

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA or its successor agency under Public Law 103-354, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs will be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in § 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA or its successor agency under Public Law 103-354 actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA or its successor agency under Public Law 103-354 actions that on an individual basis may have relatively few environmental impacts but create a potential for significantly impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA or its successor agency under Public Law 103-354's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s), (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts.

FmHA or its successor agency under Public Law 103-354 will consult with HUD for determining a significant impact whenever the total of HUD and FmHA or its successor agency under Public Law 103-354 housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 24 CFR part 50.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) or similar State authorities.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events (*i.e.*, hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA or its successor agency under Public Law 103-354 office to which a potential applicant would go to seek program information and request application materials will notify

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the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA or its successor agency under Public Law 103-354's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA or its successor agency under Public Law 103-354 for a project not categorically excluded, the prospective applicant will be requested to complete Form FmHA or its successor agency under Public Law 103-354 1940-20 at the time of the issuance of Form AD-622, "Notice of Preapplication Review Action," or other notice inviting an application. Form AD-622 will clearly inform the applicant that during the period of application review, the applicant is to take no actions or incur any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, and that satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions for Community Programs and prior to loan approval for all other programs where a preapplication is used. FmHA or its successor agency under Public Law 103-354 must make its environmental reviews simultaneously with other loan processing actions so that they are an integral part of the loan process. Whenever the potential for a major adverse environmental impact is recognized, such as issues pertaining to floodplains, wetlands, endangered species, or the need for an EIS, priority consideration will be given to resolving this issue by appropriate FmHA or its successor agency under Public Law 103-354 staff. Loan processing need not cease during this resolution period, but loan processing actions will not be taken that might limit alternatives to be considered or whose outcome may be affected by the environmental review. The environmental impact review (whether a categorical exclusion, environmental assessment or EIS) must be completed

prior to the issuance of the letter of conditions for Community Programs, prior to issuance of a conditional commitment for the Business and Industry and Farmer Program Guaranteed Loan Programs, and either prior to loan approval or obligation of funds, whichever occurs first, for all other programs where a preapplication is used. As an exception, however, whenever an application must be submitted to the National Office for concurrence or approval, the environmental review must be completed prior to and included in the submission to the National Office. The environmental impact review is not completed by FmHA or its successor agency under Public Law 103-354 until all applicable public notices and associated review periods have been completed and FmHA or its successor agency under Public Law 103-354 has taken any necessary action(s) to address comments received. The exception to the provisions of this paragraph is contained in §1940.332 of this subpart.

(c) When a preapplication is not filed, the prospective applicant will be required to complete Form FmHA or its successor agency under Public Law 103-354 1940-20 at the earliest possible time after FmHA or its successor agency under Public Law 103-354 is contacted for assistance but no later than when the application is filed with the appropriate FmHA or its successor agency under Public Law 103-354 office. (For the exception to this statement as regards Farm Programs' Class I actions, see §1940.309(c) of this subpart.) FmHA or its successor agency under Public Law 103-354 will not consider the application to be complete, until FmHA or its successor agency under Public Law 103-354 staff have completed the environmental impact review, whether an assessment or EIS.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA or its successor agency under Public Law 103-354 1940-22 will be completed by FmHA or its successor agency under Public Law 103-354 as early as possible after receipt of the application. The application will not be considered complete until either the checklist is successfully completed or

the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* With the exception of paragraph (b)(2) of this section, the FmHA or its successor agency under Public Law 103-354 official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action will be the official having approval authority for the action as specified in subpart A of part 1901 of this chapter (available in any the Agency or its successor agency under Public Law 103-354 office).

(b) *State Office level.* (1) When the approval official is at the State Office level, the responsible Program Chief will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with §1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

(2) Whenever the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, will make the final decision on the matter or matters in disagreement. The State Director will also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter will be forwarded to the National Office for resolution. The Program Support Staff will coordinate its resolution with the

appropriate Assistant Administrator. Failure of these parties to resolve the matter will require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with §1940.302(i) of this subpart, the approval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or