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(2) The equitable geographic distribution of grants funded through this Subpart among the various regions of the United States.

(b) *Additional review criteria.* Priority shall be given to applicants that demonstrate a commitment to developing strong collaborative models for developing services that are victim-centered; policies, protocols and penalties that hold offenders accountable; and programs that educate the entire campus community about how to end and prevent violence against women through systemic change. Commitment may be demonstrated in a number of ways including: clear communication from the institution's top leadership that strong responses to and prevention of violence against women is a priority; development and vigorous enforcement of campus policies and adherence to local laws addressing violence against women; creation of coordinated, multidisciplinary task forces that include at a minimum both campus and community-based victim service providers and campus security personnel and local law enforcement; innovative approaches to educating the entire campus community, including faculty, staff, administration, and students; provision of training and education programs to campus security personnel, others in positions of authority, and campus victim service providers; development of resource materials and information on violence against women; and innovative dissemination strategies for communicating information about the identification of violence against women, its underlying causes, and the consequences of committing violent crimes against women.

(c) *Intergovernmental review.* This grant program is covered by Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197), and implementing regulations at 28 CFR Part 30. A copy of the application submitted to the Violence Against Women Office of the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.106 What are the grantee reporting requirements for the grant program?

(a) *Semi-annual progress reports and annual performance reports.* Each grantee receiving funds under this Subpart shall submit semi-annual progress reports and an annual performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office). Funding shall be suspended if a grantee fails to submit an annual performance report.

(b) *Final performance report.* Upon completion of the grant period, the institution shall be required to file a final performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office) and the Secretary of Education (U.S. Department of Education's Safe and Drug Free Schools Program) explaining the activities carried out under this Subpart along with an assessment of the effectiveness of those activities in achieving the purposes set forth previously.

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

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AUTHORITY: 42 U.S.C. 13701 through 14223.

SOURCE: 59 FR 63019, Dec. 7, 1994, unless otherwise noted.

Subpart A—General

§ 91.1 Purpose.

The Attorney General, through the Assistant Attorney General for the Office of Justice Programs, will make grants to states and to states organized as multi-state compacts to construct, develop, expand, operate or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional space for the confinement of violent offenders, to:

(a) Ensure that prison space is available for the confinement of violent offenders; and

(b) Implement truth in sentencing laws for sentencing violent offenders.

§ 91.2 Definitions.

(a) *Violent offender*. [Reserved]

(b) *Serious drug offense* means an offense involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of 10 years or more is prescribed by state law.

(c) *Part 1 violent crimes* means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports. If such data is unavailable, Bureau of Justice Statistics (BJS) publications may be utilized. See, e.g., ''Census of State and Federal Correctional Facilities, 1990.'' (''Part 1 violent crimes'' are defined here solely as the statutorily prescribed basis for the formula allocation of funding.)

(d) *Recipient* means individual states or multi-state compacts awarded funds under this part.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

(f) *Comprehensive correctional plan* means a plan which represents an integrated approach to the management and operation of adult and juvenile correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and treatment programs, prisoner work activities (including to the extent practicable, activities relating to the development, expansion, modification, or improvement of correctional facilities) and job skills programs, educational programs, a pre-release prisoner assessment to provide risk reduction management, post-release assistance and an assessment of recidivism rates.

(g) *Correctional facilities* includes boot camps and other alternative correctional facilities for adults or juveniles that can free conventional bed space for the confinement of violent offenders.

(h) *Boot camp* means a corrections program for adult or juvenile offenders

of not more than six-months confinement (not including time in confinement prior to assignment to the boot camp) involving:

(1) Assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time for a violent felony;

(2) Adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work;

(3) Participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(4) Post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(i) *Truth in sentencing laws* means laws that:

(1) Ensure that violent offenders serve a substantial portion of sentences imposed;

(2) Are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; and

(3) The prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

§91.3 General eligibility requirements.

(a) Recipients must be individual states, or states organized as multistate compacts.

(b) *Application requirements.* To be eligible to receive either a formula or a discretionary grant under subtitle A, an applicant must submit an application which includes:

(1) Assurances that the state(s) have implemented, or will implement, correctional policies and programs, including truth in sentencing laws. No specific requirements for complying with this condition are prescribed by this interim rule for fiscal 1995 funding because of the need for further review of the status of truth in sentencing laws and the impact and needs requirements relating to reform in state systems.

(2) Assurances that the state(s) have implemented or will implement policies that provide for the recognition of the rights and needs of crime victims. States are not required to adopt any specific set of victims rights measures for compliance, but the adoption by a state of measures which are comparable to or exceed those applied in federal proceedings will be deemed sufficient compliance for eligibility for funding. If the state has not adopted victims rights measures which are comparable to or exceed federal law, the adequacy of compliance will be determined on a case-by-case basis. States will be afforded a reasonable amount of time to achieve compliance. States may comply with this condition by providing recognition of the rights and needs of crime victims in the following areas:

(i) Providing notice to victims concerning case and offender status;

(ii) Providing an opportunity for victims to be present at public court proceedings in their cases;

(iii) Providing victims the opportunity to be heard at sentencing and parole hearings;

(iv) Providing for restitution to victims; and

(v) Establishing administrative or other mechanisms to effectuate these rights.

(3) Assurances that funds received under this section will be used to construct, develop, expand, operate or improve correctional facilities to ensure that secure space is available for the confinement of violent offenders.

