

**§ 6.106 Deviations.**

(a) *General.* The Assistant Administrator, OEA, is authorized to approve deviations from these regulations. Deviation approvals shall be made in writing by the Assistant Administrator, OEA.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Assistant Administrator, OEA, after consulting CEQ, will inform the responsible official, as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. If the Assistant Administrator, OEA, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Assistant Administrator, OEA, shall coordinate his action on a deviation under § 6.106(b) (1) or (2) of this part with the Director, Grants Administration Division, Office of Planning and Management, for any required grant-related deviation under 40 CFR 30.1000, as well as the appropriate Assistant Administrator.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

**§ 6.107 Categorical exclusions.**

(a) *General.* Categories of actions which do not individually, cumulatively over time, or in conjunction with other Federal, State, local, or private actions have a significant effect on the quality of the human environment and which have been identified as

having no such effect based on the requirements in § 6.505, may be exempted from the substantive environmental review requirements of this part. Environmental information documents and environmental assessments or environmental impact statements will not be required for excluded actions.

(b) *Determination.* The responsible official shall determine whether an action is eligible for a categorical exclusion as established by general criteria in § 6.107 (d) and (e) and any applicable criteria in program specific subparts of part 6 of this title. A determination shall be made as early as possible following the receipt of an application. The responsible official shall document the decision to issue or deny an exclusion as soon as practicable following review in accordance with § 6.400(f). For qualified actions, the documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

(c) *Revocation.* The responsible official shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the responsible official determines that: (1) The proposed action no longer meets the requirements for a categorical exclusion due to changes in the proposed action; or (2) determines from new evidence that serious local or environmental issues exist; or (3) that Federal, State, local, or tribal laws are being or may be violated.

(d) *General categories of actions eligible for exclusion.* Actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities;

(2) Other actions specifically allowed in program specific subparts of this regulation; or

(3) Other actions developed in accordance with paragraph (f) of this section.

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(e) *General criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with allowable categories in paragraph (d) of this section may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other Federal, State, local, tribal or private actions;

(ii) The action is known or expected to directly or indirectly affect:

(A) Cultural resource areas such as archaeological and historic sites in accordance with § 6.301,

(B) Endangered or threatened species and their critical habitats in accordance with § 6.302 or State lists,

(C) Environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or

(D) Other resource areas identified in supplemental guidance issued by the OEA;

(iii) The action is known or expected not to be cost-effective or to cause significant public controversy; or

(iv) Appropriate specialized program specific criteria for not granting an exclusion found in other subparts of this regulation are applicable to the action.

(2) Notwithstanding the provisions of paragraph (d) of this section, if any of the conditions cited in paragraph (e)(1) of this section exist, the responsible official shall ensure:

(i) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph (c) of this section;

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment and FNSI or a notice of intent for an EIS and ROD is prepared and issued.

(f) *Developing new categories of excluded actions.* The responsible official, or other interested parties, may request that a new general or specialized program specific category of excluded actions be created, or that an existing

category be amended or deleted. The request shall be in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published in the FEDERAL REGISTER as a proposed rule, amending paragraph (d) of this section when the proposed new category applies to all eligible programs or, amending appropriate paragraphs in other subparts of this part when the proposed new category applies to one specific program. The publication shall include a thirty (30) day public comment period. In addition to criteria for specific programs listed in other subparts of this part, the following general criteria shall be considered in evaluating proposals for new categories:

(1) Any action taken seldom results in the effects identified in general or specialized program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

[50 FR 26315, June 25, 1985, as amended at 51 FR 32610, Sept. 12, 1986]

### § 6.108 Criteria for initiating an EIS.

The responsible official shall assure that an EIS will be prepared and issued for actions under subparts E, G, H, and I when it is determined that any of the following conditions exist:

(a) The Federal action may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local, regional or State land use plans or policies;

(c) The proposed action may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated