

FEMA's NEPA Desk Reference

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Introduction

This desk reference is designed to provide a brief background on the National Environmental Policy Act (NEPA) and direction on how the NEPA process is implemented at the Federal Emergency Management Agency (FEMA). Although all aspects of the documentation process are discussed, the primary focus is on the Categorical Exclusion (CATEX) and the Environmental Assessment (EA) since those are the most common forms of documentation required for FEMA projects subject to the NEPA process. Other than the officially signed policy, guidance, and regulations contained within this reference, this Desk Reference is only informal guidance.

Chapter One discusses the background and intent of the National Environmental Policy Act as passed by Congress. Chapter Two focuses on the NEPA environmental review process and general implementation of that process. This Chapter provides an introduction to the essential elements of the implementation of NEPA and their interrelation. Chapter Three covers the environmental review process and levels discussed, as implemented at FEMA. This chapter focuses on FEMA's regulations and procedures and involvement with Grantees and Subgrantees. A detailed, step-by-step discussion on conducting Environmental Assessments is contained in Chapter Four.

The Appendices contain resource documents on NEPA guidance, FEMA policy, overviews of other environmental laws, executive orders, and sample documents. The three-ring binder will allow the addition of resources such as regional forms, checklists and relevant state legislation - and the incorporation of changes to the existing appendices which can be inserted.

Chapter 1

The National Environmental Policy Act

This Chapter will cover:

- ◇ **History of NEPA**
- ◇ **Purpose of NEPA**
- ◇ **What Does NEPA Apply To?**

History of NEPA

National Environmental Policy Act PL 91-190 -The National Environmental Policy Act (NEPA) was passed by Congress in 1970 and established a national policy for the protection and maintenance of the environment by providing a process which all federal agencies must follow. Congress recognized the profound impact that federal actions of the preceding decades were having and saw the need to declare a federal policy through this act to allow the federal government to maintain and create conditions under which man and nature could exist in productive harmony. See Desk Reference Appendix A.

National Environmental Policy Act - Congress's Intent. This Section contains the statement of policy and objectives for federal activities under the Act.

Sec. 101: "The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and Local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans" PL 91-190 42 U.S.C. Title I

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Purpose of NEPA

National Charter for Protecting the Environment - NEPA establishes environmental policy for the Nation. It provides an interdisciplinary framework for federal agencies to prevent environmental damage and contains action-forcing procedures to ensure that environmental considerations are taken into account.

Ensures that Environment is Considered - Requires that federal agencies consider the effects of their proposed actions and alternatives on the human environment before deciding to fund and implement the action. Nearly all actions proposed by a federal agency are subject to the process required by NEPA, and this includes any action carried out using FEMA funds. The process required under NEPA increases the quality of decisions by requiring a full understanding of the impacts and obtaining input from a range of stake holders. Emergency exceptions are made when the proposed action is the only means to ensure the immediate health and safety of people. The law requires a decision making process and not a specific outcome, making it the National Environmental POLICY Act and not PROTECTION Act.

Sec. 102: "The Congress authorizes and directs that . . . (2) all agencies of the Federal Government shall- (A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment . . ."

“. . . (C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on (I) The environmental impact of the proposed action, (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

From a 1989 U.S. Supreme Court NEPA case (Roberston v. Methow Valley Citizen's Council):

NEPA itself does not impose substantive duties mandating particular results but simple prescribes the necessary process for preventing uninformed - rather than unwise - agency action . . . If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.

"Human Environment" - A comprehensive phrase that includes the natural and physical environments and the relationship of people with those environments. Social and economic effects are not, by themselves, intended to require preparation of an Environmental Impact Statement (EIS), the highest and most extensive level of NEPA review.

Ensures Public Involvement - Environmental information must be available to public officials and citizens before agency decisions are made and before actions are taken.

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What does NEPA apply to?

The law states that major Federal actions significantly affecting the environment are subject to review. Practically all federal actions are subject to NEPA review. The NEPA implementation process, discussed in Chapter 2, is the method for determining which actions are major actions significantly affecting the environment. Federal actions can take the form of: adoption of official policies, rules, and regulations; adoption of plans; adoption of programs; approval of specific projects, including private undertakings approved by agency permit or regulatory decision.

Federal Funding - Such as grant awards or funding programs. Includes activities used as a non-federal match to federal funding. No minimum amount.

Federal Permits - Such as Section 404 of the Clean Water Act, Wetlands permit, issued by Army Corps of Engineers.

Facilities and Equipment - Such as new buildings proposed for a FEMA facility.

Agency Rulemaking - Such as promulgating regulations that affect land development like National Flood Insurance Program regulations.

Federal Lands - Doesn't typically apply to FEMA projects except for activities at NETC and Mt. Weather. Typical federal land uses triggering NEPA include timber harvesting, mining, grazing, transmission corridor projects (electrical, gas, oil, etc.), or building construction.

Chapter II NEPA Implementation

This Chapter will cover:

- ◇ **The role of the Council on Environmental Quality**
- ◇ **Defining the full scope of a federal action**
- ◇ **The various levels of NEPA review and documentation**
- ◇ **Common NEPA procedural lapses**
- ◇ **Consequences of violating NEPA process**
- ◇ **Relationship of NEPA and other environmental laws**

Role of Council on Environmental Quality

Issue Regulations and Guidance - CEQ created implementing regulations and guidance to implement the procedural decision making and disclosure process required by NEPA. The CEQ regulations and guidance define levels of NEPA review and procedures for these levels.

- Regulations for Implementing the Procedural Provision of NEPA (40 CFR 1500) - See Appendix B in Desk Reference;
- Forty Most Asked Questions Concerning CEQ's NEPA Regulations. 46 Federal Register 18028. See Appendix C in Desk Reference.;
- CEQ: Memorandum: Scoping Guidance;
- CEQ Memorandum: Guidance Regarding NEPA Regulations, 44 Federal Register 34263.

Mediate Interagency Disputes over environmental policy - such as lead agency disagreements.

Provide Training and Advise Federal Agencies - Federal agencies can seek advise from CEQ regarding NEPA compliance. This is especially useful when unusual circumstances arise to ensure full compliance with the NEPA process.

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Defining the Full Scope of the Federal "Action"

Segmentation - The scope of the federal action, consisting of directly related federal and non-federal actions, must be clearly defined prior to determining the level of documentation to ensure that all connected actions have been considered. NEPA requires that the sum of related components making up a "larger" action be evaluated in one document. It is unacceptable to divide a large action into a series of smaller actions or to not consider the proposed action in context with other actions taking place. These are often called connected actions.

Actions are connected when:

- **One action justifies the other**
- **One action "federalizes" the other**
- **It is unreasonable or unwise to take one action without the other**
- **One action triggers the other**
- **One action is a commitment to the other**
- **One action precludes alternatives to the other**

Actions are not connected when:

- **One action is remote and speculative**
- **The "federal connection" is minor**
- **The actions are tiered - the second action is later in time or may not occur, and can be changed in the interim**

Levels of Documentation

The NEPA Environmental Review Process - The NEPA process provides for several levels of environmental review and documentation.

The objective of the process depicted on the flow chart and the levels of documentation and decision making are oriented toward determining which actions are major federal actions significantly affecting the human environment and thus require an Environmental Impact Statement (EIS), as required in the Act in Sec. 102(C). These levels of documentation are described in CEQ regulations at 40 CFR 1500-1508 (Appendix B of the Desk Reference)

The Council on Environmental Quality intended that the NEPA procedures be a practical part of agency decision making, not an unnecessary and costly paperwork burden. The Council recognized that some federal activities simply would not have significant impacts that would require an EIS unless taken under sensitive circumstances and so, in promulgating its overall NEPA regulations that guide all Federal agencies, allowed for categorically excluding specific federal actions from more lengthy NEPA documentation. A document was still needed for those agency proposals that would not have significant environmental impacts, but were not clearly categorically excluded and

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may have unresolved conflicts regarding alternative uses of available resources . To meet this requirement as well as avoid unnecessary environmental impact statements, the Council created environmental assessments. This document meets the objectives of NEPA but, unlike the EIS, requires less quantity and quality of public involvement.

- **Statutory Exclusions** - are specific actions excluded from NEPA review. These actions are either emergency in nature or have no or little potential to affect the environment. No review or documentation is required. These actions are only provided for in agency specific statutes and described in agency specific regulations.
- **Categorical Exclusions (CATEX)** - are the next level of review under NEPA and include actions, that through experience, an agency has found will not typically result in significant impacts upon the environment. CATEXs are defined in CEQ regulations. Agencies are responsible for developing their own lists of specific exclusion categories. This level does require consideration of environmental issues and that consideration must be documented. If the action is listed in an agencies regulations as a CATEX it must undergo consideration for extraordinary environmental circumstances, which if present, require the next level of NEPA review, the Environmental Assessment (EA).
- **Environmental Assessment** - is defined as a concise public document that serves to provide sufficient evidence and analysis regarding the significance of impacts of the proposed action and alternatives to aid in decision making and regarding whether to prepare an Environmental Impact Statement (EIS), which is the next level of NEPA review. The EA concludes with a decision document. This decision document based on the results of an EA can take two forms: the Finding of No Significant Impact (FONSI) or the Notice of Intent to Prepare an EIS.
- **The Environmental Impact Statement** - is a detailed analysis and evaluation of all of the impacts of the proposed project and all reasonable alternatives. This document usually provides more detailed and rigorous analysis than the environmental assessment and provides for formal public involvement. An EIS concludes with a decision document, the Record of Decision, that provides for an explanation of the reasons for selecting a particular action and environmental mitigation associated with that action.

Common Procedural Lapses

Failure to follow the NEPA process of evaluation of actions, public involvement, and decision maker consideration of full information, before actions are taken, is what is called a procedural lapse in implementation of the NEPA process. Some portion of the NEPA process has been left out or a short cut taken.

Timing - Premature selection and commitment to proposed action resulting in a “pre-decision” or preparing the NEPA document after the applicant has begun implementation of the project thus negating the intent of the law. Sometimes called post facto documentation or informally, NEPA backfill. The lapse directly relates to the need to treat NEPA compliance as a process rather than a document and includes consideration of the environment and public input before decisions at a

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local level are finalized or before action is taken. This lapse emphasizes the need for applicants, state, and federal officials involved to be educated on the process.

Level of Documentation - Failure to prepare the document most appropriate to the project such as preparing a Categorical Exclusion when an Environmental Assessment is needed. FEMA specific CATEXs will be discussed later. Either the action clearly falls within a CATEX on FEMA's list or it does not. A major challenge to a contested environmental assessment is likely to focus on level of documentation claiming that a resource issue has potentially significant effects and should be evaluated in an EIS.

Depth and Scope of Analysis - The scope of the project may be too narrowly defined resulting in segmented review of projects. The analysis itself is not specific enough to relevant issues or is encyclopedic, presenting too much irrelevant information that hides or confuses real issues. Perhaps important issues are overlooked. The analysis must be thorough yet concise, and appropriate to the relevance of the issue (e.g., if noise is not a problem, do not spend three pages discussing it, but if it is a problem, be sure analysis is thorough enough to fully evaluate and clearly explain this issue.)

Level of Public Involvement - Failure to provide adequate, or perhaps any, opportunities for public review and involvement in the project. If controversy arises and the public feels they have been left out of the process there is likely to be suspicion that the agency was trying to hide something and provides a legitimate basis for a lawsuit.

Full Disclosure - Not fully disclosing the basis for a decision or the potential effects of an action. Objectivity is extremely important. The agency must consider all comments, and simply disclose all information in the appropriate document, after which, even if there is unhappiness among interest groups, the agency can follow through with a decision. This closely relates to appropriate public involvement as a means of disclosure.

Focus on Documentation over Process - By focusing on production of a document that meets the letter and the intent of the law the implementation of a decision-making process is often overlooked and the benefits not realized. For example, if an infeasible alternative is evaluated under the guise of a feasible alternative just to complete the document, nothing is added to the decision-making process. Furthermore, the document must be actually used by the decision makers when making final decisions or approving the scope of a project.

Consequences of Not Following NEPA Process

Lawsuits - Enforcement of the NEPA process is by a citizen suit provision meaning anyone can bring a lawsuit against the responsible Federal agency for violation of NEPA. If the federal agency does not properly follow the process of analysis, documentation, disclosure, and consideration in decision making the agency is vulnerable to a lawsuit which begins with an injunction requiring immediate stoppage of work and may take considerable time, effort and cost in attorney fees and court costs to resolve.

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Project Delay - The project can be delayed for a number of reasons stemming from noncompliance with NEPA. Some of these include public opposition, review agency interventions, lawsuits, project redesign, rewrite of documents in appropriate form and content.

Denial of Funding - If the applicant begins project implementation before FEMA has completed NEPA review funding will be denied, except in very limited imminent threat emergency situations. FEMA's environmental policy memo number 3, in the Desk Reference Appendix F, describes this situation. This further emphasizes the need for applicants and states to be informed of the NEPA process and requirement for the federal agency to complete NEPA before any actions by applicants.

Negative Publicity - A negative perception of FEMA can occur when the public finds that the agency neglected to consider the environment, is in violation of environmental law or unable to mitigate the community's suffering because they neglected to follow the process.

NEPA and Other Environmental Laws

Since the purpose of NEPA is to take into account the effects of federally funded or supported actions on various environmental resources, there are a number of other federal environmental laws and Executive Orders (E.O.) that can be conveniently incorporated into the NEPA process. Much of the research, planning processes and consultation that occur under these other laws can take place at the same time as the evaluation and assessment is taking place for the NEPA document, thus not duplicating data collection and analysis. It is highly recommended, and in some cases required, to document compliance with other federal laws and Executive Orders in the NEPA document. All other laws must be fully complied with - completion of NEPA review does not fulfill specific legal requirements of other environmental laws. See Appendix H of the Desk Reference for a Summary of Other Federal Environmental Laws.

State and Local Laws - State level documentation alone will not fulfill FEMA's NEPA requirements, in content or procedurally. Where state studies are complete, they may be used to supplement or to incorporate into the NEPA document. The state required environmental review should be used as information from which to prepare the NEPA document or, where possible, prepare a joint document avoiding duplication of effort. To produce a joint document, early coordination and cooperation by the applicant, state grantee agency, and FEMA is necessary. As the lead federal agency with a NEPA responsibility, FEMA is required to take an active role and to ensure that all NEPA requirements are met.

Other Federal Laws - The NEPA process subsumes the review of actions under the array of federal environmental laws. The NEPA review process should address compliance with these laws, as relevant, in the EA. These are independent laws with which FEMA must comply, even when NEPA documentation is not required - e.g. statutory exclusion or categorical exclusion - take care to ensure compliance with all other federal laws. Some Federal laws require review by state programs and under related state laws.

Executive Orders - The three E.O.s most frequently encountered in FEMA projects include E.O. 11988, Floodplains, E.O. 11990, Wetlands and E.O. 12898, Environmental Justice. The E.O.s on

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Protection of Floodplains and Wetlands, require a planning process that is similar to NEPA and which considers alternatives and evaluates impacts to those specific resources. However, unlike the NEPA process, these executive orders require specific outcomes when certain circumstances are encountered. E.O. 12898, Environmental Justice, requires that the federal agency evaluate actions for disproportionately high or adverse effects on minority or low income populations, and avoid those effects. FEMA has made a policy decision that all NEPA documents will demonstrate compliance with E.O. 12898. When an EA or an EIS is being prepared, the NEPA document should fully document E.O. 11988 and 990 process as well. These E.O.s, like federal laws, require compliance independent from NEPA. See Appendices G and H.

Chapter III FEMA Implementation

This Chapter will cover:

- ◇ **FEMA's NEPA compliance process**
- ◇ **Application of FEMA's Categorical Exclusions and Extraordinary Circumstances**
- ◇ **Key components of EA's and EIS's**
- ◇ **NEPA differences between FEMA and other agencies**

FEMA's NEPA Compliance Framework

FEMA's process is guided by the Stafford Act, 44 CFR part 10 and related policy memos and guidance documents.

Stafford Act - Legislation establishing FEMA's responsibilities of disaster planning, response and recovery, and hazard mitigation and flood insurance. The Act also defines actions statutorily excluded from NEPA review. Only Congress can statutorily exclude actions from NEPA review.

FEMA 44 CFR Part 10 - FEMA's regulations for implementing NEPA which is an extension of CEQ regulations, not a replacement. This lists FEMA's Statutory Exclusions, Categorical Exclusions, extraordinary circumstances, and FEMA specific requirements for EAs and EIS. Refer to Appendix D in Desk Reference.

FEMA's NEPA Guidance - Refer to Appendix F in the Desk Reference for policy memos on acquisition CATEX and E.O. 12898; other federal agency clearance; and completed or initiated actions. Informal guidance on Categorical Exclusions is in this chapter.

How FEMA Regulations Differ from Other Agencies - Differences include varying types of actions listed as CATEXs or identified as statutory exclusions, and centralized/decentralized document approval authority. Department of Housing and Urban Development is the only agency that has been given statutory authority by Congress to assign responsibility, or delegate, NEPA to the states and communities that administer the CDBG program. FEMA cannot delegate the NEPA process, and must remain actively involved in NEPA review for projects it proposes to fund.

Brief Review of Levels of Review and Documentation Related to FEMA

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- **Statutory Exclusions** - Any action that FEMA initiates or funds, whether through program funds (mitigation, public assistance, flood insurance, etc.), 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. Congress expressly exempted certain FEMA programs or activities from NEPA compliance as listed in the Stafford Act (P.L. 93-288 Sec. 812 as amended). These actions are either emergency in nature or have no or little potential to affect the environment. There is no documentation or memo to the file required under the regulations for statutory exclusions. Some statutory exclusions are also mirrored in the list of CAT-EXs - these are noted with [SE].
- **Categorical Exclusions** - NEPA review, for a significant portion of FEMA's actions, can be satisfied by a relatively simple documented determination that the action fits one of the categorical exclusion categories defined in FEMA's environmental regulations. This is a list of actions identified and listed by FEMA that, through FEMA experience, have been determined to not individually or cumulatively have a significant effect on the environment, i.e. small, routine undertakings. Defined in 44 CFR part 10.8(d), see Appendix D in the Desk Reference. CATEXs must fit description in a listed category, this is not open to interpretation. These will be discussed in detail next. Documentation of this decision by the RD is required. This CATEX documentation, as with any NEPA documentation must be completed prior to initiation of the action.
- **Environmental Assessment** - Supports NEPA compliance through compilation and public availability of all relevant information, can determine need for EIS, facilitates preparation of EIS if necessary.
- **Environmental Impact Statement** - Required if agency action has potential to "significantly affect the quality of the human environment." EA is tool for making determination. FEMA has identified criteria which describe actions that normally require an EIS. They are located at 44 CFR 10.8(b).
- *Action Initiated or Completed Before FEMA NEPA Review*
See Environmental Policy Memo #3-Revised in Appendix F.
General Process: In very limited circumstances an action, not covered by a Statutory Exclusion, must be implemented before NEPA review is completed. Policy memo #3-Revised explains FEMA's review process for such immediate emergency actions. The FEMA Regional Director (RD) first considers whether the action qualifies under policy #3 criteria for immediate emergency actions. The RD then consults with the FEMA Environmental Officer and the Council on Environmental Quality (CEQ) with CEQ making the final determination.

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Statutory and Categorical Exclusions

This section is intended to present a basic framework under which the list of statutory and categorical exclusions (CAT-EX) is to be applied for FEMA activities and provides some informal suggestions on how to interpret the regulations. The regulatory language in 44 CFR Part 10 has been relied upon, where possible, so that the requirements are clear, followed by brief suggestions of the intent of each of the sections where complex issues may be involved. FEMA's environmental regulations (44 CFR part 10) were modified by a Final Rule publication in the Federal Register on February 5, 1996. The regulatory language in this section reflects those changes.

This section is not official FEMA policy regarding CATEXs, but hopefully, useful information to guide your thinking when applying the CATEXs.

To summarize, there are two types of actions that do not require extensive NEPA environmental documentation:

- **Exempt by statute** A limited number of actions - primarily emergency actions - are exempt from NEPA requirements altogether, pursuant to the Stafford Act. These are called Statutory exclusions. There is no documentation or memo to the file required under the regulations for statutory exclusions. Statutory exclusions are identified along with the listed CATEXs. They are for convenience in defense when EA/EIS is not needed - these are noted with [SE].
- **Categorical Exclusions** FEMA has developed a list (at 44 CFR § 10.8) of categories of actions which were determined typically to have no significant environmental impact, based on experience with these types of actions, and thus may generally be excluded from detailed documentation (EA or EIS). Documentation of this decision is required. This is called the CAT-EX document.

Background

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.

Process

When evaluating an action to determine if it fits a CATEX category, the entire "Federalized" action must be defined. Other actions may be connected to the proposed Federally funded, supported, or authorized action, and thus Federalized for purposes of NEPA review if the Federal action: provides justification for another action; enables other actions, public or private, to go forward (such as inducing development, expanding sewage capacity, improving access to an

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area); commits the construction of another action (constructing one phase that is dependent on another phase); or precludes consideration of alternatives for another action. For example, if FEMA repairs or improves a road or replaces a bridge that enables substantially better access to an area, then further review of the connected action is necessary, particularly if there are sensitive resources there, such as improving access to a wilderness area or barrier island. If there is a fairly clear connection, then typically an EA would be required that would look at the larger action. Actions are not connected when one action is remote and speculative, the Federal connection is minor, or the second action is much later in time and can be changed in the interim.

When it is determined that an action fits a categorical exclusion category, two additional considerations must be addressed in order to determine if the record of a CATEX is the appropriate NEPA document. 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 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 many of which 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 statutes and EOs which address such resources as wetlands, floodplains, historic preservation, cultural resources, endangered species, hazardous materials. These other environmentally oriented Federal laws and regulations include, 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, Executive Orders 11988, 11990, and 12898, as well as FEMA's implementing regulations at 44 CFR Part 9 and FEMA's National Flood Insurance Program rules at 44 CFR Parts 59 through 77.

The practical implementation of the NEPA review process, even at the SE and particularly the CATEX stage, requires that Grantees and Subgrantees have an understanding of the NEPA process, SE's, CATEXs, and extraordinary circumstances so that they can provide valuable information concerning project scope and can cooperate regarding identification of potential extraordinary circumstances. Too often, coordination is lacking, and an extraordinary circumstance does not come to FEMA's attention until well into the project review process.

Grantees and Subgrantees also need to understand these stages of NEPA review so that they can coordinate them with review under State NEPA-like laws. Even though the specific exclusion categories are likely to differ, a clear understanding of NEPA review can produce coordinated review of issues that will speed State and Federal process along.

Regulations and Guidance (Regulations are in bold italics)

44 CFR 10.8 (c) Statutory exclusions. The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments

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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

Actions falling within the bounds of these Statutory Exclusions are exempt from NEPA, including all NEPA review and documentation.

For section 402, General Federal Assistance.

For section 403, Essential Assistance.

For section 406, Repair, restoration, reconstruction, or replacement of a facility damaged or destroyed. These 406 funded activities must take place on the same site as the damaged facility, and conform substantially to the pre-existing design. Also, the proposed facility must conform substantially to the pre-existing footprint and location on the site of the pre-existing damaged facility. Alternate or improved projects not meeting the above criteria do not fall within this SE, and require NEPA review.

For section 407, debris removal.

For section 502, Federal emergency assistance

(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.

These criteria are for use of FEMA's Environmental Officer in determining future CATEX categories. These criteria cannot be used as the basis for deciding upon a CATEX as the appropriate level of NEPA documentation for a specific action - actions must fall within the definition of one of the CATEX categories listed below in (2). These criteria are used when evaluating actions for potential consideration for addition to the list of approved CATEX categories.

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(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].

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

This is self explanatory.

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

This is not intended to cover cases where the implementation of proposed regulations affect the physical environment, such as those that restrict, prohibit, or permit development in certain areas. For example National Flood Insurance Program (NFIP) has undergone environmental assessments for some regulatory changes. The entire National Flood Insurance Act underwent an EIS.

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

This would include planning activities, appraisal of property, surveying, and engineering studies. Any action that the planning or engineering might recommend, however, when proposed for Federal funding, is subject to the NEPA process.

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

This includes inspection and monitoring processes that are part of the compliance requirements for various programs. These activities should not have any physical effect upon the environment. Any federally funded action that the inspections or monitoring might recommend, however, is subject to the NEPA process. This is very similar to (iii) above.

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

This is self explanatory.

(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;

This is self explanatory.

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(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.

This is intended for Stafford Act section 404, National Flood Insurance Act section 1362, Flood Mitigation Assistance Program (FMAP), or other acquisitions where the intent of the project is to eliminate the hazard by removing occupants and structures. In addition to the acquisition of property, this is intended to cover the removal of the structure from acquired property, either intact or after being demolished.

This category is not intended to be used when there is a planned relocation/reconstruction site where there is Federal or applicant direct involvement in site development activities, and the site is intended to house the residents or transported structures, or support the activity from the property being acquired. In this case, the acquisition and the planned relocation/reconstruction site must be evaluated together in an EA.

There is a distinction made between projects involving relocation/reconstruction sites selected by individuals participating in a larger project and planned formal relocation/reconstruction sites with Federal or applicant direct involvement in site selection and site development. In the former, the locational decisions are made by individuals and are scattered in time and space, some before and some after project approval. The latter is a type of action that is foreseeable by FEMA, there is a causal connection between the two activities, and the evaluation of impacts for the combined action is manageable given that there is a more formal decision making process concerning site selection that is carried under the direct control of a government entity. The distinction is made to require an EA for activities where there is an effort by a government entity to select or develop a site.

Generally, the presence of hazardous materials in an area where a project will be implemented is considered an extraordinary circumstance. The Hazard Mitigation Grant Program (HMGP) requires that any properties acquired with FEMA funds be free of hazardous levels of hazardous or toxic substances, according to all local, state, and Federal laws, regulations, and standards. In the case of HMGP projects, the extraordinary circumstance is avoided by not participating in land acquisition involving a contaminated property. Property owners are required to clean properties before they can be acquired. Lead, asbestos, and normal quantities of household hazardous materials are frequent occurrences in these projects, and as such should not be considered extraordinary if all local, state, and Federal laws and regulations are to be followed during demolition or removal.

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

This is intended to address the purchase or leasing of existing facilities when the proposed use of the facility is in conformance with current or planned state and local land use and zoning requirements. An example would be the lease of current commercial or office building for use as a Disaster Field Office. Care must be exercised in defining what constitutes non-conformance with past use or local

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land use requirements. For example, changing from warehouse to a residential or institutional use is clearly a substantial change in land use. Also, a change from a low intensity commercial office space to a high intensity commercial or institutional use where factors such as traffic, noise, parking requirements, visual impact may change substantially might be considered to be not conforming to past use. If a variance from local land use controls or a zoning change is required this would be considered non-conforming to existing 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;

This is intended for water lines, power lines, telephone lines, other utilities, gauges, communication and warning systems, etc. in currently used rights of way or within existing systems or facilities. Transportation facilities would not be considered utilities. For example, improvement or installation of a roadway in an currently used sewer right of way would not be covered.

All proposed uses for rights-of-way should be evaluated in light of the current condition of the right of way. Some rights-of-way may have never experience construction activity, or had activity decades ago. If the right-of-way has been re-established in natural cover or other natural conditions have returned, such as forests or wetlands, the activity is not intended to be covered under this category. For example, power lines could be extended for a large distance over an existing right of way but might still require disturbance or removal of a large amount of mature re-grown trees or disruption to re-established wetlands.

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

This category should now be used for FEMA facility operation activities. This would only cover activities in previously disturbed areas. Does not cover dredging, excavating or filling in Waters of the U.S. except where there is an approved maintenance plan that was previously evaluated in an EA or through a U.S. Army Corps of Engineers permit agreement. Removal of minor debris would be covered.

(xi) Planting of indigenous vegetation;

The type of activities this is intended to cover includes planting of grasses for dune or bank stabilization and planting of vegetative buffers for fire hazard reduction purposes. It is important to evaluate impacts on resources protected under the Coastal Barrier Resource Act when planting in coastal areas.

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

This is intended to apply to demolition activities and/or activities associated with the movement of the debris to sites permitted for such material.

The presence of lead, asbestos, and normal quantities of household hazardous wastes in a subject structure, does not in and of itself require and EA if the applicant commits to follow all current local, state, and Federal requirements for the removal and disposal of such materials.

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

This category is intended to apply to the transport of structures when individuals are selecting scattered relocation sites of their choosing. This category is not intended for the movement of structures to planned relocation sites where there is Federal or applicant direct involvement in site selection or site development (excluding the basic unloading of the transported structure and funding of basic relocation costs common to all structures - i.e. basic allowance for foundation and utility connections). In the case of a planned relocation site, the activity as a whole (movement and construction of a planned relocation site) must be considered in an EA.

There is a distinction made between projects involving relocation/reconstruction sites selected by individuals participating in a larger project and planned formal relocation/reconstruction sites with Federal or applicant direct involvement in site selection and site development. In the former, the locational decisions are made by individuals and are scattered in time and space, some before and some after project approval. The later is a type of action that is foreseeable by FEMA, there is a causal connection between the two activities, and the evaluation of impacts for the combined action is manageable given that there is a more formal decision making process concerning site selection that is carried under the direct control of a government entity. The distinction is made to require an EA for activities where there is an effort by a government entity to select or develop a site.

(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;

This is self explanatory.

(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]

This is intended to cover a wide range of hazard mitigation retrofitting measures that include most seismic retrofit projects. This would not cover section 406 alternate projects unless the new facility is being built on the footprint of a previous facility that had a substantially similar design and function,

"Substantially conforms to the preexisting design [and] function" is intended to include use of the property consistent with the previous land use. Change in design or function that would result in potentially significant effects on the surrounding environment is also not intended to be covered - such as differing levels of pollution, noise, odor, smoke, visual impact, traffic, increased capacity, etc.

"Substantially conforms . . . to the pre-existing location" is intended to mean little if any ground disturbance outside of the footprint of an existing facility, and activity not resulting in substantial removal of trees, or filling of wetlands, disruption to archeological resources, adverse hydrologic/hydraulic effects, etc.

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This provides the HMGP and other programs a comparable level of exclusion that the statutory exclusion provides to certain 406 activities. This category expands beyond the scope of "conforms to previous condition" defined in the statutory exclusion, by allowing for modifications to the previous condition that accommodate retrofitting and elevation.

(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;

Improvements to existing facilities does not include new construction, and should not result in change in function or new construction.

The phrase, "Construction of small scale hazard mitigation measures," is primarily intended to cover small scale hazard mitigation measures. This includes such things as upgrading the size of an existing culvert, construct a small culvert under a road, upgrading or construction of a small-area urban storm drainage system, and installation of small floodwalls. This category is intended to cover activities with no disturbance or adverse effects outside the currently disturbed area (such as drainage systems or culverts under existing streets/bridges) or no disturbance or adverse effects outside the footprint of an existing facility. This basically means enlarging a culvert or existing stormwater drainage system in place - pulling out one size pipe and inserting a larger pipe in its place.

Generally, this category is not intended to cover improvements, upgrading, or construction where there may be adverse effects on flood levels, local hydrology, or drainage patterns (i.e. lowering water tables; increasing flooding elsewhere that would affect residences, facilities, or other resources; creating erosion at the next bend in the stream; or affecting the mapped 100 year flood level), as might be the case with levees and many drainage or channel projects, such as channel straightening, channel diversions, etc.

An activity that alters systems capacity means that a component cannot be installed in a system which would allow the overall system capacity to be exceeded. For example, an enlarged culvert should not allow a downstream flow that would exceed the existing design capacity of the drainage system components or the natural system. Likewise, if the action changes downstream flow patterns to the extent that land use, delineated special flood hazard, stream functions, stream habitat, erosion or sedimentation rates are affected, the action would not be excludable.

(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;

An example of this is the installation of equipment within a structure such as a generator, sprinkler system, or emergency lighting.

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

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- (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]*

This would not cover funding the construction of a landfill in a non-emergency situation, as a means to replace landfill space used during a previous debris removal activity. This only covers the activity of removal of debris permitted under section 406 and associated disposal immediately following the removal of the debris.

- (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;*

This portion of CATEX xix covers the funding or construction of temporary housing on the actual disturbed portion of a site previously used for housing. For example, the construction of temporary housing on a the actual site of a former RV park, mobile home park, vacant mobile home pads. The key factors are previously disturbed and compatible with residential use.

This CATEX also covers the placement of one Mobil Home/RV/etc. on the site of a private residence.

Care should be exercised with these activities when siting in the vicinity of potential environmental hazards, such as waste facilities, industrial areas, contamination areas, high traffic areas near interstates, etc. Siting in proximity to an environmental hazard would be considered an extraordinary circumstance under (viii), potential for adverse effects on health or safety. If these hazards are present in proximity, this would also be an issue for detailed investigation under Executive Order 12898.

- (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);*

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- (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;*

This, without any environmental issues, is not a clear basis for requiring an EA.

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

This circumstance requires a closer look at potential for cumulative impacts.

(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;

The presence of Federally designated or proposed threatened or endangered species within the area to be affected by the project should be considered an extraordinary circumstance. Consultation with USFWS under the Endangered Species Act is required if a species or habitat is present to make a determination of effect.

The presence of a wetlands should be considered an extraordinary circumstance if the amount or type of wetland resource to be affected would require action or attention under a Federal, state or local regulation or standard. If wetlands are present in the project area, consultation must occur with the USACE, and appropriate state and local agencies. A project that affects several separate wetland resources should evaluate the impacts to all wetlands to determine if there is a cumulative effect extraordinary circumstance.

The presence of a historic property, including for example a structure, district, cultural property, or archeological site, eligible for listing on the National Register of Historic Places, should generally be considered an extraordinary circumstance. All of the National Historic Preservation Act, Section 106 and 110 requirements, procedures, and consultation with the State Historic Preservation Officer must also be followed, regardless of the level of NEPA review. The following circumstances are almost always considered NEPA extraordinary circumstances:

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1. A highly important eligible structure/resource/cultural property or a National Historic Landmark may be adversely affected (minor adverse effects typically wouldn't trigger this circumstance such as minor maintenance or minor structural retrofit);
2. There is significant historic preservation related controversy regarding the potential for adverse effect on an eligible structure/resource/cultural property that may be affected.
3. A large number or proportion of eligible structures/resources/cultural properties in a community/neighborhood may be adversely affected;
4. The integrity of a historic district, potential historic district, or potentially significant archeological/cultural property site may be adversely affected; OR,
5. Historic or prehistoric human remains or traditional cultural property would be adversely affected.

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

Generally, the presence of hazardous materials, above a Federal, State, or local action level, in an area where a project will be implemented is considered an extraordinary circumstance. FEMA requires that any properties acquired with FEMA funds be free of hazardous levels of hazardous or toxic substances, according to all local, state, and Federal laws, regulations, and standards. In this case the extraordinary circumstance is avoided by not participating in contaminated property acquisition. The property may be cleaned independent of the Federal project, before acquisition so that the circumstance is avoided.

Lead, asbestos, and normal quantities of household hazardous materials are frequent occurrences in HMGP acquisition/relocation/elevation/retrofitting projects, Public Assistance demolition activities, and other FEMA activities following a disaster, and as such should not be considered extraordinary if all local, state, and Federal laws and regulations are to be followed during demolition or removal.

Often, Federal and State laws and regulations governing disposal of disaster debris are temporarily modified after a disaster. If our actions, relative to hazardous or toxic materials, are subject to these post-disaster modifications, these modifications should be considered when determining actions that require special 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;

The same guidance as in (v) applies for Wetlands. For coastal zones, if an action may adversely affect or modify landuse in an area or result in construction in an area designated under the Coastal Barrier Resources Act this might be considered extraordinary. If the action may affect an area designated by any other Federal law governing the environment in coastal areas, the Environmental Officer should be consulted to determine a course of action. Any actions that have the potential to adversely affect wild and scenic rivers, sole or principal drinking water aquifers, or wildlife refuges and wilderness areas (Federal, State, Local, or Tribal) should be considered to have an extraordinary circumstance. Consult the Environmental Officer regarding other possible special status areas.

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

If a FEMA action, or connected action, directly or indirectly increases the health and safety risk from natural, technological, environmental, and man-made hazards then it would be considered an extraordinary circumstance.

(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.

Cumulative impacts result from incremental impact of proposed action when added to other past, present and foreseeable actions of the applicant or any other agency or when looking at the past or future potential changes to the human environment. Individual actions can be minor but collectively significant. For example, drainage projects done in an incremental manner can create significant downstream impacts on both the quantity and quality of water. Or, historical loss of wetlands in a watershed makes removal of remaining wetlands cumulatively more significant. If there is potential for or concern about possible cumulative effects, they should be evaluated further in an EA.

(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.

Simply stated, CATEX documentation should be short and concise with only that information necessary to indicate that the required steps have been taken. Any analysis or data to support the statements or conclusions summarized in the CATEX document should be backed up in the administrative record. See appendix E - CATEX document format. The inclusion of the information in the next section would cover the requirement for the CATEX document and minimize the possibility of future challenges.

(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.

This clause is intended to ensure that if the conditions upon which a categorical exclusion was granted have changed, because of a change in the scope of the project 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.

Environmental Assessments and Environmental Impact Statements

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Environmental Assessment - As noted earlier the EA is frequently, but not always, the mechanism for determining whether the action will have a significant impact on the quality of the human environment. At FEMA most of the NEPA analytic documents generated are EA's. These will be discussed in detail in the next section.

Environmental Impact Statements - An EIS is a detailed statement for major federal actions significantly affecting the quality of the human environment. FEMA has identified criteria which describe actions that normally require an EIS. They are located at 44 CFR 10.8(b).

EIS's must be prepared if the proposed action may cause any "significant" effects on the "quality of the human environment." Although EISs have many of the same components as EAs, the breadth and depth of analysis for an EIS is much greater and requires complete evaluation of the full range of feasible alternatives. Also, the public involvement requirements are greater and more specific. There are strict legal and regulatory requirements for EIS's. Some requirements include publication in the Federal register at the notice of intent, draft and final stages; formalized scoping meetings; a minimum 45 day comment period at the draft stage, and 30 day comment period on the final EIS. Whereas FEMA internally reviews and approves EAs, EPA reviews all EISs for document adequacy and environmental quality of the proposal.

Actions Normally Requiring an EIS

Criteria have been included in FEMA's environmental regulations that provide guidance to determine which actions would require an EIS, with or without an EA. For some actions it is not necessary to prepare an Environmental Assessment to determine the significance of impacts if it is readily apparent that the action meets any of the following criteria.

Found at 44 CFR 10.8(b)(2) i-x

- (i) If an action will result in an extensive change in land use or the commitment of a large amount of land
- (ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area
- (iii) If many people will be affected
- (iv) If the environmental impact of the project is likely to be controversial

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- (v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharges areas, or delicate or rare ecosystems, including endangered species
- (vi) If an action will result in a major adverse impact upon air or water quality
- (vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register if, after consultation with the Advisory Council on Historic Preservation an environmental assessment is not deemed sufficient
- (viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria
- (ix) If an action holds potential for threat or hazard to the public
- (x) If an action is similar to previous actions determined to require an environmental impact statement.

Key Components of EAs and EISs

The primary difference in content between an EA and EIS is the depth and breadth of analysis of the following components.

Purpose and Need - The Purpose of and Need for the project. This is the problem statement and not merely a statement of support for a predetermined solution, e.g. "The purpose is to build a dam," when it should be "the purpose is to prevent future flooding."

Alternatives - The description of all the reasonable alternatives for addressing the project purpose and need. In addition, the No-Action alternative must always be evaluated. An EIS requires extensive evaluation of ALL reasonable feasible alternatives

Affected Environment - Description of the environmental setting in which the proposed action and alternatives would take place. The setting includes the project site and where the effects may reach such as downstream water quantity impacts.

Environmental Consequences - The impacts to various resource categories caused by the proposed action and alternatives. An EIS goes to a more detailed and extensive level of analysis.

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Mitigation of Impacts - Measures which minimize or mitigate unavoidable impacts of the proposed action and alternatives. Mitigation measure should be considered throughout the NEPA process (44 CFR 10.12(c)), but must be identified in detail in an EIS.

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EA and EIS Timeline Comparison

Environmental Assessment - No Regulatory Timeframes Required

<u>Action</u>	<u>Time Required</u>
1. Publish Notice of Intent to prepare an EA in local paper (optional)	0-2 weeks
2. Collect Data and Prepare Draft EA	6-16 weeks
3. Comment Period (optional)	2-8 weeks
4. Review and integrate comments into Final EA	2-12 Weeks
5. Prepare Finding of No Significant Impact (FONSI) or Notice of Intent to Prepare an EIS	1 week
6. Availability of Final/FONSI and Comment Period (optional)	0-4 weeks

More time is required for more complicated EA's where there is disagreement over possible significant effects: longer time or recollection of data (step 2) longer or multiple comment periods (step 3) longer time to address comments (step 4) is required, and addition of a final comment period on the FONSI (step 6).

Total Time Required would average 13-43 weeks

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Environmental Impact Statement - Min. Regulatory Timeframes Imposed

<u>Action</u>	<u>Time Required</u>
1. Prepare and Publish Notice of Intent to Prepare an EIS	1 week
2. Hold Scoping Meeting, Collect Data and Prepare Draft EIS	12-16 weeks
3. Internal Review of Draft EIS. Transmit to EPA for Publication	2 Weeks
4. Comment Period (Required 45-day comment period)	7 Weeks
5. Review and Integrate Agency and Public Comment into Final EIS	4 weeks
6. Transmit Final EIS to EPA for Publication	1 week
7. Comment Period (Required 30-day comment period)	5 weeks
8. Publish Record of Decision (90 days is required between Publication of Draft EIS and Record of Decision)	1 week

Total Time Required is a *minimum* of 37 weeks

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How FEMA Differs from Other Agencies in its Implementation of EA and EIS

Second and Third Party Applicants for Funding

The process involving second and third party applicants for funding sometimes decreases FEMA control at the project's start, particularly in terms of alternatives analysis. Other agencies may have more involvement in development of actions and alternatives because they directly develop and administer projects.

Pre-Selected Alternative Problems

Consequently applicants for FEMA funding often have previously developed what they consider to be the "selected" alternative. The most effective way to eliminate this difficulty of preselection or commitment to alternatives is by ensuring early coordination between the applicant, state and FEMA. Other differences include varying types of actions listed as CATEXs or identified as statutory exclusions, and centralized/decentralized document approval authority.

FEMA/Grantee/Subgrantee Roles and Responsibilities

The Section 404 and 406 programs each operate in somewhat different post disaster environments, with the 404 program operating on a longer-term planning basis. Because FEMA projects, particularly under the 404 and 406 programs, are often different than the typical Federal project where the agency has more involvement in project design and development, this education and coordination stage is essential and must occur throughout so that FEMA can swiftly negotiate all decision levels and reach a conclusion.

FEMA must encourage primary information collection by Grantees and Subgrantees and communication of that information to FEMA staff making decisions throughout this decision tree. The responsibility is reciprocal - FEMA must inform the Grantees and Subgrantees of its information needs throughout the entire process.

Involving States - Before an emergency occurs conduct ongoing outreach through training courses; develop a sample cooperative agreement that identifies roles and responsibilities which can be implemented during administration of FEMA programs or in the event of an emergency (see Appendix R in Desk Reference); when an emergency occurs make contact with state representatives early in the process.

Chapter IV Environmental Assessments

This Chapter will cover:

- ◇ **When and how to conduct an Environmental Assessment.**
- ◇ **When and how scoping takes place in the Environmental Assessment process.**
- ◇ **Determining appropriate level of public involvement.**
- ◇ **The components of an EA.**
- ◇ **How to write an EA.**
- ◇ **When to include environmental mitigation of impacts and how to document and enforce this environmental mitigation.**
- ◇ **When and how to prepare a FONSI.**

Purpose of Environmental Assessments

The purpose of an Environmental Assessment is “a concise public document for which a federal agency is responsible that serves to: 1) briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI; 2) aid in agency’s compliance with the Act when no EIS is necessary, 3) facilitate preparation of an EIS when one is necessary.” Refer to Desk Reference Appendix B, CEQ regulations 1508.9.

The preparation of a sufficient EA contributes to this by:

Requires and Documents Formulation of Plans and Alternatives - Allows decision maker to compare program objectives in combination with environmental effects for a range of actions.

Public Input - Provides information and opportunity for the public and other stake-holders to be involved in the process and to have their concerns taken into account when decisions are made.

Identifies and Documents Detrimental Impacts - Provides a forum for consideration of the significance of the effects of contemplated actions during the agency’s decision-making process.

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Environmental Mitigation Plan - Identifies significant impacts that can be mitigated below the level of significance and thereby avoid the necessity to prepare an EIS. Mitigation plan and monitoring/enforcement is required for an EIS.

The Scoping Process

Once a proposal is made to or within FEMA to take an action, FEMA must plan a strategy to evaluate this action under NEPA. This initial planning stage is called scoping. The objectives of scoping include identifying agency and public concerns; identify reasonable alternatives that meet the purpose for action; to define issues to be examined in detail in the NEPA document, and to save time in the overall process by ensuring that draft documents identify all relevant agency and public concerns which if brought up at the end of the NEPA process could require time consuming re-analysis.

Scoping is comprised of a number of activities, which ideally occur during or immediately after project formulation, when the purpose and need and reasonable alternatives are being identified. Practically for FEMA, working with applicants with developed proposal submissions dictates that scoping reexamine existing purpose and alternatives and begin identification of relevant issues. Scoping requires ongoing investigation of possible issues that may come to light during the preparation of the EA. The primary emphasis of the scoping task is the first cut evaluation and conceptualization of the issues to be investigated and the relation of those issues to the formulation of alternatives. Once issues are identified and initial concerns solicited through scoping activities, detailed analysis and writing of the EA occurs in the next stage of preparation.

The flow chart illustrates the relationship between the Environmental Assessment process and scoping. Basically, most scoping activities take place during the early phases of the Environmental Assessment as seen in the flow chart. Some scoping activities such as public involvement and identifying issues of concern begin early but continue throughout the EA process.

When beginning scoping, it is often useful to solicit direct written comments from authoritative agencies by providing written project descriptions or through the hosting of a scoping meeting for more complicated projects. Applicants should be directly involved during scoping activities. These activities should also assist in pinpointing the need for Federal and State level permits. The solicitation of written comments should be coordinated with the required consultation processes for other substantive environmental laws, such as the National Historic Preservation Act and the Endangered Species Act, etc. Special Note - a scoping meeting held during the preparation of an EA cannot substitute for the specific requirement for a scoping meeting during the EIS process. The scoping process for Environmental Assessments is less formal and structured than that required when conducting and EIS. Although there is no formal guidance for EA scoping, it is an important part of the process.

Benefits of Scoping

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The scoping process helps to focus the EA process, analysis and documentation on those issues that are relevant and helps to avoid overlooking an important issue. When the public is involved scoping helps to increase public confidence in the analysis and to defend the scope of an EA's analysis. The purpose is to create concise, thorough documents and not encyclopedias.

Environmental Assessment Scoping Components

- **Educate States and Applicants**
- **Identify Lead and Cooperating Agencies and determine roles**
- **Determine Range of Alternatives**
- **Identify Environmental and NEPA Compliance Issues**
- **Determine Level of Public Involvement**
- **Identify Alternatives for Detailed Study**
- **Identify Permits Needed**
- **Identify Relevant Data Sources**

Educate States and Applicants about NEPA Requirements

When a proposed action requires NEPA review, states and applicants should be made aware of requirements as early as possible in the process. Because the applicant process for Section 404 and 406 Grant Programs poses some unique difficulties for FEMA, early contact is essential to minimize the procedural lapses mentioned earlier. This not only facilitates NEPA compliance but also helps define issues early on, stimulates better consideration of alternatives and the impact, and, if an EA or EIS is required, prepares states and applicants to provide viable alternatives.

- **Educating Applicants** - Use initial applicant briefing to educate about NEPA requirements. Provide applicant with NEPA fact sheet (See Appendix R) or checklist that focuses on:
 - Project purpose; what is problem to be addressed, not solution;
 - Identifying potentially significant issues associated with natural, cultural, social and economic environments;
 - Developing viable alternatives to meet the project purpose.
- **How FEMA Differs from Other Agencies** - The process involving second and third party applicants for funding sometimes decreases FEMA control at the project's start, particularly in terms of alternatives analysis. The applicant often has what they consider to be the "selected" alternative. This sometimes results in "backfilling" - the process of trying to identify alternatives "after the fact" to fulfill the NEPA requirement of considering more than one alternative. Ways to reduce or solve this problem are discussed later.

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Lead Agency and Cooperating Agencies

FEMA often participates in projects involving multiple funding agencies that each have NEPA responsibilities. For example, Hazard Mitigation Projects often have Department of Housing and Urban Development funding as a match. Rather than complete two separate NEPA documents, agencies may work together to produce one joint document that meets requirements of both. To do this one agency should be designated the Lead Agency and another the Cooperating Agency.

- **Lead Agency** - Lead Agency has primary responsibility for preparation of the EA or EIS. To determine which agency should be the Lead, the following criteria should be considered.
 - Magnitude of involvement (may be funding);
 - Project approval/disapproval authority;
 - Expertise on action's environmental impacts;
 - Duration of involvement; and
 - Sequence of involvement.
- **Cooperating Agencies** - Cooperating Agency involvement must be requested by the lead agency. Cooperating agencies may participate in any aspects of NEPA review, but any contributions the cooperating agency makes should be agreed upon. For example, FEMA may be the lead agency, but the contribution by a cooperating agency may be to conduct a study for a portion of the project, likely relating to the component they may be funding or over which they have regulatory authority.
- **When and How to Designate Lead and Cooperating Agencies** - When other federal agencies have a key role in the overall effort, the agencies should discuss and reach agreement on their respective roles. This agreement should be documented in a memorandum. When there is a dispute about lead agency status, the case can be referred to CEQ for resolution. CEQ must resolve the dispute within 20 days.
- **See Desk Reference Appendix B**
 - 40 CFR 1501.5(c)
 - 40 CFR 1501.6
 - 40 CFR 1501.15
 - 40 CFR 1501.16
 - 40 CFR 1501.17
 - 40 CFR 1501.26

Scoping Alternatives

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- **Identify Project Purpose and Need** - The project purpose and need guides the development of the alternatives. If this is poorly defined or too narrow alternatives development will be difficult.

Purpose for Action (GOALS) - The purpose is typically defined in terms of the funding program's objectives. For example, the purpose for action in most hazard mitigation situations is to reduce the need for further disaster assistance and/or elimination of repetitive damage and suffering. For infrastructure, it might be to replace services or buildings in a manner that reduces the potential for future disaster assistance. The purpose for action should be general in nature, and not specifically oriented to support the proposed action and limit consideration of other alternatives.

Need for Action (THE GENERAL PROBLEM) - Define the problem and historic situation or current context that the proposed action and alternatives intend to address. However, need should not be defined by the proposed action (e.g. to build a dam). Typically, the basic need for most FEMA projects is existing damage to facilities with resultant loss of function, the history of hazards or a current situation (flood, fire, earthquake, high winds) that threatens life and property and results in continued disaster assistance payments. The situation of the project area should be explained enough so readers understand why we are involved. The need should be described in a manner that allows multiple ways of addressing the problem.

- **Develop Range of Alternatives Which Meet or Achieve Purpose and Address the Need** - Many feasible alternatives on many scales may be identified. The EA must rigorously explore and objectively evaluate a reasonable range of alternatives. Select a few alternatives that exemplify the range of alternatives scoped out. A good way to judge a viable alternative is to ask the question - if for some reason the proposed project cannot be chosen, could/would you go with any of the alternatives?

Be realistic - Given application process and tendency for preselection, there is a strong need for early coordination and understanding among FEMA/State/Applicant and good applications/DSRs that solicit reasonable alternatives. The key to developing reasonable alternatives is to view alternatives from the perspective that if the proposed action was not available, given a funding source, the alternative would be pursued by the applicant.

- **Develop Screening Criteria for Feasibility** - If there is a small range of alternatives, briefly evaluate feasibility. However, if there are many alternatives, use screening criteria such as the following:
 - Environmental (e.g., critical habitat of endangered species)
Does the alternative have a fatal environmental flaw or a resource issue that would render the action infeasible in some way - Karst landforms, endangered species, burial mounds.
 - Economic
Is the cost of the alternative exorbitant compared to other feasible alternatives?
 - Technical
Are there any technical or engineering issues that affect the feasibility of the alternatives (e.g., geotechnical, hydrologic; also topographic relationship of sewage treatment plant to community)?

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- **Screen Alternatives** - Use comparative analyses format. A table or matrix is often helpful.
- **Documentation** - document the alternative scoping/screening process in your project file. Typically, a short mention is made in the actual EA about alternatives considered but dismissed.
- **Ongoing Process** - While the primary effort for identifying alternatives occurs during the scoping process, ongoing reassessment of alternatives will continue through the preparation portion of the EA process.

Identify Environmental Issues

A scoping checklist can be found in Appendix L on the Desk Reference. To identify relevant issues the following steps may be helpful: informal consultation with agencies, review of available maps, contact with applicants, a walk of the project site, solicitation of comments in media/surveys/public meetings.

- **Environmental, Social, Economic and Other Problems Identified** - During project planning and scoping for EA - Identify the issues that are of concern to the community, the review agencies, the applicant, the state, and the public. Develop a preliminary list of issues that must receive further analysis. This preliminary evaluation may reshape the proposed project.
- **Identify Concerns Requiring Environmental Mitigation** - Sometimes environmental impacts can be mitigated. Develop preliminary list of concerns requiring mitigation and some mitigation options. REMEMBER - impacts associated with mitigation must also be evaluated in the EA.
- **Identify Resource Issues** - Are there specific concerns with each resource? For example, perhaps the study area has karst topography. Develop your methodology for data collection and impact analysis to fully evaluate the implications of this issue as it relates to the project.
- **Eliminate Irrelevant Issues** - Eliminate issues which have no relevance to the project or study area. For example, if there are no standing structures in or near the study area, there will not be any Architectural History issues. However, do not assume that because a resource issue is not readily apparent, e.g. archaeological resources, that they are not there. Seek authoritative opinion.

Determining Level of Public Involvement

Determining the level of public involvement is a significant part of scoping but continued evaluation regarding the level of involvement and the actual public involvement activities continue throughout the project. Public involvement may help shape better alternatives not considered by the engineers or community officials.

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This is a major component of NEPA, both at the EA and EIS level. If there is potential for controversy or uncertainty over public sentiment on environmental issues, it is important to conduct appropriate public involvement to bring issues to light early rather than later so that the EA can take them into account.

There is an essential need to work with the applicant in this area and explain the benefit of disclosing early.

44 CFR part 10.9(c) requires that the FEMA Regional Director (RD) involve environmental agencies, applicants, and the public to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," the RD shall consider:

- **Magnitude of the Proposal** - The scale of impact this action will have on people and resources. The greater the magnitude the greater the public involvement.
- **Likelihood of Public Interest** - Actions likely to impact a large number of people or be the subject of controversy. For example, if environmental groups, land owners, community organizations have already expressed interest or hostility.
- **Need to Act Quickly** - Full public involvement may be precluded in situations where it is necessary to act quickly such as replacing a failing dam. However, some degree of involvement is still recommended.
- **National Security Classification** - May preclude or curtail public involvement due to inability to reveal specific information.
- **Need for Permits and E.O. Notice** - Some permits, such as Section 404, require specific public involvement activities. If there are potential E.O. 12898, 11988, or 11990 issues, then public involvement becomes an essential component of compliance with these E.O.s which must be combined with NEPA review.

Public Involvement Options

Depending on the local situation, the length of comment period, location of draft EA, use of public meetings, etc., can be varied. Public release of draft EA, even if for a short review period, should be strongly considered. As standard practice, at a minimum, the availability of a draft EA should be advertised. Provide draft for review in public location in the community. Public involvement activities must be designed to reach all segments of the affected community - this may mean producing information materials in different languages, radio and television advertising so that potentially interested/affected groups would be properly notified, and public meetings held during the evening or on weekends so working people can attend.

- **Community Surveys/Interviews** - Can be used at various points in the process to obtain public opinion about the project, issues or the alternatives.
- **Fact Sheets and Newsletters** - These can be used to keep the public informed between public meetings. See Appendix Q in the Desk Reference for a NEPA Overview Handout.

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- **Information Repositories** - Often established at the local library. Usually includes copies of all publicly distributed materials (newsletters, reports, etc.)
- **Public Notification** - Executive Order 11988 and 11990 require public notice for an action that is proposed in a floodplain or wetland. This notice should also indicate the preparation of an EA. It is good practice, where those E.O.s are not involved, to prepare a simple public notice, particularly where there is public controversy or potentially significant issues. E.O. 12898 also requires notice, as appropriate. See Appendix N in the Desk Reference for an example public notice.
- **Public Meetings/Workshops** - When holding public meeting explain the process, the project and alternatives, as well as record comments. Also solicit written comments from participants after public meetings. Coordinate with applicants when proposing public meetings. Public meetings under EISs are more formalized than a meeting conducted for an EA.
- **Media Coordination** - Typically the Public Information Officer (PIO) provides this function. Also, the means by which media requests are handled should be planned in advance. It is best to designate one individual to provide media interviews and answer questions.
- **Information Hotline** - A local telephone number through which the public can get answers to questions or provide input.

The public involvement stage of environmental review process is the key time to keep in mind the objectives of E.O. 12898, Environmental Justice, which requires that the agency evaluate actions having a disproportionately high or adverse impact on minority or low income population and that the agency conduct appropriate public involvement activities.

Preparing the Environmental Assessment

Four Primary Components of an Environmental Assessment

These are the four primary components of the EA. Each component contributes to decision-making by building upon the previous component.

- **Purpose and Need** - The purpose and need guides the development of the Alternatives.

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- **Alternatives** - The Alternatives determine the Affected Environment.
- **Characterizing the Affected Environment** -The specific characteristics of the affected environment will determine potential environmental consequences.
- **Environmental Consequences** - All components contribute to the evaluation of environmental consequences, and it is the information provided in these four sections of the EA that contribute to decision-making.

Purpose and Need

Purpose - Goals for action in general that would address the problem to some degree.

Need - The problem to be addressed.

See scoping discussion for detail on purpose and need. Generally, this section should not discuss the purpose for action in terms of the proposed project. The purpose should be kept broad enough to allow for multiple alternatives that could achieve the purpose, possibly in varying degrees.

Development and Discussion of Alternatives

The initial definition of alternatives for feasibility is conducted during the scoping stage. Feasible alternatives are explored further in the analysis and EA preparation stage.

- **Evaluate Alternatives Which are Practical or Feasible from a Technical, Economic and Legal Standpoint** - If an alternative is feasible, a description of it should be included in a such way that does not discount its unbiased consideration. Language that gives an obviously biased negative impression should not be included. Only the facts necessary to describe the action's functions, the degree to which it may meet the purpose and need, and information needed to understand the detailed individual components and activities is necessary.
- **Minimum: Proposed Action, No-Action, and One Other Alternative** - At least one viable alternative, in addition to the No Action and Proposed Action, MUST be fully considered and evaluated. This is one of the key differences between NEPA and many state "NEPA like" laws, such as the California Environmental Quality Act (CEQA). Some state laws do not require evaluation of the environmental effects of alternatives, but may focus more on the proposed action and its impacts. Executive Orders 11988 and 11990, for actions affecting floodplains and wetlands, require that the agency consider alternatives to actions located in or affecting floodplains and wetlands. If these E.O.s are relevant, the scope of EA alternatives is likely to be larger.
- **Alternatives Should not be Selected to Enhance Support for the Proposed Action** - An alternative to the proposed action should not be dismissed because:
 - There is known public opposition;
 - The environmental impacts will be worse than the proposed action.

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- **Incorporating Environmental Mitigation in Alternatives** - Design of proposed actions and alternatives should include clear descriptions of environmental mitigation whenever possible. This mitigation can also be listed in the environmental consequences sections. All mitigation discussed as part of an action should have clear stipulations that indicate that it is enforceable/is certain to occur if the action is implemented.

No Action Alternative, Alternatives to Proposed Action, and Proposed Action

- **No Action Alternative** - Thoroughly exploring the negative environmental and social impacts of the No Action alternative can be key to defining the purpose and need for action. The No Action alternative can either be the continuation of an on-going program/risk or the cancellation of proposed activity. For example, the continuance of existing conditions (No Action) might continue hardship, monetary loss, and would not contribute to floodplain management, additional environmental impacts, etc.
 - **Continuation of on-going program**
 - **Continuation of existing environmental conditions/risk**
 - **Cancellation of proposed activity**
- **Proposed Action**
 - **“Proposed”: Applicant’s First Choice** - The proposed action is the Applicant’s most desired solution to the problem (though it is only one way to address the project need). The proposed action must be designed to meet the identified purpose and need (correct the problem)
- **All Alternatives - Describe In detail** - including diagrams or sketch maps, thoroughly describe all components and actions to take place under the proposed action. It is essential for the reader to be able to draw conclusions about the impacts of the actions, thus there is a need to fully understand the individual action components. This applies to all alternatives and the proposed action. Describe the amount of materials involved, equipment to be used, dimensions of action, land area to be disturbed and its characteristics, time to complete, quantity of materials and earth moving, etc., etc.

Considerations for Characterizing the Affected Environment

- **Level of Analysis Should Parallel Degree of Concern Raised by Issue** - The discussion should be no longer than needed to understand the impacts of the proposed action and alternatives. The amount of detail in the discussion should be commensurate with the importance of the impacts and should not be encyclopedic. For example, if socio-economic impacts are not important to the project, do not duplicate the census report.
- **Inter-disciplinary Process** - NEPA requires consideration be given to all aspects of the environment through a systematic, interdisciplinary approach to agency decision-making. The interdisciplinary approach ensures balanced consideration of all natural, social, and design factors.

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- **Qualitative and Quantitative Analysis** - Some impacts are easily quantified such as costs or acres of wetlands. Some are less quantifiable such as loss of a community park, trees lining a street, or the function of a wetland or floodplain. Both types of impacts must be taken into consideration.

Characterizing the Affected Environment

It is essential to describe the relevant existing conditions of the natural or built environment of the specific project area that may be impacted. Readers of the EA must have a clear picture of the environment and natural resources of the project area in relation to the proposed action and alternatives. What may be obvious to anyone who visits the site may be difficult for a far removed reader to infer, even for simple culvert projects. Appendix M of the Desk Reference contains a listing of information resources.

- **Define Geographic Study Area** - The geographic study area for a project is defined by the alternatives as well as by each resource studied. The study area for some resources, such as wetlands, are defined by the presence of the resource (i.e., the study area only includes the area in which the resource exists). Other resources issues are less site specific, such as air quality, or even regional in nature like economics.
- **Use Readily Available Data** - Many sources of available data exist and should be reviewed prior to doing any field work. Examples include: soil surveys, National Wetland Inventory (NWI) Maps, etc.
- **Conduct Field Studies** - Conduct appropriate field studies, guided by the scoping findings, to characterize the affected environment. Field studies may include wetland surveys, hazardous waste site investigations, cultural resources surveys, biological inventories, etc.
- **Gather Data from Federal, State and Local Agencies** - Contact relevant federal, state and local agencies to collect data useful to characterizing the environment and assessing environmental consequences. Examples of this include contacting the U.S. Fish and Wildlife Service and the State Natural Heritage Program to determine if any rare, threatened or endangered species or candidate species exist in the study area, or contacting the Soil Conservation Service for input regarding Prime Farmlands.

Evaluating Environmental Consequences

- **Determining Adequate Level of Analysis** - The environmental consequences section of the document provides the analytic basis for comparison of the alternatives. All alternatives must be studied and evaluated for their environmental impacts. Environmental effects include aesthetic, cultural, ecological, economic, health, historical, and social issues. The reader or decision maker must be able to weigh the impacts of alternatives to make an informed decision. The scoping activity should have defined the larger environmental issues to be investigated in detail and the context in which they should be evaluated. This scoping activity should have provided vital information that would define the appropriate level of

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analysis. Additional consultation with resource agencies or interests should provide additional feed back on the appropriate level of analysis.

- **Quantitative and Qualitative Analysis** - A comparative matrix can be used to present resource and impact data in a summary format.

Quantitative analysis: Should be the preferred analysis when data is available. Quantification of impacts in measurable units (acres of trees removed, cubic feet per second, concentrations pollutants generated, etc.) is fairly objective. Fully explain the relevance of any numbers/data generated to the levels/significance of impact on a resources. The assigning of numerical scales to rate the level of impact (e.g. 1 to 5 with 1 being large and 5 small impact) is not a quantitative method of analysis and should not be used.

Qualitative analysis: Use qualified professional judgment, opinions of qualified resource agencies and interests as basis of preparing a credible effects analysis. Qualitative effects analysis should consist of a narrative description of effects with a clearly stated rationale and description of analysis methods. The use of qualitative analysis requires that any conclusions regarding impacts be clearly understandable and the basis upon which those conclusions are made also be easily understandable.

Types of Effects

- **Direct Effects** - Are caused by the action and occur at the same time and place. Example: Removal of vegetation from a project site to allow construction of a facility. Sometimes referred to as a primary effect.
- **Indirect Effects** - Are reasonably foreseeable consequences of the action but are later in time or further removed in distance from the direct effects. Effects that change land use patterns, population density or growth rate. Example: Increased air pollution from additional vehicles is a foreseeable indirect effect of relocating residents to newly created neighborhood. Downstream sedimentation resulting from project site erosion might also be considered an indirect effect. Sometimes referred to as secondary effects.
- **Cumulative Effects** - Direct and indirect effects of project actions that are greater in significance than just the sum of the direct and indirect effects, when viewed in the context of the total effects of other past, present and reasonable foreseeable future actions

Cumulative effects are not a wholly different effect from direct or indirect effects of an action. Cumulative effects are merely a way of placing seemingly isolated or insignificant direct and indirect effects in context with respect to overall impacts, both over time and in an area larger than that evaluated for direct and indirect effects. An example is that of a watershed that has lost nearly all of its historical wetlands. Without looking at the total setting the elimination of one acre of wetland in this watershed may be dismissed as insignificant. But, if this is one of the very few remaining naturally occurring wetlands in this severely disturbed watershed, then cumulatively this impact may be great ("the straw that broke the camels back.")

Cumulative effects from the construction and/or operation of a proposed flood control or a drainage facility may be very important because the incremental lowering of wetland, habitat, and

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water quality caused by the proposed project in an already degraded watercourse or drainage basin may have cumulatively significant impacts when looked at along with the conditions of the watershed or the channel up or downstream of the proposed action. Depending on the present condition of the watercourse, the erosion and sediment produced during construction may or may not have a potentially significant cumulative impact on an already degraded watercourse.

Some resources may be affected by several cumulative actions (causing cumulative effects) either later in time or removed from the causative action in distance (indirect effects). In other words, the resource may be affected both indirectly and cumulatively.

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Cause and Effect Relationships

The concept of cause and effect relationships is easier to understand in terms of the cause as the action and the effect as the impact. For example, if the proposed action is a ditch channelization project, the following might occur:

Action/Cause	Impact/Effect
Removing vegetation	Loss of habitat Increased sedimentation Microclimatic changes
Filling wetlands	Loss of habitat Loss of wetland functions <ul style="list-style-type: none"> • water quality • floodwater storage • groundwater recharge Changes to local hydrology
Increased conveyance	Larger quantities downstream Suspension of solids Shoreline and bed erosion Changes to aquatic habitat

Cause and effect relationships must be evaluated site specific and resource specific. Cause and effect evaluation should include an analysis of:

- Predicted change from existing conditions
- Discussion of specific activities as part of an action that would cause change
- Specific locations of problem activities
- Specific locations of predicted effects
- Specific timing of problem activities
- Specific timing of predicted effects

The results of the analysis of cause and effect should be documented in plain language in the EA consequences section. The discussion should clearly identify the scope of the resource specific issue identified and provide an explanation and analysis of the predicted reasonably foreseeable environmental changes that may take place.

“Significance”- Significance of an action must be in terms of context and intensity.

- **Context** - is the setting in which the action is assessed and includes society as a whole, the affected region, affected interests, and the locality itself. Therefore, significance of the action will vary with the setting. Typically, for a site specific action, significance would be relevant to the local effects, rather than effects in the world as a whole.

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- **Intensity** - refers to the severity of the impact. In determining the intensity of an impact, consideration should be given to:
 - Beneficial effect - a significant environmental effect may exist even when the proposed action has an overall beneficial effect;
 - Public health and safety - the degree to which the proposed action affects public health and safety;
 - Unique characteristics - of the geographic setting may include proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecological critical areas;
 - Degree of controversy - that the effects on the quality of the human environment are likely to have;
 - Extensive change in land use; land use change which is incompatible with the existing or planned land use of the surrounding area;
 - Unique or unknown risks - the degree to which the possible effects on the human environment pose unique or unknown risks;
 - Precedent setting - the degree to which an action may set a precedent for future actions with significant effects;
 - Cumulative - whether the action is related to other actions with individually insignificant, but cumulatively significant effects;
 - Scientific, cultural, or historic - the degree to which the action may use loss or destruction of significant scientific, cultural or historic resources;
 - Threatened or endangered species - the degree to which a proposed action may adversely affect a threatened or endangered species, or its critical habitat; and
 - Violation of federal, state or local law - whether the action threatens violation of federal, state, or local laws.

There are always a few resources for a particular proposal that are much more important - to the decision maker, the environmental experts, other agencies' staff, or the public (interest groups) - than others. Such resources might be:

- Scarce
- Valuable
- Politically sensitive
- Necessary for long-term mission objectives
- Important historically or culturally
- Important for public health or safety

If there are significant effects, an EIS must be prepared.

Some Specific Suggestions for Evaluating Impacts

Direct, indirect, and cumulative impacts should be assessed as to their magnitude, location, duration, reversibility, frequency, and their effect on the long term productivity of any resources.

Where possible, show impacts in quantities such as acres/hectares, etc. Where impacts are not quantifiable, briefly describe impacts. Numerical comparisons have been used by some but, if

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not carefully done, can be controversial. It is never a good idea to weigh the value of resources against one another.

No specific level of analysis is required, however, each alternative must be assessed in a manner that is substantially similar to the analysis of the proposed action.

It is important to list both the negative and beneficial impacts of the proposed action and the alternatives.

Provide basis for all statements of impacts. If an impact is described, provide basis/justification for this determination - methodology, source, letter of consultation with expert or agency, research, site visit, etc.

For resources which require consideration under other environmental laws, there should be correspondence with the appropriate agency and documentation complying with the agency's request. The procedures spelled out in those relevant laws should be followed and documented in the EA.

If there is inadequate/unavailable information then state this and reasons for not being able to obtain the data.

A summary of impacts in a matrix or table form is often useful when there are multiple or complex environmental issues. See the sample impact summary table.

Required Resource Categories

At a minimum, these categories must always be considered during the NEPA process and included in an EA review but, depending on the action, other categories may also require consideration.

- **Wetlands** (Section 404 of the Clean Water Act) - FEMA should utilize all available data sources (National Wetland Inventory (NWI) Maps, state surveys, etc.) to determine the presence of wetlands within the study area. Keep in mind that the overall accuracy rate of the NWI maps is about 40 percent, so a field reconnaissance should also be conducted. Also, state agencies with regulatory authority over wetlands may be able to provide additional information. See Appendix J in the Desk Reference for Army Corps Wetlands Regulatory Programs (Sections 404 and 10) informal guidance for FEMA Funded Projects. It is not necessary to field delineate and flag the wetlands for all alternatives until after one has been selected, and the FONSI has been published. It is important, however, that all alternatives are evaluated using "significantly similar" information during the NEPA process, so that a comparison of all alternatives for decision-making is balanced. The information used, and the findings should be including in the EA. Consider including a copy of the NWI map in the document as a resource for the reader.

If the region has a good working relationship with the Army Corps of Engineers, it is valuable to contact them for an initial review of the findings as to the presence of wetlands. However, the Corps is not responsible for making an official determination on presence of wetlands within a project area until a Field Determination in conjunction with the Section 404

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permit application has been scheduled. If wetlands are found, the Corps should be consulted about the type of permit that will be required. This should be documented in the EA, and any correspondence included in the Appendices.

- **Threatened and Endangered Species** (See Appendix I in the Desk Reference for the Endangered Species Act (ESA)) - Initial consultation with the U.S. Fish and Wildlife Service (USFWS) for land based species or the National Marine Fisheries Service (NMFS) for marine life, and relevant state agencies (Wildlife Agency and Natural Heritage Program), as soon as the alternatives have been identified. Typically a copy of the study area showing any footprints or limits of disturbance should be included with a letter requesting agency review. Typically the USFWS or NMFS and state agency will know if any rare, threatened or endangered species are known to inhabit the general vicinity (region), and sometimes may have data on specific sightings. In addition, they will identify whether the study area has any known critical habitat for a listed species. Remember these species include both plants, animals, and marine life.

If federally listed threatened or endangered species are known to the area, FEMA must consult with the USFWS or NMFS about the scope of field determination needed (informal consultation, Biological Evaluation or Biological Assessment). In addition, the USFWS and NMFS can provide input about adverse effects and ways to mitigate them. The EA should reference all consultation and any investigation to determine the presence of federally listed species and any results of the consultation.

“Recommended measures” from the USFWS, for example, are non-discretionary and must be incorporated into the NEPA document. If a biological opinion is required, it must be done before the FONSI or ROD.

- **Historic and Cultural Resources** (See Appendix K in the Desk Reference for Section 106 of the National Historic Preservation Act (NHPA)) - Coordination regarding archeological resources and historic structures should begin early in the NEPA process. Section 106 of the National Historic Preservation Act is independent of NEPA, and as such, federal actions must undergo the 106 process without regard to the level of NEPA review. When an EA is being prepared, the EA should document:
 - Identification of the 106 “Areas of Potential Effects”;
 - Evaluation and identification of National Register of Historic Places eligible or listed historic properties;
 - Effects on identified historic properties;
 - Consultation with the State Historic Preservation Officer (SHPO), and Advisory Council on Historic Preservation, where necessary; and
 - A Memorandum of Agreement or Programmatic Agreement to resolve adverse effects.

Cultural resource investigations must be conducted by persons who meet or exceed the Secretary of Interiors Standards for Professional Qualification Standards (36 CFR Part 61, Appendix A).

Section 106 requires a detailed evaluation of the proposed federal action. To comply with NEPA, each alternative must be evaluated in a manner that is “significantly similar.” Often, a lower level or degree of investigation and identification of resources is conducted for all alternatives,

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and the detailed evaluation and mitigation as required under Section 106, is reserved for the proposed action. Section 106 review should be completed before a FONSI is signed.

Sample Variations for Affected Environment/Impacts Section

<p>I. Small project area, simple project/alternative activities, where all alternatives have essentially same affected environment</p> <ul style="list-style-type: none">- Resource A<ul style="list-style-type: none">• Affected Environment• Environmental ConsequencesAlt 1, Alt 2, Etc.- Resource B<ul style="list-style-type: none">• Affected Environment• Environmental ConsequencesAlt 1, Alt 2, Etc. <p>II. Where alternatives are more varied or complex</p> <ul style="list-style-type: none">- Resource A<ul style="list-style-type: none">Alternative 1<ul style="list-style-type: none">Affected EnvironmentEnvironmental ConsequencesAlternative 2<ul style="list-style-type: none">Affected EnvironmentEnvironmental ConsequencesEtc.- Resource B

Environmental Mitigation of Adverse Impacts

Often potentially significant impacts are identified in an EA that may require the preparation of an EIS. To avoid the need to prepare an EIS, these potentially significant impacts must be avoided or the level of impact reduced or eliminated. This is called environmental mitigation and is necessary if an EIS is to be avoided. Specific design changes or commitments, restoration efforts, offsetting measures, timing of actions, planning and development commitments, environmental measures, etc., are often agreed upon that serve to moderate or lessen potential significant impacts caused by the proposed action or alternatives. Any of these mitigation measures, design changes, restoration, etc. must be clearly documented in the EA in relation to the potentially significant impact that they are mitigating. The measures or changes can be

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documented in the project description, but should also be discussed in the environmental consequences section in relation to the relevant impact.

All mitigation measures designed to reduce impacts below the level of significance must be fully enforceable and certain to occur if the action is implemented so that there is fair certainty that there will not be a significant impact. The commitment by an applicant, the inclusion in a grant agreement, the use of an enforceable permit, etc. must be mentioned in the EA.

If there are environmental mitigation measures included in the EA that reduce an impact below the level of significance, then a Mitigated FONSI must be prepared with the environmental mitigative measure specified as conditions of the FONSI. If there are only one or two environmental mitigation measures required, these may be summarized in the FONSI. A large number or more complex mitigation measures should be summarized in a table attached to or referenced in the FONSI. All environmental mitigative conditions essential to reducing significant impacts below the threshold of significance must be a condition of a FONSI. Environmental mitigation measures may also be included in grant agreements to ensure the applicants are clearly aware of them.

If reviewing agencies are definitive in their recommendations to mitigate potential impacts, then the EA should state exactly what the community has done so far (i.e. developed erosion control plans or ordinances) and what the community will do to mitigate the potential environmental impacts. Any ordinances or plans that would mitigate the potential impacts should be adopted by the community and referenced in the EA.

The applicant should take all reasonable standard environmental mitigative measures to reduce erosion, water pollution, noise, dust, etc. during and after construction. For example, using best management practices for sediment and erosion control. CEQ's "Forty Questions" question 39 C), indicates that the EA should include a discussion of mitigation measures for reducing those impacts not considered to be significant.

The Five Categories of Mitigation Under CEQ Regulations

In descending order of desirability.

- **Avoiding** the impact by not taking certain action or parts of an action
- **Minimizing** impacts by limiting the degree or magnitude of the action and its implementation
- **Rectifying** the impact by repairing, rehabilitating, or restoring the affected environment
- **Reducing** or eliminating the impact over time by preservation and maintenance during the life of the action
- **Compensating** for the impact by replacing or providing substitute resources or environments

Environmental Mitigation Considerations

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- **Mitigation Monitoring** - The FONSI must specifically identify which environmental mitigation measures were selected and adopted as part of the preferred action. A monitoring and enforcement program ensures that these measures are implemented and are having the desired effect of mitigating environmental impacts.
- **Mitigation Measures Can Have Impacts** - Environmental mitigation measures must comply with environmental laws, permits, etc., and are also subject to analysis for environmental effects. For example, a site for creation of a wetland to mitigate the loss of wetlands from the proposed action, must be evaluated for presence of cultural resources, threatened and endangered species, etc.

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Alternative Formats for Environmental Assessments

<p>I. A Simpler EA</p> <p>Purpose and Need Description of Alternatives Description of Affected Environment and Environmental Consequences of Proposed Action and Alternatives Agencies and Organizations Consulted References (If applicable) Appendices</p> <p>II. A More Complex EA</p> <p>Table of Contents Purpose and Need Alternatives Summary of Environmental Consequences Affected Environment and Environmental Consequences of Proposed Action and Alternatives (Including Mitigation Measures) List of Preparers Agencies and Organizations Consulted Federal Permits References Appendices</p>

Preparing the FONSI

- **Selection of Preferred Action** - Must indicate the selection of a preferred action, reasoning for selecting, and description of that action.
- **Finding** - Must reference the preparation of the EA in accordance with NEPA, and other relevant E.O.s
- **Environmental Mitigation** - Must indicate any environmental mitigation measures required as a condition of funding.
- **Compliance with Other Federal Laws** - Must indicate how will comply with environmental and historic preservation laws as well as indicate permits required.

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- **Compliance with Executive Orders** - If no disproportionate adverse effects are discovered, then the FONSI must state that E.O. 12898 was complied with and that no disproportionate adverse impacts to low income or minority populations were discovered. The FONSI must also indicate compliance with E.O.s 11898 Floodplain and 11990 Wetlands.

Summary of EA Preparation

Essential Elements of Preparing Environmental Assessments

- **Viable Alternatives to the Proposed Action**
Provide at least one alternative (in addition to the no-action), that accomplishes, to some degree, the purpose and need for action. The alternative must not be dismissed from consideration, and must be technically, economically and legally possible.
- **Detailed Description of Actions**
Describe in detail every component of the proposed action and the alternatives. The reader/reviewer must have a very clear picture of all components of the actions and how they interrelate. Describe sizes, amounts of materials/excavation, locations, areas of disturbance, and methods to be used. Include site drawings that depict the functional and spatial relationships of the action and the immediate environment. An unclear or incomplete description of the project may raise concerns for reviewers about whether the effects of the project have been thoroughly assessed and makes it impossible for a reviewer, who cannot visit the project site, to readily draw the same conclusions about impacts. This is true for complex projects as well as for simple projects where reasonable people would conclude that there are only minor impacts.

The reader should *never* have to assume anything.

- **Thorough Description of the Affected Environment**
Describe the existing environmental conditions as they relate to the impacts of the actions and explain the status of other resources commonly evaluated. Be specific in characterizing the existing environment including the presence of resources in the immediate project area (i.e. in the footprint of the disturbing activity, within close proximity, and the general area). Information on a county wide summary basis is not helpful unless site specific conditions are also discussed. Remember, the study area should be determined by the resource being discussed.
- **Complete and Objective Assessment of Impacts**
For each component of all actions, provide an analysis of the potential impacts, even for those components that seem relatively benign. Address all relevant impacts and be thorough and clear in the assessment. Reference in the text all site visits, studies, agency contact or consultations which support the assertions made.

Key Environmental Assessment "Do's"

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- **Be creative in developing alternatives**
- **Focus on the process - not the document**
- **Analytic, not encyclopedic**
- **Focus on important issues**
- **Be concise**
- **Emphasize alternatives**
- **Write in plain language**
- **Use graphics**

Key Environmental Assessment “Don’ts”

- **Assume that proposed action is the only feasible alternative**
- **Make assumptions that a FONSI will be the outcome**
- **Give lengthy description of irrelevant issues**
- **Use the document to justify decisions that had already been made**
- **Use a lot of technical jargon**

In his Handbook on Environmental Law, William H. Rodgers describes, in the words of judges, the inadequacy of NEPA environmental documents:

Environmental Impact Statements [an EA's as well] found inadequate by the courts “display serious lapse of disclosure and reasoned decisions.” Defective EIS's [as well as EA's] include vague conclusions unsupported in fact. They are “scientifically indefensible, wholly unquantified, unexplained in comprehensible terms, internally contradictory, basically flawed, obviously misleading or incomplete, excessively cryptic or perfunctory, argumentative, genuinely preposterous, and dependent on stale data or biased procedures.” The documents “ignore important topics; delete telling information; exude arrogance, callousness, or whimsy”; are “unresponsive to expert criticism”; and often “demonstrate a reluctant, begrudging compliance.”

FEMA EA Administrative Process

- **Preparation of Draft EA** - Regional Environmental Officer (REO), where appropriate, directs scope of EA. Follow FEMA's Desk Reference, environmental policy memos, and other generic environmental impact analysis materials. Consult the applicant throughout preparation for information on project design, the consideration of alternatives, conditions of the project area, and environmental impacts. Site visits and photographs are essential. Follow-up on issues identified during scoping and detailed analysis stages, conducting more detailed study or consultation with authoritative agencies. Consult Headquarters (HQ) or regional environmental contact, as appropriate, for guidance and assistance during preparation or to assist in development of contractor scope of work.
- **Draft EA - Internal Review and Public Review as Appropriate** - REO forward Draft to HQ program and Environmental Officer (EO) for review. HQ program office coordinates

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with regional staff regarding comments. Regional staff consult with applicant and revise draft.

- **Final EA - Internal Review and Public Review as Appropriate** - Region incorporates public, program, and EO comments. Modify project design, develop new alternatives, or propose mitigation of adverse effects as necessary or desired based upon public comment or potential for adverse impacts. Region forwards final to HQ EO and Office of General Counsel (OGC) for final review. Public review in limited circumstances.
- **Finding of No Significant Impact (FONSI)** - Regional Director (RD) and REO makes decision to proceed with funding the proposed action or an alternative to the proposed action based upon consideration of many factors, including the significance of environmental impacts. If the RD concludes that the action selected does not have significant impacts, then a FONSI is prepared. Any environmental mitigation incorporated into the project design to reduce the impacts below the level of significance must be required as part of the FONSI. The signed FONSI, along with the EA, is forwarded to the EO for approval, and the Office of General Counsel for legal review. Once the EO and OGC sign the FONSI the project has completed the NEPA process. For actions occurring in a floodplain, E.O. 11988 has public notice requirements that should be coordinated with NEPA FONSI. These notices should make reference to the preparation of an EA and E.O. 11988.
- **Notice of Intent to Prepare EIS** - If the RD concludes that the project will have significant effects, then the RD prepares a "Notice of Intent to Prepare an EIS" and forwards this to the Environmental Officer for publication in the *Federal Register*.