(4) Assurances that the state(s) has a comprehensive correctional plan in accordance with the definition elements in §91.2. If the state(s) does not have an adequate comprehensive correctional plan, technical assistance will be available for compliance. States will be afforded a reasonable amount of time to develop their plans.

(5) Assurances that the state(s) has involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders and that the state(s) will share funds received with counties and other units of local government, taking into account the burden placed

on these units of government when they are required to confine sentenced prisoners because of overcrowding in state prison facilities.

(6) Assurances that funds received under this section will be used to supplement, not supplant, other federal, state, and local funds.

(7) Assurances that the state(s) has implemented, or will implement within 18 months after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (September 13, 1994), policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

(8) Assurances that correctional facilities will be made accessible to persons conducting investigations under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997.

(9) If applicable, documentation of the multi-state compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities.

(10) If applicable, a description of the eligibility criteria for participation in any boot camp that is to be funded.

(c) States, and states organized as multi-state compacts, which can demonstrate affirmative responses to the assurances outlined above will be eligible to receive funds.

(d) Each state application for such funds must be accompanied by a comprehensive correctional plan. The plan shall be developed in consultation with representatives of appropriate state and local units of government, shall include both the adult and juvenile correctional systems, and shall provide an assessment of the state and local correctional needs, and a long-range implementation strategy for addressing those needs.

(e) Local units of government, i.e., any city, county, town, township, borough, parish, village or other general purpose subdivision of a state, or Indian tribe which performs law enforcement functions as determined by the secretary of the Interior, are in turn eligible to receive subgrants from a participating state(s). Such subgrants shall be made for the purpose(s) of carrying out the implementation strategy, consistent with state(s) comprehensive correctional plan.

(f) In awarding grants, consideration shall be given to the special burden placed on states which incarcerate a substantial number of inmates who are in the United States illegally. States will not be required to submit additional information on numbers of criminal aliens. The Bureau of Justice Assistance (BJA) and the Immigration and Naturalization Service (INS) are currently working together to implement the State Criminal Alien Assistance Program (SCAAP) to assist the states with the costs of incarcerating criminal aliens. The Office of Justice Programs will coordinate with the SCAAP program to obtain the relevant information.

(g) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

[59 FR 63019, Dec. 7, 1994, as amended by Order No. 2703–2004, 69 FR 2841, Jan. 21, 2004]

§ 91.4 Truth in Sentencing Incentive Grants.

(a) Half of the total amount of funds appropriated to carry out subtitle A for each of the fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Truth in Sentencing Incentive Grants.

(b) *Eligibility*. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of § 91.3 and must demonstrate that the state(s)—

(1) Has in effect laws which require that persons convicted of violent crimes serve not less than 85% of the sentence imposed; or

(2) Since 1993—

(i) Has increased the percentage of convicted violent offenders sentenced to prison;

(ii) Has increased the average prison time which will be served in prison by convicted violent offenders sentenced to prison;

(iii) Has increased the percentage of sentence which will be served in prison by violent offenders sentenced to prison; and

(iv) Has in effect at the time of application laws requiring that a person

who is convicted of a violent crime shall serve not less than 85% of the sentence imposed if—

(A) The person has been convicted on 1 or more prior occasions in a court of the United States or of a state of a violent crime or a serious drug offense; and

(B) Each violent crime or serious drug offense was committed after the defendant's conviction of the preceding violent crime or serious drug offense.

(c) *Formula allocation*. The amount available to carry out this section for any fiscal year will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(d) *Transfer of unused funds*. On September 30 of each fiscal years 1996, 1998, 1999 and 2000, the Attorney General will transfer to the funds to be allocated under the Violent Offender Incarceration Grant formula allocation (section 91.5) any funds made available to carry out this section that are not allocated to an eligible state under paragraph (b) of this section.

§91.5 Violent Offender Incarceration Grants.

(a) Half of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Violent Offender Incarceration Grants.

(b) *Eligibility*. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3(b).

(c) *Allocation of violent offender incarceration funds*—(1) *Formula allocation*. 85% of the sum of the amount available for grants under this section for any fiscal year and any amount transferred as described in §91.4(c) for that fiscal year will be allocated as follows:

(i) 0.25% will be allocated to each eligible state except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands shall each be allocated 0.05%.

(ii) The amount remaining after application of paragraph (c)(1)(i) of this section will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(2) *Discretionary allocation*. Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under this subsection and any amount transferred as described in §91.4(c) for that fiscal year will be allocated at the discretion of the Assistant Attorney General for OJP to states that have demonstrated:

(i) The greatest need for such grants, and

(ii) The ability to best utilize the funds to meet the objectives of the grant program and ensure that secure cell space is available for the confinement of violent offenders.

(d) *Transfer of unused funds*. On September 30 of each fiscal years 1996, 1997, 1998, 1999 and 2000, the Assistant Attorney General will transfer to the discretionary program under paragraph (c)(2) of this section any funds made available under paragraph (c)(1) of this section that are not allocated to an eligible state under paragraph (c)(1) of this section.

§91.6 Matching requirement.

(a) The federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period. A certification to that effect will be required of each recipient of grant funds and must be submitted to the Office of Justice Programs with the application.

(b) [Reserved]

Subpart B—FY 95 Correctional Boot Camp Initiative

§ 91.10 General.

(a) *Scope of boot camp program.* Funding is appropriated in fiscal year 1995 to provide grants to states and multistate compacts to plan, develop, construct and expand correctional boot camps for adults and juveniles.

(b) Adult and juvenile boot camps, referred to as ''correctional boot camps,'' are programs that ''provide a structured environment for delivering nontraditional corrections programs to criminal offenders.''

(c) With respect to this program, the mandates of the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5601 *et seq.*) shall apply.

(d) *Eligibility.* (1) Funding is available for both adult and juvenile boot camps. To be eligible for the funding of boot camps, states must comply with the general assurances in § 91.3(b) or demonstrate steps taken toward compliance. While the majority of assurances are applicable to the adult correctional system, those states applying for grants for juvenile boot camps must include the juvenile system in the state comprehensive correctional plan and demonstrate how construction of the boot camp will make secure space available to house violent juvenile offenders.

(2) For purposes of the FY '95 boot camp program, a ''violent felony'' means any crime punishable by imprisonment for a term exceeding one year, or an act of juvenile delinquency that would be punishable by imprisonment for such term if committed by an adult, that:

(i) Involves the use or attempted use of a firearm or other dangerous weapon against another person, or

(ii) Results in death or serious bodily injury to another person.

(3) States must document that the boot camp program does not involve more than six-months confinement (not including confinement prior to assignment to the boot camp) and includes:

(i) Assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time of a violent felony;

(ii) Adherence by inmates to a highly regimented schedule that involves strict discipline, physical training and work;

(iii) Participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(iv) Post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(4) States must provide assurances that boot camp construction will free up secure institutional bed space for violent offenders.

(e) *Evaluation.* (1) Recipients will be required to cooperate with a national evaluation team throughout the planning and implementation process. Recipients are also strongly encouraged to provide for an independent evaluation of the impact and effectiveness of the funded program.

(2) Jurisdictions are strongly encouraged to engage in systematic planning activities and to develop and evaluate boot camps as part of a comprehensive and integrated correctional plan.

(f) *Limitation on funds.* Grant funds cannot be used for operating costs. States will be required to show how operating expenses will be provided.

(g) *Matching requirement.* The federal share of a grant received may not exceed 75 percent of the costs of the proposed boot camp program described in the appoved application. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period; facility operating expenses may not be used to meet the match requirement for the construction project supported. Match may be made through grantee contribution of construction-related costs. A certification to that effect will be required of each recipient of grant funds.

(h) *Innovative boot camp programs.* Jurisdictions are encouraged to explore the development of ''innovative'' boot camp programs which incorporate principles based on the accumulation of research and practical experience, and reflect sound and effective correctional practice.

Subpart C—Correctional Facilities on Tribal Lands

AUTHORITY: 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134.

SOURCE: 61 FR 49970, Sept. 24, 1996, unless otherwise noted.

§91.21 Purpose.

This part sets forth requirements and procedures to award grants to Indian Tribes for purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

§91.22 Definitions.

(a) *The Act* means the Violent Crime Control and Law Enforcement Act of 1994, Subtitle A of Title II, Public Law 103–322, 108 Stat. 1796 (September 13, 1994) as amended by the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act, Public Law 104–134 (April 26, 1996), codified at 42 U.S.C. 13701 *et. seq*.

(b) *Assistant Attorney General* means the Assistant Attorney General for the Office of Justice Programs.

(c) *Tribal lands* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of way running through the same.

(d) *Indian Tribe* means an eligible Native American tribe as defined by the Indian Self Determination Act, 25 U.S.C. 450b(e).

(e) *Construction* means the erection, acquisition, renovation, repair, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of fixed furnishings and equipment. It includes facility planning (including environmental impact analysis), pre-architectural programming, architectural design, preservation, construction, administration, construction management, or project management costs. Construction does not include the purchase of land.

[61 FR 49970, Sept. 24, 1996, as amended at 69 FR 2299, Jan. 15, 2004]

§91.23 Grant authority.

(a) The Assistant Attorney General may make grants to Indian tribes for programs that involve constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

(b) Applications for grants under this program shall be made at such times and in such form as may be specified by the Assistant Attorney General. Applications will be evaluated according to the statutory requirements of the Act and programmatic goals.

(c) Grantees must comply with all statutory and program requirements applicable to grants under this program.

(d) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

[61 FR 49970, Sept. 24, 1996, as amended by Order No. 2703–2004, 69 FR 2841, Jan. 21, 2004]

§91.24 Grant distribution.

(a) From the amounts appropriated under section 20108 of the Act to carry out sections 20103 and 20104 of the Act, the Assistant Attorney General shall reserve, to carry out this program—

(1) 0.3 percent in each fiscal years 1996 and 1997; and

(2) 0.2 percent in each of fiscal years 1998, 1999 and 2000.

(b) From the amounts reserved under paragraph (a) of this section, the Assistant Attorney General may exercise discretion to award or supplement grants to such Indian Tribes and in such amounts as would best accomplish the purposes of the Act.

Subpart D—Environmental Impact Review Procedures for VOI/TIS Grant Program

AUTHORITY: 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134; 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

SOURCE: 65 FR 48595, Aug. 8, 2000, unless otherwise noted.

IN GENERAL

§ 91.50 Purpose.

The purpose of this subpart is to inform grant recipients under the Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Formula Grant Program of OJP's procedures for complying with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et. seq.*, and related environmental impact review requirements.

§ 91.51 Policy.

(a) *NEPA Policy*. NEPA policy requires that Federal agencies, to the fullest extent possible:

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

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

(3) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

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

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

(b) *OJP's policy to minimize harm to the environment*. It is OJP's policy to minimize harm to the environment. Consequently, OJP can reject proposals or prohibit a State from using formula grant funds for a project that would have a substantial adverse impact on the human environment. Additionally, federal law prohibits the implementation of a project that jeopardizes the continued existence of an endangered species or that violates certain regulations related to water quality. Generally, though, where an EA or EIS reveals that a project will have adverse environmental impacts, OJP will work with the State grantee to identify ways to modify the project to mitigate any adverse impacts, or will encourage the State to consider an alternative site.

(c) *Mitigation*. OJP may require the following mitigation measures to reduce or eliminate a project's adverse environmental impacts:

(1) Avoiding the impact altogether by not taking certain action or part of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

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

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(d) *Use of grant funds*. In accordance with OJP's general policy of providing the States with the maximum amount of control and flexibility over the use of formula grant funds, the States can use VOI/TIS grant funds to pay for the costs of preparing environmental documents, to implement mitigation measures to reduce adverse environmental impacts, and to cover the costs of construction delays or other project changes resulting from compliance with the NEPA process. However, any funds used for these purposes must be included as a portion of the State's grant which requires a State match.

§91.52 Definitions.

The definitions supplied by the Council on Environmental Quality in its *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, 40 CFR Parts 1500 through 1508, (CEQ Regulations), shall apply to the terms in this subpart.

§91.53 Other guidance.

The Department of Justice has also published NEPA procedures that incorporate the CEQ regulations at 28 CFR part 61. Additionally, the Office of Justice Programs' Corrections Program Office has prepared a handbook for VOI/TIS grantees, *Program Guidance on Environmental Protection Requirements*. This publication and other relevant documents can be found at *http://www.ojp.usdoj.gov/cpo*.

APPLICATION TO VOI/TIS GRANT PROGRAM

§91.54 Applicability.

(a) *Major Federal action*. NEPA's requirements apply to any proposal for legislation or other major federal action that might significantly impact the quality of the human environment. The CEQ regulations in 40 CFR 1508.18 define ''major federal actions'' as actions with effects that may be major and which are potentially subject to Federal control and responsibility. The CEQ regulations categorize ''major federal actions'' as, among other things, the ''[a]pproval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and Federally assisted activities.'' (40 CFR 1508.18(b)(4)).

(b) *VOI/TIS construction grants subject to NEPA*. This subpart applies to all proposed, new and partially completed VOI/TIS projects (including projects on tribal lands) initiated by state or local units of government with grant funding from OJP that involve construction, expansion, renovation, facility planning, site selection, site preparation, security or facility upgrades or other activities that may significantly impact the environment.

(c) *Projects*. Although VOI/TIS money cannot be used for a project's operations expenses, the definition of ''project'' or ''proposal'' for NEPA review purposes is defined as both the construction and the long-term operation of correctional facilities and related components such as all off-site projects to accommodate the needs of the correctional facilities project (e.g., road and utility construction or expansion, projects offered to the affected community as an incentive to accept the correctional facility construction or expansion, and other reasonably foreseeable future actions regardless of what agency or third party undertakes such action). Reasonably foreseeable actions include future prison construction phases, especially when either current acreage requirements or design capacities for utilities are based on needs stemming from future phases.

§91.55 Categorical exclusions.

Activities undertaken by State, local, or tribal entities using VOI/TIS funds that are consistent with any of the following categories are presumed not to have a significant effect on the human environment and thus, are categorically excluded from the preparation of either an EA or an EIS. Although these activities are excluded from environmental reviews under NEPA, they are not excluded from compliance with other applicable local, State, or Federal environmental laws. Additionally, an otherwise excluded activity loses its exclusion and is subject to environmental review if it either would be located within or potentially affect any of the following: a 100-year flood plain, a wetland, important farmland, a proposed or listed endangered or threatened species, a proposed or listed critical habitat, a property that is listed or eligible for listing on the National Register of Historic Places, an area within an approved State Coastal Zone Management Program, a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, a designated or proposed Wilderness Area, or a sole source aquifer

recharge area designated by the Environmental Protection Agency (EPA). The resulting environmental review for those activities that lose their exclusion status shall focus on the factor or factors that caused the loss of the exclusion.

(a) *Minor renovations.* Projects for minor renovations within an existing facility, unless the renovation would impact a structure which is on the National Register of Historic Places, or is eligible for listing on the register.

(b) *Limited expansion.* Projects for the expansion of an existing facility or within an existing correctional complex, which does not add more than 50 beds or increase the capacity of the facility by more than 50 percent whichever is smaller. This exclusion does not apply to either a phased project that exceeds these numerical thresholds or projects to expand facilities that:

(1) Are located in a floodplain;

(2) Will affect a wetland;

(3) Will affect a facility on the National Register of Historic Places or that is eligible for listing on the register;

(4) Will affect a federally proposed or listed endangered or threatened species or its habitat;

(5) Is controversial for environmental reasons; or

(6) Would not be served by adequate sewage treatment, solid waste disposal, or water facilities.

(c) *Expansion of support facilities.* Projects for the expansion of bed space within an existing facility (e.g., double bunking or conversion of non-cell space) which are using grant funds to expand or add support facilities, such as a kitchen, medical facilities, recreational space, or program space, to accommodate the increased number of inmates. This does not include projects to increase capacity for support facilities which might pose a threat to the environment, such as solid waste and waste water management, new roads, new or upgraded utilities coming into the facility, or prison industry programs that involve the use of chemicals and produce hazardous waste or water or air pollution.

(d) *Security upgrades.* Security upgrades of an existing facility which are inside the existing perimeter fence or involve the upgrade of the existing perimeter fence. This exclusion does not include such upgrades as adding lethal fences or increasing height or lighting of a perimeter fence in a residential area or other areas sensitive to the visual impacts resulting from height or lighting changes.

(e) *Privatization.* Projects that involve the leasing of bed space (which may include operational costs) from a facility operated by a private correctional corporation or that contract with a private correctional corporation for the operation of a state facility or program. This exclusion does not apply if the correctional agency has contracted with the private vendor to build the facility, operate the facility, or lease beds to the correctional agency using federal grant funds.

(f) *Drug testing and treatment.* Projects that use grant funds to implement drug treatment, testing, sanctions, or interdiction programs.

§ 91.56 Actions that normally require the preparation of an environmental assessment.

(a) *Renovation or expansion of existing correctional facility.* Renovation or expansion activities not categorically excluded under § 91.55 require an environmental assessment (EA). An environmental assessment is generally prepared when a project is not expected to have a significant impact on the environment. Since projects for the renovation or expansion of an existing facility or the construction of a new facility within an existing correctional complex may have limited impact on the environment, preparing an EA may be sufficient.

(b) *Proposed construction of a new correctional facility.* The proposed construction of a new correctional facility will require the preparation of an environmental assessment unless the proposal will clearly have a significant environmental impact in which case an environmental impact statement can be initiated immediately without the preparation of an environmental assessment.

§91.57 Actions that normally require the preparation of an environmental impact statement.

Significant impact. For the proposed construction of a new correctional facility or the proposed expansion of an existing facility, if the proposal is large or complex and/or controversial because of the nature of possible environmental impacts, and/or if any EA determines that the project will have a significant impact on the environment, an environmental impact statement (EIS) will be required. For those projects that clearly will have significant environmental impact, a grantee can save time and resources by initiating the EIS immediately without going through the EA process.

ENVIRONMENTAL REVIEW PROCEDURES

§91.58 Timing of the environmental review process.

(a) *Initial planning and site selection phase*. The NEPA procedures must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin.

(b) *Early consultation with OJP*. As grantees identify proposed, new projects, the grantees must inform OJP and after consulting OJP's *Program Guidance on Environmental Protection Requirements*, must recommend to OJP whether:

(1) The proposed project meets the criteria of a categorical exclusion;

(2) An environmental assessment should be initiated;

(3) Because of the project size and/or anticipated environmental impacts, an environmental impact statement should be initiated.

(c) *Design phase*. Projects currently in the planning and design phase must complete the NEPA procedures and no further decisions or new commitments of resources can be made on these projects by the State or local entity that would either have an adverse impact on the environment or limit the choice of reasonable alternative sites.

(d) *Prohibited pre-analysis activities*. None of the following actions can be taken until the NEPA analysis is completed for the affected project:

(1) Starting construction;

(2) Accepting construction bids;

(3) Advertising for construction bids;

(4) Initiating the development of or approving final plans and specifications; or

(5) Purchasing property.

(e) *Ongoing or completed construction projects*. For grant-funded projects under construction, OJP will work with the States to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. For completed grant-funded projects, OJP will work with the States to determine whether those projects may pose continuing environmental problems. For example, NEPA issues may exist due to excessive noise, light pollution, excessive water consumption or draw down on an important stream, or adverse visual impact due to an inappropriate facade color in an environmentally scenic area. Consequently, performing an analysis for those VOI/TIS VOI/TIS projects for which construction is completed may still serve the useful purpose of determining the extent of a project's continuing adverse environmental impacts, and the feasibility of mitigation measures.

(f) *Avoiding duplication of efforts*. If an EA or EIS was completed on an original structure, any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated in any required environmental impact analysis for proposed modifications or additions to that structure.

§91.59 OJP's responsibilities.

(a) *In general*. All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain with OJP. Therefore, OJP, as the Federal agency sponsoring the major federal action, shall determine if a proposed project qualifies for a categorical exclusion, if a finding of no significant impact can be issued based on the EA, or if an EIS will be required.

(b) *Specific duties.* As part of its role in the NEPA process, OJP shall:

(1) Issue guidance on the preparation of environmental documents and the NEPA process.

(2) Review all draft documents.

(3) Participate in giving notice to state and federal agencies, as well as to the public, and attend public meetings with the grantee, as appropriate.

(4) Identify and solicit appropriate state, local, and tribal agencies to be a cooperating or joint lead agency, as appropriate.

(5) Prepare a written assessment of any environmental impacts that another state or federal land management or environmental protection agency believes have not been adequately addressed through the NEPA process.

(6) Monitor implementation by the states to ensure the completion of any required mitigation measures.

(7) Develop a sample Statement of Work for preparing an EIS that States employing their own contractor can use to ensure that the services provided meet the requirements.

§ 91.60 Grantee's responsibilities.

Specific duties. As part of its role in the NEPA process, the grantee agency must:

(a) Work closely with OJP on the development and review of the environmental documents, and follow the NEPA process, with the full participation of OJP.

(b) Issue the documents for public comment jointly with OJP.

(c) Solicit comment from other state and federal agencies, interested organizations, and the public.

