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Corrections Program Office

OJP
Corrections Program Office

Program Guidance on Environmental Protection Requirements

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Introduction

The National Environmental Policy Act (NEPA) of 1969 (Pub. Law 90-190; 42 U.S.C. § 4371 et seq) establishes a national goal of protecting the environment. NEPA requirements apply to any federal project, decision, or action, including grants in aid, that might have a significant impact on the quality of the human environment. NEPA is the basic national charter for protection of the environment. It establishes policy, sets goals and provides the means for carrying out the policy. According to the *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,* issued by the Council on Environmental Quality, "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential....The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment."

The policy requires that federal agencies, to the fullest extent possible:

- Implement procedures to make the NEPA process more useful to decisionmakers and the public; reduce paperwork and the accumulation of extraneous background data; and emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

- Integrate the requirements of NEPA with other planning and environmental review procedures required by law and by agency practice so that all such procedures run concurrently rather than consecutively.

- Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

- Use the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

- Use all practicable means to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of the actions upon the quality of the human environment.

All construction, expansion, and renovation projects initiated by state or local units of government with grant funding from the Corrections Program Office (CPO), Office of Justice Programs (OJP), U.S. Department of Justice are subject to NEPA. These projects are also subject, where applicable, to the requirements of the following environmental statutes and executive orders: Coastal Zone Management Act of 1972; Coastal Barrier Resources Act of 1982; Clean Air Act of 1974; Safe Drinking Water Act of 1974; Federal Water Pollution Control Act; Endangered Species Act of 1973; Wild and Scenic Rivers Act of 1968; National Historic Preservation Act of 1966; Executive Orders related to protection of wetlands, floodplain management, and environmental justice; Farmland Protection Policy Act; and the Relocation Assistance Requirements.

It is the policy of the OJP/CPO to minimize harm to the environment and OJP/CPO may reject proposals or encourage the modification of projects which have adverse environmental impacts. Unless there is no reasonable alternative, projects completed with grant funds should not be placed in a floodplain or wetlands. Projects which have an adverse impact on an endangered species will not be approved and grantee agencies

should avoid or work to mitigate negative impacts on historic properties or sites and on low income and minority communities.

For NEPA review purposes, a "project" is defined as the construction and long-term operation of the prison facilities and related components such as all off-site projects to accommodate the needs of the prison project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the prison construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases, especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

The NEPA procedures, as outlined in this Program Guidance on Environmental Protection Requirements, must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin. For example, none of the following actions can be taken until the NEPA analysis is completed for the affected project: starting construction; accepting construction bids; advertising for construction bids; initiating the development of or approving final plans and specifications; or purchasing property.

The grantee will be responsible for developing or contracting for the development of the environmental analysis documents and issuing public notices and/or arranging public hearings. Representatives from OJP/CPO will attend public meetings with the grantee, as appropriate. All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain with OJP/CPO. Grant funds may be used to pay the costs of the environmental impact analyses and implementing measures to mitigate the impact.

OJP/CPO will coordinate with grantees to ensure that any state or local environmental impact review requirements similar to the federal NEPA procedures will be met concurrently, to the extent possible, to avoid or minimize any duplication of effort or review times. Grantees are responsible for identifying the application of and informing OJP/CPO of these state and local requirements.

This document provides a definition of significant impact and provides guidance on the development of an environmental assessment (EA) and of an environmental impact statement (EIS) and the process for public notification and input and for OJP/CPO review and approval. An EA is a briefer and less expensive document than an EIS and is generally prepared when a project is not expected to have a significant adverse impact on the environment. Since projects for the renovation or expansion of an existing facility or the construction of a new facility within an existing prison complex may have limited impact on the environment, an EA may be sufficient. If the assessment shows that the project will not have a significant impact on the environment, OJP/CPO will issue a Finding of No Significant Impact and construction can begin. If the assessment determines that the project will have a significant adverse impact on the environment, an EIS will be required. If a project is large, complex, controversial, and/or expected to adversely impact the environment, an EIS will likely be required and the grantee can save time and resources by initiating the EIS immediately without going through the EA process.

This document also includes questions and answers related to implementation of NEPA and its application to OJP/CPO administered grant programs. Also included in the Appendix is a copy of the Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act issued by the Council on Environmental Quality, Executive Office of the President.

Significant Impact Defined

"Significant" as used in the National Environmental Policy Act requires considerations of both context and intensity.

Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

Intensity refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial.

- The degree to which the proposed action affects public health or safety.

- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

- The degree to which the effects on the quality of the human environment are likely to be highly controversial.

- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

- The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

- The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

- Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

Environmental Assessment - Process and Preparation

The EA is an analytical document that provides the basis for an official to determine whether to require the preparation of an Environmental Impact Statement (EIS) or to issue a Finding of No Significant Impact. The following provides a brief overview of the steps and timelines in the EA process and who is responsible for implementation.

Project Planning and Identification of Proposed Sites - Grantee

During the planning phase of the project, OJP/CPO 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 agency is encouraged to involve others at this stage through meetings where affected or interested parties are made aware of the need for action, the scope of the proposed action, and any alternatives being considered as well as provided an opportunity to express comments or concerns about potential consequences of the action. Additionally, informing at this early stage any minority and low-income populations as well as Indian tribes that may be adversely affected by the proposal and obtaining their views on proposed sites and mitigation measures are particularly important steps in meeting the environmental justice goals of Executive Order 12898.

Preparation of an Environmental Assessment - Grantee

An EA should be prepared when the grantee has identified a proposed site, but before it has determined that it will proceed with the effort. 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. Additionally, any other federal agency or agencies that will be involved in the project or a related project, such as through providing financial assistance or a permit, should be contacted in order to invite the agency to participate in development and review of the EA and to determine the status of any EA being completed by that federal agency. Grant funds may be used to pay the costs of preparing the environmental assessment, if included in the approved budget. The EA should be a brief discussion (10-15 pages) of:

- the need for the project
- alternatives
- environmental impacts of the proposed action and the alternatives
- a listing of the agencies and persons consulted

The environmental impacts of the proposed project and the alternatives should be presented in comparative form, defining the issues and providing a clear basis for choice among options by the decisionmakers and the public. The alternatives should include a "No Action" alternative as a baseline for comparative assessment of impacts. If the EA indicates significant effects, which could be reduced to insignificant levels with mitigation measures, the EA should describe the mitigating measures, how the grantee proposes to implement them and the proposed timeline for implementation. The grantee must submit the completed draft EA to OJP for review.

Review of Draft EA - OJP

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 as well as similar state and local laws.

Issue Draft Finding of No Significant Impact (FONSI) or Require an EIS - OJP

If the answers to all of the above questions are yes, OJP will issues a draft FONSI. If the response to any of the questions but 6 is "no", the EA is incomplete and will be returned for further work.

If the only "no" is in the response to question 6, then an EIS will be required. Given the cost and time required to complete an EIS, the grantee may wish to explore another alternative site at this point.

Circulate EA and Draft FONSI for Public Comment - Grantee

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. Involving the public in the decision process at this stage will facilitate development of a consensus through understanding of the proposed action, alternatives, benefits, and drawbacks; assist the grantee agency in identifying the best alternatives; decrease the risk of protest when the FONSI is issued and reduce legal challenges against the decision.

At a minimum the grantee agency must publish in two consecutive editions a notice of the availability of the FONSI and the EA in the non-legal section of the local newspaper. The notice should include a request for comments and establish a closure date for comments. The FONSI notice must be published at least twice in a newspaper of general circulation in the affected community, or if the area is not covered by regularly published local or areawide newspapers, the notice must be prominently displayed at the local post office. A copy of the EA and the FONSI must be sent to individuals and groups known to be interested in the planned project and to appropriate local, state and federal agencies. Notices should be mailed directly to owners and occupants of nearby or affected property and should be posted in and near the location of the proposed project. The EA and the FONSI must be mailed to those who request it.

Review Comments and Modify Plans, as Appropriate - Grantee

The grantee should review any public or agency comments received and modify its plans, if appropriate. Modification may include abandoning the proposed site and selecting an alternative which will have a less significant impact on the environment, or modifying the project to mitigate the environmental impact of the proposed project. The comments, responses to these comments, and any revisions to the proposed plan should be submitted 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.

Final Action on EA - OJP

Unless a significant environmental impact surfaces through the public comments or other means, OJP will issue a FONSI and authorize the grantee to begin the construction work. All of the project grant funds will be available for drawdown, as needed.

If significant environmental impacts are identified, OJP will require an EIS. The EIS must meet the timing, content, and format requirements specified in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, which are included as an Appendix to this document.

Projects for which an EIS is planned because of the size of the project, sensitive or controversial nature of the project, or anticipated adverse environmental impacts are not required to prepare an EA. Rather, the EIS process can be initiated immediately in these cases.

Estimated Time to Complete the EA Process

The following provides a rough estimate of the time that should be scheduled for the EA process between the identification of an appropriate proposed site(s), and the initiation of the construction work. The time required to complete the process may be extended if the draft EA is incomplete or insufficient, if the proposed project would adversely impact the environment, and/or if there is significant public opposition to the project.

#	Preparation of an EA	30-60 days
#	Review draft EA and issue draft FONSI	7-14 days
#	Circulate EA and draft FONSI for public comment	30 days
#	Review comments and modify plans, as appropriate	7-14 days
#	Issue final action on EA	7 days
Total time to be scheduled		**81-125 days**

Environmental Assessment - Content

An Environmental Assessment (EA) is a concise public document that provides sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Environmental Impact (FONSI). 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.

In completing an EA, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the 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. For example, if opportunities to work in prison industries are being planned for the inmates, the impacts of these planned activities must also be addressed in the appropriate sections of the assessment.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located, and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor. Generally an EA can be completed in 10-15 pages in length, except in unusual cases where a proposal is so complex that a concise document may not be sufficient or where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, a lengthy EA indicates that an Environmental Impact Statement is needed.

The following describes the four required sections of an EA and what should be included in each section. Not every issue or potential impact will be relevant to each project. However, each environmental factor listed should be addressed with a brief explanation of the impact or why it is not relevant.

Purpose of and Need for the Project

This section should briefly describe what the project is, to include a description of its major components and their size or design capacities, and why the project is needed. It should include a discussion of the activities to be conducted by the inmates and indicate whether these are new activities or an increase/expansion of existing activities.

Environmental Impact

This section provides the scientific and analytic basis for the comparison of alternatives. It should include a description of the project site and its present use, the surrounding land uses, and the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, to include the activities to be conducted by the inmates as well as any related projects. For example, a related project would be a necessary extension or expansion of a water or sewer system or new road construction for access purposes. The environmental impacts of these related activities must also be assessed.

Unique or sensitive areas must be pointed out, such as residential areas, schools, hospitals, recreational areas, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forest lands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach location maps of the project area, as well as: a U.S. Geological Survey "15 minute" ("7 ½ minute" if available) topographic map which clearly delineates the area and the location of the project elements; the Federal Emergency Management Agency's floodplain map(s) for the project area; site photos; if completed, a standard soil survey for the project; and, if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials should be of high quality resolution.

Air Quality: Discuss the amounts and types of emissions to be produced from all aspects of the project and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area and if topographical or meteorological conditions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meteorological conditions. Discuss the project's consistency with the state's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

Indicate whether silvicultural, agricultural, or other operations will employ open burning. If so, discuss whether local or state requirements exist for permitting such burning and generally discuss their content. If no permit requirements exist, discuss the type and quantity of burning to be undertaken and the methods to reduce smoke and to mitigate its adverse impacts.

Water Quality: Discuss, in terms of amounts and types of effluents, all aspects of the project and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment system(s) are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA' s Section 208 areawide waste treatment management plan. Discuss the project's consistency with applicable state water quality standards to include a discussion of whether the project would either impair any such standard or fail to meet antidegradation requirements for point or nonpoint sources. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks. For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife, or (2) reduce water quality standards below those established for the stream classification at the point of withdraw or the adjacent downstream section. Cite contacts with appropriate experts and agencies that must issue necessary permits.

Solid Waste Management: Indicate all aspects of the project and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits. Specify if any of these wastes are hazardous, toxic, or radioactive.

Land Use: Given the description of land uses as previously indicated, evaluate (1) the effect of changing the land use of the project site and (2) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

Transportation: Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing road's ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

Natural Environment: Indicate all aspects of the project including construction, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the National Natural Landmarks Program within the National Park Service of the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

Human Population: Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will effect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. Cite contacts with appropriate experts.

Construction: Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

Energy Impacts: Indicate the project's demand on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

Coastal Zone Management Act: *(Complete only if coastal or Great Lakes State.)* Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the state agency responsible for the program to determine the project's consistency with it. The results of this coordination shall be described.

Historic Preservation: The preparer shall detail the steps taken to comply with the Advisory Council on Historic Preservation's regulations for implementing Section 106 of the National Historic Preservation Act and entitled, Protection of Historic Properties. (See pages 27043 through 27084 of volume 64 of the *Federal Register* dated May 18, 1999.) First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken, such as historical/ archeological surveys, to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. If the proposed site is either located on Indian tribal land or an Indian tribe attaches religious and cultural significance to the proposed site, summarize the results of the consultation process with the Tribal Historic Preservation Officer (THPO) or, if there is not a designated THPO, a representative designated by the affected Indian tribe. Attach appropriate documentation of the Indian tribe's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO and THPO, as appropriate, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to comply with the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process required by the Advisory Council on Historic Preservation's regulations.

Wild and Scenic Rivers: Indicate whether the project will affect a river or portion thereof which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate state agencies having implementation authorities. A summary of discussions held or any required formal coordination must be include in the assessment and considered in completing the environmental impact determination for the project.

Endangered Species: Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis

should be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. Any formal or informal consultations conducted with these agencies as well as any state wildlife protection agency will also address impacts to Category I and Category II species. The results of any required coordination shall be described along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

Floodplain Management and Protection of Wetlands: Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. For more specific guidance, see the U.S. Water Resource Council's Floodplain Management Guidelines starting at page 6030 of volume 43 of the *Federal Register* dated February 10, 1978.

Farmland Protection: In consultation with the local office of the Natural Resources Conservation Service, U. S. Department of Agriculture, indicate whether the project will either directly or indirectly convert an important farmland identified in the Farmland Protection Policy Act and as further defined by the Department of Agriculture in 7 CFR Part 658. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts.

Coastal Barrier Resources: *(Complete only if the project is in a state with components of the Coastal Barrier Resources System)* Indicate whether the project is located within the Coastal Barrier Resources System. If so, indicate whether or not the project meets an exception criteria under the Coastal Barrier Resources Act and the results of any consultation with the appropriate regional office of the U. S. Fish and Wildlife Service of the Department of the Interior regarding the project's qualification as an exception.

Other Impacts: Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire-prone locations, radiation, and aesthetic considerations. Cite any discussion with appropriate experts.

State Environmental Policy Act: Indicate if the proposed project is subject to a state environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

Intergovernmental Review: Attach the comments of state, regional, or local agencies (if this review process is required for the project) and responses to all comments that deal with the subject matters discussed in this assessment or are otherwise of an environmental nature.

Other Federal Agency Reaction to Project: Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation. OJP/CPO and the grantee will work jointly or cooperatively with all projects for which another federal agency serves as the lead agency.

Cumulative Impacts: Summarize the cumulative impacts of this project and any related projects. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related projects and/or discussion with the sponsoring agencies. Attach available documentation of the analysis.

Adverse Impacts: Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

Mitigation Measures: Describe any measures which will be taken to avoid or mitigate the identified adverse impacts. Analyze the environmental impacts and potential effectiveness of the mitigation measures. Such measures shall be included as special requirements or provisions to the offer of financial assistance or other appropriate approval document if the action does not involve financial assistance.

Environmental Justice: Describe the composition of the area affected by the proposal in terms of the presence of minority populations, low-income populations, and Indian tribes. Of the proposal's projected adverse environmental impacts, including adverse human health effects and project related social, cultural, and economic impacts, indicate which adverse impacts will affect any minority or low-income population(s) or Indian tribe(s) that may be present. Indicate whether any of these adverse impacts will be disproportionately high on a minority or low-income population(s) or Indian tribe. Describe any mitigation measure(s) included in the proposal to lessen an adverse impact on an affected minority or low-income population or Indian tribe. Describe any special or targeted steps or procedures that were used to (1) inform affected minority or low-income populations or Indian tribes of the proposal; (2) obtain their views on the proposal; and (3) receive their input in the consideration of alternative sites or the development of any mitigation measures. Highlight any strategies being used to overcome linguistic, cultural, institutional, geographic or other barriers to these groups participation in the NEPA process. (For additional guidance in implementing Executive Order 12898 entitled, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, see the Council on Environmental Quality's publication entitled, Environmental Justice, Guidance Under the National Environmental Policy Act.)

Alternatives

An important part of the planning for a facility is an investigation and evaluation of alternatives to the proposed project or action to assist decisionmakers in selecting the best alternative. This section is the heart of the EA. It should describe all reasonable alternatives and their environmental impacts. The alternatives might include alternative locations, alternative designs, and alternative projects having similar benefits. Briefly describe alternatives which were eliminated from detailed study, and the reasons for their elimination. Consideration of a "No Action" alternative is mandated by the National Environmental Policy Act and provides a basis for comparison. The alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options for decisionmakers and the public. Identify the agency's preferred alternative or alternatives, if one or more exists.

Agencies and Persons Consulted

The preparer should consult with appropriate experts from federal, state, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion related to the degree of an impact should be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment. Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held and include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

Environmental Impact Statement - Process and Preparation

The following steps will be implemented whenever OJP/CPO determines that a proposed project may have a significant impact on the quality of the human environment and, therefore, that preparation of an environmental impact statement (EIS) is required. 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.

The federal regulations that govern the preparation of an EIS are contained within the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, hereafter referred to as the CEQ regulations, which are included as an appendix to this document. An important initial consideration in applying this guidance is to recognize the comprehensive scope of the activities to be addressed in the EIS process. For NEPA review purposes, a "project" is defined as the construction and long-term operation of the prison facilities and related components such as all off-site projects undertaken to accommodate the needs of the prison project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the prison construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases, especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

To the maximum extent feasible, state or local environmental impact analysis requirement should be incorporated into the NEPA process to minimize duplication of effort, including public notices and/or meetings. Consequently, grantees are expected to identify these requirements for OJP/CPO and recommend any appropriate adjustments to effectively incorporate their state and local requirements.

Establish an EIS Preparation Team - Grantee

As soon as possible after the need for an EIS is determined by OJP/CPO, the grantee will notify OJP/CPO by letter of the contracting method that the grantee wants to use for the completion of the EIS. The selected EIS preparation team or entity must meet the requirements for an interdisciplinary approach, as specified in Section 1502.6 of the CEQ regulations, and must not have any interest, financial or otherwise, in the outcome of the proposed project, to include any related projects.

If the grantee would like to use an alternate method (such as a team of experts from various state agencies or a university) for preparing the EIS, the grantee should submit a written proposal for OJP/CPO's consideration. The proposal must demonstrate that the EIS will be prepared by a team with all of the required interdisciplinary skills necessary and that the individuals on the team have experience preparing EISs for similar projects. It must also include a completion schedule demonstrating that this method will not result in significant delay.

Statement of Work: In addition to meeting all of its applicable procurement requirements, the grantee must use an approved OJP/CPO statement of work (SOW) for the conduct of the EIS. If the grantee

decides to use OJP/CPO's Standard SOW for an EIS, hereafter referred to as Standard SOW, no additional OJP/CPO approval is required but the grantee is responsible for amending the Standard SOW in order to incorporate (1) the total number of copies that it desires of the required reports and documents (OJP/CPO will normally need 5 copies of all documents for its review and record-keeping purposes); (2) any additional public or other contractor-attended meetings that may be warranted by the diverse location of alternative sites; and (3) if applicable, appropriate guidance to the contractor for completing any applicable state or local environmental impact analysis requirements or meetings. If the grantee desires to prepare its own SOW, the grantee must submit the draft SOW to OJP/CPO for review and approval.

Grantee Secures Firm: The grantee will contract for the preparation of the EIS.

Announce the Preparation of the EIS - Grantee and OJP

Section 1501.7 of the CEQ regulations requires the responsible federal agency to publish in the *Federal Register* a notice of its intent to prepare the EIS. The grantee shall be responsible for drafting this notice in consultation with the EIS contractor. Section 1508.22 of the CEQ regulations specifies the information to be provided in this notice to include a point of contact for the EIS. This point of contact shall be a professional member of the grantee agency who can answer questions not only about the proposed action but also the EIS. Other information to be provided in the notice is a description of the scoping process to be used, as described below. As part of this description, the notice shall state the date, time, and place of the scoping meeting as well as briefly state the purpose of the meeting.

As soon as practicable after signing the contract with the EIS contractor, the grantee needs to work with the contractor to draft the notice and establish the arrangements for the scoping meeting. The meeting needs to be held in the evening hours and at a location within the area to be impacted by the proposed prison site, i.e. convenient for affected and interested parties to attend. The meeting should not be scheduled any sooner than 30 days from the date that the grantee provides OJP/CPO with a copy of the draft *Federal Register* notice. The schedule should accommodate OJP/CPO review of the draft notice, Department of Justice clearance of the notice, and *Federal Register* publication, leaving readers approximately 20 days advance notice of the meeting.

Conduct the Scoping Process and Initiate the Draft EIS - Grantee

Purpose and Content: The scoping process is the initial component in the preparation of the draft EIS. This process shall be conducted in accordance with Section 1501.7 of the CEQ regulations. An important task to be accomplished in this process is to identify and consult with affected federal, state, and local agencies, Indian tribes, interested organizations and persons, including those populations covered by the policies contained in Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

The purpose of this consultation is to identify (1) those environmental issues that are most relevant or of most concern with respect to the implementation of the proposed action and its alternatives so that these issues can be analyzed in depth in the draft EIS; and (2) those environmental impacts of least relevance or concern so that they can be briefly presented in the draft EIS. Also, the scoping process should identify if there are any other federal agencies, state or local agencies, or Indian tribe(s) that are specifically involved in the implementation of the proposed action through funding, permitting, or other forms of jurisdiction and determine their roles in the preparation of the EIS, to include the roles of all cooperating agencies. (See Sections 1501.6 and 1508.5 of the CEQ regulations regarding cooperating agencies.) For

those states having state or local environmental impact analysis requirements similar to NEPA, special emphasis must be placed on identifying these requirements, involving the appropriate officials, and ensuring that these requirements are met concurrently and as part of the OJP/CPO EIS preparation process.

Scoping Meetings: There should be two distinct meetings that are open to any interested agency, organization, or individual. One meeting will be held during the evening and is primarily focused on obtaining concerns, issues or any other types of relevant information from the public that will be most affected by the proposed action or its alternatives. The grantee or contractor will provide a clear description of the proposed action and the alternatives under consideration. Maps, photographs, graphics, or other visual aids should be used to enhance the clarity of the presentation. Ample time must then be provided to receive public comments and statements. Although the public may ask questions during the meeting, because the scoping process is the preliminary stage in developing the draft EIS, presenters are not expected to be able to fully respond to all questions at this time. Rather, relevant questions will be documented and researched during the preparation of the draft EIS, just like any other environmental issue or concern raised during this meeting.

Approximately two weeks before the date of the evening scoping meeting, the grantee must publish a newspaper notice announcing the date, time and location of the meeting as well as briefly summarizing its purpose. This notice must appear in the non-legal section of at least two editions of the newspaper of general circulation in the area of the proposed action. It shall be bilingual if the affected area has a large population of non-English speaking residents. For possible additional steps in notifying potentially affected populations, see the below referenced guidance for implementing Executive Order 12898. All newspaper notices required in subsequent steps of this EIS guidance must meet the minimum requirements of this paragraph.

The other scoping meeting will normally be held the day of the evening meeting and its objective is to bring together all interested and affected agencies and organizations in order to assist the contractor in identifying both major and less important issues for the draft EIS; confirming or coordinating the EIS schedule with the related actions of other agencies; and determining roles and responsibilities of other agencies in the preparation of the draft EIS.

A transcript of either meeting is not required for OJP purposes but may be desired or required for the grantee's purposes. At a minimum, OJP requires summary minutes of both meetings.

Scoping Report: At the end of the scoping process, the contractor must prepare a brief report summarizing the results, listing the participants, and attaching the minutes. The summary will specifically list the relevant issues or concerns that the contractor intends to emphasize in the completion of the draft EIS and those which will only be briefly discussed because of their lack of relevance to the proposed action and its alternatives. Five copies of the scoping report must be provided to OJP/CPO. If OJP/CPO has any questions or comments regarding this report, it will provide them to the grantee within 10 working days from OJP/CPO's receipt of the report.

Prepare the Draft EIS - Grantee

Preparation: The content and format of the draft EIS shall meet the requirements of the CEQ regulations. See Section 1502.10 of the CEQ regulations for formatting guidance. The draft EIS must be written in plain language and use graphics that can be readily understood by the public and decision-makers not having a technical background in the impacts being addressed. CEQ's recommended page limits must be followed to the maximum extent possible as well as its guidance for incorporating materials by reference. See Sections 1502.7 and 1502.21 respectively. The cover page and other appropriate summaries in the draft EIS should list the grantee and OJP as the joint preparers of the statement. Of most importance is the CEQ requirement in Section 1502.9 (a) that the draft EIS must fulfill and satisfy to the fullest extent possible the requirements established for final statements. That is, the analysis of relevant potential impacts, whether for scheduling reasons or any other, cannot be deferred to the preparation of the final EIS. The draft EIS must represent the best analysis reasonably possible. Additionally, grantees need to recognize that any failure on their part to provide the contractor with basic project information in a manner consistent with the EIS's preparation schedule can cause delays to be experienced in attaining that schedule.

Internal Review of Draft EIS: The grantee can work as closely as it desires with the EIS contractor in the preparation of the draft EIS. However, at a minimum, the grantee must review and comment on the contractor's draft EIS before the draft is released by OJP/CPO to the public. This draft must also be provided to OJP/CPO and any cooperating agencies plus any agencies that plan to use the EIS to meet its state or local environmental impact review requirements. The grantee and OJP/CPO must coordinate their comments back to the contractor so that the contractor is not given conflicting directions. Additionally, these coordinated comments need to be accomplished within the time frames established in the EIS completion schedule. Upon receipt of these comments, the contractor must address the comments received, making any necessary changes to the draft EIS. Should extensive changes or additional analysis be required, the EIS schedule will need to be adjusted accordingly. The revised draft EIS with a proposed distribution list must then be provided to the grantee for review and comment and to OJP/CPO and any cooperating agency for its clearance.

Circulate the Draft EIS for Review and Comment - Grantee and OJP

Establish Distribution List: Section 1502.19 of the CEQ regulations shall be followed in establishing the distribution list for the draft EIS. The grantee must provide OJP/CPO with a proposed list for OJP/CPO's review and approval. Normally, there will be no charge for a copy of the draft EIS.

Notify EPA: OJP/CPO will provide the Environmental Protection Agency (EPA) with five copies of the approved draft EIS and request EPA to publish a notice of the availability of the draft in the *Federal Register*. OJP/CPO's delivery of the draft EIS to EPA will not occur until the grantee informs OJP/CPO that all copies have been distributed or mailed to the parties listed on the distribution list. The resulting EPA notice generally appears in the *Federal Register* on the first Friday following the week in which EPA is provided its copies of the EIS.

Set Review Period: Not less than 45 calendar days shall be provided the public for commenting on the draft EIS. The comment period begins on the date that the EPA notice of availability appears in the *Federal Register*. The comment period may be extended by OJP/CPO or EPA under the provisions of Section 1506.10(d) of the CEQ regulations.

Locally Announce Availability of Draft EIS and Public Information Meeting(s): Concurrent with the time frame in which the draft EIS is delivered to EPA, the grantee must publish in a newspaper of general circulation in the area of the proposed action a notice of the availability of the draft EIS for review and comment. The notice shall be published in the same manner and frequency as the scoping meeting notice discussed above. This notice shall identify where the draft EIS is available locally for review (e.g., local libraries, grantee field office), as well as identify a grantee point of contact to whom requests for copies of the draft EIS can be phoned or mailed. The notice must also announce the date, time, and place of the public information meeting on the draft EIS. T hese are minimum notice requirements and should be expanded upon to meet either (1) any state or local requirements applicable to the grantee, or (2) the purpose and intent of Executive Order 12898, if applicable to the location of the proposed project or its alternative sites.

Conduct the Public Information Meeting - Grantee

Purpose: The public information meeting is intended to (1) answer questions on the content of the draft EIS and (2) receive comments on the draft EIS from any interested agencies, organizations, or the public. Consequently, the meeting must be held during the evening hours and at a location that is convenient for the attendance of the affected public. It should also be scheduled for a date that is within the latter half of the review period for the draft EIS, thereby allowing time for the EIS to be reviewed by interested parties.

Meeting Content: The grantee or contractor should be prepared to summarize the proposed action as well as the alternatives in terms of their locations and expected environmental impacts. Visual aids should be used to clarify these topics and all presentations should be done in plain as opposed to technical language. Ample time needs to be allowed for attendees to make statements, comments or ask questions. Attendees should also be advised of their ability to submit written comments on the draft EIS and the deadline for receipt of written comments.

Meeting Documentation: A transcript of the public information meeting is not required for OJP purposes but may be required or desired for the grantee's purposes. At a minimum, OJP requires (1) summary minutes, (2) a complete list of oral comments or concerns, and (3) as an attachment, any written statements or comments submitted by attendees at the meeting. Items (2) and (3) must be addressed in the final EIS which is discussed below.

Prepare the Final EIS - Grantee

Preparation: In preparing the final EIS, the contractor must respond to all comments received on the draft in accordance with the provisions of Section 1503.4 of the CEQ regulations. All comments received plus the summary of the public information meeting shall be included in the final EIS.

Upon completion of the review period for the draft EIS, the grantee will provide OJP/CPO with one copy of all comments on the draft. Should EPA's rating comments on the draft EIS or any of the comments raise potentially reasonable alternatives or major adverse environmental impacts that were not seriously considered in the draft EIS, OJP/CPO shall consult with the grantee regarding the need to amend and re-circulate the draft EIS for public review and comment.

Internal Review of Final EIS: The review of the proposed final EIS shall be accomplished in the same manner as for the draft EIS.

Circulate the Final EIS - Grantee and OJP

Establish Distribution List: Section 1502.19(d) will be followed in establishing the minimum distribution list for the final EIS. Whether or not they commented on the draft EIS, all federal, state, and local agencies that have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action or its alternatives must be provided a copy of the final EIS. Additionally, any agency or person requesting a copy must be provided one. The grantee must provide OJP/CPO with a proposed distribution list for OJP/CPO's review and approval. There will normally be no charge for a copy of the final EIS.

Notify EPA: OJP/CPO will notify EPA in the same manner and under the same circumstances as for the draft EIS.

Establish Waiting Period: Pursuant to Section 1506.10 of the CEQ regulations , OJP/CPO shall not make any decision on the proposed action specified in the final EIS until the latter of (1) 30 days from the date that EPA publishes in the *Federal Register* a notice of the availability the availability of the final EIS or (2) 90 days from the date that EPA published in the *Federal Register* the notice of availability for the draft EIS.

Announce Availability of Final EIS Locally: Through the same media by which the availability of the draft was announced, the availability of the final must be announced by the grantee. (Again, follow guidance on publishing the local notice for the scoping meeting.) The notice should state where copies are locally available, identify a grantee point of contact for requesting a copy or receiving comments, and note the expiration of the thirty-day waiting period. If any comments are received on the final EIS, the grantee must immediately forward them to OJP/CPO.

Prepare Record of Decision - OJP/CPO

No earlier than the expiration of the appropriate waiting period for circulation of the final EIS, OJP/OJP/CPO shall prepare a record of decision under the requirements of Section 1505.2 of the CEQ regulations and in consultation with the grantee. This record of decision shall determine the allowable uses of the grantee's VOI/TIS funds with respect to the proposed action or its alternatives.

Implement the Decision - Grantee

In proceeding with the proposed action, the grantee will be required to implement any mitigation measures or other conditions established in either the final EIS or during its review. See Section 1508.20 of the CEQ regulations for the definition of mitigation. As part of any mitigation, the grantee will be required to report back to OJP/CPO on the status of implementing the mitigation per Section 1505.3 of the CEQ regulations.

Evaluate the Contractor - Grantee (if necessary)

If the EIS was prepared by an OJP/CPO contractor, the grantee must provide OJP/CPO with a brief evaluation of the contractor's performance within thirty days of the contractor's completion of its work. This evaluation will focus on the quality of the contractor's analyses and timeliness.

Environmental Impact Statement - Content

The CEQ regulations recommend a format for an environmental impact statement, that includes the following sections:

Cover Sheet

This page includes the list of responsible agencies; the title of the proposed action; the name, address, and telephone number of the contact person; a designation as draft or final, an abstract; and the date by which comments must be received.

Summary

The summary should adequately and accurately summarize the statement and stress the major conclusions, areas of controversy, and the issues to be resolved.

Purpose and Need

This section should briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action

Alternatives Including the Proposed Action

This section should present the environmental impacts of the proposal and the alternatives in comparative form, sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public based on the information and analysis presented in the sections on the affected environment and the environmental consequences.

The section should:

a) rigorously explore and objectively evaluate all reasonable alternatives and discuss reasons for eliminating any alternatives;
b) provide enough detail on each alternatives so that reviewers can evaluate their comparative merits;
c) include reasonable alternatives not within the jurisdiction of the lead agency;
d) include the alternative of no action;
e) identify the agency's preferred alternative or alternatives; and

f) define appropriate mitigation measures.

Affected Environment

The EIS should succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. Data and analyses contained in the EIS document shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Environmental Consequences

This section forms the scientific and analytic basis for the comparisons and shall consolidate the discussion of those elements required by NEPA and necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

It should include discussions of:

a) direct effects and their significance;
b) indirect effects and their significance;
c) possible conflicts between the proposed action and the objectives of federal, regional, state, and local land use plans, policies, and controls;
d) the environmental effects of alternatives including the proposed action;
e) energy requirements and conservation potential of various alternatives and mitigation measures;
f) natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;
g) urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures; and
h) means to mitigate adverse environmental impacts.

See the section on Environmental Assessment - Content, page 7, for additional guidance on the environmental analysis that must be completed.

List of Preparers

The statement must list the names and qualifications of the persons primarily responsible for preparing the EIS or significant background papers.

List of Agencies, Organizations and Persons to Whom Copies of the Statement are Sent

The entire draft and final environmental impact statements, expect for certain appendices, must be circulated and the final statement must include a list of agencies, organizations and persons to whom the statement was sent.

Appendices and Index

Appendices shall consist of material prepared in connection with the EIS and normally should include material which substantiates any analysis fundamental to the EIS. The material should be relevant to the decision to be made. Appendices should be circulated with the EIS or be readily available upon request.

The EIS shall also contain an index.

NEPA Questions and Answers

1. What types of projects are subject to NEPA requirements?

All proposals for legislation and other major federal actions significantly affecting the quality of the human environment are subject to NEPA. This would apply to all Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) projects (including projects on tribal lands) that involve construction, renovation, facility planning, site selection, site preparation, and security or facility upgrades. It would not apply to projects that involve the leasing of existing beds from a private vendor unless the private sector is building a facility with the understanding the beds will be leased by the state using federal grant funds. In some cases, the NEPA requirements could apply to the construction of a private prison being built in anticipation of a grant-funded contract for beds.

A project for NEPA review purposes is defined as the construction and long-term operation of the prison facilities and related components such as all off-site projects to accommodate the needs of the prison project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the prison construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

2. What is a major federal action?

The *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, issued by the Council on Environmental Quality, define major federal actions as actions with effects that may be major and which are potentially subject to federal control and responsibility. Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. The category of federal actions defined in the regulations which applies to the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Program is "Approval of specific projects, such as construction or management activities located in a defined geographic area. Project include actions approved by permit or other regulatory decision as well as federal and federally assisted activities."

3. Are there other federal environmental requirements, similar to NEPA's, that apply to federally funded projects?

Yes. Other federal environmental requirements that apply to federally funded construction projects include:

- The National Historic Preservation Act
- Clean Air Act
- Safe Drinking Water Act
- Federal Water Pollution Control Act
- Endangered Species Act

- # Wild and Scenic Rivers Act
- # Wilderness Act
- # Executive Order on Floodplain Management
- # Executive Order on Wetland Protection
- # Coastal Zone Management Act
- # Coastal Barrier Resources Act
- # Farmland Protection Policy Act
- # Executive Order on Environmental Justice

4. Does each of these environmental requirements require separate documents and a separate process?

No, all of the requirements are generally incorporated into the NEPA process. For example, one category of environmental impacts that must be addressed in a NEPA analysis is potential impacts to historic properties. The National Historic Preservation Act also contains federal requirements for addressing the impacts on historic properties from federal actions. In order to avoid duplicate compliance procedures, the NEPA document traditionally becomes the process for meeting the requirements of both laws. **(Note:** subsequent references to NEPA assume inclusion of all federal environmental requirements.)

5. What are the NEPA requirements?

NEPA requires the preparation an environmental assessment (EA) in order to determine if the project will significantly impact the environment and/or an environmental impact statement (EIS) if significant impacts are expected to result from the federal action.

An environmental assessment is a concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. It also facilitates the preparation of an EIS when one is necessary. An EA shall include brief discussion of the need for the proposal, of alternatives, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

An environmental impact statement serves as an action-forcing device to ensure that the policies and goals of NEPA are infused into the program/project. An EIS provides a full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.

NEPA environmental impact documents are public documents and the procedures require that the public be provided an opportunity for review and comment. The procedures also require coordination with agencies having jurisdiction over or special expertise in the identified environmental impacts.

The Council on Environmental Quality (CEQ) has published government-wide regulations for implementing NEPA, and these regulations are found at Parts 1500 through 1508 of Title 40 of the Code of Federal Regulations. The Department of Justice (DOJ) has also published NEPA procedures which incorporate the CEQ regulations. See Part 61 of Title 28 of the Code of Federal Regulations. Consistent with the CEQ and DOJ requirements, the Office of Justice Programs/Corrections Program Office

(OJP/CPO) has prepared specific guidance for the application of NEPA to OJP/CPO administered programs.

6. Will an environmental impact statement be required for each VOI/TIS project?

No. Many VOI/TIS projects will not have a significant impact on the environment and a finding of no significant impact can be based on an environmental assessment. Examples of projects that are likely to have minimal impact on the environment include: (a) projects which involve renovations of an existing facility, (b) an expansion of an existing prison, (c) smaller scale new construction projects, and (d) some new facilities within an existing prison complex. An EIS would be required if the EA finds that the project is likely to result in a significant environmental impact.

An EIS would be required for projects, such as large construction projects at a new site, that are likely to have a significant impact on the environment and can be initiated early in the project planning process without preparing an EA first.

7. Who decides if an EA or EIS should be done?

OJP/CPO, as the federal agency sponsoring the major federal action, will determine if an EIS will be required or if a finding of no significant impact can be determined based on an EA.

8. Who will be responsible for developing the EA or EIS?

The federal agency always remains responsible for compliance with NEPA but must work closely with the state or local agency responsible for implementation of the project. For EAs, the CEQ regulations allow the grantee agency to play a major role in their preparation. For EISs, the preparer cannot have a stake in the outcome of the EIS. Consequently, the federal agency or a third party expert under the direction of the federal agency prepares the EIS. As an exception to this latter provision, NEPA was specifically amended to allow a state agency with statewide jurisdiction and responsibility for the action to prepare the EIS as long as the responsible federal agency furnishes guidance and participates in the preparation and independently evaluates the EIS prior to its approval and adoption.

In accordance with OJP/CPO's general policy of providing the states with the maximum amount of control and flexibility over the use of formula grant funds, states will receive the formula grant award for which they qualify and will be responsible for developing or in the case of an EIS contracting for the environmental documents. The state may use formula grant funds to pay for the preparation of these documents and to implement mitigating actions to reduce negative impacts on the environment.

9. What is the role of OJP/CPO in the NEPA process?

OJP/CPO will:

- Issue guidance on the preparation of environmental documents and the NEPA process.
- Review all draft documents.

- Be involved in the notification to state and federal agencies, as well as the public and will participate in public hearings.
- Prepare a written assessment of any environmental impacts that another state or federal land management agency believes have not been adequately addressed through the NEPA process.
- Monitor implementation by the states.
- Enter into a contract with one or more private firms to assist with the review of draft and final copies of documents submitted by the states and attend public meetings, when appropriate.
- Prepare a sample Statement of Work that can be used by states employing their own contractor to ensure that the services provided meet the requirements.

10. What is the role of the state in the NEPA process?

The grantee agency will:

- Prepare the environmental documents and follow the NEPA process, with full participation of OJP/CPO. Grant funds may be used to pay the costs associated with compliance with these requirements.
- Issue the documents for public comment jointly with OJP/CPO.
- Solicit comment from other state and federal agencies, interested organizations, and the public.
- Not start construction on any project until all environmental work has been completed.
- Complete a Project Status Report form for all projects under construction or completed prior to notification of the NEPA requirements.
- Ensure that appropriate environmental analysis (as determined by OJP/CPO) is completed for all projects and that appropriate mitigation measures are implemented to reduce the impact of identified environmental impacts.

The grantee agency is responsible for ensuring that subgrantees are notified of the NEPA requirements and OJP/CPO is notified early in the planning process so that the NEPA process can begin early enough in the grantee's site selection process to inform decisions. The grantee, as an agency with statewide authority, will serve as a state lead agency, working closely with OJP/CPO on the development and review of the environmental documents. As such, the grantee could contract with the private organization for the preparation of an EA or EIS. The grantee would also be responsible for providing information on the project to the document preparers and for participating in any public meetings.

If delegated by the grantee, the implementing agency may develop (if required expertise exists) or contract for the development of an EA and submit it through the grantee to OJP/CPO for review and a decision to issue a finding of no significant impact (FONSI) or to require an EIS. If OJP/CPO issues a draft FONSI, the grantee agency makes it and the EA available for public comment.

If an EIS is required, the implementing agency can serve as a cooperating agency and be responsible for providing requested information on the project, the alternative sites for the project, and the agency's preferred alternative. The grantee agency would be responsible for the joint release with OJP/CPO of the EIS documents for public review and for participating in any public meetings.

11. Who will pay for the environmental work?

The VOI/TIS grant funds may be used to pay for the preparation of the EA and/or the EIS and for compliance with the NEPA process.

12. Do the federal NEPA requirements duplicate state requirements?

The Council on Environmental Quality's regulations for implementing NEPA require that federal agencies cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements. This cooperation can include joint environmental research and studies, joint public notices and information meetings, and joint environmental impact assessments or statements. Where state laws or local ordinances have environmental impact requirements in addition to but not in conflict with those in NEPA, federal agencies are required to cooperate in fulfilling these requirements as well as those of federal laws so that one document will comply with all applicable laws.

13. If a grantee complies with a state requirement that calls for an environmental impact analysis similar to that required by NEPA, can the state's requirement suffice to meet federal NEPA requirements?

