

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22697; Directorate Identifier 2004-SW-46-AD]

RIN 2120-AA64

#### Airworthiness Directives; Eurocopter France Model EC155B and B1 Helicopters; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); correction.

**SUMMARY:** This document corrects a docket number in an NPRM that was published in the **Federal Register** on October 17, 2005 (70 FR 60244). The NPRM applies to Eurocopter France Model EC155B and B1 helicopters. The NPRM proposed to require inspecting an electrical cable bundle for wear and, if necessary, installing an airworthy cable bundle and modifying the routing of the electrical cable bundles.

**FOR FURTHER INFORMATION CONTACT:** Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5127, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** On October 7, 2005, the FAA issued an NPRM to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to Eurocopter France Model EC155B and B1 helicopters. That NPRM proposed to require inspecting the wiring of panel 12 Alpha electrical (wiring) cable bundle for wear, and, if necessary, replacing any worn cable bundle, modifying the routing of the electrical wiring (MOD 0739C28), and replacing spreaders and spacers.

As published, that NPRM contains an incorrect docket number (FAA-2005-22696) throughout the preamble and the regulatory text. The correct docket number is FAA-2005-22697.

No other part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

#### Correction of Publication

Accordingly, the publication on October 17, 2005 of the proposed regulations, which is the subject of FR Doc. 05-20679, is corrected as follows:

##### § 39.13 [Corrected]

(1) On page 60244, in the third column, in the paragraph that has the Agency numbers, change "Docket No. FAA-2005-22696" to read "Docket No. FAA-2005-22697".

(2) On page 60245, in the first column, in the first paragraph under Comments Invited, change "Docket No. FAA-2005-22696" to read "Docket No. FAA-2005-22697".

(3) On page 60246, in the first column, paragraph 2. of Part 39—Airworthiness Directives, change "Docket No. FAA-2005-22696" to read "Docket No. FAA-2005-22697".

Issued in Fort Worth, Texas, on January 12, 2006.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E6-623 Filed 1-19-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-150091-02]

RIN 1545-BB97

#### Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Prior to Levy; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations relating to a taxpayer's right to a hearing before or after levy under section 6330 of the Internal Revenue Code of 1986.

**DATES:** The public hearing originally scheduled for January 19, 2006, at 10 a.m., is cancelled.

#### FOR FURTHER INFORMATION CONTACT:

Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on September 16, 2005 (70 FR 54687), announced that a public hearing was scheduled for January 19, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6330 of the Internal Revenue Code. The public comment period for these regulations expired on December 29, 2005.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, January 17, 2006, no one has requested to speak. Therefore, the public hearing scheduled for January 19, 2006 is cancelled.

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 06-535 Filed 1-17-06; 2:11 pm]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 61

[Docket No. USMS 101]

RIN 1105-AB13

#### Supplement to Justice Department Procedures and Council on Environmental Quality Regulations To Ensure Compliance With the National Environmental Policy Act

**AGENCY:** United States Marshals Service, Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to add Appendix E to Part 61 of the Department of Justice's regulations to ensure better compliance with the National Environmental Policy Act of 1969. The rule supplements existing Department procedures and regulations

of the Council on Environmental Quality and only pertains to internal procedures of the United States Marshals Service.

**DATES:** Comments must be submitted on or before March 21, 2006.

**ADDRESSES:** For matters relating to this proposed rule, written comments may be submitted to Joseph Band, Office of Chief Counsel, United States Marshals Service, Washington, DC 20002. Comments may also be submitted by fax to (202) 307-9456. To ensure proper handling, "USMS Docket No. 101" should be referenced on any correspondence. An electronic version of this proposed rule can be viewed at <http://www.regulations.gov>. Comments may also be submitted via e-mail to USMS at [env.regs@usdoj.gov](mailto:env.regs@usdoj.gov) or by accessing the internet comment form found at <http://www.regulations.gov>. Any electronic comments should include "USMS Docket No. 101" in the subject box.

#### **SUPPLEMENTARY INFORMATION:**

##### **Need for This Rule**

This rule is needed so that the United States Marshals Service (USMS) can more fully comply with the National Environmental Policy Act of 1969 (NEPA). Under NEPA, Federal agencies are required to implement internal procedures to ensure proper environmental consideration of proposed USMS actions. The procedures, proposed by this rule, will promote the protection of the environment by minimizing the use of natural resources and by improving planning and decision-making processes to avoid excess pollution and environmental degradation.

##### **Overview of the Standards That This Rule Proposes**

In complying with and implementing NEPA, the USMS shall make efforts to produce clear and concise NEPA documents and increase administrative efficiency.

All NEPA documents, specifically Environmental Assessments (EAs) and Environmental Impact Statements (EISs), shall be analytical, clear, and concise. The documents shall focus on significant issues and shall be presented in plain language and in the standard format outlined in Appendix E. In order to reduce paperwork, EISs shall be limited to approximately 150 pages, or in unusually complex matters, 300 pages. To avoid duplicative work, NEPA documents shall, whenever possible, be prepared jointly with State and local governments and shall adopt, incorporate by reference, or combine

existing USMS and other agencies' analyses, documentation, and/or other environmental reports.

The USMS shall make every effort to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including: (1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values and to head off potential conflicts and/or delays; (2) emphasizing interagency cooperation before the environmental analysis and documentation is prepared; (3) ensuring the swift and fair resolution of any dispute by designating a lead agency for any interagency projects; (4) employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis; (5) setting deadlines for the NEPA process as appropriate for individual proposed actions; (6) initiating the NEPA analysis as early as possible to coincide with the agency's presentation of a proposal by another party; and (7) using accelerated procedures as described in the CEQ regulations for legislative proposals.

##### **Proposed Implementation of Charges**

Through this proposed rule, the USMS is revising its guidance, establishing policy, and assigning responsibilities for implementing the requirements of Section 102(2) of NEPA (42 U.S.C. 4321, *et seq.*), Executive Order 11514 of March 5, 1970, title "Protection and Enhancement of Environmental Quality," and regulations of the CEQ (40 CFR parts 1500-1508).

This rule is intended to (1) Enhance the USMS' ability to comply with NEPA, related legal authorities, and Executive Orders; (2) allow non-significant program actions to be exempt from the requirement to prepare and EA or EIS; (3) focus NEPA analysis upon major federal actions significantly affecting the quality of the environment; (4) ensure public involvement in decision-making regarding environmental impact on local communities; and (5) reflect changes in the current USMS organizational structure. Development of these revised regulations has been orchestrated by USMS headquarters and district office personnel who represent the USMS' collective technical and managerial expertise in environmental quality and NEPA compliance. In addition to revising Part 61 by adding Appendix E, the USMS will provide guidance materials to district offices.

These proposed changes affect USMS internal procedures only. The USMS

consulted with the CEQ during the development of this rule.

#### **Regulatory Certifications**

##### *Executive Order 12866*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget. This rule provides environmental benefits by ensuring the USMS' compliance with NEPA, which aims to minimize the use of natural resources and improve planning to avoid excess pollution and environmental degradation. Further, this rule only affects USMS internal procedures. Whatever costs that may result from this rule should be outweighed by the reduction in delay and excessive paperwork by improved procedures.

##### *Executive Order 13132*

This regulation only affects the internal procedures of the USMS and, accordingly, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### *Executive Order 12988*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

##### *Regulatory Flexibility Act*

The Director of the USMS, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because this regulation only affects the internal procedures of the USMS.

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure of \$100,000,000 or more in any one year by state, local, and tribal governments, in the aggregate, or by the private sector, nor will it significantly or uniquely affect small governments.

Therefore, no actions were 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 § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

*Environmental Impact*

This proposed rule supplements CEQ regulations and provides guidance to USMS employees regarding procedural requirements for NEPA analysis and documentation activities. In accordance with NEPA, the rule implements procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). However, these procedures only provide internal guidance to assist USMS employees and do not serve to make the final determination of what level of NEPA analysis is required for any particular proposed action. The CEQ does not require agencies to prepare a NEPA analysis or document before establishing such procedures. *See Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000) (holding that establishing categorical exclusions does not require NEPA analysis and documentation). The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The USMS has consulted with the CEQ during the development of these categorical exclusions and is providing an opportunity for public review.

**List of Subjects in 28 CFR Part 61**

Environmental protection,  
Environmental impact statement.

Accordingly, for the reasons set forth in the preamble, part 61 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended to read 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; 5 U.S.C. 301; Executive Order 11911.

2. Appendix E to part 61 is added to read as follows:

**Appendix E to Part 61—United States Marshals Service Procedures Relating to the Implementation of the National Environmental Policy Act**

1. *Authority.* These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, *et seq.*, regulations of the Department of Justice (DOJ), 28 CFR part 61, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, “Protection and Enhancement of Environmental Quality,” March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

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

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

(b) In developing an EA or EIS, the USMS shall comply with CEQ regulations, observing that EAs and EISs should:

- (1) Be analytic, rather than encyclopedic;
- (2) Be written in plain language;
- (3) Follow a clear, standard format in accordance with CEQ regulations;
- (4) Follow a scoping process to distinguish the significant issues from the insignificant issues;

(5) Include a brief summary;

(6) Emphasize the more useful sections of the document, such as the discussions of alternatives and their environmental consequences, while minimizing the discussion of less useful background information;

(7) Scrutinize existing NEPA documentation for relevant analyses of programs, policies, or other proposals that guide future action to eliminate repetition;

(8) Where appropriate, incorporate material by reference, with citations and brief descriptions, to avoid excessive length; and

(9) Integrate NEPA requirements with other environmental review and consultation requirements mandated by law, Executive Order, or Department of Justice or USMS policy. When preparing an EA or EIS, the USMS shall require comments to be as specific as possible and when circulating a document where only minor changes have been made, only the changes to the draft should be attached, rather than the entire statement.

(c) To ensure compliance with NEPA, the USMS shall make efforts to prevent and reduce delay. The USMS will follow the procedures outlined in the CEQ regulations including:

(1) Integrating the NEPA process in the early stages of planning to ensure that decisions reflect environmental values and to head off potential conflicts and/or delays;

(2) Emphasizing interagency cooperation before the environmental analysis and documentation is prepared;

(3) Ensuring the swift and fair resolution of any dispute over the designation of lead agency;

(4) Employing the scoping process to distinguish the significant issues requiring consideration in the NEPA analysis;

(5) Setting deadlines NEPA process as appropriate for individual proposed actions;

(6) Initiating the NEPA analysis as early as possible to coincide with the agency’s presentation of a proposal by another party; and

(7) Using accelerated procedures, as described in the CEQ regulations for legislative proposals.

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

4. *Typical Classes of USMS Actions.*

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

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

(2) Transfers or disposal of equipment or property.

(3) Leases or entitlement for use, to include donation or exchange.

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

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

(b) *Scope of Analysis*

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

(2) The USMS has control and responsibility for portions of a project beyond the limits of USMS jurisdiction where the environmental consequences of the larger project are essentially products of USMS specific action, turning an otherwise non-federal project into a federal action.

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

(4) Some USMS projects, contracts, and agreements may propose a USMS action that is one component of a larger

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

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

5. *Environmental Impact Statement (EIS)*

(a) An EIS is a document required of Federal agencies for proposals significantly affecting the quality of the human environment that describes the positive and negative effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) will be published in the **Federal Register** as soon as practicable after a decision to prepare an EIS is made and before the scoping process is initiated. An EIS shall describe how alternatives considered in it, and the decisions based on it, will or will not achieve the goals of NEPA to prevent damage to the environment and promote human health. Additionally, an EIS shall describe how the USMS will comply with relevant environmental laws and policies. The format and content of an EIS are set out at 40 CFR part 1502. The USMS may prepare an EIS without prior preparation of an EA.

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

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

(1) USMS actions that are likely to have a significant environmental impact on the human environment; or

(2) Construction of a major facility on a previously undisturbed site.

6. *Environmental Assessment (EA)*

(a) An EA is a concise public document that is prepared for actions that do not normally require preparation of an EIS, but do not meet the requirements of a Categorical Exclusion (CE). An EA serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or Finding of No Significant Impact (FONSI), aid in complying with NEPA when an EIS is not necessary, and facilitate preparation of an EIS when one is required. The EA results in either a determination that a proposed action may have a significant impact on the human environment and, therefore, requires further study in an EIS, or the issuance of a FONSI. The contents of an EA are described at 40 CFR 1508.

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

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

(1) Proposals to conduct an expansion of an existing facility;

(2) Awarding a contracting or entering into an agreement for new construction at a previously developed site or an expansion of an existing facility; or

(3) Projects or other proposed actions that are activities described in categorical exclusions, but do not qualify for a categorical exclusion because they involve extraordinary circumstances.

7. *Categorical Exclusions (CE)*

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Security upgrades of existing facility grounds and perimeter fences. This exclusion does not include such upgrades as adding lethal fences or major increases in height or lighting of a perimeter fence in a residential area or other area sensitive to the visual

impacts resulting from height and lighting changes.

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

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

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

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

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

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

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

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

#### 8. Responsibilities.

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

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

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

(2) Supervising the Environmental Coordinator.

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

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

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

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

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

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

(3) Coordinating the efforts for preparation of an EIS consistent with the requirements of the CEQ regulations at 40 CFR part 1502.

(4) Cooperating and coordinating planning efforts with other federal agencies.

(5) Providing for agency training on environmental matters.

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

(1) identify types of actions initiated by private parties, state and local agencies and other non-federal entities for which agency involvement is reasonably foreseeable;

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

agency involvement is reasonably foreseeable; and

(3) Consult early with appropriate Indian tribes, state and local agencies, and interested private persons and organizations on those projects in which USMS involvement is reasonably foreseeable.

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

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

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

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

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

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

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

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

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

#### 9. Public Involvement.

(a) In accordance with NEPA and CEQ regulations and to ensure public involvement in decision-making regarding environmental impact on local communities, the USMS shall also engage in the following procedures during its NEPA process:

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

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

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

(4) For matters of national concern, the USMS will publish notification in the **Federal Register** and will send notification by mail to national organizations reasonably expected to be interested.

(5) If a decision is made to develop an EIS, the USMS will publish a NOI in the **Federal Register** as soon as possible.

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

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

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

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

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

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

13. *Compliance with Other Environmental Statutes.*

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

Dated: January 6, 2006.

**John F. Clark,**

*Acting Director, United States Marshals Service.*

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