

## § 1940.322

## 7 CFR Ch. XVIII (1-1-09 Edition)

will be familiar with the contents of the EIS and its conclusions and will consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft will accompany the proposal through the FmHA or its successor agency under Public Law 103-354 final clearance process. The alternatives considered by the approving official will be those addressed in the final EIS.

(b) As part of this review process, the preparer of the EIS will complete the recommendations listed in Item XXIIb and c of exhibit H of this subpart and provide them to the approving official prior to a final decision.

### § 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA or its successor agency under Public Law 103-354 and before any action is taken on the decision reached on the proposal, the approving official will prepare, in consultation with the preparer of the EIS, a concise record of the decision which will be available for public review. The record will:

- (a) State the decision reached;
- (b) Certify that the timing requirements for the EIS process have been fully met;
- (c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;
- (d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and
- (e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

### § 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office, as appropriate, will prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the preparer of the draft or final EIS determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the preparer will complete an environmental assessment for a Class II action which will document the reasons for this determination.

(c) The preparer will be responsible for advising the approving official of the need for a supplement. The latter will make the Agency's formal determination in a manner consistent with § 1940.316 of this subpart.

(d) All of the requirements of this subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained by the Administrator for any alternative procedures. The final supplement will be included in the project file or docket and used in the Agency's decision-making process in the same manner as a final EIS. (See § 1940.321 of this subpart and in particular subparagraphs (f), (g), and (j) of that section as well as § 1502.9(c)(4) of the CEQ regulations for associated circulation, filing, and timing requirements.)

### § 1940.324 Adoption of EIS or environmental assessment prepared by another Federal Agency.

(a) FmHA or its successor agency under Public Law 103-354 may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the preparer of the FmHA or its successor agency under Public Law 103-354 environmental review and it is concluded that

the document meets the requirements of this subpart; and

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA or its successor agency under Public Law 103-354 and the environmental conditions in the project area have not substantially changed since its publication, FmHA or its successor agency under Public Law 103-354 will recirculate the EIS as a "final" and so notify the public as specified in §1940.331(b) of this subpart. The final EIS will contain an appropriate explanation of the FmHA or its successor agency under Public Law 103-354 involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA or its successor agency under Public Law 103-354. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103-354 EIS. For circulation, filing, and timing requirements, see paragraphs (f), (g), and (j) of §1940.320 of this subpart as well as §§1506.3(c), 1506.9, and 1506.10 of the CEQ regulations.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA or its successor agency under Public Law 103-354 must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103-354 EIS.

(d) FmHA or its successor agency under Public Law 103-354 may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies. If the requirements of that paragraph can be met except for the fact that the Federal agency whose

assessment is to be adopted has no preliminary public notice requirements similar to FmHA or its successor agency under Public Law 103-354's (see §1940.331(b)(4) of this subpart), the assessment can be adopted without FmHA or its successor agency under Public Law 103-354 publishing a preliminary public notice. Additionally, when all of another Federal agency's assessment is adopted, without supplementation, for a Class II action and a finding of no significant environmental impact (exhibit I of this subpart) is reached by the proper FmHA or its successor agency under Public Law 103-354 official, no public notification of FmHA or its successor agency under Public Law 103-354's finding of no significant environmental impact is required if:

(1) The other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action;

(2) The other Federal agency's or its designee's public notice clearly described the action subject to the FmHA or its successor agency under Public Law 103-354 environmental review; and

(3) The other Federal agency's or its designee's public notice was published less than eighteen months from the date FmHA or its successor agency under Public Law 103-354 adopted the assessment.

**§ 1940.325 FmHA or its successor agency under Public Law 103-354 as a cooperating Agency.**

(a) FmHA or its successor agency under Public Law 103-354 will serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA or its successor agency under Public Law 103-354 is directly involved or for an action which is directly related to a proposed FmHA or its successor agency under Public Law 103-354 action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA or its successor agency under Public Law 103-354. A memorandum of understanding or other written correspondence will be developed with the lead agency in order