

Draft

# DEPARTMENT OF THE TREASURY'S NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

## Chapter 1 - General

### **Purpose.**

The purpose of this manual is to establish the procedures that the Department of the Treasury (Treasury) shall use to comply with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4332(2)); the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508); Executive Order (E.O.) 12114, "Environmental Effects Abroad of Major Federal Actions," dated January 4, 1979; and EO 12898, "... Environmental Justice...", dated \_\_\_\_\_. This manual is to be used in conjunction with the CEQ regulations.

### **Policy.**

It is Treasury's policy to follow the letter and the spirit of NEPA; comply fully with the CEQ regulations; comply fully with the requirements of E.O. 12114 and E.O. 12898; and apply the NEPA review process early in the planning stages for Treasury proposals. However, certain actions may result from statutory requirements involving little or no discretion on the part of the Department, and, in the case of such actions, NEPA and the CEQ regulations may not be applicable.

### **Applicability.**

- (a) This manual applies to all organizational elements of Treasury.
- (b) This manual applies to any Treasury action affecting the quality of the environment of the United States, its territories, or its possessions. It also addresses Treasury actions having effects outside the United States, its territories, or its possessions under Executive Order 12114.

### **Responsibilities.**

The Deputy Assistant Secretary (Management and Budget) is responsible for overall review of Treasury NEPA compliance. The Deputy Assistant Secretary (Management and Budget) is the Departmental Environmental Quality Officer (DEQO) and the liaison official for the Department with the Council on Environmental Quality (CEQ), the Environmental Protection Agency (EPA), and other departments and agencies concerning environmental matters.

### **Oversight of Treasury NEPA activities.**

- (a) The DEQO is responsible for overall review of Treasury NEPA compliance. The DEQO shall:
  - (1) Ensure that the actions of the Chief Management and Administrative Programs Officer, Heads of Bureaus and the Inspector General (hereafter referred to as bureaus), are duly coordinated, with respect to the fulfillment of NEPA, the CEQ Regulations, E.O. 12114 and E.O. 12898; and
  - (2) Provide guidance to bureaus on environmental policy and environmental requirements;
- (b) The Director, Office of Assets Management (OAM), has the oversight responsibilities for the management and direction of the Department-wide environmental quality program, and shall:

(1) develop the program and evaluate its performance; and

(2) develop procedures for improving program compliance through management reviews, internal control reviews and other appropriate means.

(c) The Department Environment and Energy Programs Officer (DEEPO), OAM is designated as the Departmental NEPA liaison and, under the general guidance of the Director, OAM, shall provide program support to the Deputy Assistant Secretary (Management and Budget) in carrying out the responsibilities set forth in this directive. The NEPA liaison shall:

(1) Assist bureaus in reviewing and assessing the environmental impacts of proposed Treasury actions;

(2) Provide guidance in the preparation, scoping, processing, and distribution of environmental assessments (EAs) and environmental impact statements (EISs);

(3) Receive for internal clearance and filing with EPA all EISs, draft and final, originating in the Department;

(4) Receive all EAs and EISs submitted to the Department by other agencies to coordinate the appropriate review and reply; and

(5) Perform such other functions as are specified in this directive or are appropriate under NEPA, the CEQ Regulations, E.O. 12114 or other instructions or recommendations of CEQ or EPA concerning environmental matters.

(6) The DEEPO shall serve as the BEQO for the Chief Management and Administrative Programs Officer and shall ensure the assessment of the environmental impact of actions concerning various areas of Treasury policy and operations as specified below, and the preparation of EAs and EISs relating thereto, shall be coordinated in consultation with the DEQO and the official having primary responsibility as follows:

Action Area	Official with Coordinating Responsibility
Tax policy recommendations and legislation.	Assistant Secretary (Tax Policy)
Non-tax legislative recommendations and reports.	General Counsel and Assistant Secretary Legislative Affairs
International environmental matters.	Assistant Secretary (International Affairs)
Energy and natural resource matters.	Assistant Secretary (Economic Policy)

(d) The General Counsel, shall:

(1) Provide legal sufficiency review for all draft and final EISs;

(2) Upon request, determine whether a proposed bureau action constitutes a major Federal action;

(3) Upon request, advise bureau officials on compliance with E.O. 12114 and E.O. 12898; and

(4) Assist in establishing or revising appropriate categorical exclusions and exceptions.

 (e) Heads of Bureaus, the Chief Management and Administrative Programs Officer, and the Inspector General, shall:

(1) Comply with the requirements of this Directive and TD P 75-02 ;

(2) Ensure that their actions are in compliance with the requirements of NEPA, the CEQ Regulations, E.O. 12114 and E.O. 12898;

(3) Prepare and circulate, for the consideration of others, EAs and EISs when an action or policy area in question falls under their jurisdiction as required by 40 CFR Part 1506.9;

(4) Issue any supplementary procedures for the implementation of NEPA, the CEQ Regulations, E.O. 12114 and E.O. 12898 which the Bureau deems necessary. Any such procedures shall be consistent with TD 75-02 and shall be developed in accordance with the CEQ Regulations. The procedures shall be

submitted to the DEQO for review and concurrence prior to being published for public comment. Such procedures shall be published in the bureau directives system or the Code of Federal Regulations;



(5) Sign or formally delegate the authority to sign EA's and FONSI's; and

(6) Ensure that communications with CEQ, EPA, and other Government agencies or individuals, on matters concerning Treasury compliance with NEPA, the CEQ Regulations, E.O. 12114 and E.O. 12898 are signed by, or coordinated with, the DEQO. Unless special circumstances indicate that a different officer should act, communications announcing decisions to prepare EISs, requesting comments on draft statements, or transmitting final statements for the information of agencies or persons commenting on draft statements, shall be signed by the DEQO;

(7) Designate a Bureau Environmental Quality Officer (BEQO) and alternate in their respective bureaus;

(8) Be responsive to requests from the CEQ, EPA, and the public for copies of environmental documents and reports or other information in connection with the implementation of NEPA; and

(9) Perform such other functions as specified in this directive.

(f) Bureau Environmental Quality Officers (BEQOs) shall:

(1) Determine whether a proposed bureau action may be categorically excluded under appendix A of TD P 75-02;

(2) Identify proposed bureau actions requiring an EA or EIS;

(3) Ensure each required EA or EIS is prepared in a timely manner and with the prescribed content as required by the CEQ Regulations (40 CFR 1502) and TD 75-02;

(4) Ensure the Bureau's compliance with the requirements of NEPA, the CEQ Regulations, and this directive, in particular, by coordinating the review within the Bureau of such statements and assessments, and by maintaining compliance with all applicable scheduling, scoping, consultation, circulation, public hearing, and publicity requirements;

(5) Review and sign categorical exclusions, records of environmental consideration, and similar documents; and

(6) Maintain effective communication and consultation with the DEQO and inform key bureau officials of current developments in environmental policy and programs.

#### **Adoption of the CEQ NEPA Regulations.**

Treasury adopts the regulations for implementing NEPA published by CEQ at 40 CFR Parts 1500 through 1508.

#### **Definitions.**

(a) *Terminology.* All terminology used in this manual will be consistent with the terms defined in 40 CFR part 1508.

(b) *CEQ* means the Council on Environmental Quality.

(c) *EPA* means the Environmental Protection Agency.

(d) *Minority and low-income populations* means those populations as defined in Executive Order 12898.

(e) *NEPA Document* means a Treasury Categorical Exclusion (CE), Record of Environmental Consideration (REC), Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Notice of Intent (NOI), Environmental Impact Statement (EIS), Record of Decision (ROD), or any other document prepared pursuant to the CEQ Regulations.

(f) *NEPA review* means the process used to comply with section 102(2) of NEPA.

## **Chapter 2 - Treasury Decisionmaking**

### **Treasury planning.**

(a) Treasury shall provide for adequate and timely NEPA review of Treasury proposals, including those for programs, policies, projects, regulations, orders, or legislation, in accordance with 40 CFR Part 1501.2 and this section. In its planning for each proposal, Treasury shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) Treasury shall begin its NEPA review as soon as possible after the time that Treasury proposes an action or is presented with a proposal. The NEPA review will be fully integrated with other Treasury planning and decisionmaking to ensure that the planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

(c) Treasury shall determine the level of NEPA review required for a proposal in accordance with Classes of Action section in Chapter 3, Implementing Procedures (below.)

(d) During the development and consideration of a Treasury proposal, Treasury shall review any relevant planning and decisionmaking documents, whether prepared by Treasury or another agency to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, Treasury shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR Part 1506.3.

### **Treasury decisionmaking.**

(a) Treasury shall ensure that environmental documentation for any proposal accompanies any planning reports or recommendations for the proposal to the decisionmakers.

(b) Treasury shall complete its NEPA review for each Treasury proposal before making a decision on the proposal, except as provide for in 40 CFR Part 1506.1.

(c) During the decision-making process for each Treasury proposal, Treasury shall consider the relevant NEPA documents, public and agency comments on those documents, and Treasury responses to those comments, as a part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record.

(d) If an EIS or EA is prepared for a Treasury proposal, Treasury shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EIS or EA (40 CFR Part 1505.1(e)).

(e) When Treasury uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), Treasury may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

**Interim actions: Limitations on actions during the NEPA review process.**

While Treasury is preparing an EIS, Treasury shall take no action concerning the proposal that is the subject of the EIS before issuing a ROD, except as provided for in 40 CFR Part 1506.1.

**Rulemaking.**

- (a) This section applies to regulations promulgated by Treasury.
- (b) Treasury shall begin its NEPA review of a proposed rule, if required, while drafting the proposed regulation, as soon as environmental effects can be meaningfully evaluated.
- (c) Treasury shall include any relevant NEPA documents, public and agency comments on those documents, and Treasury responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).
- (d) If an EIS is required, Treasury will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). Treasury will normally combine any public hearings required for a proposed rule with public hearings required on the draft EIS under the section on Public review of Environmental Impact Statements. The draft EIS need not accompany advance notices of proposed rulemaking that Treasury may use to gather information during the early stages of regulatory development. [When engaged in rulemaking for the purpose of protecting public health or safety, Treasury may issue the final rule simultaneously with the publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR Part 1506.10(b).
- (e) If an EA is required, Treasury will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) of this section shall apply.

**Applicant process.**

- (a) This section applies to actions that involve applications to Treasury for a permit, certification, award, license, approval, or other similar actions unless the action is categorically excluded from further preparation of an EA or EIS under Appendix A.
- (b) For major categories of Treasury actions involving a large number of applicants, the appropriate Treasury bureau (Bureau) may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide. (Note: the NEPA implementing regulations for the Community Development Financial Institution Fund are found at 12 CFR Part 1815.)
- (c) The bureau shall begin the NEPA review as soon as possible after receiving an application described in paragraph (a) of this section, and shall independently evaluate and verify the accuracy of the information received from the applicant in accordance with 40 CFR Part 1506.5(a). At the bureau's option, an applicant may prepare an EA in accordance with 40 CFR Part 1506.5(b). If an EIS is prepared, the EIS shall be prepared by the bureau or by a contractor approved by the bureau and that may be funded by the applicant in accordance with 40 CFR Part 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR Part 1506.5(c). The Treasury bureau shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a decision on the application and shall consider the NEPA document in reaching its decision.
- (d) The applicant shall:
  - (1) Consult with the bureau as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the bureau may require to be submitted as part of the application;

(2) Conduct studies that the bureau deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional, local, Native American tribes, minority and low income populations, or other interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify the bureau as early as possible of other actions required for completion to allow the bureau to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR Part 1506.2 regarding the elimination of duplication with state and local procedures, as appropriate;

(5) Notify the bureau of private entities and organizations potentially affected by or interested in the proposed action, in order that the bureau can consult, as appropriate, with these parties in accordance with 40 CFR Part 1501.2(d)(2); and

(6) Notify the bureau if, before the bureau completes the environmental review, the applicant plans to take an action that is within the bureau's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives. If the bureau determines that the action would have an adverse environmental impact or limit the choice of reasonable alternatives under 40 CFR Part 1506.1(a), the bureau will promptly notify the applicant that the bureau will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR Part 1506.1(b).

### **Chapter 3 - Implementing Procedures**

#### **General requirements.**

(a) Bureaus shall determine, under the requirements in the CEQ Regulations and this manual whether any Treasury proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or

(3) Is categorically excluded from preparation of either an EIS or an EA. Bureaus shall prepare any pertinent documents as required by NEPA, the CEQ Regulations and this manual. The decision to prepare an EIS shall be made in consultation with the Office of the Deputy Assistant Secretary (Departmental Finance and Management).

(b) Notwithstanding any other provision of this manual, bureaus may prepare a NEPA document for any Treasury action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support Treasury planning, assess the need for mitigation, fully disclose the potential consequences of Treasury actions, or for any other reason. NEPA documents prepared under this paragraph shall be prepared in the same manner as Treasury NEPA documents prepared under paragraph (a) of this section.

#### **Agency review and public participation.**

(a) Bureaus shall make their NEPA documents available to other Federal agencies, state, regional and local governments, Native American tribes, minority and low-income populations, interested groups, and the general public, in accordance with 40 CFR Part 1506.6, except as provided under the section on Classified, Confidential and otherwise exempted information.

(b) Wherever feasible, Treasury NEPA documents shall explain technical, scientific, or national security terms or measurements using terms familiar to the general public, in accordance with 40 CFR Part 1502.8.

(c) With respect to draft EISs, it is essential that the bureaus consult with, and take account of the comments of, appropriate Federal, State, and local agencies. This shall involve the formal solicitation of review and comments on the draft statement (40 CFR 1503.1). When appropriate, procedures for obtaining State and local comments shall be utilized (40 CFR 1503.1(a)(2)).

(d) Comments should also be requested from individuals or organizations which appear to have a special interest in some significant environmental aspect of the proposed action (40 CFR 1503.1(a)(4)). Special efforts shall be made to solicit comments from affected minority and low income populations.

#### **Classes of Action Requiring Similar Treatment Under NEPA.**

(a) Actions undertaken by the Department of the Treasury may be broken down into three main classes of action, those actions:

- (1) normally requiring EISs;
- (2) normally requiring EAs but not necessarily EISs; and
- (3) requiring neither an EIS nor an EA (i.e., categorical exclusions).

(b) In the event a proposed bureau action falls within either category (1) or (2) of paragraph (a) of this section, the bureau should take the appropriate steps outlined in the sections for EISs or EAs that follow. If the proposed action is "categorically excluded" then the bureau need not address the environmental effects of the action.

#### **Environmental Impact Statements.**

Bureaus shall prepare and circulate EISs and related RODs in accordance with the CEQ Regulations, as supplemented by this Chapter. All draft and final EISs and RODs shall be approved by the Deputy Assistant Secretary (Department Finance and Management) and the General Counsel prior to being released. Bureau actions normally requiring EISs include proposals for major Treasury building projects involving land acquisition and construction of extensive new facilities, or for major tax expenditure legislation by the Office of Tax Policy which may have a significant effect on the environment.

#### **Lead Agency Determination**

40 CFR Part 1501.5(a) provides that a lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either proposes or is involved in the same action, or is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity (40 CFR 1506.2). In the event the preparation of an EIS for a proposed bureau action requires the designation of a lead agency for either of these reasons, the head of the bureau shall contact the DEQO for guidance. Any communications with other agencies which deal with lead agency designations shall be coordinated with the DEQO. The criteria and responsibilities for lead and cooperating agencies are outlined in 40 CFR Parts 1501.5 and 1501.6, respectively.

#### **Securing Information.**

(a) The full resources of the Department of the Treasury should be utilized in developing the factual and analytic information and reference sources required in the preparation of an EIS. The assistance of other agencies, Federal, State, or local, with jurisdiction by law or special expertise concerning the environmental impacts involved should also be sought. Further, in accordance with 40 CFR Part 1506.3, bureaus may adopt, in whole or in part, a draft or final EIS prepared elsewhere in the Department or by another Federal agency.

(b) If BEQOs have difficulties in securing requisite information or need guidance in making necessary analyses, they should consult the Departmental Environmental Programs Officer, who will assist in locating needed information through the CEQ, EPA, or other appropriate sources.

### **Notice of Intent and scoping.**

(a) The bureau shall publish a NOI in the **Federal Register** in accordance with 40 CFR Part 1501.7 and containing the elements specified in 40 CFR Part 1508.22 as soon as practicable after a decision is made to prepare an EIS. However, if there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, the bureau may defer publication of the NOI until a reasonable time before preparing the EIS, provided that the bureau allows a reasonable opportunity for interested parties to participate in the EIS process. The bureau may obtain sample NOIs and information on the procedures to be followed from the EEPO in Departmental Offices. Through the NOI the bureau shall invite comments and suggestions on the scope of the EIS. The bureau shall disseminate the NOI in accordance with 40 CFR Part 1506.6. Special outreach efforts may be required to identify minority and low-income populations who may be interested in receiving the NOI.

(b) Publication of the NOI in the **Federal Register** shall begin the public scoping process under 40 CFR Part 1501.7. The public scoping process for a Treasury EIS shall allow a minimum of thirty days for receipt of public comments.

(c) The bureau may hold a public scoping meeting if it would assist in providing information or the comments indicated the need for such a meeting. If a scoping meeting is held, it shall be scheduled at least 15 days after publication of the NOI. Should the bureau change the location, date, or time of the public scoping meeting, or schedule additional public scoping meetings, the bureau shall publicize these changes in the **Federal Register** and in other appropriate ways.

(d) In determining the scope of the EIS, the bureau shall consider all comments received during the announced comment period for the public scoping process. The bureau may consider comments received after the close of the comment period.

(e) The public scoping process is optional for supplemental EISs (40 CFR 1502.9(c)(4)). If the bureau decides to hold a public scoping process for a supplemental EIS, the bureau will follow the provisions of paragraphs (a) through (d) of this section.

### **Writing and Content.**

(a) EISs are to be written in plain language, and may include appropriate graphics, so that bureau decisionmakers and the public can readily understand them (40 CFR 1502.8).

(b) The "scoping" process, as discussed below, shall be utilized so that only significant issues related to the proposed action are analyzed in depth.

(c) EISs should be as concise as possible while still providing adequate, meaningful, and factual information and analysis to permit an evaluation of the proposed action from the environmental standpoint. Their length shall normally be less than 150 pages, and for proposals of unusual scope or complexity, less than 300 pages (40 CFR 1502.7). "Tiering" (40 CFR 1502.20) and "incorporation by reference" (40 CFR 1502.21) should be used, where appropriate, to insure that statements are kept concise.

(d) Quantitative information about the proposed action, including actual or estimated data on its probable effects, should be included to the greatest extent practicable. If a cost-benefit analysis of the proposed action has been prepared, it should be incorporated by reference or appended to the EIS as an aid in evaluating the environmental consequences (40 CFR 1502.23).

(e) All reasonable alternatives and their environmental impacts shall be addressed, regardless of whether or not they are not within the authority of the Department (40 CFR 1502.14(c)). Appropriate mitigation measures shall also be discussed (40 CFR 1502.14(f)), such as to avoid, minimize, rectify, reduce, or eliminate and compensate the impacts.

(f) The basic content requirements for EISs are set forth in 40 CFR Part 1502.10-25. Bureaus shall follow the prescribed outline and content requirements described therein as closely as is feasible in each particular case.

(g) Draft and final statements should refer to the underlying studies, reports, and other documents considered by the preparing bureau and indicate how such documents may be obtained. With the exception of standard reference documents, such as congressional materials, the bureau should maintain a file of the respective documents which may be consulted by interested persons. If especially significant documents are attached to the EIS, care should be taken to insure that the statement remains an essentially self-contained instrument easily understood without the need for undue cross-reference.

(h) A contractor may be selected to prepare the EIS. Bureau responsibility, in the event a contractor is employed, is outlined in 40 CFR Part 1506.5(c).

#### **FILING AND DISTRIBUTION OF EISs AND SUPPLEMENTAL STATEMENTS.**

(a) Five copies of draft and final EISs, comments, and responses shall be filed with EPA, Attention: Office of Federal Activities, 401 M Street, S.W., Washington, D.C. 20460. The EPA, in turn, publishes a weekly notice in the Federal Register of the EISs filed during the preceding week.

(b) At the same time as they are filed with EPA, EISs shall also be sent to commenting agencies and made available to the public (40 CFR 1506.9).

(c) Any supplement to an EIS shall be made a part of the formal record, if such a record exists, before a final decision on the proposal is made (40 CFR 1502.9(c)(3)).

#### **Public review of environmental Impact Statements.**

(a) The public review and comment period on a bureau draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes the Notice of Availability (NOA).

(b) The bureau shall hold at least one public hearing on the draft EIS. Such public hearing shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS and include the location, date and time of the public hearing.

(c) The bureau shall prepare the final EIS following the public comment period and the public hearing(s) on the draft EIS. The final EIS shall respond to oral and written comments received during the public review process for the draft EIS as required by 40 CFR Part 1503.4.

(d) The bureau shall not make a decision on the proposed action until the later of the following dates:

(1) ninety days after EPA publishes the NOA for a draft EIS; or

(2) thirty days after EPA publishes the NOA for a final EIS.

(3) the time periods in subparagraphs (1) and (2) above may be extended or reduced, in accordance with 40 CFR Part 1506.10(d).

(d) The bureau shall use appropriate means to publicize the availability of draft and final EISs and the time and place for public hearings on a draft EIS. The methods chosen should focus on reaching persons who may be interested in or affected by the proposal and shall include, but not be limited to, those listed in 40 CFR Part 1506.5(b)(3). Note: special outreach efforts may be required to reach minority and low-income population who may be interested in or affected by the draft and final EIS.

(e) The entire draft and final EIS shall be circulated in accordance with 40 CFR Part 1502.19. Appendices and unchanged statements may be treated in accordance with 40 CFR Part 1502.18(d) and 1503.4(c). If the statement is unusually long, the bureau may circulate the summary instead (40 CFR 1502.12), except that the entire statement shall be furnished as specified in 40 CFR Part 1502.19.

#### **Supplemental environmental impact statements**

(a) The bureau shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns as discussed in 40 CFR Part 1502.9(c)(1).

(b) The bureau may supplement a draft or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR Part 1502.9(c)(2).

(c) Any bureau decision to prepare a supplemental EIS shall be coordinated with the DEQO and the General Counsel.

(d) The bureau shall prepare, circulate, and file a supplement to a draft of final EIS in the same manner as any other draft of final EIS, except that scoping is optional for a supplement. A ROD is required for the supplement prior to any action being taken. In special circumstances, it may be possible to negotiate alternative procedures with CEQ. The DEQO will lead any discussions of alternative procedures with CEQ.

(e) Supplements shall be incorporated into any bureau formal administrative record for the proposed action (40 CFR Part 1502.9(c)(3)).

#### **Records of decision.**

(a) If the bureau decides to take action on a proposal covered by an EIS, a ROD shall be prepared in accordance with 40 CFR Part 1505.2. No action shall be taken until the decision has been made public except as provided for in 40 CFR Part 1506.1.

(b) The bureau shall publish the ROD in the **Federal Register** and made available to the public as specified in 40 CFR Part 1506.6, except as provided for in 40 CFR Part 1507.3(c).

#### **Environmental assessments.**

(a) The bureau shall prepare and circulate EAs and related FONSI's in accordance with the requirements of the CEQ regulations. Bureau activities normally requiring EAs, but not necessarily EISs, include proposals to build new border stations, major expansions at existing facilities involving changes in land use, development of facility master plans, acquisition of general purpose office space in excess of 20,000 square feet by construction or lease in locations not previously occupied, and proposed actions that would normally be categorically excluded except that the proposed action involves extraordinary circumstances that may result in the proposed action having an impact on the human environment.

(b) Whenever it appears that a bureau matter, including the continuance of any action or program already initiated, could constitute a major action significantly affecting the quality of the human environment, whether beneficially or adversely, an EA shall be prepared as soon as possible, and at all times prior to the decision to take or to continue the action. Consistent with the views of the head of the bureau, or an officer specifically designated by the bureau head for the purpose, shall prepare the assessment. The BEQO shall participate as appropriate in this preparation.

(c) To the extent practicable, other agencies, applicants, and the public should be involved in preparing the EA (40 CFR 1501.7). Bureau responsibility for information provided by applicants for use

in preparing an EA or for assessments prepared by an applicant for a bureau, is outlined in 40 CFR Part 1506.5(b) and Chapter of this manual.

(d) In accordance with 40 CFR Part 1508.9, the EA shall:

- (1) describe the proposed action and the need for it;
  - (2) briefly describe the environmental impacts of, and alternatives to, the proposed action, including mitigation measures and cumulative impacts;
  - (3) list the agencies and persons consulted; and
  - (4) provide a brief analysis, based upon the above evidence, for determining whether to prepare an EIS, or a FONSI.
- (e) The bureau shall make EAs available to the public in keeping with 40 CFR Part 1506.6.
- (f) An EA need not be prepared if a bureau has decided to prepare an EIS on a proposed action.

**Finding of no significant impact.**

(a) The bureau shall prepare a FONSI only if the related EA supports the FONSI. The EA shall be attached to the FONSI.

(b) The FONSI must contain the following:

- (1) The name of the proposed action;
- (2) A brief description of the proposed action, including any alternatives considered;
- (3) A short description of the environmental effects anticipated;
- (4) The facts and conclusions that lead to the FONSI;
- (5) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant, beyond those mitigations that are an integral part of the proposed action;
- (6) A point of contact (POC) for further information or a deadline and POC for receipt of public comments; and
- (7) The date of issuance and the signature of the bureau approving official.

(c) The bureau shall make the FONSI available to the public in keeping with 40 CFR Part 1501.4(e)(1) and 1506.6.

(d) When the proposed action is, or is closely similar to one, which normally requires an EIS, or the nature of the proposed action is without precedent, the EA and the FONSI will be made available to the public, in accordance with 40 CFR Part 1506.6(b), for review and comment for 30 days before the bureau makes its final determination whether or not to prepare an EIS (40 CFR 1501.4(e)(2)).

**Categorical Exclusions.**

(a) Appendix A lists Bureau actions which Treasury has determined do not individually or cumulatively have a significant effect on the human environment (CATEGORICAL EXCLUSIONS).

(b) To find that a proposal is categorically excluded, the bureau shall determine the following:

- (1) The proposal fits within one of the classes of actions that is listed in Appendix A;
- (2) There are no extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects. Extraordinary circumstances are unique situations presented by specific proposed actions. These circumstances include:
  - (3) Highly controversial environmental effects, uncertain effects or unproven technology;
  - (4) Location in a minority or low-income population area;
  - (5) Potential impacts to areas of critical environmental concern, including but not limited to, prime or unique agricultural lands, wetlands or floodplains, coastal zones, wilderness areas, aquifers, or wild and scenic rivers;
  - (6) Potential adverse effects to properties or archaeological materials either listed on or eligible for listing on the National Register of Historic Places (note: the categorical exclusion is still applicable if a separate Section 106 process under the National Historic Preservation Act has been completed resulting in the concurrence of the State Historic Preservation Officer (SHPO) or the signing of a Memorandum of Agreement with the SHPO and the Advisory Council on Historic Preservation);
  - (7) Adverse effects on species listed or proposed to listed on the List of Endangered or Threatened Species or location in an area designated as Critical Habitat for an endangered or threatened species or other protected resources; and
  - (8) Possible violation of Federal, state, local, or tribal law for the protection of the environment.

## PROPOSALS FOR LEGISLATION.

(a) Legislative EISs are required to be included in recommendations or reports on legislative proposals to Congress which significantly affect the quality of the human environment. A legislative EIS shall be considered part of the formal transmittal of a legislative proposal to Congress; although it may be sent to Congress up to 30 days later in order to allow time for completion and accuracy. In all instances, the legislative statement must be available in time for Congressional hearings and deliberations in order that it may serve as a basis for public and Congressional debate (40 CFR 1506.8(a), CEQ Regulations).

(b) Bureaus with primary responsibility for legislative proposals originating in the Department, which will significantly affect the quality of the human environment, shall be responsible for preparing legislative EISs.

(c) Preparation of a legislative EIS shall conform to the requirements for EISs as provided in paragraph 9. of this directive except as follows:

(1) There need not be a "scoping" process.

(2) The legislative EIS, although prepared in the same manner as a draft EIS, shall be considered that "detailed statement" required by statute. Provided that, when any of the following conditions exist, both a draft and final legislative EIS shall be prepared and circulated as provided in 40 CFR Parts 1503.1 and 1506.10 of the CEQ Regulations.

(a) A congressional committee with jurisdiction over the proposal has a rule requiring both draft and final EISs.

(b) The proposal results from a study process required by statute.

(c) Legislative approval is sought for Federal or federally assisted construction or other projects which the bureau recommends be located at specific geographic locations. For proposals requiring an EIS for the acquisition of space by the General Services Administration (GSA), draft and final EISs shall be provided to GSA for use during the approval process.

(d) The bureau decides to prepare draft and final statements.

d. Close coordination shall be maintained between the DEQO and Office of the General Counsel with regard to the latter's normal responsibility concerning Departmental legislative proposals.

PUBLIC INVOLVEMENT. 40 CFR Part 1506.6 of the CEQ Regulations requires public involvement in the NEPA process. To comply with this requirement bureaus shall:

(a) Provide for public hearings whenever appropriate. Whenever, under the normal policies or procedures of a bureau, a hearing would be held on a matter requiring the preparation of an EIS, the environmental aspects should be included in the hearing. In other cases, the question of whether a hearing should be held with respect to an environmental matter shall be determined in accordance with the criteria set forth in 40 CFR Part 1506.6(c) of the CEQ Regulations. Normally, all hearings contemplated in this paragraph should be based on a draft EIS which should be made available to the public at least 15 days before the hearing.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents. The notice should be provided by the means most likely to inform those persons and agencies who may be interested or affected.

(1) 40 CFR Part 1506.6(b) of the CEQ Regulations provides notification methods that may be used, including publication in local newspapers of general circulation notice to state and areawide clearinghouse and notice by mail.

(2) A notice of the filing and availability of each EIS, draft and final, shall be inserted in the Federal Register by the responsible bureau. The Departmental Environmental Programs Officer will supply a sample outline of such notices and information on the procedures to be followed.

(c) Make EISs and EAs, along with any comments and under-lying documents, available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), the Department's regulations thereunder (31 CFR Part 1), and the disclosure regulations of the bureau (40 CFR 1506.6(f), CEQ Regulations).

(1) These materials are to be placed in the public reading room of the Treasury Library in the Main Treasury Building, Washington, D.C., and the public reading rooms of the bureaus if any are maintained. The documents may be read or copied during working hours.

(2) Copies made available to the public shall normally be provided without charge. However, when such costs are significant, the bureau may, in accordance with 40 CFR Part 1506.6(f) of the CEQ Regulations, establish a fee which shall not exceed the actual cost of reproducing the copies.

(d) Provide for public involvement as specified elsewhere in this directive.

MITIGATION. Bureaus shall ensure that mitigation measures that have been identified in EAs and EISs are carried out. Bureaus shall institute procedures, in coordination with the DEQO, to ensure that the mitigation measures are carried out (40 CFRs 1505.2© and 1505.3, CEQ Regulations).

#### COMMENTING ON OTHER AGENCIES' STATEMENTS.

(a) As set forth in paragraph 5.a.(6), the DEQO shall receive all EAs and EISs submitted by other agencies for comment and coordinate the appropriate review and reply.

(b) If any bureau receives a request for comment directly from another agency, the request, together with the respective documents, shall be referred to the DEQO for appropriate action.

(c) Comments should be confined to matters within the jurisdiction or expertise of the Department of the Treasury. However, comments need not be limited to environmental aspects, but may relate to fiscal, economic, and non-governmental matters of concern to the Department.

EMERGENCIES. In the event of emergencies which may prevent bureau compliance with this directive or the CEQ Regulations, the CEQ may be consulted, through the DEQO, about alter-native arrangements (40 CFR 1506.11, CEQ Regulations).

#### OTHER REQUIREMENTS.

(a) Integrating Departmental Procedures With Other Environmental Review and Consultation Requirements.

(1) 40 CFR Part 1501.7(a)(6) of the CEQ Regulations requires that, as part of the scoping process, agencies identify other environmental review and consultation requirements so that any other required analyses or studies may be prepared concurrently and integrated with EAs and EISs.

(2) The attention of the bureaus is directed particularly to the analyses and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.); the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.); E.O. 11988, "Floodplain Management," dated May 24, 1977; E.O. 11990, "Protection of Wetlands," dated May 24, 1977; CEQ Memorandum, "Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory," dated August 10, 1980; CEQ Memorandum, "Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy," dated August 11, 1980; and other similar requirements.

(b) EPA Review.

(1) Section 309 of the Clean Air Act (42 U.S.C. 7609) provides that the Administrator of EPA shall comment in writing on the environmental impact of any matter within the area of EPA responsibility. Those areas include air and water quality, noise abatement and control, pesticide regulation, solid waste disposal, and generally applicable environmental radiation criteria and standards. Whenever an applicable bureau action is involved in one of these areas, the bureau is required to submit five copies of the respective EIS to EPA for review and comment, in addition to the five copies required in paragraph 12.a.

(2) If the Administrator of EPA determines that the matter "is unsatisfactory from the standpoint of public health or welfare or environmental quality," the matter is to be referred to the CEQ in accordance with the criteria and procedures outlined in 40 CFR Parts 1504.2 and 1504.3 of the CEQ Regulations.

(3) Under Section 102(2)(C) of NEPA, other Federal agencies are authorized to make similar reviews and referrals in accordance with the criteria and procedures in 40 CFR Part 1504.2 and 1504.3 of the CEQ Regulations.

REQUIREMENTS FOR FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS.

(a) E.O. 11988, "Floodplain Management," and E.O. 11990, "Protection of Wetlands," direct Federal agencies to ensure that the potential effects of any proposed actions they may take in a floodplain or wetland are considered and evaluated in their decisionmaking.

(b) In a Federal Register notice of May 24, 1978 (43 FR 22311), the Department of the Treasury advised, as a general rule, it does not engage in activities which would impact on floodplains or wetlands. It was further stated that no separate Treasury procedures implementing these E.O.s would be issued, but rather that such procedures would be incorporated in this directive.

(c) Procedures for floodplain management and protection of wetlands are as follows:

(1) To the extent possible, bureaus are to avoid actions which would result in modification or destruction of floodplains and wetlands and, wherever there is a practicable alternative, are to avoid direct or indirect support of new development or construction in floodplains or wetlands.

(2) In the case of any proposed Departmental action which may involve floodplain or wetlands, and which may require the preparation of an EA or EIS, the assessment or statement shall include necessary data on the floodplain or wetlands in keeping with these procedures. In the event the proposed action does not require an EA or EIS, these procedures shall still be followed as concerns the floodplain or wetlands.

(3) In the event of floodplain or wetlands involvement, the following procedural steps are to be followed. Although these steps specifically mention floodplains, they are also applicable to wetlands involved as appropriate.

(a) Determine if the proposed action is in a floodplain.

(b) Provide for public involvement in a floodplain management decisionmaking process by informing the public of the intent to locate in the floodplain, and by encouraging public comments thereon.

(c) Identify and evaluate practicable alternatives to locating in a floodplain, including alternative sites, alternative actions, or no action.

(d) If determined that the only practicable alternative is to locate in a floodplain, identify the impacts of the proposed action using the NEPA process and EA or EIS procedures in this directive. Focus especially on the adverse impacts of the proposed action on lives and property in the area, and on natural and beneficial floodplain values.

(e) If harm to, or within, a floodplain may result from the proposed action, determine ways to minimize the harm and to restore and preserve the floodplain values.

(f) Reevaluate the proposed alternatives, based on the information obtained from paragraphs 17.c.(2)(c), (d) and (e), and consider whether the proposed action is still feasible at the site or should be limited.

(g) A statement of findings and public explanation, including a brief comment period, must be provided for the proposed action if reevaluation determines that the proposed action is the only practicable alternative.

## Appendix A

### List of Categorical Exclusions (CE)

The use of a Categorical Exclusion does not eliminate the need for an analysis of the area (specifically an Archaeological assessment and concurrence with the State Historical Preservation office, and US Fish and Wildlife Service consultation.

Categorical Exclusions are broken up into two categories:

**Category I** include projects which a Case File and Decision Memo are NOT required. The following are categories of routine administrative, maintenance, and other actions that normally do not individually or cumulatively have a significant effect on the quality of the human environment.

A1 - Actions necessary to support the normal conduct of Treasury business, such as routine administrative, financial, shipping and receiving, storage and warehousing, and personnel actions in accordance with applicable standards.

A2 - Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 - Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A4 - Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A5 - Rulemakings that are strictly administrative or procedural in nature which clearly do not have any environmental impacts.

A6 - Award of contracts for technical support services, management and operation of government facilities, and personal services (examples include, but are not limited to: designation of gagers by U.S. Customs Service).

A7 - Administrative, organizational, or procedural orders, Directives, Notices, and guidelines.

A8 - Actions to conserve energy that clearly have no environmental impact.

A9 - Information gathering (examples include, but are not limited to, literature surveys; threatened and endangered species surveys; wildlife and wildlife habitat surveys and studies; historic property and archaeological surveys; wetland delineations; timber stand examination; water, air, waste, material and soil sampling; inventories; audits, etc.) data analysis (examples include, but are not limited to, computer modeling, document preparation such as conceptual design or feasibility studies), and dissemination (examples include, but are not limited to, document mailings, publication and distribution, and training and information programs, historical and cultural demonstrations, public affairs actions, etc.).

A10 - Operational law enforcement activities performed by Treasury bureaus as part of their statutory authority.

A11 - Lease or acquisition of an interest in real property, if property use is to remain unchanged.

A12 - Acquisition of land or interest in land.

A13 - Transfer or excessing of real property to the General Services Administration and other Federal Departments and Agencies.

A14 - Relocation or demolition of buildings and equipment done in compliance with all Federal, state, and local environmental requirements.

A15 - Internal organizational changes including facility and office reductions, deactivations, and closures.

A16 - Routine repair and/or maintenance actions at existing facilities that do not result in a substantial change in the functional use of the facility (examples include but are not limited to: mowing lawns at administrative facilities, replacing a roof or storage shed, painting a building, applying registered pesticides for rodent or vegetation control).

A17 - Upgrades or replacement of process equipment, which do not result in increased air emissions, wastewater volumes, or the use or generation of hazardous materials/wastes, or the disposal of contaminated material.

