

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

## § 1940.326

to define FmHA or its successor agency under Public Law 103-354's role as the cooperating agency. The State Director will coordinate FmHA or its successor agency under Public Law 103-354's participation as a cooperating Agency for an action at the State Office level. The Administrator will have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the State Director will consider the expertise which FmHA or its successor agency under Public Law 103-354 could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency will be sent to CEQ.

(c) As a cooperating Agency, FmHA or its successor agency under Public Law 103-354 will participate in the development and implementation of the scoping process. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA or its successor agency under Public Law 103-354 portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director will request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA or its successor agency under Public Law 103-354 will use the EIS as its own as long as FmHA or its successor agency under Public Law 103-354's comments and concerns are adequately addressed by the lead Agency and the final EIS is considered to meet the requirements of this subpart. It will be the responsibility of the preparer of the FmHA or its successor agency under Public Law 103-354 environmental review document to formally advise the approving official on these two points. The failure of the

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

lead Agency's EIS to meet either of these stipulations will require FmHA or its successor agency under Public Law 103-354 to follow the steps outlined in § 1940.324 of this subpart prior to the approving official's decision on the FmHA or its successor agency under Public Law 103-354 action.

### § 1940.326 FmHA or its successor agency under Public Law 103-354 as a lead Agency.

(a) When other Federal agencies are involved in an FmHA or its successor agency under Public Law 103-354 action or related actions that require the preparation of an EIS, the preparer will consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination will be those contained in § 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office will be contacted. The assistance of CEQ will then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA or its successor agency under Public Law 103-354 preparer will request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b) of this subpart. A memorandum of understanding or other written correspondence should be developed with a cooperating agency in order to define that agency's role in the preparation of the EIS.

### § 1940.327 Tiering.

To the extent possible, FmHA or its successor agency under Public Law 103-354 may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis