities contemplated would not encompass large scale land management activities, but would be limited to those properties where DHS had direct management responsibilities.

In response to the concern that activities under this CATEX, such as restoration, may cause short-term adverse effects in order to gain long-term beneficial effects, procedures in the Directive require consideration of extraordinary circumstances when this CATEX would be applied to a specific action. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion E6.* The Department received numerous comments to this CATEX asserting that the proposed categorical exclusion should be clearly limited to roads that would not cause new surface disturbance. The comments noted that road construction can have significant impact on the environment by increasing erosion, contaminated runoff, and fragmenting wildlife habitat. The comments suggest that the reference to “previously disturbed areas” needs clarification.

In response to the comments, this CATEX was significantly revised and narrowed in scope. The comments submitted for this categorical exclusion noted that the important criterion to determine the potential for significant environmental impact was not the extent of prior disturbance, but rather the degree of environmental sensitivity. The Department recognizes that new road construction is highly controversial, and accordingly modified this CATEX by limiting the term “\* \* \*

construction or reconstruction,” to read, “\* \* \* reconstruction.”

Furthermore, Section 3.2 in Appendix A of the Directive, contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. In particular, the extraordinary circumstances would require the need to be alert for a potentially significant effect on an environmentally sensitive area in the application of this CATEX. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion E7.* The Department received a general comment regarding this and several other CATEXs that essentially asserted that the Department maintained a relaxed threshold for what constitutes information that has no significant effect on the human environment. The comment referenced this categorical exclusion concerning construction of trails as an example of that relaxed threshold.

In response to these comments, the Department first makes reference to the specific limitation in the CATEX which limits its application to construction of trails in non-environmentally sensitive areas where run-off, erosion, and sedimentation during construction are capable of mitigation through implementation of Best Management Practices. Furthermore, the Department references Section 3.2 in Appendix A of the Directive, containing a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion E9.* CATEX E9 was deleted as redundant in that all of its contemplated activities were included in other proposed, and now finalized, CATEXs. Wells for drinking water, sampling wells, and watering landscaping are included in E2 or E3. Septic systems are not built independent from other facilities and

are therefore included in the activities described in E2, D3, or D4. Field instruments, such as stream-gauging stations, flow-measuring devices, telemetry systems, geo-technical monitoring tools, geophysical exploration tools, water-level recording devices, well logging systems, water sampling systems, and ambient air monitoring equipment are included in E3.

*Categorical Exclusion F1.* This CATEX was clarified to more accurately define its intent. It is more accurate to limit the actions contemplated to those applicable to hazardous materials and the relevant requirements and to provide a separate CATEX for actions related to the handling and disposal of hazardous waste. In order to ensure that this CATEX was sufficiently limited in that fashion without expanding or modifying its intended scope, the CATEX published for notice and comment as F1 has been limited by defining it as "Categorical exclusion F1: Routine procurement, transportation, distribution, use, and storage of hazardous materials that comply with all applicable requirements, such as Occupational Safety and Health Act (OSHA) and National Fire Protection Association (NFPA) requirements.

The Department received a comment on CATEX F1 that was related primarily to hazardous waste disposal as opposed to hazardous materials usage. That comment will be addressed in CATEX F2.

*Categorical Exclusion F2.* The Department received a comment on the CATEX originally published as F1, asserting that no standard exists by which to measure the routine use of hazardous materials/waste. Specifically, the comment stated that absent a deeper explanation of the activities being excluded, this categorical exclusion could easily become a rubber stamp to nearly all agency activities with hazardous waste. The comment expressed the additional concern that a categorical exclusion for these activities could mask the cumulative effects of routine hazardous waste use at agency facilities.

DHS considered this comment and separated hazardous waste handling and disposal into CATEX F2 with specific limitations to assure compliance with appropriate hazardous waste handling and disposal requirements.

In response to the concern over cumulative effects, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in

the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. In particular, this evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the potential cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

*Categorical Exclusion F3.* The Department received a comment asserting that the former categorical exclusion F3 should be deleted because it excludes detection and scanning devices that, in sufficient numbers or with sufficient radiological effects, could pose a significant threat to the environment and public health. The Department also received a comment asserting that the former categorical exclusion F2 was too broad since it does not provide for an exception for devices with a significant amount of hazardous or radiological risk and/or waste, nor does it set a limit for the cumulative use of such devices.

The Department considered these comments and realized that clarification was required. In addition, further review found that the former CATEX F2 and F3 language referencing the use of instruments that contain hazardous, radioactive, and radiological materials and the examples provided was somewhat redundant. Consequently, the CATEX that was originally published as CATEX F2 has been combined with the CATEX that was originally published as CATEX F3 and additional limiting language has been added to ensure that DHS activities contemplated by this CATEX meet all manufacturer specifications, as well as comply with all requirements to protect the environment. It is important to note that DHS meets all safety parameters for radiological devices as provided within the NRC license for those devices. In addition, DHS takes extra precautions with these devices, when installed, to ensure that these devices are separated by distance from each other, the operator, and the owners of the property being examined in conformance with the NRC license and to avoid potential for threats to the environment and public health. Furthermore, DHS does not accumulate these types of equipment in central storage, maintenance, or distribution facilities.

No evidence of cumulative effects has been demonstrated from DHS uses of these types of equipment.

*Categorical Exclusion G1.* Commenters agree with the language proposed that limited the application of this CATEX to training exercises using live chemical, biological, and radiological agents to designated facilities, but contend that this does not go far enough. Regardless of the facility, they believe the use of live agents cannot be said to inherently have no potential for significant environmental impacts. At a minimum, such activities should require a review of extraordinary circumstances and the preparation of a Record of Environmental Consideration.

DHS, in consultation with the Council on Environmental Quality, considered the comments regarding the potential effects of training activities with live agents. The language of this CATEX has been modified to clarify that it does not apply to training that involves use of live chemical, biological, or radiological agents except when the training is conducted at a location designed and constructed to contain such materials. Construction and operation of these types of facilities remains subject to review under NEPA.

*Categorical Exclusion G2.* One commenter believed that references to "conducting" national, state, local, or international training exercises should be deleted. While design and development for readiness exercises may not significantly impact the environment, actually conducting them may and the current language of "projects" or "activities \* \* \* to \* \* \* conduct \* \* \*" could be interpreted as including the actual operation of the exercise. The commenter stated that the existing Federal Aviation Administration CATEX allowing for planning grants does not support an exemption for conducting readiness activities, nor does the Army CATEX for emergency or disaster assistance provide for the proposed CATEX. The commenter also stated that perhaps the intent was not to cover the actual exercises themselves; rather, the documents providing for them; however, this is not what the language provides.

DHS considered the comments regarding the potential for significant environmental impact from the conduct of national, state, local, or international training exercises and offers the following additional explanation in response. Disaster contingency planning and training exercises have been conducted by a variety of federal agencies for many years with no significant environmental impact. The

Office of Domestic Preparedness (ODP), formerly in the Department of Justice and now merged into DHS, has conducted terrorist attack response exercises since 1997. The Federal Emergency Management Agency (FEMA), which was merged into DHS Emergency Preparedness and Response Directorate, has also conducted these types of training exercises for many years to train for response to natural disasters. No evidence of significant environmental impact has been demonstrated from the conduct of these exercises by ODP or FEMA.

DHS provides direct support, technical assistance, and funding to plan, conduct, and evaluate training exercises based on natural disasters, accidents, and chemical, biological, radiological, nuclear, or explosive terrorism. Exercises take place in communities around the nation and involve members from several response disciplines. Realistic training scenarios that involve local, state, and federal agencies are necessary to simulate actual conditions and hone the skills first responders will need in the event of a disaster, whether from terrorist attack or other natural or manmade causes. Full-scale exercises (FSEs) are the largest and most complex of these training activities and are purposefully planned with the participation of the other relevant governments and response organizations to provide as realistic a scenario as possible without making unacceptable demands on available emergency response resources or unacceptable impacts on the communities or the environments where they occur. In particular, FSE activities contemplated in the development of this CATEX are normally conducted in venues such as sports stadia, fairgrounds, ports, or other sites where large-scale activities normally take place.

Pursuant to the language of the proposed CATEX, training exercises are required to be conducted “\* \* \* in accordance with existing facility or land use designations.” This means that the entire exercise, including airborne emissions, waterborne effluents, outdoor noise, and solid and bulk waste disposal practices, must comply with existing applicable federal, state and local laws and regulations. The CATEX on its face does not apply to “\* \* \* exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices \* \* \*” that potentially could have an adverse environmental impact.

*Categorical Exclusion H2.* The former CATEX published as H2 for “Issuance of grants for the conduct of security-related

research and development or the implementation of security plans or other measures at existing facilities” has been deleted, since it was found to be redundant with the laboratory operations in B1 and the physical security activities in B9. The former CATEX H3 for “Issuance of planning documents and advisory circulars on planning for security measures which are not intended for direct implementation or are issued as administrative and technical guidance” was found to include activities that were redundant with the activities described in CATEX A3.

*Categorical Exclusion I1.* The commenter suggested edits to ensure that the use of a portable or relocatable facility does not impact sensitive resources that may be near the facility. DHS accepted this comment and made the recommended changes, as well as other grammatical changes.

*Categorical Exclusions J2 and J3 (published in the draft Directive as categorical exclusions B13 and B14, respectively).* Comments stated that Categorical Exclusion B13 created an incentive for logging by allowing commercial thinning of forests. Comments expressed concern that there were no stated requirements for agencies to cite a purpose for their logging activities such as to remove trees threatening essential DHS facilities or blocking construction of the same. Comments expressed concern that Categorical Exclusion B13 opened up the ability of an agency to allow multiple, 70-acre areas to be cumulatively cut in environmentally sensitive habitat. Comments requested explanation of how many projects will be covered under Categorical Exclusion B13, how many acres will be affected, how many board feet will be harvested, and what type of trees will be affected. Comments also expressed concern that Categorical Exclusion B13 may be used in a manner that would not consider impacts to cultural heritage areas. Comments stated that, while Categorical Exclusion B13 may be appropriate for certain agencies within DHS, such as the Federal Law Enforcement Training Center, it should not be a Department-wide categorical exclusion.

Regarding Categorical Exclusion B14, comments expressed concern that it lacked requirements for agencies to provide a purpose for the salvage of dead or dying trees, such as a requirement to remove dead trees threatening essential DHS facilities or blocking construction of the same. The comments also expressed concern that Categorical Exclusion B14 would provide DHS with the opportunity to

allow multiple, 250-acre areas to be cumulatively harvested in environmentally sensitive habitat. Comments also expressed concern over consideration of impacts to cultural heritage areas. Comments requested some explanation of how many projects will be covered under Categorical Exclusion B14, how many acres will be affected, how many board feet will be harvested, or what type of trees will be affected.

DHS considered these comments and noted several similarities regarding the potential for environmental impact from the activities contemplated in these CATEXs. Upon review of the comments and the administrative record, DHS determined that Department-wide Categorical Exclusions for these activities were not necessary. Therefore, both of these CATEXs have been limited in application to the Federal Law Enforcement Training Center (FLETC).

Activities conducted under these CATEX would be performed for operational, safety, or natural resources management purposes on FLETC property. Examples of the situations where these CATEXs may be used include, but would not be limited to, situations where trees that are damaged by storms or disease or may be dead or dying would threaten the operation of FLETC facilities, situations where forest management is needed to encourage the return of native forest species or to promote forest health, or where control of fuel load is needed to protect residential or commercial property immediately adjacent to FLETC property. In all cases, FLETC property managers would be expected to employ forest management practices as defined by the Society of American Foresters.

In addition, a commercial timber harvest program would not conform to the mission of DHS and DHS does not manage sufficient land area to sustain such a program. Consequently, there are no existing programs in DHS to encourage any type of commercial forest use nor are any expected to be established.

*Categorical Exclusion K1.* The commenters expressed concerns about the use of this CATEX in sensitive habitats. They stated that limited monitoring conducted by wildlife and land management agencies suggests that there are systematic and on-going environmental abuses and degradation caused by the Border Patrol during road dragging activities. Specifically, these one-lane roads, according to the commenters, quickly become two and three lanes in addition to the off-road driving on the shoulder done to read foot prints in the sand. The commenters

stated that much of the dragging takes place in important habitat for several endangered species. In addition, the commenter asserted that since "trails" are by definition limited to foot traffic, road dragging should not be permitted on trails.

