

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

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

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

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

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

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

8. SUPPLEMENTING AN EIS

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

9. AVAILABILITY OF INFORMATION

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

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

1. AUTHORITY

These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, *et seq.*, regulations of the Department of Justice (DOJ), 28 CFR part 61, *et seq.*, the Environmental Qual-

ity Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. PURPOSE

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

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

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

To ensure compliance with NEPA, the USMS shall make efforts to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including, (1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values, and to head off potential conflicts and/or delays,

(2) emphasizing inter-agency cooperation before the environmental analysis and documentation is prepared, (3) ensuring the swift and fair resolution of any dispute over the designation of the lead agency, (4) employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis, (5) setting deadlines for the NEPA process as appropriate for individual proposed actions, (6) initiating the NEPA analysis as early as possible to coincide with the agency's consideration of a proposal by another party, and (7) using accelerated procedures, as described in the CEQ regulations, for legislative proposals.

3. AGENCY DESCRIPTION

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

4. TYPICAL CLASSES OF USMS ACTIONS

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

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

(2) Transfers or disposal of equipment or property,

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

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

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

(b) Scope of Analysis.

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

(2) The USMS has control and responsibility for portions of a project beyond the limits of USMS jurisdiction where the environmental consequences of the larger project are essentially products of USMS specific ac-

tion. This control turns an otherwise non-federal project into a Federal action.

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

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

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

5. ENVIRONMENTAL IMPACT STATEMENT (EIS)

(a) An EIS is a document required of Federal agencies for proposals significantly affecting the quality of the human environment. EIS describes the positive and negative effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) will be published in the FEDERAL REGISTER as soon as practicable after a decision to prepare an EIS is made and before the scoping process is initiated. An EIS shall describe how alternatives considered in it, and the decisions based on it, will or will not achieve the goals of NEPA to prevent damage to the environment and promote human health. Additionally, an EIS shall describe how the USMS will comply with relevant environmental laws and policies. The format

and content of an EIS are set out at 40 CFR part 1502. The USMS may prepare an EIS without prior preparation of an EA.

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

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

- (1) USMS actions that are likely to have a significant environmental impact on the human environment, or
- (2) Construction of a major facility on a previously undisturbed site.

6. ENVIRONMENTAL ASSESSMENT (EA)

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

(b) A FONSI will include the EA or a summary of the EA. The FONSI will be prepared and made available to the public through means described in paragraph 9 of this Appendix, including publication in local newspapers and in the FEDERAL REGISTER for matters of national concern. The FONSI will be available for review and comment for 30 days prior to signature and the initiation of the action, unless special circumstances warrant reducing the public comment period to 15 days. Implementing the action can proceed after consideration of public comments and the decision-maker signs the FONSI.

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

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

clusion because they involve extraordinary circumstances.

7. CATEGORICAL EXCLUSIONS (CE)

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

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

(1) The project may have effects on the quality of the environment that are likely to be highly controversial;

(2) The scope or size of the project is greater than normally experienced for a particular action described in subsection (c) below;

(3) There is potential for degradation, even if slight, of already-existing poor environmental conditions;

(4) A degrading influence, activity, or effect is initiated in an area not already significantly modified from its natural condition;

(5) There is a potential for adverse effects on areas of critical environmental concern or other protected resources including, but not limited to, threatened or endangered species or their habitats, significant archaeological materials, prime or unique agricultural lands, wetlands, coastal zones, sole source aquifers, 100-year-old flood plains, places listed, proposed, or eligible for listing on the National Register of Historic Places, natural landmarks listed, proposed, or eligible for listing on the National Registry of Natural Landmarks, Wilderness Areas or wilderness study areas, or Wild and Scenic River areas; or

(6) Possible significant direct, indirect, or cumulative environmental impacts exist.

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

(1) Minor renovations or repairs within an existing facility, unless the project would adversely affect a structure listed in the National Register of Historic Places or is eligible for listing in the register.

(2) Facility expansion, or construction of a limited addition to an existing structure, or facility, and new construction or reconstruction of a small facility on a previously developed site. The exclusion applies only if:

(i) The structure and proposed use comply with local planning and zoning and any applicable State or Federal requirements; and

(ii) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.

(3) Security upgrades of existing facility grounds and perimeter fences, not including such upgrades as adding lethal fences or major increases in height or lighting of a perimeter fence in a residential area or other area sensitive to the visual impacts resulting from height or lighting changes.

(4) Federal contracts or agreements for detentions services, including actions such as procuring guards for detention services or leasing bed space (which may include operational costs) from an existing facility operated by a State or a local government or a private correctional corporation.

(5) General administrative activities that involve a limited commitment of resources, such as personnel actions or policy related to personnel issues, organizational changes, procurement of office supplies and systems, and commitment or reallocation of funds for previously reviewed and approved programs or activities.

(6) Change in contractor or Federal operators at an existing contractor-operated correctional or detention facility.

(7) Transferring, leasing, maintaining, acquiring, or disposing of interests in land where there is no change in the current scope and intensity of land use, including management and disposal of seized assets pursuant to Federal laws.

(8) Transferring, leasing, maintaining, acquiring, or disposing of equipment, personal property, or vessels that do not increase the current scope and intensity of USMS activities, including management and disposal of seized assets pursuant to Federal forfeiture laws.

(9) Routine procurement of goods and services to support operations and infrastructure that are conducted in accordance with Department of Justice energy efficiency policies and applicable Executive Orders, such as E.O. 13148.

(10) Routine transportation of prisoners or detainees between facilities and flying activities in compliance with Federal Aviation Administration Regulations, only applicable where the activity is in accordance with normal flight patterns and elevations for the facility and where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been the subject of a NEPA review, and

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

8. RESPONSIBILITIES

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

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

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

(2) Supervising the Environmental Coordinator,

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

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

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

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

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

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

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

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

(5) Providing for agency training on environmental matters.

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

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

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

(3) Consult early with appropriate Indian tribes, State and local agencies, and interested private persons and organizations on

those projects in which the USMS involvement is reasonably foreseeable.

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

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

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

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

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

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

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

(7) Include, as part of the administrative record, relevant environmental documents, comments, and responses in formal rule-making or adjudicatory proceedings, and

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

9. PUBLIC INVOLVEMENT

(a) In accordance with NEPA and CEQ regulations and to ensure public involvement in decision-making regarding environmental

impact on local communities, the USMS shall also engage in the following procedures during its NEPA process:

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

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

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

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

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

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

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

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

10. SCOPING

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

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hold an early scoping meeting that may be integrated with other initial planning meetings.

11. MITIGATION AND MONITORING

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

12. SUPPLEMENTING AN EA OR EIS

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

13. COMPLIANCE WITH OTHER ENVIRONMENTAL STATUTES

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

[71 FR 71048, Dec. 8, 2006]

PART 63—FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION PROCEDURES

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

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

§ 63.1 Purpose.

These guidelines set forth procedures to be followed by the Department of Justice to implement Executive Order

11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). (The Orders.)

§ 63.2 Policy.

(a) It is the Department of Justice's policy to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in floodplains and wetlands whenever there is a practicable alternative. The Department will provide leadership and take affirmative action to carry out the Orders.

(b) It is the Department of Justice's intention to integrate these procedures with those required under statutes protecting the environment, such as the National Environmental Policy Act (NEPA). Whenever possible, the procedures detailed herein should be coordinated with other required documents, such as the environmental impact statement (EIS) or environmental assessment required under NEPA, so that unnecessary paperwork can be eliminated.

§ 63.3 References.

(a) Unified National Program for Floodplain Management, Water Resources Council, which is incorporated in these guidelines.

(b) Water Resources Council Floodplain Management Guidelines, Water Resources Council, 1978 (43 FR 6030).

(c) National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*) and NFIP criteria (44 CFR part 59 *et seq.*).

(d) Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

(e) National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*) (NEPA).

§ 63.4 Definitions.

Throughout this part, the following basic definitions shall apply:

(a) *Action*—any Federal activity including:

- (1) Acquiring, managing and disposing of Federal lands and facilities;
- (2) Providing federally undertaken, financed, or assisted construction and improvements; and