

APPENDIX

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FEMA ENVIRONMENTAL DESK REFERENCE



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*
Richard S. Shivar
Environmental Officer

SUBJECT: 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.

February 11, 1994

EXECUTIVE ORDER 12898

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall 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 and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice. (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

<http://hydra.gsa.gov/pbs/pt/call-in/eo12898.htm>

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies. (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

[§1-103(e) amended by E.O. 12948, 60 FR 6381, Feb. 1, 1995]

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(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis. To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information.

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

<http://hydra.gsa.gov/pbs/pt/call-in/eo12898.htm>

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

/s/ William J. Clinton

THE WHITE HOUSE

February 11, 1994.

● **ENVIRONMENTAL JUSTICE** - means the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income or education level with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

● **FAIR TREATMENT** - means that no population, due to political or economic dis-empowerment, is forced to shoulder the negative human health and environmental impacts of pollution or other environmental hazards.



Federal Emergency Management Agency

Washington, D.C. 20472

cc: Jenita D.
Todd D.
Geri

MAY 24 1980

OP

EN-4

MEMORANDUM FOR: Associate Directors
Administrators
Regional Directors

FROM: *Richard S. Shivar*
Richard S. Shivar
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO # 2
Other Federal Agency Clearance for Environmental Assessments

Questions have arisen concerning the level of input and clearance required from other Federal agencies for environmental assessments (EA) generated by FEMA. This memo is intended to clarify those questions.

When an environmental assessment is done our regulations (44 CFR 10.9(c) and the Council on Environmental Quality regulations (40 CFR Parts. 1500-1508) ask that we involve affected Federal, State, and local agencies and concerned groups to the extent practicable. In addition, however, there are numerous other requirements that must be considered in evaluating each project. Three that are of particular importance address:

- 1) The identification of historic, archeological or cultural resources which could require a section 106 consultation with the State Historic Preservation Officer (36 CFR 800).
- 2) The occurrence of threatened or endangered species which could require a section 7 consultation with the Fish and Wildlife Service (50 CFR Part 402).
- 3) The undertaking of any work, structure, or activity occurring in, or affecting any body of water in the United States, including wetlands and coastal waters which could require review by the U. S. Corps of Engineers to determine whether some level of a section 404 (40 CFR Part 6) permit is required.

Each of these resources should be discussed in the "existing conditions" portion of the EA indicating a determination of whether they are or are not found in or near the project area. If it is shown that the project results in adverse impacts to any of these resources, then specifically defined procedures and consultations may be required and compliance with these procedures must be documented in the EA.

If you have questions in any of these areas please feel free to call (646-3610) or E-mail me. I would like to move the EAs through the review process as quickly as possible and having these three areas fully addressed will help immensely.

Note: Environmental Policy Memos will be issued as needed to better define FEMA policy in this area. Although not titled as such, my April 8, 1994 memo addressing categorical exclusions and EO 12898 concerning environmental justice should be considered ENVIRONMENTAL POLICY MEMO #1.

cc Director
Chief of Staff
Public Affairs
Congressional Affairs
Regional Operations



Federal Emergency Management Agency

Washington, D.C. 20472

MAY 3 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

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

FROM: 
Richard S. Shivar
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #3 (Issued 3/24/95,
Revised and Reviewed at CEQ 3/1/96)
Policy for Projects Initiated Without Environmental Review
Required by the National Environmental Policy Act (NEPA)

This memorandum, which reissues ENVIRONMENTAL POLICY MEMO #3, maintains the original policy but includes clarifications recommended by the Council on Environmental Quality.

Occasionally FEMA funding is requested for an action that has been initiated and/or completed prior to environmental review and documentation as required by NEPA and outlined in 44 CFR Part 10, FEMA's Environmental Considerations. Often when these actions occur, the applicant has already requested and attained local, state and Federal permits required for such actions. However, due to lack of prior Federal involvement, the full NEPA environmental review process has not been followed in which reasonable alternatives and their impacts are fully investigated and documented before the action takes place.

There is minimal guidance in FEMA's regulations on how to address such situations, and this memorandum is intended to clarify policy and procedures for such actions.

Policy: It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding.