DHS considered these comments regarding the potential for environmental impact from the activities contemplated in this CATEX. In response to this comment, Customs and Border Protection believes that it will provide adequate protection for the environment by limiting this CATEX to road dragging that will not expand the width, length, or footprint of the road or trail. Drag roads are roads and soft shoulders that are purposefully made to be wide and are groomed daily for evidence of the foot traffic from illegal entrants or smugglers. Many of these roads have been actively maintained in this fashion since the predecessor to the current Office of the Border Patrol was established in 1936. This CATEX covers previously groomed and maintained roads and trails and does not cover the creation of new drag roads; minor edits have clarified that the purpose is for maintaining rather than creating roads and trails. New drag roads would go through the same environmental review that any new road development would require. Care is taken by the Border Patrol agents to minimize impact to wildlife assets in the normal course of their duties to defend the border areas of the Nation.

**Michael Chertoff,**  
*Secretary of Homeland Security.*

### **Management Directive 5100.1, Environmental Planning Program**

#### *1. Purpose*

A. This Directive establishes policy and procedures to ensure the integration of environmental considerations into Department of Homeland Security (DHS or the Department) mission planning and project decision making. Environmental stewardship, homeland security, and economic prosperity are compatible and complementary. This Directive establishes a framework for the balanced and systematic consideration of these factors in the planning and execution of DHS activities.

B. This Directive establishes procedures that DHS will use to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4335) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508). NEPA is the basic

charter and foundation for stewardship of environmental resources in the United States. It establishes policy, sets goals, and provides a tool for carrying out federal environmental policy. NEPA requires federal agencies to use all practicable means within their authority and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

C. This Directive provides the means for DHS to follow the letter and spirit of NEPA and comply fully with CEQ regulations. This Directive adopts and supplements CEQ regulations, and is to be used in conjunction with them. This Directive encompasses other requirements and establishes the DHS Environmental Planning Program.

#### *2. Scope*

A. Substantive or procedural requirements in this Directive apply to DHS components as described herein and are to be used in program planning and project development. This Directive applies to any discretionary DHS action with the potential to affect the quality of the environment of the United States, its territories, or its possessions. It also addresses those DHS actions having effects outside the United States, its territories, or its possessions under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. More specifically, this Directive applies to:

1. DHS mission and operations planning
2. Promulgation of regulations
3. Acquisitions and procurements
4. Asset management
5. Research and development
6. Grants programs

B. This Directive supplements CEQ regulation for implementing NEPA. In the case of any apparent discrepancies between these procedures and the mandatory provisions of CEQ regulations, CEQ regulations will govern.

#### *3. Authorities*

This Directive is governed by numerous Public Laws, Regulations, and Executive Orders, including, but not limited to:

- A. Clean Air Act (16 U.S.C. 470 *et seq.*)
- B. Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)
- C. Endangered Species Act (16 U.S.C. 1531 *et seq.*)
- D. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4321–4335)

- E. Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)
- F. Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)
- G. Migratory Bird Treaty Act (16 U.S.C. 703–712)
- H. National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)
- I. National Historic Preservation Act (16 U.S.C. 470 *et seq.*)
- J. National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*)
- K. Title 40 of the Code of Federal Regulations Parts 1500–1508
- L. Executive Order 11514, Protection and Enhancement of Environmental Quality, dated March 5, 1970, as amended by Executive Order 11991, dated May 24, 1977.
- M. Executive Order 11988, Floodplain Management, dated May 24, 1977.
- N. Executive Order 11990, Protection of Wetlands, dated May 24, 1977.
- O. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979.
- P. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.
- Q. Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998.
- R. Executive Order 13123, Greening the Government through Efficient Energy Management, dated June 3, 1999.
- S. Executive Order 13148, Greening the Government through Leadership in Environmental Management, dated April 21, 2000.
- T. Executive Order 13149, Greening the Government through Federal Fleet and Transportation Efficiency, dated April 21, 2000.

#### *4. Definitions*

A. All definitions of words and phrases in 40 CFR Part 1508 apply to this Directive.

B. A glossary of words and phrases as used in this Directive is included in Appendix A.

#### *5. Responsibilities*

Responsibility for oversight of DHS NEPA activities, unless otherwise delegated, is as follows:

A. The *Secretary of DHS (Secretary)* recognizes the long term value of incorporating environmental stewardship into the planning and development of all DHS missions and activities and exercises the ultimate responsibility in the Department to fulfill environmental planning

requirements. To this end, the Secretary delegates specific authority for environmental planning to the heads of the Directorates, service chiefs, and other direct reports. The Secretary delegates to the Under Secretary for Management, as the Departmental Environmental Executive, the authority to establish an Environmental Planning Program and to ensure that environmental planning requirements are functionally integrated into DHS missions. The following objectives are to be used in guiding environmental planning activities in DHS:

1. Timely and effective support
2. Sustainable capability
3. Consistency with national security, fiscal responsibility, and other considerations of national policy
4. Full compliance with all appropriate environmental laws, Executive Orders, regulations, and other requirements, such as environmental management systems (EMS).

**B. The DHS Department**

*Environmental Executive (DEE)* is the Under Secretary for Management and has authority to fulfill the Secretary's objectives by ensuring that the Department fully integrates environmental planning requirements into all DHS missions and activities. The DEE recognizes that environmental planning is an important and necessary part of good management practice in the Department. To this end, the DEE has delegated specific authority for environmental planning to the Chief of Administrative Services, the Director of the Office of Safety and Environmental Programs, and to other DHS officials as set forth in this Directive. In exercising the authority delegated from the Secretary, the DEE will:

1. Ensure that Under Secretaries and Designated DHS Officials incorporate environmental planning and stewardship requirements into their mission requirements to fulfill the Secretary's objectives, the requirements of NEPA, CEQ Regulations, this Directive, applicable Executive Orders, and other environmental planning requirements.
2. Support budget requests to meet the requirements of this Directive.
3. Consult, as needed, with Under Secretaries and Designated DHS Officials to ensure that they complete appropriate environmental planning for highly sensitive programs or actions that may require the attention of either the Deputy Secretary or the Secretary.
4. Delegate requests for environmental planning-related information received at the Departmental level to the Chief, Administrative Services for action.

C. The *Chief of Administrative Services (CAS)* has authority to support the DEE in efforts to promote good management practice by ensuring that environmental planning requirements are functionally integrated into all of DHS missions and activities. To this end, the CAS has delegated authority to establish a reliable and cost effective environmental planning program to the Director, Office of Safety and Environmental Programs. In exercising this authority, the CAS will:

1. Advise the DEE, as needed, on all environmental planning matters in the Department.
2. Establish, as needed, appropriate Department-wide policy, guidance, or training to enable the effective performance of environmental planning throughout DHS.
3. Recommend, as requested by the DEE, appropriate action on budget requests for environmental planning resources from Under Secretaries and Designated DHS Officials.
4. Consult with Under Secretaries and Designated DHS Officials to ensure that their policies and procedures incorporate the requirements of this Directive.
5. Direct, as needed, the performance of environmental planning activities within DHS components with particular emphasis on highly sensitive programs or actions that may require the attention of the senior executive levels of the Department.
6. Coordinate requests for environmental planning related information received at the Departmental level among appropriate DHS components or assign the request to the appropriate components for resolution.
7. Approve new or revised administrative procedures proposed by DHS components, including the delegation of authority to sign environmental documents pursuant to the recommendations of the Director, Office of Safety and Environmental Programs. Coast Guard, Federal Emergency Management Agency, and Customs and Border Protection, are delegated this authority when this directive goes into effect.
8. Revoke, as appropriate, delegations of authority to a DHS Under Secretary or Designated Official.

D. The *Director, Office of Safety and Environmental Programs (DOSEP)* is designated by the Secretary as DHS Environmental Planning Program Manager and is responsible for establishing and directing the Department's environmental planning program, and ensuring its functional integration into DHS missions. The

DOSEP will support the CAS with advice and assistance in carrying out the responsibilities of that office as set forth in the above paragraph. Such advice and assistance will:

1. Advise the CAS, as needed, on all environmental planning matters in the Department.
2. Develop, as needed, policy, guidance, or training to enable the reliable, timely, and cost effective performance of environmental planning throughout the Department to fulfill the Secretary's objectives and other requirements of this Directive.
3. Evaluate for CAS, as requested, budget requests for environmental planning resources.
4. Direct, as needed, the performance of environmental planning activities within DHS components, with particular emphasis on headquarters level programs or actions and those that have the interest of the CAS.
5. Coordinate and respond to requests for environmental planning related information received at the Departmental level among appropriate DHS components or assign the request to the appropriate Directorate for resolution.
6. Review environmental documents, public notices, and other related external communications that require a Departmental-level approval prior to release by the Proponent. This includes all draft, final, and supplemental Environmental Impact Statements (EIS) originating in the Department prior to filing with EPA, unless otherwise delegated.
7. Evaluate new or substantively revised supplemental procedures from DHS components for conformance with this Directive. DHS components' supplemental procedures will only be recommended to CAS for approval after they are evaluated by DOSEP, meet all necessary CEQ and public review requirements, and incorporate all appropriate comments and revisions.
8. Evaluate new or revised DHS component procedures for environmental planning requirements promulgated under laws other than NEPA to ensure appropriate consistency with existing policies or procedures and potential for department-wide applicability.
9. Evaluate requests for delegation of authority from an Under Secretary or a designated DHS Official to sign environmental documents. Such delegation shall only be recommended for approval if the requestor has both approved supplementary procedures and adequate staff resources to fulfill the Secretary's objectives and the requirements of this Directive. The

adequacy of staff resources will involve an evaluation of knowledge and experience in fulfilling environmental planning requirements and preparing NEPA analyses and documentation sufficient to meet the Secretary's objectives. Requests for delegation of authority and supplementary procedures may be evaluated concurrently.

10. Recommend revocation of a delegation of authority from an Under Secretary or a designated DHS Official for inappropriate procedures or inadequate staff resources to ensure full compliance with this Directive or other environmental planning requirements.

11. Assist DHS components, as needed, in reviewing and assessing the environmental impacts of proposed DHS actions covered by Executive Order (E.O.) 12114.

12. Review and comment on EISs and NEPA analyses originating from agencies outside of DHS relating to:

- (a) Actions with national policy implications relating to DHS missions;
- (b) Legislation, regulations, and program proposals having a potential national impact on a DHS mission, and,
- (c) Actions with the potential to encroach upon DHS missions.

13. Coordinate requests from non-Departmental agencies regarding cooperating agency status within DHS, as appropriate.

14. Act as the principal point of contact for DHS on environmental issues brought before CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters. This includes requests for alternative arrangements to comply with NEPA and CEQ regulations.

15. Perform other functions as are specified in this Directive or as are appropriate under NEPA, CEQ regulations, applicable Executive Orders, other requirements concerning environmental matters.

E. The *Office of General Counsel* will:

1. Provide legal sufficiency review, when appropriate, for use of categorical exclusions, draft, final, and supplemental Environmental Assessments (EAs), Findings of No Significant Impact (FONSIs), Environmental Impact Statements (EISs), and Records of Decision (RODs).

2. Advise Proponents (as defined in Appendix A, Glossary) in consultation with the Environmental Planning Program Manager (EPPM), whether a component's proposed action is subject to the procedural requirements of NEPA.

3. Advise Proponents on compliance with NEPA, CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.

4. Assist in establishing or revising Departmental or component's NEPA procedures, including appropriate categorical exclusions (CATEX).

F. All *Under Secretaries, Designated DHS Officials, and Heads of Components* will:

1. Fully integrate the requirements of this Directive into planning for all applicable programs, activities, and operations. Ensure that the planning, development, and execution of all their missions and activities conform to the policy and procedures in this Directive.

2. Ensure that DHS Proponents take the lead in environmental planning efforts and maintain an understanding of the potential environmental impacts of their programs and projects.

3. Plan, program, and budget for the requirements of this Directive.

4. Support outreach processes for environmental planning.

5. Coordinate with other DHS components on environmental issues that affect them.

6. Prepare and circulate environmental documents for the consideration of others when an action or policy area in question falls under their jurisdiction as required by 40 CFR Part 1506.9.

7. Request the assistance of DOSEP in preparing the environmental analysis for any actions covered by E.O. 12114, unless otherwise delegated.

