



# Federal Emergency Management Agency

Washington, D.C. 20472

APR 18, 1994

OP

MEMORANDUM FOR: Associate Directors  
FEMA Regional Directors  
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs  
Mitigation Division Chiefs  
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)  
Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #1  
Categorical Exclusion (CATEX) of Projects Involving the Acquisition of  
Damaged Properties; and Implementation of E.O. 12898 Concerning  
Environmental Justice

The purpose of this memorandum is to provide information concerning: 1) the changes to 44 CFR Part 10 (FEMA's Environmental Regulations) as published in an interim rule in the Federal Register on Friday, January 7, 1994; and 2) FEMA policy for the implementation of E.O. 12898 which addresses environmental justice. Copies of both are attached. Effective immediately, this interim rule amends 44 CFR 10 by adding certain purchases of properties to the list of actions that FEMA categorically excludes from reviews under the National Environmental Policy Act (NEPA). Likewise implementation of E.O. 12898 is immediately effective.

## **Categorical Exclusion of Projects Involving Acquisition of Damaged Properties**

This rule is intended to speed the administrative process for acquisition projects which include subsequent conversion to open space and which will not have a significant environmental impact. This CATEX was developed in response to the increased number and scope of properties being acquired by the States and communities to resolve public health and safety concerns following the Great Flood of 1993. By utilizing the new CATEX in conjunction with mitigation program funding, it is intended that the acquisition of significant numbers of qualified properties may be efficiently processed, thereby avoiding repeated damage and threat to public safety associated with those same properties. This CATEX is effective nationwide and applies to all acquisition projects that will be converted to open space regardless of the reason.

This CATEX does not apply to projects involving the relocation of structures or the development of other sites. In addition, a normally excluded acquisition project that has characteristics described under "Actions That Normally Require an Environmental Impact Statement" (44 CFR 10.8(b)(2)) or that would trigger any criteria described under "Extraordinary Circumstances" (44 CFR 10.8(e)) will require that the appropriate assessment process be followed.

Additionally, the new CATEX does not change FEMA's responsibility to comply with other environmental statutes. These include, but are not limited to, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and the Resource Conservation and Recovery Act. In many communities, historic properties may be a part of an acquisition project. Consequently, the National

Historic Preservation Act must be followed in the acquisition process, including consultation with the State Historic Preservation Officer (SHPO). Consultation with the Advisory Council on Historic Preservation should be coordinated by the SHPO.

FEMA's responsibilities under Executive Orders 11988 and 11990, FEMA's implementing regulations at 44 CFR 9, and FEMA's National Flood Insurance Program regulations at 44 CFR 59 through 77 are not affected by the new CATEX.

### **Implementation of E.O. 12898 Concerning Environmental Justice**

On February 11, 1994 President Clinton signed E.O. 12898, entitled, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." (Copy attached) The Executive Order directs Federal agencies "to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . ." A preliminary assessment of FEMA programs indicates that some of the hazard mitigation projects proposed in the floodplain may potentially fall within the scope of agency actions which have a greater impact on minority and low-income populations.

The NEPA environmental review process provides a convenient vehicle for fulfilling FEMA's environmental justice responsibilities. This environmental justice consideration should be included in the assessment of socioeconomic or other relevant impacts of proposed actions and their alternatives in the environmental assessment (EA) or the environmental impact statement (EIS). For those actions which would otherwise qualify as categorical exclusions (CATEX), and thus not require a NEPA review, the Regional Director shall assess the impact of the proposed action on minority and low-income populations and make a finding on whether the proposed action would have a "disproportionately high and adverse effect" on the populations identified in E.O. 12898. This finding shall be incorporated in the documentation supporting a CATEX for a proposed action. If the proposed action is deemed to have a disproportionately high and adverse impact, mitigative actions should be incorporated as part of the proposed action.

For example, in the acquisition of residential property in the floodplain to remove structures from the floodway pursuant to Section 404 of the Stafford Act, it appears that these properties tend to represent the least expensive real estate in the area and are more likely be owned by a lower income population than the homes located above the floodplain. If the Regional Director assesses the proposed action and determines that the proposed acquisition would have a disproportionately high and adverse effect on a minority and/or low-income population because replacement housing is scarce, relocation assistance might be recommended as a mitigative action.

If you have any questions regarding this new CATEX or the implementation of E.O. 12898, contact my office at 202-646-3011.

#### Attachment

Executive Order 12898 (Federal Register Vol. 59, No. 32, Wednesday 2/16/94)

cc     Director  
       Chief of Staff  
       Public Affairs  
       Congressional Affairs  
       Regional Operations