



(Billing Code: 4410-02-P)

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 61

RIN 1110-AA32

Federal Bureau of Investigation's National Environmental Policy Act Regulations

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is promulgating regulations establishing the Federal Bureau of Investigation's (FBI's) National Environmental Policy Act (NEPA) procedures.

These regulations establish a process for implementing NEPA, Executive Order 11514, Executive Order 12114, and Council on Environmental Quality (CEQ) and Department of Justice (DOJ) regulations for implementing the procedural provisions of NEPA.

DATES: Effective date: [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Catherine Shaw, FBI Occupational Safety and Environmental Programs (OSEP) Unit Chief; 935 Pennsylvania Avenue, NW, Room WB-460, Washington, DC, 20535; (202) 436-7500.

SUPPLEMENTARY INFORMATION: On May 24, 2016, the FBI published a Notice of Proposed Rulemaking (NPRM) setting forth the NEPA procedures that are the subject of this final rule. *See* 81 FR 32688 (2016). The NPRM provided for a comment period ending July 25, 2016. No comments were received.

CEQ's NEPA implementing regulations contained in 40 CFR parts 1500-1508 require each Federal agency to adopt procedures (40 CFR 1507.3) to ensure that decisions are made in accordance with the policies and purposes of NEPA (40 CFR 1505.1). DOJ has established such policies and procedures at 28 CFR part 61. The FBI NEPA regulations supplement DOJ's procedures to ensure that environmental considerations are fully integrated into the FBI's mission and activities.

The FBI regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process in the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily comprehensible by the public and all parties involved in implementation of the proposed action.

The FBI NEPA regulations are not intended to serve as a comprehensive NEPA guide, but will serve as a framework for the FBI NEPA Program. The FBI plans to apply its NEPA regulations in conjunction with NEPA, the CEQ regulations (40 CFR parts 1500–1508), DOJ implementing regulations (28 CFR part 61), and all other applicable environmental regulations, executive orders, and statutes developed for the protection of the environment.

The FBI will, as appropriate, keep the public informed of the FBI NEPA Program and NEPA actions and ensure that relevant environmental documents, comments, and responses accompany proposals through all levels of decision making (40 CFR 1505.1(d)). The FBI's NEPA Program will be implemented primarily by the following key persons within the FBI:

(a) The FBI Director will maintain signature authority over all Findings of No Significant Impact (FONSI) and Records of Decision (RODs).

(b) The *Environmental Executive/Bureau Designated Environmental, Safety and Health Official (DESHO)* will offer recommendations to the FBI Director regarding the disposition of all FONSI and RODs; oversee the FBI NEPA Program; ensure that NEPA reviews are initiated as early as possible in the project planning process; ensure that decisions are made in accordance with the general policies and purposes of NEPA; and use his or her best efforts to ensure that sufficient funds are available to perform NEPA management-related planning, actions, and reporting. These responsibilities may be delegated to the Program Deputy Bureau DESHO.

(c) The *Program Deputy Bureau DESHO* will designate and assign duties to the FBI NEPA Program Manager; ensure that the FBI NEPA Program is coordinated with other environmental policies and directives; review the FBI NEPA Program metrics; and exercise additional authority as delegated by the Environmental Executive/Bureau DESHO.

(d) The *FBI NEPA Program Manager* will serve as the FBI's primary, centralized NEPA contact; provide for overall development, implementation, coordination, administration, and quality assurance measures associated with the FBI NEPA Program; advise FBI employees on NEPA matters; establish and ensure implementation of FBI-wide NEPA policy, guidance, and training; and review NEPA documentation.

(e) The *Deputy Bureau DESHOs* are heads of the FBI branches, divisions, or offices reporting directly to the FBI Deputy Director or Associate Deputy Director who, within their span of control, will ensure the NEPA Program is properly implemented and managed; use their best efforts to ensure that sufficient funds within their branches, divisions, and offices are available to perform NEPA management-related planning, actions, and reporting; and assign staff to fill NEPA roles as required.

Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation.

The FBI has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly, this rule has not been reviewed by the Office of Management and Budget. In addition, because this rule is not “significant,” under Executive Order 12866, it is not subject to the requirements of Executive Order 13771, which requires agencies to eliminate two regulations for each new one adopted.

Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

DOJ has assessed the costs and benefits associated with implementation of this rule and believes that the regulatory approach selected maximizes net benefits by better enabling the FBI to comply with NEPA. Further benefits associated with implementation of this rule are a streamlined approach to performing NEPA reviews, which is expected to lead to a reduction in delay and excessive paperwork; enhanced environmental awareness; collaborative and participatory public involvement; clear compliance guidelines resulting in reduced liability risk;

and enhanced cost savings arising from fewer requirements to prepare Environmental Assessments (EAs) where projects are covered by categorical exclusions (CATEXs).

The FBI contracts out, on average, 20 EAs annually for actions that would be covered by the CATEXs instated by the rule. The average contracting costs associated with development of each of these EAs is approximately \$50,000. Therefore, the rule would result in an annual cost savings of approximately \$1,000,000 in contract payouts. The FBI anticipates that its own staffing costs with regard to NEPA compliance will remain roughly the same upon adoption of the new rule, as FBI personnel will still be involved in reviewing projects and developing/implementing a NEPA compliance strategy for each one.

The exact impact of the rule on staffing and funding requirements cannot be calculated due to uncertainty about the number of future projects and the level at which environmental review will occur (CATEX, EA, or Environmental Impact Statement (EIS)). However, as discussed in the preceding paragraphs, the FBI estimates a net annual cost savings of up to \$1,000,000.

Executive Order 13132—Federalism

This regulation will not have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

DOJ, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a substantial economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not substantially or uniquely affect small governments. Therefore, no action was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or have substantial adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

The FBI regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process in the early stages of planning. They are also intended to promote

transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily comprehensible by the public and all parties involved in implementation of the proposed action. A CATEX is a category of actions which, barring extraordinary circumstances, does not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. The estimated average document length is 15 pages for an EA and 150 pages for an EIS. EAs, EISs, and their associated administrative records must be retained for at least six years after signature of the NEPA decision document. By contrast, a CATEX requires either no documentation or very brief documentation (records of environmental consideration documenting CATEXs are typically only a few pages long). The estimated total annual NEPA documentation burden associated with this rulemaking is unknown at this time because of the uncertainty of the number of projects that will require various levels of NEPA review.

National Environmental Policy Act

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist

agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. United States Forest Service*, 73 F. Supp. 2d 962, 972-73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954-55 (7th Cir. 2000).

List of Subjects in 28 CFR Part 61

Environmental protection; Environmental impact statements.

Authority and Issuance

Accordingly, part 61 of title 28 of the Code of Federal Regulations is amended as follows:

Part 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for part 61 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order 11991.

2. Add Appendix F to part 61 to read as follows:

Appendix F to Part 61—Federal Bureau of Investigation Procedures Relating to the Implementation of the National Environmental Policy Act

1. Authority

These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, regulations of the Department of Justice (DOJ), 28 CFR part 61, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, et seq., and

Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. Purpose

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

3. Agency Description

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

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

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

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

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

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

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

4. NEPA Documentation and Decision Making

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

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

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

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

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

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

5. Categorical Exclusions

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

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

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

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

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

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

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

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

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

- (vi) An effect on the quality of the human or natural environment that is likely to be highly scientifically controversial or uncertain, or likely to involve unique or unknown environmental risks;
- (vii) Establishment of precedents or decisions in principle for future actions that have the potential for significant impacts (e.g., master plans, Integrated Natural Resource Management Plans, Integrated Cultural Resource Management Plans);
- (viii) Significantly greater scope or size than normally experienced for a particular category of action;
- (ix) Potential for substantial degradation of already existing poor environmental conditions. Also, initiation of a potentially substantial environmental degrading influence, activity, or effect in areas not already substantially modified; or
- (x) A connection to other actions with individually insignificant, but cumulatively significant, impacts.