8. Propose to the CAS, for review and approval, new or revised supplemental procedures for the implementation of this Directive. All supplemental procedures will be consistent with the National Environmental Policy Act, this Directive and the CEQ regulations.

(a) Proposals to establish, substantively revise, or delete CATEXs are subject to DOSEP review, CEQ review, public comment, and publication of a final version in the **Federal Register** before they can be used.

(b) For those Under Secretaries and Designated DHS Officials with delegated authority to sign environmental documents, preparation of handbooks and other technical guidance regarding NEPA implementation do not need CAS and CEQ approval.

9. Propose to the CAS any new or revised procedures for environmental planning requirements promulgated pursuant to laws other than NEPA to confirm appropriate consistency with existing department-wide policies or procedures and to evaluate potential applicability to other DHS components.

Any new or revised procedures must be consistent with existing department-wide policies or procedures.

10. Send all environmental documents and procedures via their respective organizational hierarchy to the DOSEP for review, prior to release to the public, unless otherwise delegated.

11. Components not listed in paragraph 5.C.7 may request from the CAS a delegation of authority to sign environmental documents. The request should include documentation demonstrating that the component has adequate staff resources with knowledge and experience in preparing NEPA analyses and documentation sufficient to ensure full compliance.

12. Ensure that all external communications on environmental planning requirements that are controversial, highly visible, classified, sensitive or related to matters with potential for Department-wide implications are coordinated with the DOSEP and provide DOSEP with a copy of all related formal communications.

13. Respond to requests for copies of environmental documents, reports or other information related to the implementation of NEPA.

14. Designate an appropriate Environmental Planning Program Manager (EPPM) and alternate in their respective components as a single point of contact for coordination with DOSEP on relevant environmental planning matters.

G. *Environmental Planning Program Managers (EPPMs)* will:

1. Act as a single point of contact for DOSEP on all environmental planning matters.

2. Inform key officials within their respective components of current developments in environmental policy and programs.

3. Coordinate environmental planning strategies for matters within their respective component's purview.

4. Act to further their respective components compliance with the requirements of NEPA, CEQ regulations, this Directive, applicable Executive Orders, and other environmental requirements.

5. Identify discretionary activities within their respective components and ensure that the requirements of this Directive are fully integrated into those activities.

6. Work with Proponents in their respective components, as needed, to fulfill the requirements of this Directive and other environmental planning requirements. Consultation with Proponents will, at a minimum, involve the following objectives:

(a) Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the Proponent makes a decision that has adverse environmental effects or limits the choices of alternatives to satisfy an objective, fix a problem, or address a weakness.

(b) Plan, program, and budget to meet the requirements of this Directive.

(c) Support the execution of the requirements of this Directive.

(d) Ensure that their respective DHS Proponents are cognizant of the potential environmental impacts of their programs and projects.

(e) Monitor the preparation and review of environmental planning efforts to ensure compliance with all applicable scheduling, scoping, consultation, circulation, and public involvement requirements.

(f) Advocate and develop, as appropriate, agreements with federal, tribal, and state regulatory and/or resource agencies concerning NEPA and other environmental planning requirements.

(g) Coordinate with other DHS components on environmental issues that affect them.

(h) Coordinate with DOSEP in preparing the environmental analysis for any actions covered by E.O. 12114.

7. Propose changes in this Directive or their supplementary procedures through the appropriate lines of authority to DOSEP.

8. Support outreach processes for environmental planning.

9. In consultation with the DOSEP, define appropriate environmental training requirements for personnel within their respective components.

10. Coordinate with DOSEP on environmental issues to be brought before CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters.

11. Coordinate requests from non-Departmental agencies regarding cooperating agency status with DOSEP.

*H. Program or Project Proponents* will (in consultation with their respective EPPM):

1. Ensure that appropriate environmental planning, including the analyses and/or documentation required by NEPA is completed before a decision is made that limits the choices of alternatives to satisfy an objective, fix a problem, address a weakness, or develop a program.

2. Ensure that the program or project has adequate funding and resources to

complete appropriate environmental analysis and documentation.

3. Ensure the quality of the analysis and the documentation produced in the environmental planning process.

4. Perform the appropriate outreach and communication with federal, state, tribal, local, and public interests.

5. Ensure that the project budget has sufficient resources to meet all mitigation commitments.

6. Seek technical assistance from the DOSEP, as needed, through the appropriate lines of authority to ensure compliance with NEPA.

#### 6. Policy

A. Stewardship of the air, land, water, and cultural resources is compatible with and complementary to the planning and execution of the DHS mission. Environmental planning processes provide a systematic means of evaluating and fulfilling this aspect of DHS responsibility. DHS recognizes that when environmental stewardship responsibilities are not managed effectively, there may be social, financial, and administrative costs, as well as lost opportunities and potential for lower quality mission outcomes. To effectively meet its environmental stewardship responsibilities, DHS will integrate environmental planning requirements into homeland security operational planning, program development, and management methodologies consistent with homeland security requirements, fiscal policies, and other considerations of national policy.

B. DHS Proponents will have the lead role in the environmental planning process. DHS Proponents will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish, and wildlife, and other natural resources in the context of terrestrial and aquatic ecosystems. DHS Proponents will employ all practical means consistent with other considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in NEPA.

C. DHS Proponents will provide for adequate staff, funding, and time to integrate environmental planning into DHS missions and to perform appropriate NEPA analysis (in conformance with 40 CFR 1507.2) for programs, plans, policies, projects, regulations, orders, legislation or applications for permits, grants, or licenses. Should mitigation be necessary to reduce the environmental effects of a DHS proposed action, the Proponent will be responsible for providing the

costs of mitigation or ensuring that the applicant provides for mitigation.

D. DHS Proponents will integrate the NEPA process with other DHS planning and project decision making activities and other environmental review requirements sufficiently early to:

1. Ensure that mission planning, program development, and project decision making reflect the Secretary's objectives and the policies in this Directive.

2. Ensure that no action moves forward for funding or approval without the systematic and interdisciplinary examination of likely environmental consequences according to the policy and procedures in this Directive.

3. Balance environmental concerns with mission requirements, technical requirements, and costs in the decision making processes to ensure long-term sustainability of DHS operations.

4. Allow for appropriate communication, cooperation, and collaboration between DHS, other government entities, the public, and non-governmental entities as an integral part of the NEPA process.

E. DHS Proponents will emphasize quality analysis of the potential for environmental effects among alternative courses of action to meet mission needs and the development of strategies to minimize those effects. Documentation required under NEPA will present the evaluation of environmental effects and the development of the minimization strategies. The depth of analysis and volume of documentation will be proportionate to the nature and scope of the action, and to the complexity and level of anticipated effects on important environmental resources. Documentation is necessary to present results of the analysis, but the objective is quality analysis to support DHS decisions, not the production of documents.

F. DHS Proponent, in consultation with the EPPM and the Office of General Counsel, will determine the level of NEPA analysis required for the proposed action. DHS Proponents will complete their NEPA analysis and review for each DHS proposed action before making a final decision on whether to proceed with the proposed action. No action or portion of an action that is the subject of an EA or EIS process will be taken that limits reasonable alternatives, involves a conflict of resource use, or has an adverse environmental effect until the ROD or FONSI has been made public. No actions or portions of an action covered by a CATEX that requires a Record of Environmental Consideration

(REC) will be taken until the REC is completed.

G. Laws other than NEPA that require DHS to obtain or confirm the approval of other federal, tribal, state, or local government agencies before taking actions that are subject to NEPA, will be integrated into the NEPA process at the earliest possible stage and to the fullest extent possible. However, compliance with other environmental laws does not relieve the Proponent from completing an environmental planning process, including appropriate compliance with NEPA. In addition, compliance with NEPA does not relieve the Proponent from complying with other environmental requirements.

#### 7. Procedures

A. Appendix A contains specific procedures for the application of environmental planning requirements to DHS consistent with the Secretary's objectives and the policies in this Directive. Appendix A also provides a glossary.

B. A DHS component with delegation of authority under Section 5.C.7 may also propose supplemental procedures for CAS approval. Supplemental procedures specific to a DHS component will be effective upon approval by CAS.

C. All supplemental procedures must be fully consistent with this Directive.

D. DHS components may not use the CATEX expressly limited to another DHS component or CATEX from any other federal agency.

E. The CAS may revoke all or part of a component's delegation and any supplemental procedures. No component will be given approval to

implement its own supplemental procedures, unless they also have received complete delegation authority.

F. Components may prepare handbooks or other technical guidance for their personnel on how to apply these procedures to their programs.

G. Any questions or concerns regarding this Directive should be addressed to the Director, Office of Safety and Environment.

### **Appendix A, Timely and Effective Environmental Planning in the Department of Homeland Security**

#### *Introduction*

This Appendix provides guidance for timely and effective environmental planning and includes supplementary instructions for implementing the NEPA process in DHS. The numbers in parentheses signify the relevant citation in CEQ Regulations. DHS and its components will use NEPA as a strategic planning tool, not as a documentation exercise. DHS is committed to using all of the tools at its disposal to ensure timely and effective environmental planning and implementation of the NEPA process.

#### *1.0 General Policies and Provisions*

Timely and effective environmental planning involves a systematic process to identify and evaluate the potential for significant environmental effects from a proposed DHS action. Proponents of programs and activities within DHS have a major role in this process and are responsible for implementing the policies and provisions set out in this section. This process and the guidance in this Directive are designed to focus effort on those types of actions with the

most potential for significant environmental effects. The process involves three levels of evaluation effort as shown in Figure 1: Categorical exclusion, environmental assessment, and environmental impact statement. These levels reflect the increasing potential for significant environmental effects. It is expected that the majority of proposed DHS actions will be able to be evaluated through CATEX or environmental assessments. Fewer DHS actions are likely to require an EIS, which is prepared for those proposals with the potential to significantly impact natural resources and the human environment.

#### 1.1 Up-Front Planning Activities

A. Continually assess environmental planning in DHS to improve its effectiveness in supporting and enabling departmental missions.

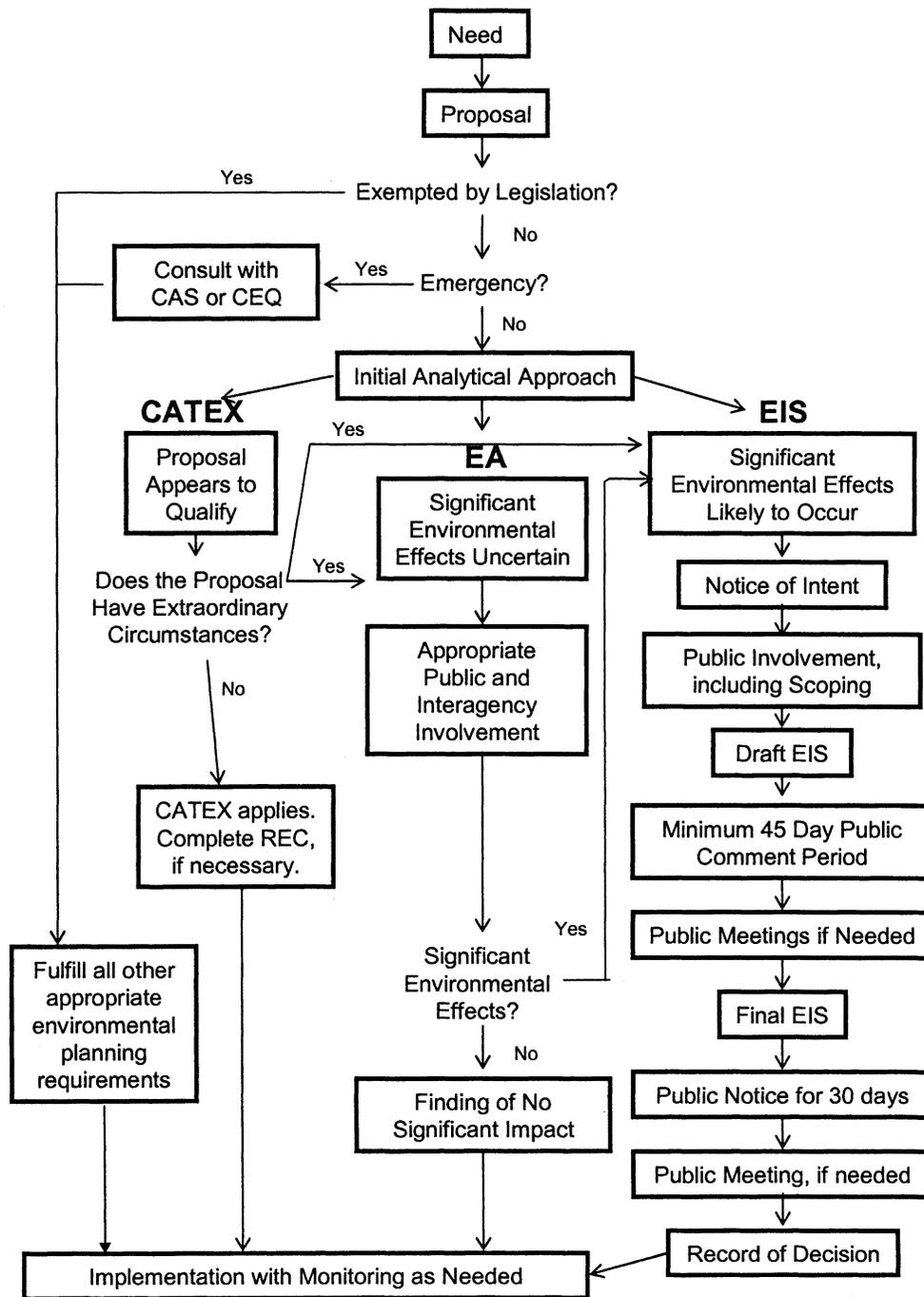
B. Adapt environmental planning goals and requirements to complement DHS mission requirements.

C. Fully integrate NEPA and other environmental planning goals and requirements into program planning and decision-making processes and formal direction, as appropriate, at all levels of the DHS organization.

D. Ensure that environmental planning staffs are located within the DHS organization where they can function as effective members of interdisciplinary planning and project teams.

E. Enable effective environmental planning through appropriate training, education, and interagency support relationships.

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**Figure 1: The Environmental Planning Process Under NEPA****BILLING CODE 4410-10-C****1.2 Ongoing Administration**

A. Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the Proponent makes a decision that limits the choice of alternatives to satisfy an objective, fix a problem, or address a weakness.

B. Integrate environmental and planning reviews concurrently, rather than sequentially, with the NEPA process.

C. Use public involvement processes to limit the analysis of issues to those that are important to the decision making at hand.

D. Share information with and coordinate with other federal, tribal, state, and local agencies early in the

planning process and integrate planning responsibilities with other agencies and governments.

E. Take into account the views of the surrounding community and other interested members of the public during its planning and decision making process.

F. Offer cooperating agency status, where appropriate, to other federal, tribal, state, and local agencies that have

jurisdiction by law or special expertise, which means statutory responsibility, agency mission or related program experience, with respect to environmental issues.

G. Ensure the scientific integrity of all environmental impact analyses, mitigation requirements, and monitoring requirements.

H. Make maximum use of programmatic analyses and tiering of environmental planning efforts to provide relevant environmental information at the appropriate program and project decision levels, eliminate repetitive analyses and discussion, ensure proper consideration of cumulative effects, and focus on issues that are important to the decision being made.

I. In accordance with 40 CFR 1506.3, consider adopting relevant existing environmental impact analyses, or any pertinent parts thereof, whether prepared by DHS or another agency. Adopted environmental impact analyses of others may be revised or supplemented as needed to serve DHS purposes.

J. Incorporate material by reference to reduce unnecessary paperwork without impeding public review. The referenced material must be reasonably available for public review within the time allowed for comment.

K. Update the list of CATEX to ensure that DHS environmental planning resources remain focused on those activities with the most potential for significant effects.

### 1.3 Follow Through—Monitoring and Mitigation (40 CFR 1505.3)

A. Practical mitigation measures (i.e., those that can be reasonably accomplished within the scope of a proposed alternative, to include offsite mitigation) should be identified to address the impacts of the proposed action and alternatives. Any mitigation measures selected by the Proponent will be clearly outlined in the FONSI or ROD and will be included in the proposed budget for the project or made a part of the approved application from external entities.

B. Use best management practices and existing environmental management systems, to implement a project and monitor the predicted environmental effects. Using adaptive management techniques, adapt the implementation of a project as new information becomes available.

C. Budget for mitigation. The Proponent will ensure funding to implement mitigation commitments or ensure that external applicants provide for mitigation funding in their proposal prior to approval by DHS.

D. Implement mitigation. Ensure that all mitigation commitments in the ROD or FONSI are implemented.

E. Monitor Results. Monitoring of the expected environmental effects from DHS projects, including appropriate indicators of effectiveness, is an integral part of any mitigation system. The Proponent is responsible for ensuring monitoring during mitigation, where necessary, to ensure that the final decision justified in the ROD or FONSI is implemented. For external applicants, the Proponent is responsible for ensuring that the applicant provides for monitoring. The Proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process.

### 1.4 Dispute Resolution

A. *The DHS Dispute Resolution Process.* During the environmental planning process, a DHS Proponent and another federal agency may not agree on significant issues or aspects of the process. DHS policy is to seek to resolve these disputes at the lowest organizational level possible. However, there are occasions when disputes cannot be resolved at this level. Figure 2 provides a diagram of the full dispute resolution process within DHS.

Alternative Dispute Resolution, using the Institute for Environmental Conflict Resolution (a federal agency based in Tucson, Arizona) or another mediation service, is an option that may be used at any stage of this dispute resolution process for more significant disputes.

When significant disputes arise, it is important to maintain a record of the

positions and interests of all of the disputing parties, as well as the eventual resolution of the dispute. The Proponent will provide the other federal agency with written notification, using certified mail or a comparable method, detailing the nature of the disagreement. The Proponent will attempt to resolve the dispute within 30 working days of notification.

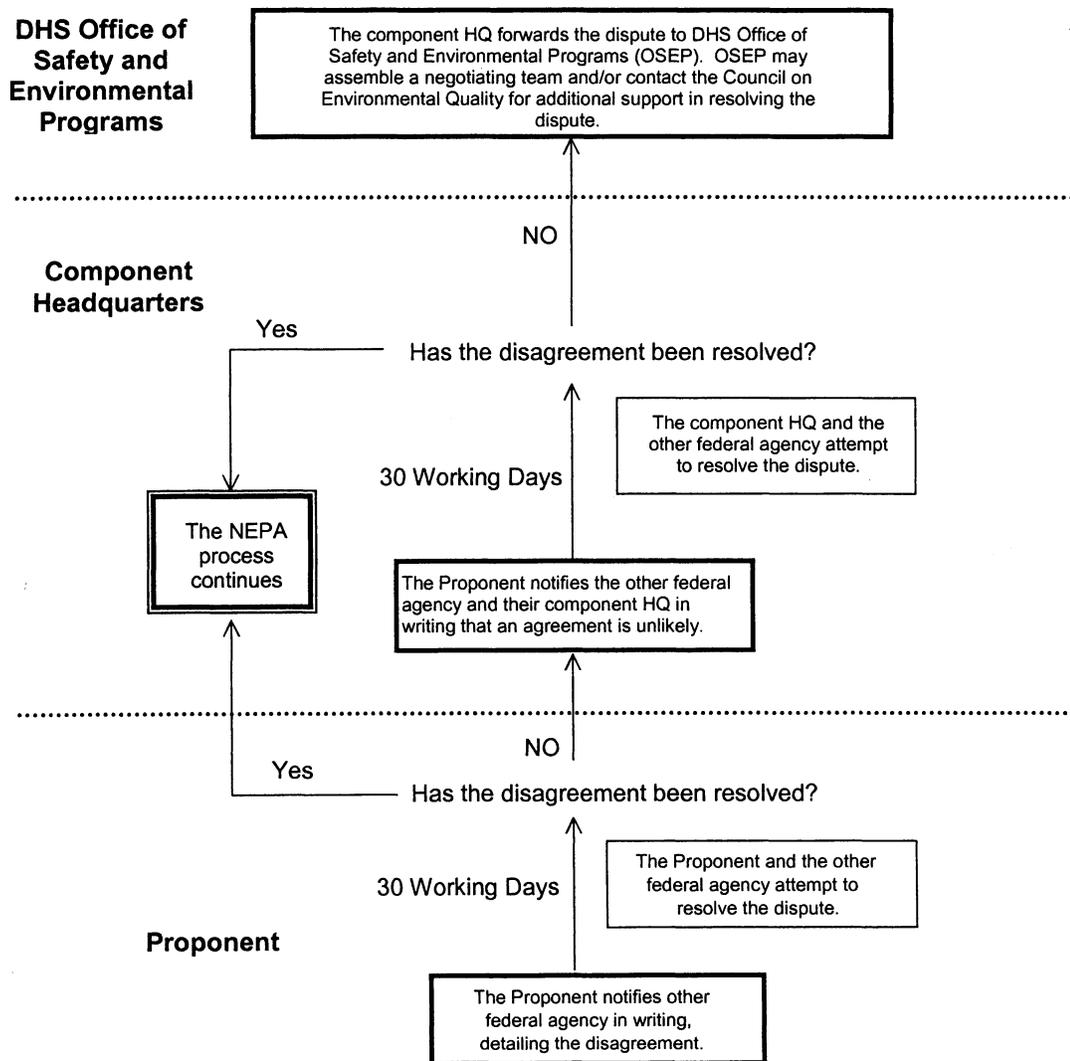
If dispute negotiations fail, the Proponent must notify the other federal agency in writing that an agreement is unlikely and provide a copy to the headquarters of the respective DHS component (where the component does not have a separate headquarters, then the notification must go to the Proponent's program office within their respective Assistant Secretary's staff). From the date of that letter, the headquarters of the DHS component will initiate 30 additional working days of negotiations.

If after 30 working days, the headquarters of the DHS component has not resolved the issue, it will be forwarded to the DEE. The DEE may appoint a negotiating team and/or seek Council on Environmental Quality (CEQ) support in resolving the issue.

B. *The CEQ Referral Process (40 CFR Part 1504).* The CEQ referral process is available when an agency is of the opinion that there are unacceptable environmental effects associated with another agency's proposed actions. Upon receipt of information that another federal agency intends to refer a DHS matter to CEQ, the DHS lead component will immediately notify and consult with the DOSEP to notify the DEE and determine how to proceed. In those instances where a DHS component is of the opinion that another agency's proposed action that is being analyzed in an EIS will result in unacceptable environmental effects, the component should elevate the matter to the DOSEP and DEE at the earliest possible time to determine how to proceed in accordance with 40 CFR part 1504.

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Figure 2: Dispute Resolution Flowchart



**BILLING CODE 4410-10-C**

*2.0 Intergovernmental Collaboration and Public Involvement*

**2.1 Purpose**

Open communication, consistent with other federal requirements, is DHS policy. The purpose of this policy is to build trust between DHS and the communities it serves. Other organizations and citizens play an important role in protection of resources

and their communities. Collaboration with other federal, tribal, state, and local agencies, as well as non-governmental organizations (NGOs) and the general public is an effective means to identify important issues to be considered in the environmental planning process. In many cases, these parties have expertise not available in DHS or they may have authorities and obligations to protect specific resources or to approve or fund all or a part of the proposal. Knowing

these issues early in the environmental planning process enables a focused effort on issues that are of most interest to the public and importance to the relevant DHS decision.

Collaboration, through meaningful and regular dialogue with those outside of DHS, can serve to avoid conflicts and facilitate resolution when conflicts occur. Awareness and consideration of the needs and requirements of other organizations and the general public,

consistent with mission requirements, will enhance the effectiveness of DHS missions.

## 2.2 Coordination With Other Government Agencies, Tribes, States, and the General Public

DHS policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in all appropriate aspects of environmental planning, especially in an environmental impact analysis process. In many cases, these organizations have expertise not available in DHS or they may have authorities and obligations to protect specific resources.

A. When DHS is the lead agency for an environmental planning effort, it is responsible for the scope of the NEPA analysis and the use of processes to coordinate with other government agencies, tribes, states, and the general public to assist in defining that scope.

B. When another agency has expertise to analyze the potential environmental effect of a DHS proposal, the Proponent will coordinate with it early to ensure high quality and complete analysis.

C. DHS will coordinate draft environmental impact analyses with appropriate federal, tribal, and state governments, as well as other interested parties.

D. Among the various Federal agencies that can be involved in an environmental planning effort, EPA has a special role. Section 309 of the Clean Air Act provides the EPA Administrator with authority to, among other things, review and comment in writing on the environmental impact of any matter relating to the environment contained in any authorized federal projects for construction and any major federal agency action for which NEPA applies. At a minimum, DHS Proponents must ensure that their EISs are appropriately coordinated with the EPA.

E. Proponents will make special effort to coordinate with affected tribes. In particular, Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" directs all federal departments to, among other things, "strengthen the United States government-to-government relationships with Indian tribes and establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications \* \* \*

F. Obtaining the views of the surrounding community and other interested parties during planning and

decision making processes helps proponents to focus the analysis to issues that are important to the public or the decision making at hand and set the boundaries of the environmental evaluation. Public involvement is a process that starts early and continues throughout the planning and early stages of conducting a NEPA analysis.

G. Scoping (40 CFR 1501.7) is a term for the process of coordination with other government agencies, tribes, states, and the general public that is required for EISs. DHS strongly encourages the use of a process like scoping for EAs.

## 2.3 Lead Agencies (40 CFR 1501.5)

The lead agency in an environmental planning process has the responsibility to define the scope and substance of the environmental planning effort.

A. DHS will be the lead agency when a proposed action is clearly within the province of DHS authority. Likewise, an Under Secretary or designated DHS Official will seek to form a joint-lead relationship, when another agency has initiated an action within the province of DHS authority or has a significant responsibility regarding the action.

B. Unless otherwise delegated, the CAS will designate a component within DHS to be the lead agency when more than one component could be involved. As necessary, the CAS will represent the Department in consultations with CEQ or other federal entities in the resolution of lead-agency determinations.

C. To eliminate duplication with state and local procedures, a non-federal agency may be designated as a joint lead agency when a component has a duty to comply with state or local requirements that are comparable to the NEPA requirements.

## 2.4 Cooperating Agencies (40 CFR 1501.6 and 1508.5)

DHS components are encouraged to use the cooperating agency process. Other federal, tribal, or state agencies may share a role in the environmental planning associated with programs or projects in DHS missions. These agencies often have specialized expertise or authority in environmental planning requirements that can benefit DHS mission planning. Where another federal, tribal, or state government agency has jurisdiction by law or special expertise with respect to environmental issues, the DHS Proponent should encourage the agency to be a cooperating agency pursuant to 40 CFR 1501.6 and 1508.5.

Any federal agency with jurisdiction by law must be a cooperating agency, if requested by the lead agency. Any

federal agency with special expertise with respect to environmental issues in an environmental impact analysis may also be a cooperating agency, by agreement. Any tribal, state, or local government entity with jurisdiction by law or special expertise on any environmental issue may also be a cooperating agency, by agreement.

CAS, as needed, will coordinate requests from non-Departmental agencies in determining cooperating agency status within DHS.

## 2.5 Public Involvement (40 CFR 1506.6)

Open communication with the American public in the environmental planning process, consistent with other federal requirements, is DHS policy.

Public involvement in the environmental planning process helps produce better decisions. Other public organizations, NGOs, and citizens play an important role in the protection of resources. DHS encourages early and open public involvement in environmental planning processes.

A. *Environmental Assessments.* The Proponent will involve other agencies, applicants, and the public in the environmental impact evaluation process leading to the preparation of an EA, to the extent practicable (to the extent that it can be done). The Proponent has discretion under 40 CFR 1501.4 (b) and 1506.6(a) regarding the type and level of public involvement and the length of any public comment period in EA preparation. Section 4.3 describes the public involvement policy for an EA in greater detail. The following factors are to be weighed in determining the nature of the public involvement effort and the length of the public comment period in EA preparation.

(1) Magnitude of the proposed project/action and impacts.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations that may be impacted.

(6) Nature of the environmental impact evaluation; for example a determination of conformity with a state air quality implementation plan may require public review. The guidance under the following section for EISs (section 2.6.B) should also be considered when preparing an environmental assessment.

B. *Environmental Impact Statements.* CEQ regulations mandate specific

public-involvement steps in the EIS. Component's will:

(1) *Provide for appropriate public involvement.* Public involvement must begin early in the proposal development stage, and during preparation of an EIS. The involvement of other federal agencies and state, local, and tribal governments with jurisdiction or special expertise with respect to environmental issues, as well as the general public, is an integral part of impact analysis, and provides information and conclusions for incorporation into an EIS. Information obtained from public involvement efforts can help to focus environmental analysis effort on the impacts with the most potential for significance. A public meeting may be appropriate. The need for a formal public hearing should be determined in accordance with the criteria set forth in 40 CFR Part 1506.6(c).

(2) *Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents.* The notice should be provided by effective and efficient means most likely to inform those persons and agencies that may be interested or affected, including minority populations and low-income populations. Special effort should be made to identify and perform outreach to affected minority populations and low-income populations. Public notices for NEPA activities involving proposals that are controversial, likely to receive Congressional or high-level executive branch attention, likely to gain nationwide attention, have DHS wide effects, or involve classified or sensitive issues should be cleared with the Departmental Environmental Executive (DEE) prior to publication.

(3) *Tailor the methods to reach the audience of concern.* Make every effort to make materials available and accessible to affected or interested populations. Special outreach efforts may be needed to reach affected tribes and minority populations and low-income populations. Translation may be required to reach limited-English speakers. Additionally, components are encouraged to use electronic means to provide access to and distribution of environmental planning information and NEPA documents.

## 2.6 Review of Other Agencies' Analyses and Documents

A. DHS components should review and comment on other agencies' environmental analyses and documents when the proposed action may impact DHS missions, operations, or facilities.

B. Comments should be confined to matters within the jurisdiction or

expertise of the Department; such as security, immigration, or enforcement.

C. If a DHS component intends to issue formal adverse comments on a non-DHS agency's analysis or document, the matter should be coordinated with DOSEP prior to issuing the comments.

### 3.0 Categorical Exclusions (40 CFR 1507.3(b)(2)(ii))

#### 3.1 Purpose

A. CEQ regulations (40 CFR 1508.4) provide for federal agencies to establish categories of actions that based on experience do not individually or cumulatively have a significant impact on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). These CATEXs allow DHS components to avoid unnecessary efforts and paperwork and concentrate their resources on those proposed actions having real potential for environmental concerns.

B. Components may otherwise decide to prepare environmental assessments for the reasons stated in CEQ regulations (1508.9) even though it is not required to do so.

C. All requests to establish, substantively revise or delete CATEXs (together with justification) will be forwarded through the component to the DOSEP for approval. Upon DOSEP approval, proposals to delete, modify, or establish new CATEXs will be subject to both CEQ review and public comment before they will be available for use.

#### 3.2 Conditions and Extraordinary Circumstances (40 CFR 1508.4)

For an action to be categorically excluded, DHS components, working with the EPPM, must satisfy each of the three conditions described below. If the proposed action does not meet these conditions, is not exempted by a statute or subject to emergency provisions for alternative compliance with NEPA, an EA or an EIS must be prepared before the action may proceed. Where it may not be clear whether a proposed action will meet these conditions, the Proponent must ensure that the administrative record reflects consideration of these conditions. Certain CATEX require documentation of the consideration of these conditions in the form of a Record of Environmental Consideration. A component should not use a CATEX for an action with significant impacts, regardless of whether the impacts are beneficial or adverse.

A. *Clearly Fits the Category.* The entire action clearly fits within one or

more of the categories of excludable actions listed in Section 3.3.

B. *Is Not a Piece of a Larger Action.*

It is not appropriate to segment an action or connected actions by division into smaller parts in order to avoid a more extensive evaluation of the potential for significant environmental impacts under NEPA. One form of segmentation occurs when the scope of the action has been divided solely for the purposes of using several CATEX or the repetitive use of a single CATEX. For purposes of NEPA, actions must be considered in the same review if the actions are connected, for example: where one action triggers or forces another; where one action depends on another (e.g., when one action is an interdependent part of a larger action, or where one action will not proceed unless another action is taken).

C. *No Extraordinary Circumstances Exist.* It is not appropriate to categorically exclude an action when there are extraordinary circumstances present that would create the potential for a normally excluded action to have a significant environmental effect. In those cases where a specific action that might otherwise be categorically excluded is associated with one or more extraordinary circumstances, a Record of Environmental Consideration (REC), as described in paragraph 3.3.B, will be prepared to document the determination that the proposed action is appropriately categorically excluded or requires further analysis through an EA or EIS process. A determination of whether an action that is normally excluded requires additional analysis because of extraordinary circumstances must focus on the action's potential effects and consider the environmental significance of those effects in terms of both context (whether local, state, regional, tribal, national, or international) and intensity. This determination is made by considering whether the specific action is likely to involve one or more of the following circumstances:

(1) A potentially significant effect on public health or safety.

(2) A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, the Migratory Bird Treaty Act, or Magnuson-Stevens Fishery Conservation and Management Act.

(3) A potentially significant effect on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, affects a historic or cultural resource or traditional and sacred sites, or the loss or destruction of

a significant scientific, cultural, or historical resource.

(4) A potentially significant effect on an environmentally sensitive area.

(5) A potential or threatened violation of a federal, state, or local law or administrative determination imposed for the protection of the environment. Some examples of administrative determinations to consider are a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan (SIP); and federal, state, or local requirements for the control of hazardous or toxic substances.

(6) An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, or likely to involve unique or unknown environmental risks.

(7) Employment of new technology or unproven technology that is likely to involve unique or unknown environmental risks, where the effect on the human environment is likely to be highly uncertain, or where the effect on the human environment is likely to be highly controversial in terms of scientific validity.

(8) Extent to which a precedent is established for future actions with significant effects.

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

(10) Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Whether the action is related to other actions with individually insignificant, but cumulatively significant impacts.

3.3 List of Categorically Excludable Actions

A. Table 1 provides a list of Categorical Exclusions, i.e., those activities which normally require no further NEPA analysis in an EA or an EIS. When relying on Table 1, Proponents, in consultation with their EPPM, should be alert for the presence of the extraordinary circumstances listed in Section 3.2. DHS CATEXs are divided into the following functional groupings of activities conducted by DHS components in fulfilling the Department's mission:

- (1) Administrative and Regulatory Activities
- (2) Operational Activities

- (3) Real Estate Management Activities
- (4) Repair and Maintenance Activities
- (5) Construction, Installation, and Demolition Activities
- (6) Hazardous/Radioactive Materials Management and Operations
- (7) Training and Exercises
- (8) Categorical Exclusions for specific DHS components

B. *Record of Environmental Consideration (REC)*. When there are extraordinary circumstances associated with a specific proposal that is a part of class of actions that is otherwise categorically excluded, a REC must be prepared. A REC is a means of documenting the consideration of the conditions listed in Section 3.2 and the determination that the specific action contemplated is either appropriately categorically excluded or should be analyzed through an EA or an EIS process. Certain CATEX, identified by an asterisk, include classes of actions that have a higher possibility of involving extraordinary circumstances. A REC will be prepared whenever a CATEX that is identified by an asterisk is used. The DOSEP will sign all RECs unless signature authority has been delegated to the component. The REC will normally not exceed two pages.