Exception: A statutory exclusion to this requirement already exists in the Stafford Act. An action taken or assistance provided pursuant to Sections 402, 403, 407, 502, or 422, or an action that has the effect of restoring a facility substantially to its condition prior to the disaster or emergency pursuant to Section 406, shall not be deemed a major Federal action affecting the environment. In this case, no NEPA documentation is required and no coordination with the Environmental Officer would be required. Be

aware, however, this exclusion does not relieve FEMA of the responsibility to comply with other Federal statutes, permits, and requirements such as, National Historic Preservation Act, Endangered Species Act, Section 404 of the Clean Water Act, Executive Orders 11988, 11990, and 12898, etc.

In addition, there may be a rare situation where an extension of this exception can be considered. Actions proposed for FEMA funding which were completed without fulfilling the documentation and procedural requirements of NEPA, but which were initiated in an emergency situation to prevent or reduce an immediate threat to life, health, property or severe economic losses may be considered, if otherwise eligible. Situations that might be considered under this extension could be HMGP or Public Assistance actions which were taken to avoid imminent loss from an ongoing event or from a highly probable future event whose anticipated occurrence could not possibly allow appropriate time for NEPA review.

The Regional Director has responsibility for determining the immediate course of action in such exceptional situations, but must coordinate with the Environmental Officer when these requests are made. The following paragraphs outline the procedure and documentation required when the Regional Director determines that an already initiated and/or completed project might qualify to be considered under this extension.

Procedure: If an action is proposed which is not statutorily excluded from the NEPA process and has been or will be initiated and/or completed prior to NEPA documentation due to the circumstances noted above, the Regional Director should contact the Environmental Officer at the earliest possible time so that the Environmental Officer may consult with the President's Council on Environmental Quality (CEQ), the body which has oversight for Federal agency NEPA compliance. If it is determined that the proposed action is likely to qualify under this extension then the following steps will be required:

1) The Regional Director will see that all substantive Federal, state and local statutes, regulations, and permits (local building permits, USACE 404 Permits, Section 106 historic preservation consultation, Endangered Species consultation, Executive Order considerations, etc.) are satisfied for the action. This information is to be documented in an "Environmental Record of Completed Action" which is approved by the Regional Director and submitted for review by the Environmental Officer. This document should include:

- (a) The purpose and need for the action, specifically defining its emergency nature;
- (b) A description of the action;
- (c) A description of the preexisting affected environment;

- (d) A description of the potential and actual impacts to the environment, including a summary of the results of all environmental evaluation conducted prior to and since the completion of the project, supporting consultation letters from applicable agencies, and a description of any environmental mitigation measures which were implemented; and
- (e) A description of any significant unaddressed environmental impacts resulting from the action and the mitigation measures required to reduce these impacts below the level of significance.

2) With the document provided, the Environmental Officer, in consultation with the Regional Director and CEQ should determine whether the action initiated and/or completed prior to NEPA review has potential of actual significant impacts not previously mitigated and whether or not those impacts can be mitigated. Examples of impacts that could be of issue include significant impacts to the natural environment, irretrievable loss of critical habitat, the taking of threatened or endangered species, or unacceptable upstream or downstream effects. Where there is reason to suspect that the action did have a significant impact on the environment, but that the actual impact cannot be verified, significant impact will be presumed. If the significant impacts can be mitigated to below a level of significance, public notice will be given and the necessary mitigation measures will be required to be implemented before funding can be considered. A recommendation that the action not receive funding would result where the significant impacts cannot be mitigated.

Please explain this policy to the states and potential applicants to ensure they are clear on how the requirements of the NEPA regulations can preclude the funding of completed actions except in the rare situation define above. If you have any questions on this policy, please contact Brent Paul at (202) 646-3032.



Federal Emergency Management Agency

Washington, D.C. 20472

FEB 27 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

FROM: *Richard S. Shivar*
Richard S. Shivar
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #4
Availability and Use of the Updated list of Categorical
Exclusions Published February 5, 1996 as a Revision of
44 CFR 10.8.

This memorandum distributes and discusses use of the final rule for the revision of 44 CFR 10.8 which became effective February 5, 1996, the day it was published in the Federal Register. This rule generally expands the categories of FEMA actions that normally would not require an environmental impact statement or an environmental assessment to fulfill the requirements of the National Environmental Policy Act (NEPA). Actions fitting these categories are commonly referred to as categorical exclusions or CATEXs.

