

§9.8

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considered as one of the natural and beneficial values of floodplain.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 33879, Aug. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

§9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when proposing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see §9.12); and

(2) Rely on its environmental assessment processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the FEDERAL REGISTER as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the

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