TABLE 1.—CATEGORICAL EXCLUSIONS

CATEX#	
<b>Administrative and Regulatory Activities.</b> These CATEX have the additional requirement to be conducted in conformance with Executive Orders on Greening the Government, E.O.s 13101, 13123, 13148, 13149, and 13150.	
A1 .....	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.
A2 .....	Reductions, realignments, or relocation of personnel that do not result in exceeding the infrastructure capacity or changing the use of space. An example of a substantial change in use of the supporting infrastructure would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.
A3 .....	Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: <ul style="list-style-type: none"> <li>(a) Those of a strictly administrative or procedural nature;</li> <li>(b) Those that implement, without substantive change, statutory or regulatory requirements;</li> <li>(c) Those that implement, without substantive change, procedures, manuals, and other guidance documents;</li> <li>(d) Those that interpret or amend an existing regulation without changing its environmental effect;</li> <li>(e) Technical guidance on safety and security matters; or,</li> <li>(f) Guidance for the preparation of security plans.</li> </ul>
A4 .....	Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents. If any of these activities result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include but are not limited to: <ul style="list-style-type: none"> <li>(a) Document mailings, publication and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions.</li> <li>(b) Studies, reports, proposals, analyses, literature reviews; computer modeling; and non-intrusive intelligence gathering activities.</li> </ul>
A5 .....	Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
A6 .....	<p>Procurement of non-hazardous goods and services, and storage, recycling, and disposal of non-hazardous materials and wastes, that complies with applicable requirements and is in support of routine administrative, operational, or maintenance activities. Storage activities must occur on previously disturbed land or in existing facilities. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Office supplies,</li> <li>(b) Equipment,</li> <li>(c) Mobile assets,</li> <li>(d) Utility services,</li> <li>(e) Chemicals and low level radio nuclides for laboratory use,</li> <li>(f) Deployable emergency response supplies and equipment, and</li> <li>(g) Waste disposal and contracts for waste disposal in established permitted landfills and facilities.</li> </ul>
A7 .....	<p>The commitment of resources, personnel, and funding to conduct audits, surveys, and data collection of a minimally intrusive nature. If any of these commitments result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Activities designed to support the improvement or upgrade management of natural resources, such as surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; timber stand examination; minimal water, air, waste, material and soil sampling; audits, photography, and interpretation.</li> <li>(b) Minimally-intrusive geological, geophysical, and geo- technical activities, including mapping and engineering surveys.</li> <li>(c) Conducting Facility Audits, Environmental Site Assessments and Environmental Baseline Surveys, and</li> <li>(d) Vulnerability, risk, and structural integrity assessments of infrastructure.</li> </ul>
<b>Operational Activities</b>	
B1 .....	<p>Research, development, testing, and evaluation activities, or laboratory operations conducted within existing enclosed facilities consistent with previously established safety levels and in compliance with applicable Federal, tribal, state, and local requirements to protect the environment when it will result in no, or <i>de minimus</i> change in the use of the facility. If the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.</p>
B2 .....	<p>Transportation of personnel, detainees, equipment, and evidentiary materials in wheeled vehicles over existing roads or jeep trails established by federal, tribal, state, or local governments, including access to permanent and temporary observation posts.</p>
B3 .....	<p>Proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to its ongoing functional uses and would be consistent with previously established safety levels and in compliance with applicable Federal, tribal, state, or local requirements to protect the environment.</p>
B4 .....	<p>Provision of on-site technical assistance to non-DHS organizations to prepare plans, studies, or evaluations. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) General technical assistance to assist with development and enhancement of Weapons of Mass Destruction (WMD) response plans, exercise scenario development and evaluation, facilitation of working groups, etc.</li> <li>(b) State strategy technical assistance to assist states in completing needs and threat assessments and in developing their domestic preparedness strategy.</li> </ul>
B5 .....	<p>Support for or participation in community projects that do not involve significant physical alteration of the environment. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Earth Day activities,</li> <li>(b) Adopting schools,</li> <li>(c) Cleanup of rivers and parkways, and</li> <li>(d) Repair and alteration of housing.</li> </ul>
B6 .....	<p>Approval of recreational or public activities or events at a location typically used for that type and scope (size and intensity) of activity that would not involve significant physical alteration of the environment. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Picnics,</li> <li>(b) Encampments, and</li> <li>(c) Interpretive programs for historic and cultural resources, such as programs in conjunction with state and tribal Historic Preservation Officers, or with local historic preservation or re-enactment groups.</li> </ul>
B7 .....	<p>Initial assignment or realignment of mobile assets, including vehicles, vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.</p>
B8* .....	<p>Acquisition, installation, maintenance, operation, or evaluation of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities and the eventual removal and disposal of that equipment in compliance with applicable requirements to protect the environment. Examples of the equipment include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Low-level x-ray devices,</li> <li>(b) Cameras and biometric devices,</li> <li>(c) Passive inspection devices,</li> <li>(d) Detection or security systems for explosive, biological, or chemical substances, and</li> <li>(e) Access controls, screening devices, and traffic management systems.</li> </ul>

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
B9*	<p>Acquisition, installation, operation, or evaluation of physical security devices, or controls to enhance the physical security of existing critical assets and the eventual removal and disposal of that equipment in compliance with applicable requirements to protect the environment. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Motion detection systems,</li> <li>(b) Use of temporary barriers, fences, and jersey walls on or adjacent to existing facilities or on land that has already been disturbed or built upon,</li> <li>(c) Impact resistant doors and gates,</li> <li>(d) X-ray units,</li> <li>(e) Remote video surveillance systems,</li> <li>(f) Diver/swimmer detection systems, except sonar,</li> <li>(g) Blast/shock impact-resistant systems for land based and waterfront facilities,</li> <li>(h) Column and surface wraps, and</li> <li>(i) Breakage/shatter-resistant glass.</li> </ul>
B10	<p>Identifications, inspections, surveys, or sampling, testing, seizures, quarantines, removals, sanitization, and monitoring of imported products that cause little or no physical alteration of the environment. This CATEX would primarily encompass a variety of daily activities performed at the borders and ports of entry by various elements of the Customs and Border Protection and Transportation Security Administration.</p>
B11	<p>Routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations, such as patrols, investigations, and intelligence gathering, but not including any construction activities (construction activities are addressed in Subsection F of these CATEX). This CATEX would primarily encompass a variety of daily activities performed by the components of U.S. Coast Guard, Immigration and Customs Enforcement, Customs and Border Protection, Transportation Security Administration, and the U.S. Secret Service.</p>
<b>Real Estate Activities</b>	
C1	<p>Acquisition of an interest in real property that is not within or adjacent to environmentally sensitive areas, including interests less than a fee simple, by purchase, lease, assignment, easement, condemnation, or donation, which does not result in a change in the functional use of the property.</p>
C2	<p>Lease extensions, renewals, or succeeding leases where there is no change in the facility's use and all environmental operating permits have been acquired and are current.</p>
C3	<p>Reassignment of real property, including related personal property within the Department (e.g., from one Departmental element to another) that does not result in a change in the functional use of the property.</p>
C4	<p>Transfer of administrative control over real property, including related personal property, between another federal agency and the Department that does not result in a change in the functional use of the property.</p>
C5	<p>Determination that real property is excess to the needs of the Department and, in the case of acquired real property, the subsequent reporting of such determination to the General Services Administration or, in the case of lands withdrawn or otherwise reserved for the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of Interior.</p>
<b>Repair and Maintenance Activities</b>	
D1	<p>Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or 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 would not require an environmental assessment or environmental impact statement for the installation).</p>
D2	<p>Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment that does not result in a change in the functional use of the property.</p>
D3	<p>Repair and maintenance of Department-managed buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g. replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, and maintenance of waterfront facilities that does not require individual regulatory permits).</p>
D4*	<p>Reconstruction and/or repair by replacement of existing utilities or surveillance systems in an existing right-of-way or easement, upon agreement with the owner of the relevant property interest.</p>
D5*	<p>Maintenance dredging activities within waterways, floodplains, and wetlands where no new depths are required, applicable permits are secured, and associated debris disposal is done at an approved disposal site. This CATEX encompasses activities required for the maintenance of waterfront facilities managed primarily within the U.S. Coast Guard and Customs and Border Protection.</p>
D6	<p>Maintenance of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Installing or repairing gabions with stone from a nearby source,</li> <li>(b) Adding brush for fish habitat,</li> <li>(c) Stabilizing stream banks through bioengineering techniques, and</li> <li>(d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls.</li> </ul> <p>This CATEX would primarily involve property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.</p>

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
<b>Construction, Installation, and Demolition Activities</b>	
E1 .....	Construction, installation, operation, maintenance, and removal of utility and communication systems (such as mobile antennas, data processing cable, and similar electronic equipment) that use existing rights-of-way, easements, utility distribution systems, and/or facilities. This is limited to activities with towers where the resulting total height does not exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the acquisition, installation, operation or maintenance.
E2* .....	<p>New construction upon or improvement of land where all of the following conditions are met:</p> <ul style="list-style-type: none"> <li>(a) 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,</li> <li>(b) The site is in a developed area and/or a previously-disturbed site,</li> <li>(c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area,</li> <li>(d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings, and,</li> <li>(e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).</li> </ul>
E3* .....	<p>Acquisition, installation, operation, and maintenance of equipment, devices, and/or controls necessary to mitigate effects of the Department's missions on health and the environment, including the execution of appropriate real estate agreements. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Pollution prevention and pollution control equipment required to meet applicable Federal, tribal, state, or local requirements,</li> <li>(b) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees and/or native vegetation for use as a noise abatement measure, and,</li> <li>(c) Devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, fencing and grating to prevent accidental entry to hazardous or restricted areas, and rescue beacons to protect human life.</li> </ul>
E4* .....	Removal or demolition, along with subsequent disposal of debris to permitted or authorized off-site locations, of non-historic buildings, structures, other improvements, and/or equipment in compliance with applicable environmental and safety requirements.
E5 .....	Natural resource management activities on Department-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation, landscaping, and control of non-indigenous species. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E6 .....	Reconstruction of roads on Departmental facilities, where runoff, erosion, and sedimentation issues are mitigated through implementation of best management practices. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E7 .....	Construction of physical fitness and training trails for non-motorized use on Department facilities in areas that are not environmentally sensitive, where run-off, erosion, and sedimentation are mitigated through implementation of best management practices. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E8* .....	<p>Construction of aquatic and riparian habitat in streams and ponds on Department-managed land, using native materials or best natural resource management practices. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Installing or repairing gabions with stone from a nearby source,</li> <li>(b) Adding brush for fish habitat,</li> <li>(c) Stabilizing stream banks through bioengineering techniques, and,</li> <li>(d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls.</li> </ul> <p>This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.</p>
<b>Hazardous/Radioactive Materials Management and Operations</b>	
F1 .....	Routine procurement, transportation, distribution, use, and storage of hazardous materials that comply with all applicable requirements, such as Occupational Safety and Health Act (OSHA) and National Fire Protection Association (NFPA).
F2 .....	<p>Reuse, recycling, and disposal of solid, medical, radiological, and hazardous waste generated incidental to Department activities that comply with applicable requirements such as Resource Conservation and Recovery Act (RCRA), Occupational Safety and Health Act (OSHA), and state hazardous waste management practices. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Appropriate treatment and disposal of medical waste conducted in accordance with all federal, state, local and tribal laws and regulations,</li> <li>(b) Temporary storage and disposal solid waste, conducted in accordance with all federal, state, local and tribal laws and regulations,</li> <li>(c) Disposal of radiological waste through manufacturer return and recycling programs, and</li> <li>(d) Hazardous waste minimization activities.</li> </ul>

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
F3 .....	<p>Use (that may include the processes of installation, maintenance, non-destructive testing, and calibration), transport, and storage of hand-held, mobile or stationary instruments, containing sealed radiological and radioactive materials, to screen for or detect dangerous or illegal individuals or materials in compliance with commercial manufacturers specifications, as well as applicable Federal requirements to protect the human environment. Examples of such instruments include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Gauging devices, tracers, and other analytical instruments,</li> <li>(b) Instruments used in industrial radiography,</li> <li>(c) Systems used in medical and veterinary practices; and</li> <li>(d) Nuclear Regulatory Commission (NRC) approved, sealed, small source radiation devices for scanning vehicles and packages where radiation exposure to employees or the public does not exceed 0.1 rem per year and where systems are maintained within the NRC license parameters at existing facilities.</li> </ul>
<b>Training and Exercises</b>	
G1 .....	<p>Training of homeland security personnel, including international, tribal, state, and local agency representatives using existing facilities where the training occurs in accordance with applicable permits and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, or radiological agents except when conducted at a location designed and constructed to contain the materials used for that training. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Administrative or classroom training,</li> <li>(b) Tactical training, including but not limited to training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response,</li> <li>(c) Vehicle and small boat operation training,</li> <li>(d) Small arms and less-than-lethal weapons training,</li> <li>(e) Security specialties and terrorist response training,</li> <li>(f) Crowd control training, including gas range training,</li> <li>(g) Enforcement response, self-defense, and interdiction techniques training, and</li> <li>(h) Techniques for use in fingerprinting and drug analysis.</li> </ul>
G2 .....	<p>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 and where conducted in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades/flash bang devices used to simulate an attack during exercise play).</p>
<b>Unique Categorical Exclusions for the Transportation Security Administration</b>	
H1 .....	<p>Approval or disapproval of security plans required under legislative or regulatory mandates unless such plans would have a significant effect on the environment.</p>
H2 .....	<p>Issuance or revocation of certificates or other approvals, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Airmen certificates,</li> <li>(b) Security procedures at general aviation airports, and</li> <li>(c) Airport security plans.</li> </ul>
<b>Unique Categorical Exclusion for the U.S. Visit Program</b>	
I1* .....	<p>A portable or relocatable facility or structure used to collect traveler data at or adjacent to an existing port of entry where the placement or use of the facility does not significantly disturb land, air, or water resources and does not individually or cumulatively have a significant environmental effect. The building footprint of the facility must be less than 5,000 square feet and the facility or structure must not foreclose future land use alternatives.</p>
<b>Unique Categorical Exclusions for the Federal Law Enforcement Training Center</b>	
J1* .....	<p>Prescribed burning, wildlife habitat improvement thinning, and brush removal for southern yellow pine at the FLETC facility in Glynco, Georgia. No more than 200 acres will be treated in any single year. These activities may include up to 0.5 mile of low-standard, temporary road construction to support these operations.</p>
J2 .....	<p>Harvest of live trees on Federal Law Enforcement Training Center facilities not to exceed 70 acres, requiring no more than 1/2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Removal of individual trees for saw logs, specialty products, or fuel wood, and</li> <li>(b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.</li> </ul>
J3 .....	<p>Salvage of dead and/or dying trees on Federal Law Enforcement Training Center facilities not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees,</li> <li>(b) Harvest of fire damaged trees, and</li> <li>(c) Harvest of insect or disease damaged trees.</li> </ul>

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
<b>Unique Categorical Exclusions for Customs and Border Protection</b>	
K1 .....	Road dragging of existing roads and trails established by Federal, tribal, state, or local governments to maintain a clearly delineated right-of-way, to provide evidence of foot traffic and that will not expand the width, length, or footprint of the road or trail.
K2 .....	Repair and maintenance of existing border fences that do not involve expansion in width or length of the project, and will not encroach on adjacent habitat.

\*Denotes classes of actions that have a higher possibility of involving extraordinary circumstances. A REC will be prepared whenever a CATEX that is identified by an asterisk is used.

4.0 Environmental Assessments

4.1 Purpose

An EA is a brief analysis that is prepared pursuant to NEPA to assist the Proponent in decision making by determining whether an EIS must be prepared. The environmental impact evaluation process summarized in an EA will conclude in either a finding of no significant impact (FONSI) or a Notice of Intent to prepare an EIS.

4.2 When To Use

A. For any proposed action by a component that does not qualify for a CATEX or involves extraordinary circumstances that preclude use of the CATEX, or does not clearly require an EIS, the Proponent will prepare an EA unless it is otherwise clear that an EIS is needed.

B. If changes in the scope of a proposed component's action could significantly affect the quality of the human environment, an EA shall be prepared as soon as possible to determine the significance of the effects unless it is otherwise clear that an EIS is needed.

C. An EA need not be prepared if a Proponent has decided to prepare an EIS on a proposed action.

D. An EA may be prepared on any action at any time a Proponent determines that an EA would assist DHS planning and decision making.

4.3 Considerations in Preparation of an EA or a Programmatic EA

A. CEQ regulations and DHS policy require public involvement in the environmental impact evaluation process leading to the preparation of an EA. The degree of public involvement is to be determined by evaluating the factors in Appendix A, Section 2.5. In addition, Appendix A, Section 2.2 strongly encourages the use of a process like scoping to fulfill public involvement requirements during the preparation of an EA. Subparagraphs 4.3.E and F of this Directive describe other procedures to obtain public

involvement in the preparation of an EA.

B. The EA should include alternatives to the proposed action.

C. Unless signature authority has been specifically delegated to a relevant DHS component, EAs and the associated environmental documents should be reviewed and approved by the CAS.

D. An EA may result in a FONSI when one of two situations exists: a FONSI may conclude the process when either (1) the evaluation of environmental effects of the proposed action finds no potential for significant impact to the quality of the human environment or (2) the component can commit to including measures in the proposed action that mitigate the potential for significant impact until it is no longer significant. If a Proponent uses mitigation measures in such a manner, the FONSI must identify these mitigating measures, and they must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the Proponent must stop the action and prepare an EIS.

E. When a process like scoping is not used to involve the public early in the preparation of an EA, the Proponent, in consultation with the EPPM, will determine how to make any EA and proposed FONSI available to the public before making a decision or taking an action. This determination should be made after evaluation of the factors in Appendix A, Section 2.5. When it is determined that an EA and proposed FONSI will be made available for public review and comment pursuant to this subparagraph, a minimum period of thirty (30) days will normally be provided for comment.

F. There are certain situations, described in 40 CFR 1501.4(e) (2), when a public review period is required for a draft FONSI. DHS will publish the EA with any draft FONSI that is published for public review pursuant to this subparagraph. Following the procedure in this subparagraph does not preclude

the option to also use a process like scoping to obtain public involvement early in the process of preparing an EA.

G. The EA process concludes with either a public notice of the availability of the approved EA and signed FONSI or a decision to proceed to prepare an EIS and the publication of a Notice of Intent in the **Federal Register**.

4.4 Actions Normally Requiring an EA or a Programmatic EA (40 CFR 1501.3, 1508.9)

A. Projects for which environmental assessments will be the minimum level of analysis include, but are not limited to:

(1) Proposed construction, land use, activity, or operation that has the potential to significantly affect environmentally sensitive areas.

(2) Dredging projects that do not meet the criteria of the U.S. Army Corps of Engineers Nationwide Permit Program.

(3) New or revised regulations, Directives, or policy guidance that is not categorically excluded.

(4) Proposal of new, low-altitude aircraft routes wherein over flights have the potential to significantly affect persons, endangered species, or property.

(5) Permanent closure or limitation of access to any area that was previously open to public use (e.g., roads and recreational areas) where there is a potential for significant environmental impacts.

(6) New law enforcement field operations for which the impacts are unknown, or for which the potential for significant environmental degradation or controversy is likely.

B. A Programmatic EA may be prepared on a broad federal action, such as a program or plan for which only very general environmental information is known, and the anticipated environmental impacts are minor. A site or activity-specific EA or supplemental EA, may be tiered to the Programmatic EA and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific EA. In some cases the

Programmatic EA may be specific enough or contain sufficient information to require no or very little tiered analysis.

#### 4.5 Decision Document: Finding of No Significant Impact (FONSI) (40 CFR 1508.13)

If the EA supports the conclusion that the action has no significant impact on the environment, the Proponent will prepare a separate Finding of No Significant Impact (FONSI) that will accompany the EA. The action described in the FONSI will be the one that DHS or its component intends to implement. It is also known as the "proposed action" under NEPA.

A. The FONSI must either be attached to the EA or incorporate the EA by reference and consist of the following:

- (1) The name of the proposed action,
- (2) A summary of the facts and conclusions that led to the FONSI,
- (3) Any mitigation commitments (including funding and/or monitoring) essential to render the impacts of the proposed action not significant, beyond those mitigations that are an integral part of the proposed action,

(4) A statement that the action will not have a significant impact on the human environment, and,

(5) The date of issuance and signature of the components official approving the document.

#### 4.6 Supplemental EAs

A. The Proponent will prepare a supplemental EA if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns.

B. The Proponent may supplement a draft or final EA at any time to further the analysis.

C. The Proponent will prepare, circulate, and file a supplement to an EA in the same manner as any other EA. The Proponent will provide public involvement in Supplemental EAs like that for other EAs. The Proponent has discretion regarding the type and level of public involvement in Supplemental EAs. Factors to be weighed include those listed in Section 2.6 A.

D. The supplemental EA process concludes with either a public notice of the availability of the approved EA and signed FONSI or a decision to proceed to prepare an EIS and the publication of a Notice of Intent in the **Federal Register**.

#### 5.0 Environmental Impact Statements (EISs) (40 CFR 1502)

##### 5.1 Purpose

An EIS analyzes the environmental impacts of a proposed action and all reasonable alternatives. It displays them in a report for review by the decision maker. The EIS provides an opportunity to work collaboratively with other federal, state, and tribal authorities. The EIS provides an opportunity for the public to understand the impacts and to influence the decision. An EIS is a more detailed analysis than an EA and is prepared for actions that appear to be major federal actions significantly affecting the quality of the human environment. It includes (1) a purpose and need statement (2) a reasonable range of alternative means to meet that purpose and need (3) a description of the affected environment (4) a description of the environmental effects of each of the alternatives and (5) a list of persons primarily responsible for a particular analysis (including their expertise, experience, and professional discipline). The EIS must identify the preferred alternative or alternatives (if one or more exist) in the draft EIS.

##### 5.2 When To Use

An EIS is prepared when a DHS component proposes an action that does not qualify for a CATEX or EA, and that could constitute a major federal action significantly affecting the quality of the human environment.

#### 5.3 Actions Normally Requiring an EIS (40 CFR 1501.4), a Programmatic EIS, or a Legislative EIS (40 CFR 1506.8)

A. Actions normally requiring EISs include, but are not limited to:

- (1) Actions where the effects of a project or operation on the human environment are likely to be highly controversial,
- (2) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas,
- (3) Major federal actions having a significant environmental effect on the global commons, such as the oceans or Antarctica, as described in E.O. 12114,
- (4) Change in area, scope, type, and/ or tempo of operations that may result in significant environmental effects, and
- (5) Where an action is required by statute or treaty to develop an EIS.

B. A Programmatic EIS (PEIS) may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known. A site-specific EIS or EA may then be tiered to the PEIS and the

environmental analysis discussed in the broader statement be incorporated by reference in the site-specific analysis.

C. A Legislative EIS will be prepared and circulated for any legislative proposal for which DHS or its components are primarily responsible and which involves significant environmental impacts.

#### 5.4 Preparation and Filing (40 CFR 1506.9)

The Proponent is responsible for initiation, preparation, and approval of EISs. Preparation at this level is intended to ensure that the NEPA process will be incorporated into the activity planning process and that the EIS will accompany the proposal through existing review processes.

#### 5.5 Combining Documents (40 CFR 1506.4)

Draft and final EISs should refer to the underlying studies, reports, and other documents considered in conjunction with the preparation. The components should indicate how such documents could be obtained. If possible, the supporting documents should be posted on a DHS Web site along with the EIS. With the exception of standard reference documents, such as congressional materials, the Proponent should maintain a file of the respective documents, which may be consulted by interested persons. If especially significant documents are attached to the EIS, care should be taken to ensure that the statement remains an essentially self-contained instrument easily understood without the need for undue cross-reference.

#### 5.6 Supplemental EISs (40 CFR 1502.9)

A. The Proponent will prepare a supplemental EIS if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns discussed in 40 CFR 1502.9(c)(1). In those cases where an action is not completed within a budget cycle (typically two years) from the year of execution of the ROD, the Proponent will review the EIS when proceeding with the action to determine whether a supplement is needed.

B. The Proponent may supplement a draft or final EIS or ROD at any time to further the analysis. The Proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. Any component's decision to prepare a supplemental EIS will be coordinated with the DEE unless such

decision has been delegated to the respective EPPM.

D. The Proponent will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft or final EIS, except that scoping is optional for an SEIS. A separate ROD is required for the supplement prior to any action being taken even if one had been prepared for the final EIS that is being supplemented. In special circumstances, it may be possible to negotiate alternative procedures for the SEIS with CEQ. The DEE will lead any discussions of alternative procedures with CEQ, unless delegated to the respective EPPM.

E. The public notice methods should be chosen to reach persons who may be interested in or affected by the proposal.

#### 5.7 Proposals for Legislation (40 CFR 1506.8)

The Proponent, in consultation with the DEE, is responsible for ensuring compliance with NEPA in legislative proposals. The DEE will maintain close coordination with the Office of the General Counsel whenever legislation is proposed that requires NEPA compliance.

#### 5.8 Decision Document: Record of Decision (ROD) (40 CFR 1505.2)

If the component decides to take action on a proposal covered by an EIS, a ROD will be prepared. The components will publish the ROD in the appropriate manner to make it available to the public and to reach the range of interested parties involved. The components will also post the ROD on the component's Web site, if one exists.

#### 5.9 Review of Other Agencies' EISs

A. If any DHS component receives a request for EIS comment directly from another agency, and the DHS component wants to provide comments on the EIS, the DHS component will notify the DOSEP about the request. DOSEP will check if other DHS components have been requested to comment on the same EIS.

(1) If no other DHS component has received a request for comment, DOSEP will inform the requested component to provide comments. However, comments on another agency's EIS will not be posted on a public docket without DEE approval.

