

action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6) and (7) of this section) on factors which include, but are not limited to:

- (i) Scale of the action;
- (ii) Potential for controversy;
- (iii) Degree of public need;
- (iv) Number of affected agencies and individuals; and
- (v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall entail as appropriate:

- (i) [Reserved]
- (ii) Notice to Indian tribes when effects may occur on reservations.
- (iii) Information required in the affected State's public notice procedures for comparable actions.
- (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
- (v) Notice through other local media.
- (vi) Notice to potentially interested community organizations.
- (vii) Publication in newsletters that may be expected to reach potentially interested persons.
- (viii) Direct mailing to owners and occupants of nearby or affected property.
- (ix) Posting of notice on and off site in the area where the action is to be located.

- (x) Holding a public hearing.
- (5) The notice shall include:
- (i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;
  - (ii) Based on the factors in paragraph (c)(3) of this section, a map of the area or other identification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is discernible; instead of publication of such map, FEMA may state that such map is available for public

inspection, including the location at which such map may be inspected and a telephone number to call for information;

(iii) Based on the factors in paragraph (c)(3) of this section, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

#### **§9.9 Analysis and reevaluation of practicable alternatives.**

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in §9.6, of this part, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination

because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see §9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.* (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a prac-

ticable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirement of E.O. 11988 to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements of E.O. 11990 to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section, the great weight intended by the Orders.

(5) Choose the “no action” alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e)(2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the “no action” alternative shall be selected.

(6) In any case in which the Regional Director has selected the “no action” option, FIA may not provide a new or renewed contract of flood insurance for that structure.

EFFECTIVE DATE NOTE: At 45 FR 79070, Nov. 28, 1980, §9.9(e)(6) was temporarily suspended until further notice.

#### §9.10 Identify impacts of proposed actions.

(a) *Purpose.* The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of the Orders to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the identification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values.

(d) In the review of a proposed or alternative action, the Regional Director shall specifically consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include for example, the factors listed in §9.7(b)(2);

(2) *Natural values-related factors.* These include, for example, the following: Water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space recreation and green belts); and agricultural, aquacultural and forestry resource values.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including