

## § 26.5

in relevant environmental documents, and described in the environmental impact statement.

(Authority: 42 U.S.C. 4321-4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

### § 26.5 Responsibilities.

(a) The Director of the Office of Environmental Affairs shall:

(1) Be responsible to coordinate and provide guidance to VA elements on all environmental matters;

(2) Assist in the preparation of environmental documents by VA elements; and, where more than one VA element, or Federal, State, or local agency is involved, assign the lead VA element or propose the lead Federal, State or local agency to prepare the environmental documents;

(3) Recommend appropriate actions to the Secretary of Veterans Affairs on those environmental matters for which the Secretary of Veterans Affairs has final approval authority;

(4) Assist in resolution of disputes concerning environmental matters within VA, and among VA and other Federal, State and local agencies;

(5) Coordinate preparation of VA comments on draft and final environmental impact statements of other agencies;

(6) Serve as the VA's principal liaison to the CEQ, the Environmental Protection Agency, the Office of Management and Budget, and other Federal, State, and local agencies on VA environmental actions; and

(7) Prepare appropriate supplemental guidance on implementation of these regulations.

(b) VA General Counsel shall provide legal advice and assistance in meeting the requirement of NEPA, the CEQ Regulations and these regulations.

(c) The heads of each VA element shall:

(1) Adopt procedures to ensure that decisions are made in accordance with NEPA, the CEQ Regulations and these regulations; and

(2) Be responsible to prepare environmental documents relating to programs and proposed actions by their

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elements, when required by these regulations.

(Authority: 42 U.S.C. 4321-4370a)

### § 26.6 Environmental documents.

(a) *Environmental Impact Statements.* The head of each VA element shall include a detailed written statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." NEPA 102(2), 42 U.S.C. 4332(2) *see* CEQ Regulations, 40 CFR part 1502. An environmental impact statement shall be prepared in accordance with the following procedures:

(1) *Typical Classes of Action Which Normally Do Require Environmental Impact Statements:* (i) Proposed legislation (CEQ Regulation, 40 CFR 1508.17);

(ii) Acquisition of land in excess of 10 acres for development of a VA medical center facility;

(iii) Acquisition of land in excess of 50 acres for development of a VA national cemetery; and

(iv) Promulgation of policies which substantially alter agency programs and which have a significant effect on the quality of the human environment.

(2) *Specific Criteria for Typical Classes of Action Which Normally Do Require Environmental Impact Statements:* (i) Probable significant degradation of historic or cultural resources, park lands, prime farmlands, designated wetlands or ecologically critical areas;

(ii) An increase in average daily vehicle traffic volume of at least 20 percent on access roads to the site or the major roadway network;

(iii) Probable conflict with Federal, State, or local environmental protection laws or requirements;

(iv) Probable threat or hazard to the public, or the involvement of highly uncertain risks to the environment;

(v) Similarity to previous actions that required an environmental impact statement; and

(vi) Probable conflict with, or significant effect on, local or regional zoning or comprehensive land use plans.

(b) *Categorical Exclusions.* A categorical exclusion is a "category of actions which do not individually or cumulatively have a significant effect on the

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human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations . . . and for which, therefore, neither an environmental assessment (see subparagraph (c), *infra*) or an environmental impact statement is required.” CEQ Regulations, 40 CFR 1508.4.

(1) Typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:

(i) Repair, replacement, and new installation of primary or secondary electrical distribution systems;

(ii) Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries;

(iii) Routine VA grounds and facility maintenance activities;

(iv) Procurement activities for goods and services for routing facility operations maintenance and support;

(v) Interior construction or renovation;

(vi) New construction of 75,000 gross square feet or less;

(vii) Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;

(viii) Actions which involve support or ancillary appurtenances for normal operation;

(ix) Leases, licenses, permits, and easements;

(x) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;

(xi) VA policies, actions and studies which do not significantly affect the quality of the human environment;

(xii) Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and

(xiii) Actions, activities, or programs that do not require expenditure of Federal funds.

(2) Specific criteria for typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:

(i) Minimal or no effect on the environment;

(ii) No significant change to existing environmental conditions;

(iii) No significant cumulative environmental impact; and

(iv) Similarity to Actions previously assessed with a finding of no significant impact.