(2) If another DHS component has received a request for comment, DOSEP will either:

(a) Coordinate the response between DHS components, or

(b) Direct one of DHS components to serve as the lead commenting component.

(3) The lead commenting component will provide a copy of formal comments on non-DHS agency EISs to DOSEP.

B. Any pertinent DHS projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final statement. In such cases, DHS components should consider serving as a joint lead agency or cooperating agency.

C. Several types of EIS proposals from non-DHS agencies should be referred by DHS components directly to DOSEP for comment, including:

(1) Actions with national policy implications relating to the DHS mission,

(2) Actions with national security, immigration, or law enforcement implications, and

(3) Legislation, regulations, and program proposals having national impact on DHS's mission.

#### 6.0 Special Circumstances

##### 6.1 Emergencies (40 CFR 1506.11)

In addition to natural disasters and technological hazards, Americans face threats posed by hostile governments and extremist groups. These threats to national security include acts of terrorism and war, and require DHS action to defend and protect public health and safety as expeditiously as possible. Consequently, there may not be adequate time to perform the appropriate NEPA analyses and documentation. In the event of any such emergency, whether from natural or man-made causes, DHS will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this Directive or CEQ regulations. Examples of emergencies that may require immediate DHS action include responses to hurricanes, earthquakes, imminent threat of terrorist activity, or the release or imminent release of hazardous, biological, or radiological substances.

A. The DHS senior official responsible for responding to an emergency will consider the probable environmental consequences of the proposed DHS actions and will minimize environmental damage to the maximum degree practical, consistent with protecting human life, property, and national security. At the earliest practical time, the DHS senior official responding to the emergency (in coordination with the appropriate EPPM, where authority has been delegated under section 5.C) shall ensure that DOSEP is advised on actions

taken in response to the emergency that may have environmental impacts.

B. If the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section 5.C) jointly conclude that the emergency response actions would qualify for a CATEX and give rise to no extraordinary circumstances that would preclude the use of a CATEX as defined in this Directive or CEQ regulations, then no further analysis or documentation is required to comply with NEPA prior to proceeding with DHS actions.

C. In situations where the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section 5.C) jointly conclude that the DHS emergency response actions would not qualify for a CATEX, the DHS senior official will, at a minimum, document consideration of the potential environmental effects in an environmental assessment for the DHS response action. If the environmental impact evaluation process concludes that no significant environmental effects will occur, a FONSI will be prepared and published. In the event the EA cannot be concluded prior to the initiation of DHS response actions, the DHS senior official, DOSEP, and the appropriate EPPM will develop alternative arrangements to meet the requirements of this Directive and CEQ regulations pertaining to environmental assessments. To the maximum extent practical, these alternative arrangements will ensure public notification and involvement and focus on minimizing the adverse environmental consequences of DHS response action and the emergency. The DOSEP, in coordination with the appropriate EPPM, will inform CEQ of these arrangements at the earliest opportunity.

D. If, at any time, including during the preparation of an EA as described in paragraph C above, the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section 5.C) jointly conclude that the emergency action appears to be a major federal action significantly affecting the quality of the human environment, the DOSEP, in coordination with the appropriate EPPM, will immediately notify the Council on Environmental Quality regarding the emergency and will seek alternative arrangements to comply with NEPA in accordance with 40 CFR 1506.11.

E. The alternative arrangements developed under Subsection C or D apply only to actions necessary to control the immediate effects of the emergency to prevent further harm to life or property. Other actions remain subject to NEPA review as set forth herein. Factors to address when crafting alternative arrangements include: nature and scope of the emergency; actions necessary to control the immediate impacts of the emergency; potential adverse effects of the proposed action; components of the NEPA process that can be followed and provide value to the decision making (such as coordination with regulatory agencies and the public), duration of the emergency; and potential mitigation measures.

F. A public affairs contingency plan should be developed to ensure open communication among the media, the public, and DHS to the extent practical in the event of an emergency to cover the requirements of NEPA and other related topics.

#### 6.2 Classified or Protected Information (40 CFR 1507.3(c))

A. DHS will take care to make information in NEPA analysis and documents available to the public in conformance with its responsibilities under the Council on Environmental Quality regulations at 40 CFR 1506.6(f). In accordance with CEQ regulations, DHS will not disclose classified, sensitive security information, or other information that DHS otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552).

B. The existence of classified or protected information does not relieve DHS of the requirement to assess and document the environmental effects of a proposed action.

C. To the fullest extent possible, DHS will segregate any such classified or protected information into an appendix sent to appropriate reviewers and decision makers, and allow public review of the remainder of the NEPA analysis. If exempted material cannot be segregated, or if segregation would leave essentially meaningless material, the DHS component will withhold the entire NEPA analysis from the public; however, the DHS component will prepare the NEPA analysis in accordance with CEQ Regulations and this Directive, and use it in the DHS decision making process. The protected NEPA analysis may be shared with appropriately cleared officials in CEQ, EPA, and within DHS. In such cases, other appropriate security and environmental officials will ensure that the consideration of environmental

effects will be consistent with the letter and intent of NEPA. With regard to an EIS requiring a security clearance for review, a team of cleared personnel will review the classified or protected material for compliance with applicable Federal, tribal, state, and local environmental compliance requirements. This team will include internal environmental professionals and external resource professionals with appropriate clearances.

#### 6.3 Procedures for Applicants (40 CFR 1501.2, 1506.5)

A. DHS components with the role of processing applications for permits, grants, awards, licenses, approvals, or other major federal actions become the Proponent for environmental planning purposes. These Proponents must consider the environmental effects of their action in accordance with this Directive, where applicable. The requirements of this Directive may be approached in a programmatic manner (e.g. one NEPA evaluation and document for an entire category of grants) or may be approached on a single application basis. In either case, DHS components must be alert to identify circumstances that may be associated with any single application that would have the potential for significant environmental impacts.

B. For major categories of DHS actions involving a large number of applicants, the appropriate DHS component will prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide and identify studies or other information required for later federal action.

C. DHS Proponent shall begin the NEPA review as soon as possible after receiving an application. The Proponent must conduct an independent and objective evaluation of the applicant's materials and complete the NEPA process (including evaluation of any EA that may be prepared by the applicant) before rendering a decision on the application. DHS Proponents must consider the NEPA analysis in reaching a decision.

D. In all cases, DHS program Proponent shall ensure that its application submittal and approval process provides for appropriate time and resources to meet the requirements of this Directive. Each DHS program Proponent must ensure, for each separate approval authority, that the responsibility for meeting the requirements of this Directive is appropriately allocated between the applicant and DHS for each program of

applications and, potentially, for each individual applicant. At a minimum, the application submittal and approval process must incorporate the following provisions:

(1) Consultation with DHS Proponent as early as possible in the application development process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the program Proponent may require to be submitted as part of the application. This includes the identification of the need for DHS Proponents to consult with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action in accordance with 40 CFR 1501.2(d)(2).

(2) Anticipation of issues that may lead to either or both (i) a significant environmental impact; or (ii) a concern with evaluating the level of significance. This may include identification of information gaps that may hinder an appropriate evaluation of significance.

(3) Performance of studies that DHS Proponent deems necessary and appropriate to determine the potential for environmental impacts of the proposed action.

(4) Identification and evaluation of appropriate options to resolve potentially significant environmental impacts. This may include development of appropriate actions to mitigate significant impacts.

(5) Consultation, as appropriate, with Federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action as needed during the NEPA process for scoping and other public involvement activities. This would include consultation with minority populations and low-income populations in accordance with E.O. 12898.

(6) Notification to DHS Proponent as early as possible of other actions required to coordinate and complete the federal environmental review and to eliminate duplication with state and local procedures. (40 CFR 1506.2)

(7) Notification to DHS Proponent if the applicant changes the scope of the proposed action.

(8) Notification to DHS Proponent if the applicant plans to take an action that is within the Proponent's jurisdiction that may have a significant environmental impact or limit the choice of alternatives. If DHS Proponent determines that the action would have a significant environmental impact or limit the choice of reasonable alternatives, the Proponent will promptly notify the applicant that the

permit, license, etc. will be withheld until the objectives and procedures of NEPA are achieved.

(9) Completion of appropriate NEPA documentation.

E. Final DHS approval of a grant, license, permit or other formal request from an applicant may be conditioned by provisions for appropriate mitigation of potentially significant environmental impacts. DHS Proponents will ensure that all mitigation committed to as part of the ROD or FONSI is incorporated as conditions in whatever formal approval, contract, or legal document is issued. DHS Proponents will also ensure that appropriate monitoring of the implementation and success of the mitigation is also a condition of the formal documentation. The mitigation shall become a line item in the Proponent's budget or other funding document, if appropriate, or included in the legal documents implementing the action, e.g., contracts, leases, or grants.

### Glossary

All terminology and definitions contained in 40 CFR Parts 1500–1508 are incorporated into this Directive. The following definitions are provided for other terms and phrases used.

**Component:** Any of the DHS organizational elements, including agencies, bureaus, services, directorates, etc.

**Council on Environmental Quality (CEQ):** NEPA created in the Executive Office of the President a Council on Environmental Quality. The Council is appointed by the President with the advice and consent of the Senate. The President designates the Chairman. The Council, among other things, appraises programs and activities of the federal Government in light of the policy set forth in Title I of NEPA and formulates and recommends national policies to promote improvement of the quality of the environment.

**Designated DHS Official:** Senior DHS officials as designated by the Secretary, Deputy Secretary, or Under Secretaries.

**Environmental Baseline Survey:** A generic term that refers to procedures to investigate a real property asset to determine the presence or absence of natural or man made conditions that would require consideration under various environmental laws and regulations. An environmental baseline survey may or may not be encompassed within an environmental impact evaluation.

**Environmental Impact Evaluation:** A generic term that includes the processes that result in either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Environmental

impact evaluation is often a major portion, if not the whole portion, of an environmental planning process.

**Environmental Planning Process:** The effort required to systematically address the environmental stewardship requirements in public policy during program and project planning, development, and design; and prior to execution. This process may consist wholly or in part of an environmental impact evaluation. The environmental planning process may extend into execution, deployment, or operational phases when the need to control potential for adverse environmental impacts requires mitigation and monitoring.

**Environmental Site Assessment:** A form of environmental baseline survey that typically focuses on determining the potential for soil or water contamination due to historical activities on or adjacent to defined parcels of real property. An environmental site assessment is often conducted in a manner to conform to standards established by ASTM International (formerly the American Society for Testing and Materials).

**Environmentally Sensitive Areas:** These include, but are not limited to: (1) Proposed or designated critical habitat for threatened or endangered species; (2) properties listed or eligible for listing on the National Register of Historic Places; and (3) areas having special designation or recognition such as prime or unique agricultural lands, coastal zones, designated wilderness or wilderness study areas, wild and scenic rivers, 100 year floodplains, wetlands, sole source aquifers, Marine Sanctuaries, National Wildlife Refuges, National Parks, National Monuments, essential fish habitat, etc.

**Facility Audit:** A procedure to assess ongoing compliance with environmental requirements at operating facilities.

**National Environmental Policy Act (NEPA):** Public Law 91–190, as amended, declares a national policy which will encourage productive and enjoyable harmony between man and his environment; establishes a Council on Environmental Quality in the Executive Office of the President; and requires that every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement (EIS) by the responsible official.

**Office of the General Counsel:** This phrase refers to the Office of the General Counsel as a component, as defined in the DHS Delegations of Authority.

**Proponent:** The identified project or program manager and may reside at any

level of the organization of a component. Normally this person resides in the operational line of authority. The Proponent has the immediate authority to decide a course of action or has the authority to recommend course of action, from among options, to the next higher organization level (e.g. district to region) for approval. The Proponent would also normally have authority to establish the total estimate of resource requirements for the proposed action or, in the execution phase, have the authority to direct the use of resources. While the Proponent is not normally expected to personally execute and document the environmental planning process, he or she has the lead role and is responsible for initiating the effort and retains responsibility (with support from the EPPM) for the content and quality of the process and documentation.

**Record of Environmental Consideration (REC):** A REC is an internal DHS administrative document for recording the results of a review of a specific proposal that may be included in a category of actions described in a Categorical Exclusion. The purpose, use, and content of the REC are explained in Appendix A, Section 3.3.B.

[FR Doc. 06–3078 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA–1631–DR]

### Missouri; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

**DATES:** *Effective Date:* March 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated March 16, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows: