

other non-Federal entities, require some form of Federal approval. To implement the requirements of § 1501.2(d),

(i) The heads of the FEMA offices and administration shall prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(ii) The Regional Director shall provide such guidance on a project-by-project basis to applicants seeking assistance from FEMA.

(iii) Upon receipt of an application for agency approval, or notification that an application will be filed, the Regional Director shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-Federal entities are expected to:

(i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;

(iii) Consult with appropriate Federal, regional, State, and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(iv) Submit applications for all Federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other Federal, regional, State, local, and Indian tribe actions required for project completion so that FEMA may coordinate all Federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

#### § 10.8 Determination of requirement for environmental review.

The first step in applying the NEPA process is to determine whether to prepare an environmental assessment or an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated into the decision-making process. Environmental impact statements will be prepared for all major Agency actions (see 40 CFR 1508.18) significantly (see 40 CFR 1508.27) affecting the quality of the human environment.

(a) In determining whether to prepare an environmental impact statement (EIS) the Regional Director will first determine whether the proposal is one which:

(1) Normally requires an environmental impact statement; or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) *Actions that normally require an EIS.* (1) In some cases, it will be readily apparent that a proposed action will have significant impact on the environment. In that event, the Regional Director will, pursuant to § 10.9(g) of this part, submit the notice of preparation of an environmental impact statement to the Environmental Officer.

(2) To assist in determining those actions that normally do require an environmental impact statement, the following criteria apply:

(i) If an action will result in an extensive change in land use or the commitment of a large amount of land;

(ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area;

(iii) If many people will be affected;

(iv) If the environmental impact of the project is likely to be controversial;

(v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharge areas, or delicate or rare ecosystems, including endangered species;

## § 10.8

## 44 CFR Ch. I (10–1–07 Edition)

(vi) If an action will result in a major adverse impact upon air or water quality;

(vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register if, after consultation with the Advisory Council on Historic Preservation an environmental assessment is not deemed sufficient;

(viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria;

(ix) If an action holds potential for threat or hazard to the public; or

(x) If an action is similar to previous actions determined to require an environmental impact statement.

(3) In any case involving an action that normally does require an environmental impact statement, the Regional Director may prepare an environmental assessment to determine if an environmental impact statement is required.

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159;

(1) Action taken or assistance provided under sections 402, 403, 407, or 502 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of ac-

tions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in §316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties and the associated demolition/removal [see paragraph (d)(2)(xii) of this section] or relocation of structures [see paragraph (d)(2)(xiii) of this section] under any applicable authority when

## Federal Emergency Management Agency, DHS

## § 10.8

the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;

(x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;

(xi) Planting of indigenous vegetation;

(xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;

(xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;

(xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the pre-existing design, function, and location; [SE, in part]

(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, exter-

nal radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§402); [SE]

(B) Essential Assistance (§403); [SE]

(C) Debris Removal (§407) [SE]

(D) Temporary Housing (§408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§410);

(F) Individual and Family Grant Programs (§411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§412);

(H) Food Commodities (§413);

(I) Legal Services (§415);

(J) Crisis Counseling Assistance and Training (§416);

(K) Community Disaster Loans (§417);

(L) Emergency Communications (§418);

(M) Emergency Public Transportation (§419);

(N) Fire Management Assistance Grants; and

## § 10.8

## 44 CFR Ch. I (10–1–07 Edition)

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, or archaeological, cultural, historical or other protected resources;

(vi) Presence of hazardous or toxic substances at levels which exceed Federal, state or local regulations or standards requiring action or attention;

(vii) Actions with the potential to affect special status areas adversely or other critical resources such as wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(x) Potential for significant cumulative impact when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an en-

vironmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting an exclusion, the Regional Director determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.* (i) The FEMA list of exclusion categories will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and the Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the FEDERAL REGISTER at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

(f) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(g) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and

does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

[45 FR 41142, June 18, 1980, as amended at 46 FR 2049, Jan. 8, 1981; 46 FR 54346, Nov. 3, 1981; 47 FR 13149, Mar. 29, 1982; 52 FR 5285, Feb. 20, 1987; 59 FR 954, Jan. 7, 1994; 61 FR 4230, Feb. 5, 1996; 61 FR 10688, Mar. 15, 1996; 66 FR 57347, Nov. 14, 2001]

#### § 10.9 Preparation of environmental assessments.

(a) *When to prepare.* The Regional Director shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. The Regional Director may prepare an environmental assessment at any time to assist planning and decision-making.

(b) *Content and format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement, aiding in compliance with NEPA when no EIS is necessary, and facilitating preparation of a statement when one is necessary. Preparation of an environmental assessment generally will not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussion of the following:

- (1) Purpose and need for the proposed action.
- (2) Description of the proposed action.
- (3) Alternatives considered.
- (4) Environmental impact of the proposed action and alternatives.
- (5) Listing of agencies and persons consulted.
- (6) Conclusion of whether to prepare an environmental impact statement.

(c) *Public participation.* The Regional Director shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," the Regional Director shall consider:

- (1) Magnitude of the proposal;
- (2) Likelihood of public interest;
- (3) Need to act quickly;
- (4) Likelihood of meaningful public comment;
- (5) National security classification issues;
- (6) Need for permits; and

(7) Statutory authority of environmental agency regarding the proposal.

(d) *When to prepare an EIS.* The Regional Director shall prepare an environmental impact statement for all major Agency actions significantly affecting the quality of the human environment. The test of what is a "significant" enough impact to require an EIS is found in the CEQ regulations at 40 CFR 1508.27.

(e) *Finding of No Significant Impact.* If the Regional Director determines on the basis of the environmental assessment not to prepare an environmental impact statement, the Regional Director shall prepare a finding of no significant impact in accordance with 40 CFR 1501.4(e) of the CEQ regulations. The assessment and the finding shall be submitted to the Environmental Officer and the Office of General Counsel (OGC) for approval. If Environmental Officer and OGC approval is obtained, the Regional Director shall then make the finding of no significant impact available to the public as specified in § 1506.6 of the CEQ regulations. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

(f) *Environmental Officer or OGC Disallowance.* If the Environmental Officer or OGC disagrees with the finding of no significant impact, the Regional Director shall prepare an environmental impact statement. Prior to preparation of an EIS, the Regional Director shall forward a notice of intent to prepare the EIS to the Environmental Officer who shall publish such notice in the FEDERAL REGISTER.

(g) *EIS determination of Regional Director.* The Regional Director may decide on his/her own to prepare an environmental impact statement. In such case, the Regional Director shall forward a notice of intent to prepare the EIS to the Environmental Officer who shall publish such notice in the FEDERAL REGISTER. The notice of intent shall be published before initiation of the scoping process.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]