(d) Refrain from purchasing land, beginning bidding process, or starting construction on any project until all environmental work has been completed.

(e) Complete a project Status Report form for all projects under construction or completed prior to the effective date of this subpart.

(f) Ensure that appropriate environmental analysis, as determined by OJP, is completed for all projects and that appropriate alternatives are considered and mitigation measures are implemented to reduce the impact of identified environmental impacts, if any.

(g) Identify and inform OJP of all applicable state and local environmental impact review requirements.

(h) Notify all subgrantees of the requirements of this subpart in the initial planning and site selection phase.

§ 91.61 Subgrantee's responsibilities.

If delegated by the grantee, the subgrantee shall:

(a) Prepare (if the required expertise exists) or contract for the preparation of an environmental assessment (EA); and

(b) Submit all environmental assessments through the grantee to OJP for review and the issuance of a draft finding of no significant impact (FONSI) or a determination that an environmental impact statement (EIS) is required. If OJP issues a draft FONSI, the grantee agency shall make the draft FONSI and the underlying EA available for public comment.

§ 91.62 Preparing an Environmental Assessment.

(a) *In general.* An Environmental Assessment (EA) is a concise public document that provides sufficient evidence and analysis for determining whether OJP should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Completing an EA requires considering all potential impacts associated with the construction of the correctional facility project, its operation and maintenance, any related projects including those off-site, and the attainment of the project's major objectives. The latter requires an analysis of the environmental impacts of any training and vocational activities to be conducted by the inmates.

(b) *Project planning and site selection.* During the planning phase of the project, OJP and the grantee jointly define the project, explore the various

alternatives and identify a proposed site for the construction or renovation project. In order to identify possible environmental concerns and reduce the likelihood of later opposition to the project, the grantee should involve other interested parties at this stage through public meetings which allow affected or interested parties to learn about the need for the action, the scope of the proposed action, and any alternatives being considered. These public meetings should also provide interested parties an opportunity to express comments or concerns about potential consequences of the action. Additionally, minority and low-income populations as well as Indian tribes that may be affected by the proposal should be consulted at this early stage. The grantee should obtain their views on proposed sites and mitigation measures as an important step in meeting the environmental justice goals of Executive Order 12898.

(c) *Draft environmental assessment.* The grantee should prepare an EA after identifying the proposed site, but before reaching a final decision to proceed with the effort at that location. The grantee may prepare the EA or contract for the preparation of all or parts of the EA. In order to adequately assess all of the potential environmental impacts, a multi-disciplinary team must be used to perform the environmental analysis. Any state or local environmental impact review requirements should also be incorporated into the EA process. The amount of analysis and detail provided must be commensurate with the magnitude of the expected impact. At a minimum, an EA should include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and alternatives considered, and a list of agencies and persons consulted. VOI/TIS grant funds may be used to pay the costs of preparing the environmental assessment.

(d) *OJP's Review of the Draft EA.* The Office of Justice Programs will review the EA for the following:

(1) Has the need for the proposed action been established?

(2) Have the relevant areas of environmental concern been identified?

(3) Have other agencies with an interest been consulted?

(4) Has the grantee provided opportunities for public involvement?

(5) Have reasonable alternatives and mitigation measures been considered and implemented where possible, including the costs and resources to operate the facility?

(6) Has a convincing case been made that the project as presently conceived will have only insignificant impacts on each of the identified areas of environmental concern?

(7) Has the grantee adequately documented compliance with other related federal environmental laws and regulations as well as similar state and local environmental impact review requirements.

(e) *Draft Finding of No Significant Impact (FONSI) or determination that EIS is required.* If the EA satisfies all the factors in OJP's seven-part review set forth in the previous paragraph, OJP will issue a draft FONSI. If OJP's review of the EA results in a response of ''no'' to any of the questions, except question 6, then the EA is incomplete and will be returned for further work. If the only ''no'' is in response to question 6, then OJP will issue a determination requiring an EIS for that particular project at that site. Given the cost and time required to complete an EIS, the grantee may wish to explore another alternative site at this point.

(f) *Circulate EA and draft FONSI for public comment.* The grantee must provide public notice of availability of a Finding of No Significant Impact. The notice must be timed so that interested agencies and the public have 30 days for review and comment on the draft EA.

(g) *Review comments and modify plans, as appropriate.* The grantee must review any public or agency comments received as a result of review of the EA and draft FONSI, and should modify its plans, if appropriate. Modification may include modifying the project to mitigate the environmental impact of the proposed project, or abandoning the proposed site and selecting an alternative that will have a less significant

impact on the environment. The grantee must submit the comments, responses to these comments, and any revisions to the proposed plan to OJP for review. If the grantee recommends proceeding with the project in light of adverse comments on the environmental impact, the grantee must include the rationale for its recommendation.

(h) *Final action on EA.* Unless a significant environmental impact surfaces through the public comments or other means, OJP will issue the FONSI and authorize the grantee to begin the purchase of land, the bidding process, the development of final plans and specifications, and the construction work.

§ 91.63 Preparing an Environmental Impact Statement

(a) *Initial determination.* OJP will determine whether a proposed project may have a significant impact on the quality of the human environment, thereby requiring the preparation of an environmental impact statement (EIS). This determination will be made either:

(1) On the basis of an environmental assessment (EA) prepared for the proposed project or

(2) Without the preparation of an EA, but based on the extensive size of the proposed facility and the resulting variety of environmental impacts, the sensitive environmental nature of the proposed site, and/or the existence of highly controversial environmental impacts.

(b) *CEQ regulations.* The CEQ regulations in 40 CFR parts 1500 through 1508 govern the preparation of the EIS. The Corrections Program Office's Handbook on *Environmental Protection Requirements* offers further guidance.

(c) *EIS preparation team.* (1) Once OJP determines that an EIS is needed, the grantee shall notify OJP in writing about the contracting method that the grantee will use to complete the EIS. The grantee shall establish an EIS preparation team or entity that meets the requirements for an interdisciplinary approach. The team must not have any interest, financial or otherwise, in the outcome of the proposed projected or any related projects.

(2) If the grantee decides to use an alternate method to contracting out for preparation of the EIS (such as using a team of experts from various state agencies or a university), the grantee must submit a written proposal to OJP demonstrating that the team has the necessary interdisciplinary skills and experience in preparing EISs for similar projects. The proposal must include a completion schedule demonstrating that the alternate method will not result in significant delay. The proposal must also document that all members of the team, other than the grantee's employees, do not have any interest, financial or otherwise, in the outcome of the proposed project or any related projects.

(3) The grantee must use an OJP-approved statement of work (SOW) in conducting the EIS.

(4) Any consultant or contractor hired by OJP or the grantee to prepare an EIS must execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project or any related projects.

(d) *Notice of intent.* OJP will publish a notice in the FEDERAL REGISTER to announce its intent to prepare the EIS. The grantee shall be responsible for drafting this notice. This notice must state the date, time and place of the scoping meeting and briefly describe the purpose of the meeting. The grantee should schedule the meeting at least 30 days from the date that the grantee submits the draft FEDERAL REGISTER notice to OJP.

(e) *Scoping.* The scoping process shall be conducted in accordance with 40 CFR 1501.7 of the CEQ regulations. The purpose of scoping is to identify and consult with affected federal, state and local agencies, Indian tribes, interested organizations and persons, including minority and low-income populations. The grantee and OPD shall conduct two distinct scoping meetings to assist in identifying both major and less important issues for the draft EIS. At the end of the scoping process, a brief report will be prepared summarizing the results, listing the participants, and attaching the meeting minutes.

(f) *Draft EIS.* The grantee and OJP will prepare the draft EIS in accordance with the requirements of the CEQ regulations in 40 CFR parts 1500

through 1508. The draft EIS must represent the best analysis reasonably possible. The grantee must submit the draft EIS to OJP and any cooperating agencies for internal review and comment. The revised draft must be submitted to OJP and any cooperating agency for approval.

(g) *Public comment*. The grantee, with OJP approval, must establish a distribution list and must mail the draft EIS to those parties. OJP will then submit the approved draft EIS to the Environmental Protection Agency (EPA) and will request EPA to publish a notice of the availability of the draft in the FEDERAL REGISTER. The grantee must publish a similar notice in a newspaper of general circulation in the area of the proposed action. Additionally, the grantee and OJP shall conduct a public information meeting to answer questions and receive comments on the draft EIS.

(h) *Final EIS*. The grantee and OJP will prepare the final EIS, including a copy of all comments on the draft and a summary of the public information meeting. The grantee shall submit the final EIS to OJP and any cooperating agencies for internal review. The grantee and OJP will circulate the final EIS to all parties on the distribution list, to any agency or person that requests a copy, and to EPA for publication in the FEDERAL REGISTER. The grantee must also announce the availability of the final EIS locally.

(i) *Record of decision*. When the waiting period for circulation of the final EIS expires, OJP shall prepare the record of decision in accordance with 40 CFR 1505.2 of the CEQ regulations and in consultation with the grantee. This record of decision shall determine the allowable uses of the grantee's VOI/TIS fund with respect to the proposed action or its alternatives.

(j) *Final action on EIS*. In proceeding with the proposed action, the grantee must implement any mitigation measures or other conditions established in the Record of Decision. As part of any mitigation, the grantee must report back to OJP on the status of implementing the mitigation.

§91.64 Supplemental EA or EIS.

(a) *OJP's duty to supplement*. OJP shall prepare supplements to either completed environmental assessments or draft or final environmental impact statements if the grantee proposes to make substantial changes in the proposed action that are relevant to previously assessed environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Additionally, OJP shall include the supplement in its formal administrative record.

(b) *Grantee's duty to supplement*. A grantee has a duty to inform OJP if it plans to make substantial changes in the proposed action that are relevant to environmental concerns; or if it learns of significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

§91.65 Responsible OJP officials.

(a) *Corrections Program Office Director*. The Director of the Corrections Program Office is primarily responsible for ensuring the completion of these procedures and for working with grantees to ensure that grantees and subgrantees meet their responsibilities under this subpart. The Director also has the authority to execute on behalf of OJP all FONSIs required under this subpart.

(b) *Assistant Attorney General*. The Assistant Attorney General of OJP is responsible for executing all records of decisions resulting from the completion of environmental impact statements on projects subject to this subpart.

§91.66 Public participation.

Environmental impact documents are public documents and the public should be provided an opportunity to review and comment on them.

(a) *Early project planning stages*. During the early planning stages of a project, the grantee should make reasonable efforts to meet with the affected public and other interested parties in order to obtain their views and any concerns regarding the potential environmental impacts of the proposed project.

