

§91.60

28 CFR Ch. I (7–1–05 Edition)

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

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

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

(2) Review all draft documents.

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

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

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

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

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

§91.60 Grantee's responsibilities.

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

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

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

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

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

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

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

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

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

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

§91.61 Subgrantee's responsibilities.

If delegated by the grantee, the subgrantee shall:

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

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

§91.62 Preparing an Environmental Assessment.

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

the project's major objectives. The latter requires an analysis of the environmental impacts of any training and vocational activities to be conducted by the inmates.

(b) *Project planning and site selection.* During the planning phase of the project, OJP and the grantee jointly define the project, explore the various alternatives and identify a proposed site for the construction or renovation project. In order to identify possible environmental concerns and reduce the likelihood of later opposition to the project, the grantee should involve other interested parties at this stage through public meetings which allow affected or interested parties to learn about the need for the action, the scope of the proposed action, and any alternatives being considered. These public meetings should also provide interested parties an opportunity to express comments or concerns about potential consequences of the action. Additionally, minority and low-income populations as well as Indian tribes that may be affected by the proposal should be consulted at this early stage. The grantee should obtain their views on proposed sites and mitigation measures as an important step in meeting the environmental justice goals of Executive Order 12898.

(c) *Draft environmental assessment.* The grantee should prepare an EA after identifying the proposed site, but before reaching a final decision to proceed with the effort at that location. The grantee may prepare the EA or contract for the preparation of all or parts of the EA. In order to adequately assess all of the potential environmental impacts, a multi-disciplinary team must be used to perform the environmental analysis. Any state or local environmental impact review requirements should also be incorporated into the EA process. The amount of analysis and detail provided must be commensurate with the magnitude of the expected impact. At a minimum, an EA should include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and alternatives considered, and a list of agencies and persons consulted. VOI/TIS grant funds

may be used to pay the costs of preparing the environmental assessment.

(d) *OJP's Review of the Draft EA.* The Office of Justice Programs will review the EA for the following:

(1) Has the need for the proposed action been established?

(2) Have the relevant areas of environmental concern been identified?

(3) Have other agencies with an interest been consulted?

(4) Has the grantee provided opportunities for public involvement?

(5) Have reasonable alternatives and mitigation measures been considered and implemented where possible, including the costs and resources to operate the facility?

(6) Has a convincing case been made that the project as presently conceived will have only insignificant impacts on each of the identified areas of environmental concern?

(7) Has the grantee adequately documented compliance with other related federal environmental laws and regulations as well as similar state and local environmental impact review requirements.

(e) *Draft Finding of No Significant Impact (FONSI) or determination that EIS is required.* If the EA satisfies all the factors in OJP's seven-part review set forth in the previous paragraph, OJP will issue a draft FONSI. If OJP's review of the EA results in a response of "no" to any of the questions, except question 6, then the EA is incomplete and will be returned for further work. If the only "no" is in response to question 6, then OJP will issue a determination requiring an EIS for that particular project at that site. Given the cost and time required to complete an EIS, the grantee may wish to explore another alternative site at this point.

(f) *Circulate EA and draft FONSI for public comment.* The grantee must provide public notice of availability of a Finding of No Significant Impact. The notice must be timed so that interested agencies and the public have 30 days for review and comment on the draft EA.

(g) *Review comments and modify plans, as appropriate.* The grantee must review any public or agency comments received as a result of review of the EA and draft FONSI, and should modify its

plans, if appropriate. Modification may include modifying the project to mitigate the environmental impact of the proposed project, or abandoning the proposed site and selecting an alternative that will have a less significant impact on the environment. The grantee must submit the comments, responses to these comments, and any revisions to the proposed plan to OJP for review. If the grantee recommends proceeding with the project in light of adverse comments on the environmental impact, the grantee must include the rationale for its recommendation.

(h) *Final action on EA.* Unless a significant environmental impact surfaces through the public comments or other means, OJP will issue the FONSI and authorize the grantee to begin the purchase of land, the bidding process, the development of final plans and specifications, and the construction work.

§91.63 Preparing an Environmental Impact Statement

(a) *Initial determination.* OJP will determine whether a proposed project may have a significant impact on the quality of the human environment, thereby requiring the preparation of an environmental impact statement (EIS). This determination will be made either:

(1) On the basis of an environmental assessment (EA) prepared for the proposed project or

(2) Without the preparation of an EA, but based on the extensive size of the proposed facility and the resulting variety of environmental impacts, the sensitive environmental nature of the proposed site, and/or the existence of highly controversial environmental impacts.

(b) *CEQ regulations.* The CEQ regulations in 40 CFR parts 1500 through 1508 govern the preparation of the EIS. The Corrections Program Office's Handbook on *Environmental Protection Requirements* offers further guidance.

(c) *EIS preparation team.* (1) Once OJP determines that an EIS is needed, the grantee shall notify OJP in writing about the contracting method that the grantee will use to complete the EIS. The grantee shall establish an EIS preparation team or entity that meets the requirements for an interdiscipli-

nary approach. The team must not have any interest, financial or otherwise, in the outcome of the proposed project or any related projects.

(2) If the grantee decides to use an alternate method to contracting out for preparation of the EIS (such as using a team of experts from various state agencies or a university), the grantee must submit a written proposal to OJP demonstrating that the team has the necessary interdisciplinary skills and experience in preparing EISs for similar projects. The proposal must include a completion schedule demonstrating that the alternate method will not result in significant delay. The proposal must also document that all members of the team, other than the grantee's employees, do not have any interest, financial or otherwise, in the outcome of the proposed project or any related projects.

(3) The grantee must use an OJP-approved statement of work (SOW) in conducting the EIS.

(4) Any consultant or contractor hired by OJP or the grantee to prepare an EIS must execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project or any related projects.

(d) *Notice of intent.* OJP will publish a notice in the FEDERAL REGISTER to announce its intent to prepare the EIS. The grantee shall be responsible for drafting this notice. This notice must state the date, time and place of the scoping meeting and briefly describe the purpose of the meeting. The grantee should schedule the meeting at least 30 days from the date that the grantee submits the draft FEDERAL REGISTER notice to OJP.

(e) *Scoping.* The scoping process shall be conducted in accordance with 40 CFR 1501.7 of the CEQ regulations. The purpose of scoping is to identify and consult with affected federal, state and local agencies, Indian tribes, interested organizations and persons, including minority and low-income populations. The grantee and OPD shall conduct two distinct scoping meetings to assist in identifying both major and less important issues for the draft EIS. At the end of the scoping process, a brief report will be prepared summarizing the