No. The federal agency that provides funds for the project must be involved in the process. Duplication of effort can occur if the grantee completes the state's requirements without the participation of the federal agency that is providing funds for the project. In that case, the federal agency would be required to initiate its own NEPA process. Even if the federal agency must independently initiate its NEPA procedures, it can incorporate into them as much of the previously completed environmental impact analysis as it determines to be adequate. Consequently, it is critical for grantees to request federal agency participation in the implementation of any similar state or local environmental impact review requirements.

For projects that had state or local environmental impact analysis completed prior to notification that the NEPA requirements apply to the formula grant programs, OJP/CPO will review the documents prepared to meet the state and local requirements and minimize any duplication of effort.

14. NEPA procedures require that environmental information be made available to public officials and citizens before decisions are made and before actions are taken. How is the information made available to the public?

As soon as practicable after a decision is made to prepare an environmental impact statement the lead agency shall publish a notice of intent in the *Federal Register* to provide for an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

In addition, draft environmental documents (draft EA and Finding of No Significant Impact, or draft EIS) must be made available to the public. At a minimum, the grantee agency must publish a notice of availability of the draft environmental documents in a local newspaper on two consecutive days or in two consecutive editions. In addition a public information meeting(s) will be required for all EISs, and for some assessments if there are relevant public comments.

15. If there are negative comments or protests from the public, does that mean that the project cannot be implemented?

No. The grantee agency and OJP/CPO would be required to review the public comments and, to the extent possible, to mitigate any relevant adverse impacts to the environment identified in the comments.

16. If the EA or EIS finds that there will be adverse environmental impacts, will that stop the project?

It depends. The grantee agency would be required to review the findings from the EA and/or EIS and, to the extent possible, mitigate the impacts to the environment identified in the EA or EIS. Each finding must be addressed and the final EA or EIS must indicate what measures would be taken to mitigate the impact. If the adverse environmental impacts are significant, the grantee agency should consider one of the alternatives sites assessed in the document or explore other options. If the identified adverse impact(s) is regulated by a specific statute or regulation, such as the Endangered Species Act, the agency may be prohibited from moving forward on the project unless it can locate an alternative site.

17. Can OJP/CPO prohibit a state from using formula grants for a project that would have a significant environmental impact?

Yes, but OJP/CPO will generally work with the grantee agency to identify ways to mitigate any adverse impacts or to consider an alternative site that will have less adverse impacts on the environment. However, federal law prohibits the implementation of a project that will jeopardize the continued existence of an endangered species or that violates certain regulations related to water quality.

18. What are the requirements for projects that are currently under construction?

If construction was initiated prior to the date of this guidance, OJP/CPO will work with the state to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. If construction has started prior to the date of this guidance, OJP/CPO will work with the grantee to avoid unnecessary delays in the project. A Project Status Report will be completed for each VOI/TIS project involving construction, expansion, or renovation of facilities for which construction has either started or is completed.

19. How will projects currently under construction be impacted by the NEPA process?

OJP/CPO will work with the states to minimize the disruption to current projects. However, if a project is determined to have a major adverse impact on the environment, OJP/CPO may require certain mitigations to eliminate or reduce the impacts, which could cause delays. Mitigation includes:

- Avoiding the impact altogether by not taking a certain action or part of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

- Compensating for the impact by replacing or providing substitute resources or environments.

20. What about projects that have been completed? Will the NEPA requirements apply to completed projects?

Generally not, although on an exceptional basis, some completed projects may still have NEPA issues. If, for example, the completed project poses a continuing environmental problem (e.g., excessive noise, light pollution, excessive water consumption or draw down on an important stream, adverse visual impact due to an inappropriate color in an environmentally scenic area, etc.), performing a NEPA analysis after construction is completed may still serve the useful purpose of determining the extent of the project's continuing adverse environmental impact(s) and the feasibility of mitigating it.

21. Who will pay the costs for delays in construction or changes to the project to mitigate the environmental impacts?

Grant funds may be used to cover the costs of construction delays or mitigation actions.

22. If a state corrections agency is adding a new wing to an existing prison, is the work covered by NEPA?

Yes. At a minimum, this new construction would require the preparation of an environmental assessment but may not require a detailed environmental impact statement. Important environmental factors to be addressed for an addition to an existing prison would include possible impacts to historic or archeological properties, the presence of a floodplain location, and the ability of the prison's existing water, sewer, and solid waste disposal facilities to accommodate the additional loading or demands projected to be placed upon them.

23. If an EA or EIS was completed on the original structure, is the corrections agency required to complete the environmental work again for an addition to that structure?

Any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated for proposed modifications or additions to that structure. For example, if an archeological survey was previously conducted for an area that is now the subject of a proposed addition, that survey can be referenced and used for the current EA or EIS.

24. Does NEPA apply to a project through which a state corrections agency is planning to double bunk offenders and is using grant funds to expand and upgrade the kitchen, laundry, and other service areas?

Yes. NEPA is triggered by the use of the federal grant funds. The extent of environmental impact analysis that must be conducted varies with the scope of the proposed work. For example, a project that

is expected to have limited environmental impacts would most likely need a brief environmental assessment. Primary areas of analysis would be the ability of utility and waste disposal systems to adequately handle the increased demands.

25. Does NEPA apply to a project that involves the use of grant funds to upgrade security and add a perimeter fence to an existing facility to allow the facility to be used for violent offenders?

Yes. The use of the grant funds triggers NEPA compliance procedures. For some categories of projects, their potential impacts are so minimal that they are categorically excluded from any detailed review. They are presumed under normal circumstances not to have a significant impact on the quality of the human environment. Minor renovation projects have been categorically excluded by OJP. Consequently, if the existing facility in this example had been previously used for correctional purposes and its conversion to a higher security facility is not controversial, it could be determined by CPO to be a categorical exclusion and no further environmental review would be required.

26. Are Native American Tribes required to follow the same NEPA requirements if they use grant funds to construct a new facility?

Yes.

References

The following documents issued by the Council on Environmental Quality were used to develop this guidance document. These and other documents related to the implementation of NEPA and other environmental protection requirements can be accessed from the CEQ webpage at:

http://www.whitehouse.gov/CEQ/

1. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, Council on Environmental Quality, Executive Office of the President, July 1, 1986.

2. Forty Most Frequently Asked Questions, Council on Environmental Quality, Executive Office of the President.

3. Environmental Justice: Guidance Under the National Environmental Policy Act,. Council on Environmental Quality, Executive Office of the President, July 1, 1986.

A p p e n d i x

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act