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

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

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

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

(NR4) Preparation of policies, procedures, manuals, and other guidance documents for which the environmental effects are too broad, speculative, or conjectural to lend themselves to

meaningful analysis and for which the applicability of the NEPA process will be evaluated upon implementation, either collectively or case by case.

(NR5) Grants of licenses, easements, or similar arrangements for use by vehicles (not to include substantial increases in the number of vehicles loaded); electrical, telephone, and other transmission and communication lines; and pipelines, pumping stations, and facilities for water, wastewater, stormwater, and irrigation; and for similar utility and transportation uses.

Construction or acquisition of new facilities is not included.

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

Examples include:

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

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

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

evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

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

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

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

- (i) Office supplies and furniture;
- (ii) Equipment;

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

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

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

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

- (i) Low-level x-ray devices;
- (ii) Cameras and biometric devices;
- (iii) Passive inspection devices;
- (iv) Detection or security systems for explosive, biological, or chemical substances;
- (v) Access controls, screening devices, and traffic management systems;
- (vi) Motion detection systems;

- (vii) Impact-resistant doors and gates;
- (viii) Diver and swimmer detection systems, except sonar; and
- (ix) Blast and shock impact-resistant systems for land-based and waterfront facilities.

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

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

(NR15) Training FBI personnel or persons external to the FBI using existing facilities and where the training occurs in accordance with applicable permitting requirements and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, radiological, or explosive agents, except when conducted at a location designed and constructed to accommodate those materials and their associated hazards. Examples include:

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

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

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

(R2) Acquisition or use of space within an existing structure, by purchase, lease, or use agreement. This requirement includes structures that are in the process of construction or were recently constructed, regardless of whether the existing structure was built to satisfy an FBI requirement and the proposed FBI use would not exceed the carrying capacity of the utilities and infrastructure for the use and access to the space. This requirement also includes associated relocation of personnel, equipment, or assets into the acquired space.

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

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

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

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

- (i) Realigning interior spaces of an existing building;
- (ii) Adding a small storage shed to an existing building;

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

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

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

Examples include:

- (i) Pollution prevention and pollution control equipment required to meet applicable Federal, tribal, state, or local requirements;
- (ii) Installation of fencing, including security fencing, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow;
- (iii) Installation and operation of lighting devices;

- (iv) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees or native vegetation for use as a noise abatement measure; and
- (v) Devices to protect human or animal life, such as raptor electrocution prevention devices, and fencing and grating to prevent accidental entry to hazardous or restricted areas.

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

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

- (i) Procurement of a new type of chemical or procurement of a larger quantity of a particular chemical than generally used by the FBI; and
- (ii) Disposal of items that contain PCBs (e.g., carpets, lighting, caulk).

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

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

6. Environmental Assessment

An EA is a concise public document for actions that do not meet the requirements for applying a CATEX, but for which it is unclear whether an EIS is required. An EA briefly provides evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI), and facilitates preparation of an EIS when one is required. The requirements and contents of an EA are described in 40 CFR 1508.9. Significance of impacts shall be determined based on the criteria outlined in 40 CFR 1508.27. The FBI will comment on other agencies' EAs when relevant to the FBI's mission, or where the FBI has jurisdiction by law or relevant special expertise.

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

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

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

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

7. Environmental Impact Statement

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

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

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

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

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

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

8. Scoping

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

9. Public Involvement

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

10. Mitigation

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

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

11. Programmatic, Tiered, and Supplemental NEPA Documents

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

(b) Tiered EAs or EISs may be prepared to cover narrower actions that are a component to previously prepared Programmatic EAs or EISs as described in 40 CFR 1508.28.

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

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

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

April 3, 2019. _____

Rod J. Rosenstein
Deputy Attorney General

[FR Doc. 2019-06970 Filed: 4/8/2019 8:45 am; Publication Date: 4/9/2019]