(b) *Environmental assessment process*—(1) *Newspaper notice.* At a minimum, the grantee must provide public notice of the availability of the draft EA and draft Finding of No Significant Impact (FONSI) for review and comment. The grantee must publish this notice in the non-legal section of at least two consecutive editions of the newspaper of general circulation in the affected community or area. The notice must:

(i) Explain how and where a copy of the assessment can be accessed or obtained for review;

(ii) Include a request for comments; and

(iii) Provide at least a thirty-day comment period that begins from the date of the last published notice.

(2) *Post Office notice.* If the project area is not served by a regularly published local or area-wide newspaper, the notice described in paragraph (b)(1) of this section must be prominently displayed at the local post office.

(3) *Site notice.* The grantee must send a copy of the notice to owners and occupants of properties that are nearby or directly affected by the proposed project. Additionally, the grantee must place or post the notice on the site of the proposed project.

(4) *Distribution of the draft EA.* At the same time that the grantee provides the public notice of the availability of the EA for review and comment, the grantee must mail a copy of the draft EA and FONSI to any individuals and groups that have expressed an interest in the planned project to either the grantee or OJP and also to appropriate local, state, and Federal agencies. OJP will advise the grantee of the identities of any parties who have directly requested project information from OJP.

(5) *Public information meeting.* A public information meeting is not required for each environmental assessment. Rather, OJP will decide if a public meeting would be helpful in those cases in which the public comments either reflect a serious misunderstanding of the proposed project and its potential environmental impacts or raise substantial questions or issues concerning the content of the draft EA. If OJP determines that a meeting is necessary, the grantee must schedule and hold a public meeting. An OJP representative will attend.

(c) *EIS process*—(1) *Scoping meeting.* As one of the first steps in the preparation of a draft EIS, OJP and the grantee will sponsor a public meeting in the area(s) that would be affected by the proposed project and the alternative sites under consideration. This meeting is referred to as a scoping meeting and is intended to identify the proposed project's environmental impacts that are:

(i) Of most concern to the affected public and local, state, and federal agencies and

(ii) Of least concern to the affected public and agencies.

(2) *Review and comment process for draft EIS.* OJP's procedures require the grantee to obtain the public's comments on the draft EIS by:

(i) Publishing a notice of availability of the draft EIS in the newspaper(s) serving the area(s) that would be impacted by the proposed project and the alternatives sites;

(ii) Distributing copies of the draft EIS to all interested agencies, organizations, and individuals for their review and comment;

(iii) Holding near the site of the proposed project a public information meeting in order to obtain the comments of the attendees; and

(iv) Allowing, at a minimum, a forty-five day review and comment period for the draft EIS. Grantees should refer to OJP's Guidance Handbook for further information on how to conduct these public review and comment procedures.

(3) *Distribution of final EIS.* Any interested person or group can request a copy of the final EIS and will be provided a copy.

OTHER STATE AND FEDERAL LAW REQUIREMENTS

§ 91.67 State Environmental Policy Acts.

(a) *Coordination.* OJP will coordinate with grantees to ensure that any state, local, or tribal environmental impact review requirements similar to the Federal NEPA procedures will be met concurrently, to the extent possible, through requesting the appropriate non-federal agency(ies) to be a joint

lead agency(ies). This effort would involve joint analyses, public involvement and documentation. Grantees are responsible for identifying the application of and informing OJP of these state and local requirements.

(b) *Completed analysis.* For projects that had state or local environmental impact analysis completed prior the implementation of these procedures, OJP will review the documents prepared to meet the state and local requirements. In order to minimize any duplication of analysis, OJP will advise the State on whether additional environmental impact review is required.

§ 91.68 Compliance with other Federal environmental statutes, regulations and executive orders.

(a) *Other Federal environmental laws.* All projects initiated by State or local units of government with VOI/TIS grant funding are also subject, where applicable, to the environmental impact analysis requirements of the following statutes, their implementing regulations, and the relevant executive orders:

(1) Archeological and Historical Preservation Act,

(2) Coastal Zone Management Act,

(3) Coastal Barrier Resources Act,

(4) Clean Air Act,

(5) Safe Drinking Water Act,

(6) Federal Water Pollution Control Act,

(7) Endangered Species Act,

(8) Wild and Scenic Rivers Act,

(9) National Historic Preservation Act,

(10) Wilderness Act,

(11) Farmland Protection Policy Act,

(12) Flood Disaster Protection Act

(13) Executive Order on Floodplain Management,

(14) Executive Order on Wetland Protection,

(15) Executive Order on Environmental Justice, and

(16) Executive Order on Protection and Enhancement of the Cultural Environment.

(b) *Combined requirements.* Documenting compliance with the environmental requirements in paragraph (a) of this section does not normally require separate documents or separate processes. Rather, documenting compliance with all of these requirements is generally accomplished by incorporating them into the NEPA documents. For example, one category of environmental impacts that must be addressed in a NEPA analysis is potential impacts to historic properties. The National Historic Preservation Act, as well as the Advisory Council on Historic Preservation's regulations at 36 CFR part 800, also contain Federal requirements for addressing the impacts on historic properties from Federal actions. In order to avoid duplicate compliance procedures, the NEPA document traditionally becomes the process for meeting the requirements of both laws.

PART 92—OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (COPS)

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AUTHORITY: 42 U.S.C. 13811–13812; 42 U.S.C. 14091–14102.

SOURCE: 61 FR 49972, Sept. 24, 1996, unless otherwise noted.