

## § 1940.329

## 7 CFR Ch. XVIII (1-1-05 Edition)

### § 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specific as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA or its successor agency under Public Law 103-354 and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA or its successor agency under Public Law 103-354 programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation (exhibit A of this subpart). Copies of comments addressing land use questions will be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director will notify the Administrator.

### § 1940.330 Monitoring.

(a) FmHA or its successor agency under Public Law 103-354 staff who normally have responsibility for the post-approval inspection and monitoring of approved projects will ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, will review the action's approval documents and consult with the preparer of the action's environmental review document prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The preparer will directly monitor actions containing difficult or

complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the position of the preparer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA or its successor agency under Public Law 103-354 staff, the preparer and the SEC will be immediately informed. The approving official will then take appropriate steps, in consultation with the responsible program office, the SEC and preparer, to bring the action into compliance.

### § 1940.331 Public involvement.

(a) *Objective.* The basic objective of FmHA or its successor agency under Public Law 103-354's public involvement process is threefold. It is to ensure that interested citizens can readily obtain knowledge of the environmental review status of FmHA or its successor agency under Public Law 103-354's funding applications, have the opportunity to input into this review process before decisions are made, and have access to the environmental documents supporting FmHA or its successor agency under Public Law 103-354 decisions.

(b) *Public notice requirements.* (1) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA or its successor agency under Public Law 103-354 in the FEDERAL REGISTER are explained in § 1940.320 of this subpart. With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s). It

will also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice will be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FmHA or its successor agency under Public Law 103-354 has identified to be so notified. It will also be posted at a readable location on the project site. The applicant will provide FmHA or its successor agency under Public Law 103-354 with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14 days prior to the date of the meeting.

(2) Coincident with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the same manner as a notice of intent to prepare an EIS. FmHA or its successor agency under Public Law 103-354 will request EPA to publish in the FEDERAL REGISTER a notice of the statement's availability in accordance with EPA's requirements and pursuant to § 1506.10 of the CEQ regulations.

(3) For Class II actions that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice will be published in the same manner as a notice of intent to prepare an EIS but will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies will be sent to the same parties that are required to be sent a notice of intent, as specified in paragraph (b)(1) of this sec-

tion, with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant will provide FmHA or its successor agency under Public Law 103-354 with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice. This notification procedure does not apply to actions reviewed solely on the basis of a Class I assessment.

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of the potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, applies to any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice procedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exception. Whenever property owners affected by proposed mitigation measures, such as proposed hook-up restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property

owners raised objections or concerns over the mitigation measures.

(5) The public notice requirements associated with holding a public information meeting are specified in paragraph (c) of this section.

(c) *Public information meetings.* (1) Public information meetings will be held for an action undergoing an EIS as specified in §1940.320 of this subpart. As part of the EIS process, a public information meeting will be held near the project site to discuss and receive comments on the draft EIS. It will be scheduled no sooner than 15 days after the release of the draft EIS. It will be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification will also be developed in the same manner. The meeting will be chaired by the State Director or a designee and will be fully recorded so that a transcript can be produced. The applicant will be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting will be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the completion of an environmental assessment, it will be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting will not be required. Rather a summary of the meeting to include the major issues raised will be prepared by the FmHA or its successor agency under Public Law 103-354 official who chaired the meeting.

(d) *Distribution of environmental documents.* FmHA or its successor agency under Public Law 103-354 officials will promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director or approval official for project activities and from the Administrator on other activities subject to environmental review.

#### § 1940.332 Emergencies.

(a) *Action Requiring EIS.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

(b) *Action Not Requiring EIS.* When an emergency circumstance makes it necessary to take an action with apparent non-significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will be so notified. The Administrator reserves the authority to waive or amend all procedural aspects of this subpart relating to the preparation of environmental assessments including but not limited to the applicant's submission of Form FmHA or its successor agency under Public Law 103-354 1940-20, public notice requirements and/or their associated comment periods, the timing of the assessment process, and the content of environmental review documents. Alternative arrangements will be established on a case by case basis taking into account the nature of the emergency and the time reasonably available to respond to it. These alternative arrangements will, to the extent possible, attempt to achieve the substantive requirements of this subpart such as avoiding impacts to important land resources, when practicable, and minimizing potential adverse environmental impacts. In all cases, the environmental findings and determinations required for Class I and Class II assessments must be executed by the appropriate FmHA or its successor agency under Public Law 103-354 officials prior to approval of the action and be based upon the best information available under the circumstances and the prescribed alternative arrangements.