(3) Extraordinary circumstances that must be considered by a VA element before categorically excluding a particular Department action:

(i) Greater scope or size than normally experienced for a particular categorical exclusion;

(ii) Actions in highly populated or congested areas;

(iii) Potential for degradation, although slight, or existing poor environmental conditions;

(iv) Use of unproven technology;

(v) Potential presence of an endangered species, archeological remains, or other protected resources; or

(vi) Potential presence of hazardous or toxic substances.

(c) *Environmental assessments.* If the proposed action is not covered by paragraph (a) or (b) of this section, the responsible official (head of the VA element) will prepare an environmental assessment (CEQ Regulations, 40 CFR 1508.9). Based on the environmental assessment, the official shall determine whether it is necessary to prepare an environmental impact statement, or to prepare a finding of no significant impact (CEQ Regulations, 40 CFR 1508.13).

(1) Typical classes of action which normally do require Environmental Assessments, but not necessarily Environmental Impact Statements:

(i) Acquisition of land of 10 acres or less for development of a VA medical facility;

(ii) Acquisition of land from 5 to 50 acres for development of a VA national cemetery; and,

(iii) New construction in excess of 75,000 gross square feet;

(2) Specific criteria for typical classes of action which normally do require an Environmental Assessment:

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- (i) Potential minor degradation of environmental quality;
- (ii) Potential cumulative impact on environmental quality;
- (iii) Presence of hazardous or toxic substances;
- (iv) Potential violation of pollution abatement laws;
- (v) Potential impact on protected wildlife or vegetation;
- (vi) Potential effects on designated prime farmlands, wetlands, floodplains, or ecologically critical areas;
- (vii) Alteration of stormwater runoff and retention;
- (viii) Potential dislocation of persons or residences;
- (ix) Potential increase of average daily vehicle traffic volume on access roads to the site by 10 percent or more but less than 20 percent, or which alters established traffic patterns in terms of location and direction;
- (x) Potential threat or hazard to the public, or highly uncertain risks to the environment;
- (xi) Potential conflicts with Federal, State, or local environmental protection laws or requirements;
- (xii) Potential conflict with, or significant impact on, official local or regional zoning or comprehensive land use plans; and,
- (xiii) Overloading of public utilities with insufficient capacity to provide reliable service and for average and peak periods.

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### § 26.7 VA environmental decision making and documents.

(a) Relevant environmental documents shall accompany other decision documents as they proceed through the decision-making process.

(b) The major decision points for VA actions, by which time the necessary environmental documents must be completed, are as follows:

- (1) *Leases*. Prior to execution of lease agreement.
- (2) *Grants*. Prior to notification of grant award.
- (3) *Policy*. Prior to final approval of a policy which substantially alters agency programs and which affects the human environment.

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(4) *Legislative proposals*. Included in any recommendation or report to Congress on a legislative proposal which would affect the environment. The document must be available in time for Congressional hearings and deliberations.

(5) *Major, minor, minor miscellaneous delegated projects, and non-recurring maintenance projects*. Prior to contract award for working drawings or prior to in-house initiation of working drawings. If the Secretary of Veterans Affairs or designee makes a finding of compelling need, working drawings may commence prior to completion of the environmental compliance process. However, this will not preclude completion of environmental compliance prior to construction.

(6) *Land acquisition for development*. Prior to the Secretary's acceptance of custody and accountability (for Federal lands), or acceptance of offer to donate or contract for purchase (for private lands).

(c) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, VA must act in accordance with CEQ Regulations, 40 CFR 1506.11.

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### § 26.8 Assistance to applicants.

(a) The CEQ Regulations (40 CFR 1501.2(d)) provide for advising of private applicants or other non-Federal groups when VA involvement in a particular action is reasonably foreseeable. Such foreseeable actions involve application to a VA element by private persons, States, and local agencies and pertain primarily to permits, leases, requests for financial assistance, grants, and related actions involving the use of VA real property.

(b) VA involvement may be reasonably foreseeable when the following actions are initiated by non-Federal groups:

- (1) Easements and rights-of-way on VA land;
- (2) Petroleum, grazing, and timber leases;