Any action that FEMA initiates or funds whether through program funds (mitigation, public assistance, flood insurance, etc.), funds provided to states, or internal administrative or construction expenditures must undergo environmental review pursuant to NEPA unless that action is statutorily excluded from NEPA by section 316 of the Stafford Act or qualifies as an emergency action under 44 CFR 10.13. NEPA review, for a significant portion of those actions, can be satisfied by a relatively simple documented determination that the action fits one of the exclusion categories defined in this rule. This CATEX documentation, as with any NEPA documentation must be completed prior to initiation of the action.

When it is determined that an action fits an exclusion category, two additional considerations must be addressed. First, it must be determined if extraordinary circumstances exist. The identification of one or more extraordinary circumstances associated with an action, that would otherwise qualify for a CATEX, can override that CATEX and trigger the need for an EA or EIS. (The list of extraordinary circumstances, which has also been revised in this rule change, is found in 10.8.(d)(3)). Second, there are other environmental and related Federal statutes and Executive Orders (EOs) that are often addressed within the NEPA process which, however, have their own separate legally enforceable requirements and penalties. Actions whose NEPA review is shortened by being CATEXed or actions excluded from NEPA review for statutory or emergency reasons, must still meet the full requirements

of these other statues and EOs which address such areas as wetlands, historic preservation, cultural resources, endangered species, hazardous materials, etc.

The CATEXs on this revised list can be immediately applied to any qualifying project. A project for which an environmental assessment has been started, but which now qualifies for a CATEX may be processed as a CATEX. The exception might be those projects where a formal review or comment process for the EA has been publicly initiated by published announcement.

While we hope these new CATEXs have captured all the areas where CATEXs are needed and can be used, we realize that the identification exclusion categories is the result of ongoing experience. Therefore the submission of additions and modifications to this list is encouraged and will be thoughtfully considered by this office. Please direct any questions on this memo to Brent Paul (202/646-3032).

Enclosure

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 10

RIN 3067-AC41

**Environmental Considerations/
Categorical Exclusions**

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the categories of actions or categorical exclusions that normally would not require an environmental impact statement or environmental assessment. These changes are intended to reduce the administrative processes and decrease the time required for project funding and implementation, ensuring that FEMA satisfies

environmental concerns and issues. The changes are consistent with Federal directives, regulations and statutes.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Shivar, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646-3610.

SUPPLEMENTARY INFORMATION: On August 3, 1995, FEMA published a proposed rule for comment in the Federal Register, 60 FR 39694. The proposed rule contained changes responding to numerous suggestions for additional exclusion categories and for modifications to existing exclusion categories. They reflect several years' experience on the types of actions that generally receive a finding of no significant impact after FEMA makes an environmental assessment. These changes are intended to speed the approval of those projects with no potential for significant environmental effects and to allow attention to be focused on those projects with potential environmental concerns. The publication of the proposed rule allowed for a 45-day comment period ending on September 18, 1995. During this period, comments were received from one state, two Federal agencies, an environmental group and from within FEMA. The concerns identified in these comments are addressed later in this section.

In order to produce a complete and effective update of exclusion categories, we conducted a review of the environmental assessments (EA) and the findings of no significant impact (FONSI) that FEMA has issued. In the last few years we have completed over 340 EAs, but there is only one case where an environmental impact statement (EIS) was written. While many EAs identified impacts that were able to be mitigated below the level of significance, we found that the clear majority of actions have no significant impact. Reviewing this last group revealed specific types of projects that historically did not produce significant environmental effects. In conjunction with the review of FEMA's EAs, we conducted a literature review of other Federal documents containing similar types of exclusions to ensure consistency of FEMA's exclusions with other Federal agencies' regulations. The results of these two reviews are the basis for these changes to FEMA's list of exclusion categories.

These changes are also in keeping with the Council on Environmental Quality's guidance to Federal agencies

on this subject (48 FR 34263, July 28, 1983). That guidance encourages Federal agencies to add flexibility to implementing procedures to allow new types of actions to be classified as categorical exclusions (CATEXs) with minimal documentation required. This is done by developing more broadly defined categories as well as providing examples of typical CATEXs, rather than a comprehensive list, so that specific actions not previously listed by an agency can be considered for CATEX status on a case-by-case basis.

These revised exclusion categories will not affect FEMA's responsibility to comply with all other applicable local, state, and Federal laws and regulations relating to health, safety and the environment. This encompasses Federal environmentally oriented statutes including, among others: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archaeological and Historic Preservation Act. It would not affect FEMA's responsibilities under Executive Orders 11988, 11990, and 12898. Nor would it affect FEMA's implementing regulations at 44 CFR part 9, or FEMA's National Flood Insurance Program rules at 44 CFR parts 59 through 77.

A point of clarification of the term "categorical exclusion" is necessary in the discussion of this revised rule. Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 93-288, as amended, 42 U.S.C. 5159, provides (1) for a statutory exclusion from NEPA requirements for certain actions taken under specific sections of that Act (§§ 402, 403, 407 and 502), and (2) for those actions under § 406 of the Stafford Act that have "the effect of restoring a facility substantially to its condition prior to the disaster or emergency." While statutory exclusions are exempted from all NEPA documentation, actions that are categorically excluded from preparation of an EA or an EIS must be documented by FEMA under this part. However, as with actions categorically excluded, an action statutorily excluded from NEPA is *not* exempt from the requirements of the other environmentally oriented statutes indicated above. To help determine the level of environmental review required and, specifically, when neither an EA nor an EIS is likely to be required for a proposed action, the list

of exclusion categories presented by this rule is comprehensive in that it includes both categorical exclusions and those actions that are statutorily excluded (denoted by (SE)).

The list of exclusion categories is presented with administrative type actions appearing first followed by emergency and other actions. The administrative actions relate mainly to activities that in and of themselves do not normally impact the environment, such as: planning, design, procurement, acquisition, training, studies and other administrative processes. The emergency and other actions mainly address emergency, disaster-related, or other activities that could impact features of the human and natural environment, such as: construction; maintenance or repair of facilities or vegetation; relocation of structures; floodproofing; emergency response and deployment; physical and other assistance.

Since this revision republishes and redesignates some paragraphs, and modifies other paragraphs, the following discussion is directed only at those items that are added, removed, or revised from the current 44 CFR § 10.8.

44 CFR § 10.8 is revised to redesignate and revise the discussion of statutory exclusions to recognize the difference between the basic nature of the statutory exclusion and of the CATEX. We also updated references to sections of the Stafford Act.

New paragraph (d)(2) modifies the nomenclature "List of categorical exceptions" to "List of exclusion categories" to reflect the categorical nature of the list as opposed to a list of exceptions. This change is also reflected in new paragraph (d)(6).

New paragraphs (d)(2) (i), (ii), (iii), (v), (vii), and (x) make minor wording revisions and clarify the language of existing categories but do not change their general substance.

New paragraph (d)(2)(iv) addresses inspection and monitoring processes that are part of the compliance requirements for various programs. These activities are passive as to the environment. Any federally funded action that the inspections or monitoring might recommend is subject to the NEPA process.

New paragraph (d)(2)(vi) expands the scope of the old paragraph (d)(2)(iii) on procurement of goods and services for operational support of facilities to include support of emergency operations together with temporary storage of those goods.

Paragraph (d)(2)(viii) adds purchase or leasing of existing

when land use requirements allow the proposed use.

Paragraph (d)(2)(ix) covers the acquisition, installation, or operation of utilities, gauges, communication and warning systems when using existing systems or facilities, or currently utilized infrastructure rights-of-way.

Paragraph (d)(2)(xi) would allow for the planting of indigenous vegetation, for example, to reduce erosion or fire hazard.

Paragraph (d)(2)(xii) applies to the removal of uncontaminated structures, improvements or debris to sites permitted for such material. The paragraph also applies to the demolition associated with the removal of structures or improvements.

Paragraph (d)(2)(xiii) applies to small, individual structures that are to be relocated to a new site, where FEMA is not involved in the selection or development of the new site.

Paragraph (d)(2)(xiv) excludes the act of granting a community exception for residential basement floodproofing pursuant to the National Flood Insurance Program.

Paragraph (d)(2)(xv) provides to actions under the mitigation and other programs a slightly broader exclusion than that available by statute to actions funded pursuant to § 406 of the Stafford Act whereby a facility can be restored to its approximate preexisting design, function and location. The broader interpretation also applies to § 406 actions. Some existing statutory exclusions are incorporated into the CATEX list in this paragraph and in paragraph (d)(2)(xix).

