

## Department of Veterans Affairs

## § 77.21

fiscal year, the grantee shall not be eligible to receive a grant under this part for the subsequent fiscal year.

(Authority: 38 U.S.C. 521A(j))

(The information collection requirements have been submitted to OMB and are pending OMB approval)

### § 77.17 Recovery of funds by VA.

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of additional adaptive sports grant payments.* When VA makes a final decision that action will be taken to recover grant funds from the grantee, VA must stop further payments of grant funds under this part until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

(Authority: 38 U.S.C. 521A)

### § 77.18 Visits to monitor operations and compliance.

VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using adaptive sports grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine

compliance with the provisions of this part. In the event that a grantee delivers services at a location away from the grantee's place of business, VA may accompany the grantee. If any visit is made by VA on the premises of the grantee or a subcontractor under the adaptive sports grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

### § 77.19 Financial management.

(a) All recipients will comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200.

(b) All grantees must use a financial management system that complies with 2 CFR part 200. Grantees must meet the applicable requirements of OMB's regulations on Cost Principles at 2 CFR part 200.

(The information collection requirements have been submitted to OMB and are pending OMB approval)

### § 77.20 Recordkeeping.

Grantees must ensure that records are maintained in accordance with 2 CFR part 200. Grantees must produce such records at VA's request.

### § 77.21 Application of other regulations.

For purposes of this part, the requirements in 38 CFR parts 43 and 49 are superseded by those in 2 CFR part 200.

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## PART 200—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: 24 U.S.C. 401, *et seq.*

SOURCE: 74 FR 57608, Nov. 9, 2009, unless otherwise noted.

### § 200.1 Purpose.

These regulations set out AFRH environmental policy and provide direction for carrying out the procedural requirements of the National Environmental Policy Act (NEPA) and related legal authorities.

### § 200.2 Background.

(a) The NEPA and the Council on Environmental Quality regulations implementing the procedural requirements of NEPA (40 CFR 1500 through 1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment and prescribe procedures to be followed. Other laws, executive orders, and regulations provide related direction. NEPA establishes and AFRH adopts as policy that as a Federal agency, AFRH will: Use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) As an important means of carrying out this policy, AFRH will analyze and consider the impacts of its proposed actions (activities, programs, projects, legislation) and any reasonable alternatives on the environment, and on the relationship of people with the environment. This analysis is to be undertaken early in planning any such action, as an aid to deciding whether the action will go forward, and if so how. Consideration must be given to reasonable alternative means of achieving the purpose and need for the proposed action, and to the alternative of not taking the proposed action. The analysis is to be completed, and used to inform the decision maker and make the public aware of the action's potential impacts, before the decision is made about whether and how to proceed with the action. Relevant environmental documents, comments, and responses regarding the proposal will accompany the proposal and be presented to the AFRH decision maker for their consideration.

(c) NEPA also requires and AFRH will ensure that, to the fullest extent possible, analyses and consultations required by other environmental laws be coordinated with those required under NEPA, to reduce redundancy, paperwork, time, and cost.

(d) The AFRH is an independent Federal agency that provides residence and related services for certain retired and former members of the Armed Forces. The AFRH has property in Washington, DC and Gulfport, MS.

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(e) This part contains AFRH's general policy regarding NEPA implementation and sets out AFRH procedures that supplement the CEQ regulations for meeting NEPA requirements. It also assigns responsibilities to the Chief Operating Officer (COO) for the AFRH and the Master Planner. These regulations provide further detail regarding the conduct of NEPA impact analyses.

#### § 200.3 Responsibilities.

(a) The COO is the AFRH NEPA official responsible for compliance with NEPA for AFRH actions. The COO also provides the AFRH's views on other agencies' environmental impact statements (EIS).

(b) The Master Planner is the point of contact for information on: AFRH NEPA documents; NEPA oversight activities; and review of other agencies' EISs and NEPA documents.

(c) The AFRH's assigned counsel is the point of contact for legal questions involving environmental matters.

#### § 200.4 Implementation of NEPA and related authorities.

(a) *Classification of AFRH actions.* (1) All AFRH proposed actions typically fall into one of the following three classes, in terms of requirements for review under NEPA: Categorical exclusions, environmental assessments, and environmental impact statements.

(2) The Master Planner, is responsible for classifying proposed actions and undertaking the level of analysis, consultation, and review appropriate to each.

(b) *Categorical Exclusions (CATEX).* (1) A categorical exclusion (CATEX) is a category of actions which do not individually or cumulatively have a significant effect on the human environment, except under extraordinary circumstances (42 CFR 1508.4). Because they lack the potential for effect, they do not require detailed analysis or documentation under NEPA.

(i) Determining when to use a CATEX (screening criteria). To use a CATEX, the proponent must satisfy the following three screening conditions:

(A) The action has not been segmented. Determine that the action has

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not been segmented to meet the definition of a CATEX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions.

(B) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CATEX (*see* paragraphs (b)(1)(ii)(A) through (xiv) of this section).

(C) One (or more) CATEX (*See* appendix A to part 200) encompasses the proposed action. Identify a CATEX (or multiple CATEXs) that potentially encompasses the proposed action. If no CATEX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(ii) Extraordinary circumstances that preclude the use of a CATEX are:

(A) Reasonable likelihood of significant effects on public health, safety, or the environment.

(B) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(C) Imposition of uncertain or unique environmental risks.

(D) Greater scope or size than is normal for this category of action.

(E) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302.

(F) Releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(G) When a review of an action reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(H) Reasonable likelihood of violating any Federal, State, or local law or requirements imposed for the protection of the environment.

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(I) Unresolved effect on environmentally sensitive resources, as defined in paragraph (b)(1)(iii) of this section.

(J) Involving effects on the quality of the environment that are likely to be highly controversial.

(K) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(L) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(M) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(N) Introduction/employment of unproven technology.

(iii) If a proposed action would adversely affect “environmentally sensitive” resources, unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, *etc.*) a CATEX cannot be used. Environmentally sensitive resources include:

(A) Listed or proposed Federally listed, threatened, or endangered species or their designated or proposed critical habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(iv) The use of a CATEX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to deter-

mine the applicability of the CATEX screening criteria.

(v) For those CATEXs that require documentation, a brief (one to two sentences) presentation of conclusions reached during screening should be included with the checklist. Checklists may be obtained from the Master Planner at 3700 North Capitol Street, NW., Washington, DC 20011.

(2) AFRH recognizes two types of CATEX:

(i) CATEX—does not require documentation unless the Master Planner determines that an extraordinary circumstance may exist, whereupon a CATEX—requires documentation must be prepared (*see below*). The likelihood of such a circumstance is judged to be so low that no specific environmental document is typically required.

(ii) CATEX—requires documentation that involves a cursory review to ensure that no extraordinary circumstances exist. For an action falling into such a category, a CATEX requiring documentation is completed to support a determination by the Master Planner, as to whether the action needs further review under NEPA. A CATEX documentation is developed and maintained by the Master Planner.

(3) CATEXs requiring and not requiring documentation are listed in appendix A of these regulations.

(c) *Environmental Assessment (EA)*. (1) An Environmental Assessment (EA) is a concise public document prepared by or on behalf of AFRH that assists AFRH in deciding whether or not there may be significant effects requiring a more detailed Environmental Impact Statement. Actions typically requiring preparation of an EA are found in appendix B to part 200.

(2) The analysis required for an EA leads either to a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an Environmental Impact Statement. AFRH will prepare a FONSI in accordance with 40 CFR 1508.13, if the agency determines on the basis of the EA that there are no significant environmental effects and therefore, there is no need to prepare an Environmental Impact Statement. AFRH shall make the FONSI available to the affected public as specified in

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§1506.6. Under certain limited circumstances, AFRH shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement;

(ii) The nature of the proposed action is one without precedent; or

(iii) There is controversy associated with the environmental effects of the proposed action.

(d) *Environmental Impact Statement (EIS)*. (1) An Environmental Impact Statement (EIS) is a detailed analysis and report, that presents the environmental effects of a proposed action and its reasonable alternatives. An EIS is prepared for any AFRH action that may have significant effects on the quality of the human environment. A Notice of Intent will be prepared and published in the FEDERAL REGISTER as soon as practicable after deciding to prepare an EIS. When a lengthy period of time will elapse between the decision to prepare the EIS and preparation of the EIS, the notice of intent should be published at a reasonable time prior to preparing the EIS.

(2) Certain AFRH actions are likely to have significant effects on the quality of the human environment, and hence typically require an EIS. These classes of action are listed in appendix C to part 200.

(3) When it appears that the action is likely to have significant effects on the quality of the human environment, AFRH will prepare an EIS. An action that typically requires an EIS is found in appendix C to part 200. An EA may be prepared to aid in deciding whether an EIS is needed, or the responsible official may decide to prepare an EIS without preparing an EA.

(4) Direction for preparing, circulating, finalizing, and using an EIS in decision making is found in the CEQ Regulations (40 CFR Parts 1500–1508).

(e) *Supplemental statements*. If an EA or an EIS has been completed and the AFRH goes to implement the action,

but no action has been taken within four years of the completion of the EA or EIS, the AFRH will review the document to determine if circumstances have changed that would warrant a supplement to the original document. A supplemental statement will be provided to the decision maker to inform the decisions on whether and how to proceed with the proposed action and be maintained with the previous EA or EIS and related records for the proposed action.

(f) *Using NEPA in decision making*. (1) Compliance with NEPA and related authorities will begin at the earliest point in planning any action, when the widest reasonable range of alternatives is open for consideration.

(2) The NEPA review process will be carried out in coordination with continued planning.

(3) All personnel involved in planning actions should view NEPA review as part of effective planning, not as a mere documentation requirement.

(4) Outside agencies, State and local governments, Indian Tribes, and the public will whenever practicable be afforded reasonable opportunities to participate in the NEPA process.

(5) The results of NEPA review will be fully considered by each AFRH decision-maker before making a decision on an action subject to such review and the alternatives considered by the decision-maker will be encompassed within the range of alternatives for the action.

(6) AFRH will ensure relevant environmental documents, comments, and responses are part of the record in formal rulemaking or adjudicatory proceedings.

(7) Executives and other employees responsible for aspects of NEPA review will be held accountable for the performance of such responsibilities, through performance reviews and other administrative mechanisms.

### § 200.5 Coordination with other authorities.

(a) To the maximum extent feasible, NEPA review shall be coordinated with review of proposed actions under other environmental legal authorities, including but not limited to the Comprehensive Environmental Response,

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Compensation, and Liability Act (CERCLA); the National Historic Preservation Act (NHPA); the Endangered Species Act (ESA); Executive Orders 11988, 11990, and 13006; and other applicable authorities.

(b) In effecting such coordination, responsible AFRH officials will ensure that the substantive and procedural requirements of other environmental authorities are met, together with the requirements of NEPA. It will be explicitly understood that compliance with NEPA does not substitute for compliance with other environmental authorities, nor does compliance with such other authority substitute for compliance with NEPA.

### § 200.6 Public involvement.

(a) As part of its system for NEPA compliance, the COO and the Master Planner shall provide for levels and kinds of public involvement appropriate to the proposed action and its likely effects.

(b) Where a related authority provides specific procedures for public involvement, the responsible AFRH official shall ensure that such procedures where practicable in the process of NEPA review.

(c) Public involvement in the AFRH NEPA process shall have as its purpose the full disclosure of AFRH actions and alternatives to the public, within the constraints of AFRH program authorities, and giving the public a full opportunity to comment on the environmental effects of AFRH proposals.

(d) Pursuant to Executive Order 12898, special efforts will be made to involve members of potentially affected low-income and minority communities in NEPA review and decision-making. Such efforts may include, but are not limited to, special programs of community outreach, including cross-cultural programs, translations of pertinent documents, and ensuring that translators are available at public meetings.

(e) Information pertaining to AFRH actions and/or NEPA documentation can be obtained through the Master Planner at 3700 North Capital Street, NW, Washington, DC 20011.

### § 200.7 Cooperating agencies.

(a) Federal agencies with jurisdiction by law will be invited to serve as cooperating agencies and Federal agencies with special expertise may be invited to serve as cooperating agencies in the conduct of NEPA review of an AFRH proposed action.

(b) The responsible AFRH official will invite other Tribal, State, and local agencies to serve as cooperating agencies with subject matter jurisdiction or special expertise in the conduct of NEPA review of an AFRH proposed action.

### § 200.8 AFRH participation in NEPA compliance by other agencies.

(a) AFRH may participate in the NEPA process as a cooperating agency for another lead agency's project, or as a commenter/reviewer of another agency's NEPA document. AFRH may also participate in environmental studies carried out by non-Federal parties (for example, a local government conducting studies under a State environmental policy law) where such studies are relevant to AFRH's interests or may be incorporated by AFRH into its own studies under NEPA. Where AFRH will be responsible for a decision on a project that is the subject of such a study, and has the authority to do so, AFRH will ensure that the study and its resulting documents meet the standards set forth in these regulations in coordination with the COO.

(b) As a cooperating agency, AFRH participates in the NEPA process as requested by the lead agency, in accordance with 40 CFR 1501.6 of the CEQ regulations. Tasks may include participating in meetings and providing specific information relevant to the matters over which it has jurisdiction by law or expertise.

(c) AFRH comments shall be prepared in consultation with, or by, the Master Planner.

(d) The responsible AFRH official may provide comments and/or reviews of another agency's NEPA documents, and/or other Federal and State environmental documents.

(e) AFRH comments shall be provided in accordance with 40 CFR 1503.3.

## APPENDIX A TO PART 200—CATEGORICAL EXCLUSIONS

## A.1 PURPOSE

The purpose of Categorical Exclusions (CATEXs) is to limit extensive NEPA analysis to those actions that may be major Federal actions significantly affecting the quality of the human environment, thus saving time, effort, and taxpayer dollars.

## A.2 DEFINITION

An action is categorically excluded from the requirement to prepare an EA or an EIS if it meets the following definition:

“Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. (40 CFR 1508.4)

AFRH has identified two types of CATEXs: (1) The CATEX, which does not require documentation and requires completion of an environmental checklist.

## A.3 CATEXs—REQUIRES NO DOCUMENTATION

The following CATEXs require no documentation.

A.3(a) Granting a lease (*i.e.*, outlease), an easement, license, permit (*i.e.*, licenses to Federal entities), or other arrangements for Federal or non-Federal use of AFRH controlled real property, where such use will remain substantially the same in scope and intensity.

A.3(b) Extensions or renewals of leases, licenses or permits (*i.e.*, licenses to Federal entities) or succeeding leases, easements, licenses or permits whether AFRH is acting as grantor or grantee and there is no change in use of the facility.

A.3(c) Repair and alteration projects involving, but not adversely affecting, properties listed on or eligible for the National Register of Historic Places.

A.3(d) Repair to or replacement in kind of equipment or components in AFRH-controlled facilities without change in location, *e.g.*, HVAC, electrical distribution systems, windows, doors or roof.

A.3(e) Disposal or other disposition of claimed or unclaimed personal property of deceased persons.

A.3(f) Supportive services that include health care and housing services, permanent housing placement, day care, nutritional services, collection of payment for services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.

A.3(g) Normal personnel, fiscal, and administrative activities involving civilian personnel (recruiting, processing, paying, and records keeping).

A.3(h) Routine or minor facility maintenance, custodial, and groundskeeping activities such as window washing, lawn mowing, trash collecting, and snow removal that do not involve environmentally sensitive areas (such as eroded areas, wetlands, cultural sites, or areas with endangered/threatened species).

A.3(i) Environmental Site Assessment activities under RCRA and CERCLA;

A.3(j) Geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks;

A.3(k) Installation and operation of ambient air and noise monitoring equipment that does not include constructing or erecting towers;

A.3(l) Routine procurement of goods and services (complying with applicable procedures for sustainable or “green” procurement) to support operations and infrastructure, including routine utility services and contracts.

A.3(m) Routine movement/relocations of residents on site.

## A.4 CATEXs REQUIRING DOCUMENTATION

The following are categorical exclusions that require preparation of a checklist to ensure that no extraordinary circumstances exist that would require preparation of an EA or EIS. Checklists may be obtained from the Master Planner at 3700 North Capitol Street, NW., Washington, DC 20011.

A.4(a) Expansion or improvement of an existing facility where all of the following conditions are met:

A.4(a)(1) The structure and proposed use are substantially in compliance with local planning and zoning and any applicable State or Federal requirements;

A.4(a)(2) The proposed use will only slightly increase the number of motor vehicles at the facility;

A.4(a)(3) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and

A.4(a)(4) There is no evidence of environmental controversy.

A.4(b) Transfer or disposal of real property to State or local agencies for preservation or protection of wildlife conservation and historic monument purposes.

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A.4(c) Disposal of fixtures, related personal property, demountable structures, and transmission lines in accordance with management requirements.

A.4(d) Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

A.4(e) Demolition, removal and disposal of debris from the demolition or improvement of buildings and other structures neither on nor eligible for listing on the National Register of Historic Places and when under applicable regulations (*i.e.*, removal of asbestos, polychlorinated biphenyls (PCBs), and other hazardous material) when other environmental laws and regulations will be satisfied prior to the of demolition, removal and disposal.

A.4(f) Relocations and realignments of employees and/or residents from one geographic area to another that: Fall below the thresholds for reportable actions and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to impellent. This includes reorganization and reassignments with no changes in employee and/or resident status, and routine administrative reorganizations and consolidations.

### APPENDIX B TO PART 200—THE ACTION REQUIRING AN ENVIRONMENTAL ASSESSMENT

The following actions are not considered to be major Federal actions significantly affecting the quality of the human environment and, therefore, require an Environ-

mental Impact Statement (EIS) nor are considered a categorical exclusion as defined in these regulations and would require the preparation of an Environmental Assessment (EA):

B.1 Construction on previously disturbed property where there is the potential for an increase in traffic and people.

### APPENDIX C TO PART 200—ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENT

The following actions are considered to be major Federal actions significantly affecting the quality of the human environment, and therefore must be the subjects of EIS, as indicates may have significant environmental effects:

C.1 Acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility, where one or more of the following applies:

C.1(a) The structure and/or proposed use are not substantially consistent with local planning and zoning or any applicable State or Federal requirements.

C.1(b) The proposed use will substantially increase the number of motor vehicles at the facility.

C.1(c) The site and scale of construction are not consistent with those of existing adjacent or nearby buildings.

C.1(d) There is evidence of current or potential environmental controversy.

C.2 Space acquisition programs projected for a substantial geographical area (e.g., a metropolitan area) for a 3-to-5-year period or greater (Note: a Programmatic EIS is often appropriate here, from which subsequent EISs and EAs can be tiered).

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