

impact, as specified in the environmental assessment format for a Class II action. See §1940.311(b)(1) of this subpart for when an attached discussion of water quality impacts is mandatory.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, will be incorporated into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature will warrant the initiation of a more detailed assessment under the format for a Class II action (exhibit H of this subpart). Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action (exhibit H of this subpart) will be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis will then be provided by the approving official to the party or parties which raised the matter with FmHA or its successor agency under Public Law 103-354. When several potential impacts are questioned, however, the more detailed assessment format will be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA or its successor agency under Public Law 103-354 actions recently approved in the area or planned, will be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and thresholds discussed in paragraphs (e), (f) and (g) of this section, the environmental assessment format for a Class II action will be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency will be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the preparer as

the FmHA or its successor agency under Public Law 103-354 assessment, assuming the impacts are not significant. (See §1940.324 of this subpart.) If the other Agency is doing or planning an EIS, the preparer will inform that Agency of our action and request to be a cooperating agency.

(i) The preparer will have the responsibility of initiating the assessment format for a Class II action (exhibit H of this subpart) whenever the need is identified. This should be done as early as possible in the review process. The preparer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The preparer will simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Exhibit I will be completed by the approval official in the same instances for a Class I assessment as for a Class II assessment. However, public notification of FmHA or its successor agency under Public Law 103-354's finding of no significant environmental impact will not be required for a Class I assessment. Also, special provisions for completing a Class I assessment for an action that is normally categorically excluded but loses its classification as an exclusion are contained in §1940.317(g) of this subpart. With the exception of the two preceding sentences, all other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, apply to a Class I assessment.

§ 1940.320 Preparing EISs.

(a) *Responsibility.* Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director will be notified. The EIS will be prepared at the State Office and the State Director will assume the responsibility for preparing it. The State will in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director will be responsible for actions initiated within the State. However, in

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so doing, the State Director will consult with the National Office to determine that the document meets the requirements of NEPA. State Directors will be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director will not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the preparer of the EIS will take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than FmHA or its successor agency under Public Law 103-354 (using the criteria contained in §1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination, the National Office will be consulted for assistance. All of the parties identified below will be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in major environmental issues identified to date;

(4) The Agency responsible for the implementation of the State's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State, and local agencies that will be requested to comment on the draft EIS;

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(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process will be initiated by the preparer for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process will be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It will be the responsibility of the preparer of the EIS to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the FEDERAL REGISTER. For requirements relating to the timing the publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see §1940.331(b) of this subpart.

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting will be chaired by the preparer of the EIS and will be organized to accomplish the following major purposes (as well as other purposes listed in §1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties

including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decision-making schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, will be prepared and retained by the preparer of the EIS as part of the environmental file. The preparer will offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination

with environmental experts at local, State and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in §1940.336 of this subpart.

(e) *Content and format of EIS.* The EIS will be prepared in the format and manner described in part 1502 of the CEQ regulations. There is a great deal of specific guidance in that part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA or its successor agency under Public Law 103-354 will circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the preparer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS will be provided to all parties that commented on the draft EIS.

(g) *Filing of the EIS.* The Deputy Administrator for Program Operations or any State Director that has been delegated the authority to prepare an EIS must file the EIS with EPA in accordance with §1506.9 of the CEQ regulations. The official filing date for an EIS is the day that it is received by EPA's Office of Federal Activities. Filing of the EIS cannot occur until copies of the EIS have been transmitted to commenting agencies and made available to the public. Transmittal of the EIS must, therefore, occur either prior to its being filed with EPA (received by EPA) or no later than close of business of the same day that it is filed.

(h) *Public information meetings.* A public information meeting, as specified in §1940.331(c)(1) of this subpart, will be held near the project site to discuss and receive comments on the draft EIS.

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(i) *Response to comments.* The preparer of the EIS will respond to comments on the draft EIS as required by §1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(j) *Timing of review.* The preparer of the EIS will be responsible for ensuring that the timing requirements for FmHA or its successor agency under Public Law 103-354 actions and the review periods for draft and final EISs are fully met (§1506.10 of CEQ regulations). Prescribed review periods are calculated from the date that EPA's Office of Federal activities publishes in the FEDERAL REGISTER a notice of availability for the EIS. Any request to reduce a prescribed review period will be made to EPA in accordance with §1506.10(d) of the CEQ regulations.

§ 1940.321 Use of completed EIS.

(a) The final EIS will be a major factor in the Agency's final decision. Agency staff making recommendations on the action and the approving official 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;

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(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