Paragraph (d)(2)(xvi) allows for improvements to an existing facility or for the construction of small scale mitigation measures in an already developed and appropriately zoned area on previously disturbed or graded lot(s). This includes improvements in the disturbed portion of a lot of an existing building, culverts, and berms within the previously disturbed perimeter of a road, storm drainage or utility system or existing facility. Any action covered by this category cannot change the basic function, exceed the capacity of other system components, violate land use requirements, or operate in a way as to affect the environment adversely.

Paragraph (d)(2)(xvii) permits actions within enclosed facilities which comply with local construction, noise, pollution and waste disposal regulations.

Paragraph (d)(2)(xviii) excludes, in addition to the existing category for the deployment and support of Emergency Support Teams, direct response activities including activation and support of the Catastrophic Disaster

Response Group, Regional Operations Centers, Emergency Response Teams, Urban Search and Rescue Teams, and situation assessment, reconnaissance and other data gathering efforts in response to and for recovery from a disaster.

Paragraph (d)(2)(xix) excludes emergency assistance and relief activities and rephrases terminology to reflect the amended Stafford Act. This includes general Federal and essential assistance (Stafford Act §§ 402 and 403), food coupons and commodities (§§ 412 and 413), and Federal emergency assistance (§ 502). Debris removal (§ 407) becomes less restrictive. The temporary housing definition (§ 408) is simplified as are the definitions of the individual and family grant (§ 411) and community disaster loan (§ 417) exclusions.

In paragraph (d)(3) the list of Extraordinary Circumstances, which was § 10.8(e), is updated to clarify the circumstances that may cause an action that is normally categorically excluded to have the potential for significant environmental impact. The previous paragraph (e)(2) describing "actions in highly populated or congested areas" is replaced in paragraph (d)(3)(ii) with a more workable "actions with a high level of controversy." In paragraph (d)(3)(iv) clarifying language is added to the term "unproven technology." In paragraph (d)(3)(vi) the hazardous substance condition was changed from "use" to "presence" and linked to levels that would trigger local, state, or Federal requirements. Paragraph (d)(3)(vii), which addresses flood plains or wetlands, is expanded to include other special or critical resources, i.e., coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, etc.

Three new categories are added to insure that adverse health and safety effects, paragraph (d)(3)(viii); the potential violation of Federal, state, local or tribal requirements, paragraph (d)(3)(ix); and cumulative impacts, (d)(3)(x); will now be considered as extraordinary circumstances.

Paragraph (d)(5), Revocation, is added to assure that if the conditions upon which a categorical exclusion was granted have changed or new information is discovered indicating that the action no longer meets the conditions of the categorical exclusion, the responsible official must revoke the exclusion and ask for a full environmental review.

Paragraphs (d)(6)(i) and (d)(6)(ii), which address changes to the list of exclusion categories, adds "directorates" to "offices and

administrations" to more correctly reflect all the organizational entities in FEMA.

The comments received during the comment period centered on four areas: (1) hazardous materials; (2) exception categories being too expansive; (3) extraordinary circumstances; and (4) clarification of terms and the scope of several of the proposed categories. In addition, it has been suggested that some of the categories could be combined and that some could be eliminated because they were not germane to FEMA activities. The following discussion addresses those comments directed at the substance of the proposed rule.

Several comments expressed concern about the integration of hazardous waste requirements into the categories, specifically the original sections (d)(2)(viii), (x), (xiv), and (xv). That integration already exists in the form of the extraordinary circumstance defined in (3)(vi) and in general FEMA policy regarding hazardous materials. The extraordinary circumstance would override the categorical exclusion if special hazardous material situations were identified associated with any categorically excluded action. In addition, it is FEMA policy that before the acquisition of property all state and local hazardous material ordinances must be adhered to and that the property itself must be free of contaminants. Original sections (d)(2)(vii) and (d)(2)(x) have been dropped and sections (d)(2)(xiv) and (d)(2)(xv) are adequately covered by existing policy and the extraordinary circumstance.

Commenters felt that the proposed (d)(2)(xvii) was too expansive in what it could include and that it went beyond the definition used to describe what was allowed by the statutory exclusion of the Stafford Act, 42 U.S.C. 5159. The new wording intentionally goes beyond that of the statutory exclusion. Our experience in working with this type of project indicates that many projects that truly fit the categorical exemption criteria were not covered and this language now includes them for all FEMA programs. Any project qualifying for this exclusion that is not covered by the statutory exclusion will still be evaluated for extraordinary circumstances and will lose its categorical exclusion if any of those circumstances apply.