A18 - Installation of pollution control equipment required to meet Federal, state, local or tribal requirements.

A19 - Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting trees and/or vegetation for use as a noise abatement measure.

A20 - Legislative proposals of an administrative or technical nature or comments and reports regarding legislative proposals.

A21 - Management formulation, allocation, transfer and reprogramming of Treasury budget at all levels.

A22 - Internal Revenue Service functions in the administration of the Internal Revenue Code, such as regulations interpreting, implementing, or clarifying code provisions, revenue and letter rulings and memorandums, revenue procedures, and forms and publications to assure proper record retention, reporting, and payment of tax as due.

A23 - Review of studies, reports, analysis, etc. of legislative proposals not originating in Treasury and relating to matters which are not the primary responsibility of Treasury.

A24 - Operations conducted by established laboratories within enclosed facilities where all air emissions, water effluents, outdoor noise, and solid and hazardous waste disposal practices are in compliance with existing Federal, state, and local requirements.

A25 - All law enforcement training activities conducted at existing Treasury law enforcement training and re-qualification facilities (examples include, but are not limited to: physical techniques, tactical training, vehicle and vessel operation training; firearms training; security specialties training; crowd control training including gas range training; enforcement operations training; enforcement techniques training, including fingerprinting labs and drug labs; explosives training; arson investigation training, etc.)

A26 - Routine handling and disposal of non-hazardous and hazardous material conducted in conformance with EPA, Department of Transportation, state and local regulations.

A27 - Establishment or realignment of organizational boundaries, which do not involve establishment of new facilities.

A28 - Other actions identified by the bureaus in their individual NEPA implementing procedures issued in accordance with 40 CFR Parts 1500.2, 1505.1, and 1507.3.

A29 - Grants of leases, licenses, and permits to use Treasury or bureau property for or by another governmental entity when such use is predicated upon compliance with NEPA.

A30 - Use and placement of Nuclear Regulatory Commission (NRC) approved, sealed, small source radiation devices for scanning vehicles and packages where radiation exposure to employees or the public does not exceed 0.1 rem per year and systems are maintained within the NRC license parameters.

A31 - Use and placement of low level x-ray devices to check mail and packages for contraband when these devices meet applicable Food and Drug Administration (FDA) requirements for such devices.

A32 - Continuation of preexisting conditions/operations where there is no substantial change of existing conditions/operations or existing land uses and where the surrounding circumstances have not changed.

A33 - Repair and maintenance of roads, trails, and property boundaries (examples include but are not limited to: authorizing a user to grade, resurface, and clean the culverts of an established Treasury facility road, grading a road and clearing the roadside of brush, resurfacing a road to its original condition, pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail, surveying and posting property boundaries.

A34 - Rules, regulations, or policies to establish Treasury-wide administrative procedures, program processes, or instructions. Examples include but are not limited to:

- a. Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default.
- b. Establishing a Treasury-wide process for responding to offers to exchange land and agreeing on land values.
- c. Establishing procedures for amending or revising Treasury Natural Resource Management Plans.

A36 - Recycling activities, recycling center/HazMin center development and operation.

A37 - Wetland impacts that fall under a Nationwide or Regional permit.

**Category II** include projects which a Project or Case File and Decision Memo are required. The following are categories of routine administrative, maintenance, and other actions that normally do not

individually or cumulatively have a significant effect on the quality of the human environment and, therefore may be categorically excluded from documentation in an EIS or an EA unless scoping indicates extraordinary circumstances exist.

A1 - Addition of new buildings, facilities or improvements at existing facilities which result in no or only minor changes in the capacity, use, or purpose of the facility. The activity must be compatible with existing local land use plans. (Examples include, but are not limited to: construction of parking lots not exceeding 1.0 acres in size; small additions to an existing building; pouring concrete slab for a trailer; installing a trailer; installing a storage shed or area; adding another floor to an existing building, etc.)

A2 - Performing interior and/or exterior renovation or alteration of a building without changing the land use of the building.

A3 - Grants of right-of-ways or easements for the use by vehicles; electrical, telephone, and other transmission or communication lines; transmitter and relay facilities; and for similar public utility and transportation uses.

A4 - Prescribed burning, pre-commercial thinning, wildlife habitat improvement thinning, sale of salvage timber, and sale of green timber. No more than 100 acres per facility will be harvested in any single year. No more than 200 acres per facility will be prescribed burned in any single year. Exceptions: wildlife habitat improvement, pine beetle infestation salvage sale, tick infestation, noxious weed eradication.

A5 - Pest and vector control; Feral cats and dogs; insect and disease control; fire ant control; southern pine beetle infestation control; gypsy moth infestation control. Vector control will be done in accordance with normal pest control management practices.

A6 - Security activities, including fencing, perimeter road construction and reconstruction.

A7 - Additional construction or reconstruction of existing telephone or utility lines in a designated corridor.

A8 - Approval, modification or continuation of a minor use of Treasury lands that require less than five contiguous acres of land. Examples include, but are not limited to:

- a. Approving the construction of a portable storage building.
- b. Approving the use of land for a utility corridor that crosses less than one mile of Treasury land.
- c. Approving an additional telecommunication use at a site already used for such purposes.

A9 – Regeneration of an area to native tree species, including site preparation.

A10 – Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

- a. Reconstructing a gabion with stone from a nearby source.
- b. Adding brush to lake, fish beds.
- c.

x. Further information about Treasury's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of Assets Management, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 6140 Treasury Annex, Washington, DC 20220. Bureau questions about the NEPA process should be directed to the Environment and Energy Programs Officer (EEPO) in this office.