One comment suggested adding a new extraordinary circumstance to section (d)(3) that could override the categorical exclusion of an action if that action impacted the recovery of an endangered species or could be used be

affirmatively used in that recovery. It was felt that the existing endangered species extraordinary circumstance, (d)(3)(v), would be invoked by the mere presence of a protected species and once the environmental assessment was required the opportunity for affirmatively considering recovery efforts would be available.

A suggestion was made to modify the wording of the extraordinary circumstance (d)(3)(vi) which addresses "special status areas or other critical resources" to include rare habitat that may not be on the critical list. This modification has been made by adding the quality of "uniqueness", i.e., "special status areas or other unique or critical resources."

The addition of a new extraordinary circumstance, (d)(3)(x) was suggested to address situations where normally excludable actions have impacts which by themselves are not significant, but when combined with impacts of other past, present, or foreseeable future activities have the potential for significant impacts.

Two proposed categories addressing the acquisition of real property for future use, (d)(2)(viii), and the transfer of administrative control, (d)(2)(x), were eliminated as not germane to normal FEMA activities.

Newly designated sections (c)(1), (c)(2), (d)(2), (d)(2)(vi), (d)(2)(vii), (d)(2)(ix), (d)(2)(x), (d)(2)(xii), (d)(2)(xiii), (d)(2)(xv), (d)(2)(xvi), (d)(2)(xix)(F), (d)(3)(v), (d)(3)(vi), and (d)(5) have been modified from the corresponding proposed sections in response to specific suggestions to improve clarity and definition. The explanation presented above which addresses any of these modified sections reflects new changes since the proposed rule was published.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, exclude this rule according to § 10.8(c)(2)(i). FEMA has not prepared an environmental impact statement.

Regulatory Flexibility Act

I certify that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds eight categories to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) will affect adversely the availability of disaster assistance funding to small entities, (2) will have significant secondary or incidental effects on a

substantial number of small entities, or (3) will create any additional burden on small entities.

Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, Regulatory Planning and Review, 3 CFR, 1994 Comp., p. 638. To the extent possible this proposed rule adheres to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 25, 1995, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, 44 CFR part 10 is amended as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 et seq.; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E.O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

2. Section 10.8 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 10.8 Determination of requirement for environmental review.

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159;

(1) Action taken or assistance provided under sections 402, 403, 407, or 502 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

- (i) Minimal or no effect on environmental quality;
- (ii) No significant change to existing environmental conditions; and
- (iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments, except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of various actions to enforce Federal codes, standards or regulations

(v) Training activities and both raining and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties and the associated demolition/removal [see paragraph (d)(2)(xii) of this section] or relocation of structures [see paragraph (d)(2)(xiii) of this section] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;

(x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;

(xi) Planting of indigenous vegetation;

(xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;

(xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;

(xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the

completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications (§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically

excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, or archaeological, cultural, historical or other protected resources;

(vi) Presence of hazardous or toxic substances at levels which exceed Federal, state or local regulations or standards requiring action or attention;

(vii) Actions with the potential to affect special status areas adversely or other critical resources such as wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(x) Potential for significant cumulative impact when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting an exclusion, the Regional Director determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.*

(i) The FEMA list of exclusion categories will be continually and refined as additional categories

identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and the Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the Federal Register at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

Dated: January 26, 1996.

Harvey G. Ryland,

Deputy Director.

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Federal Emergency Management Agency
Washington, D.C. 20472

JUN 20 1997

MEMORANDUM FOR: Regional Environmental Officers
FROM: *Richard S. Shivar*
Richard S. Shivar
Acting Environmental Officer
SUBJECT: ENVIRONMENTAL POLICY MEMO #5
Documentation of National Environmental Policy Act (NEPA)
Categorical Exclusions (CATEX)

The amount of environmental analysis and documentation required for FEMA actions that are categorically excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to NEPA, as implemented at 44 CFR Part 10 may be reduced according to the terms of this policy memo. After consultation with the Council on Environmental Quality (CEQ), FEMA has concluded that it is appropriate to reduce the amount of CATEX documentation required by FEMA for certain categories of action that, due to the nature of the action, have little potential to impact the environment. The determination that a FEMA action qualifies as a CATEX is under the authority of the Regional Director (44 CFR 10.8(d)(4)) or the Associate Director when addressing programmatic or directorate activities. In regions with a Regional Environmental Officer (REO), the oversight responsibility of CATEX determination and appropriate level of CATEX documentation ultimately rests with the REO.

This memo defines three levels for the administrative recordation of a CATEX:

*See page 17
in reference*

Level 1 — No Documentation

Categorically excludable FEMA actions that are of a day-to-day administrative nature and generally have no potential to impact the environment require no NEPA documentation. These actions are described in exclusion categories: 44 CFR 10.8(d)(2)(i), (ii), (iii), (iv), (v), (vi), (viii), (x), (xi), (xiv), (xviii), and (xix) (see attachment). Unless available information indicates to the contrary, extraordinary conditions need not be addressed at this level.

Level 2 — Notation

*Require some indication of what Categorical Exclusion is used
One exmp is historic preservation*
Categorically excludable actions that generally have no potential to impact the environment require no documentation except that which might be necessary with respect to historic resources. These actions are described in exclusion categories (vii), (ix), (xii), (xiii), (xv), and (xvii). When required the administrative record should

document all consultation and agreements implemented to comply with the National Historic Preservation Act (NHPA). If the action is in compliance with the NHPA, the only NEPA recordation required is the notation of the particular qualifying CATEX on the application, approval, or funding document. The potential for extraordinary circumstances related to the proposed action must still be addressed but may be determined by FEMA. If the nature of a particular action is such that extraordinary circumstances can be expected, it should be reviewed and documented at Level 3.

Level 3 — Full Documentation

Any action that can be Categorically Excluded and is not covered in Levels 1 and 2 requires a full CATEX review and documentation as described in the FEMA NEPA Desk Reference. This includes actions described in category (xvi) or actions in any category where there is an expectation of possible extraordinary circumstances. Since these actions have some potential to impact the environment, a careful inquiry to identify extraordinary circumstances is required, including consultation with resource agencies as appropriate. Because of the potential for extraordinary circumstances and, thus, for an EA to be needed, FEMA must conclude NEPA review and documentation of these actions prior to initiation of the action.

Extraordinary Circumstances: 49 CFR 101.2(j)(3)

General Considerations

For actions that qualify for a CATEX at any level, as with any statutorily excluded actions, there still remains the requirement to comply with other Federal statutes, such as the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, etc., as well as Executive Orders on Floodplains, Wetlands, and Environmental Justice. NEPA documentation, i.e. CATEX (level 3), EA, and EIS, should contain or reference the letter, permit, consultation, etc. necessary to comply with the requirements of the other environmental laws and Executive Orders. Where NEPA documentation is not required, i.e. level 1 and 2 CATEXs and statutorily excluded actions, documentation necessary for indicating compliance with the other laws would be handled separately, as required by the particular law.

This policy memo becomes effective immediately and applies to any action for which the DSR or project application is evaluated by FEMA on or after the date of this memo. Please advise and help regional program offices in implementing this change and make a special effort to work with all active DFOs in your region so they can modify their procedures to benefit from this change.

Direct any questions regarding this memo and its implementation to Brent Paul (202) 646-3032.

Attachment

44CFR10.8(d)(2) List of Exclusion Categories

FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in (d)(5) exist. If the action is of an emergency nature as described in § 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE].

- 1 (i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;
- 1 (ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;
- 1 (iii) Studies that involve no commitment of resources other than manpower and associated funding;
- 1 (iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;
- 1 (v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;
- 1 (vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;
- 2 (vii) The acquisition of properties and the associated demolition/removal [see ¶ (xii)] or relocation of structures [see ¶ (xiii)] under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.
- 1 (viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;
- 2 (ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;
- 1 (x) Routine maintenance, repair, and grounds-keeping activities at FEMA facilities;
- 1 (xi) Planting of indigenous vegetation;
- 2 (xii) Demolition of structures and other improvements or disposal of uncontaminated structures and other improvements to permitted off-site locations, or both;
- 2 (xiii) Physical relocation of individual structures where FEMA has no involvement in the relocation site selection or development;
- 1 (xiv) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;
- 2 (xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]
- 3 (xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment; *(culverts - as long as they don't increase the flood risk)*
- 2 (xvii) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;

(xviii) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except for grants that will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications (§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].