

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****7 CFR Part 25****Rural Utilities Service**

**7 CFR Parts 1703, 1709, 1710, 1717, 1720, 1721, 1724, 1726, 1737, 1738, 1739, 1740, 1753, 1774, 1775, 1779, 1780, 1781, 1782, 1784, and 1794**

**Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency**

**7 CFR Parts 1924, 1940, 1942, 1944, 1948, 1951, 1955, 1970, and 1980**

**Rural Housing Service**

**7 CFR Parts 3550, 3555, 3560, 3565, 3570, and 3575**

**Rural Business-Cooperative Service****Rural Utilities Service**

**7 CFR Parts 4274, 4279, 4280, 4284, 4287, 4288, and 4290**

**RIN 0575-AC56**

**Environmental Policies and Procedures**

**AGENCY:** Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** Rural Development, a mission area within the U.S. Department of Agriculture comprised of the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS), hereafter referred to as the Agency, has unified and updated the environmental policies and procedures covering all Agency programs by consolidating two existing Agency regulations that implement the National Environmental Policy Act (NEPA) and other applicable environmental requirements. These final rules supplement the regulations of the Council on Environmental Quality (CEQ), the regulations of the Advisory Council on Historic Preservation

(ACHP), associated environmental statutes, Executive Orders and Departmental Regulations. The majority of the changes to the existing rules relate to the categorical exclusion provisions in the Agency's procedures for implementing NEPA. These changes consolidate the provisions of the Agency's two current NEPA rules, and better conform the Agency's regulations, particularly for those actions listed as categorical exclusions, to the Agency's current activities and recent experiences and to CEQ's Memorandum for Heads of Federal Departments and Agencies entitled "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" issued on November 23, 2010.

**DATES:**

*Effective date:* The effective date for the final rule is April 1, 2016.

*Applicability date:* For proposals that had a complete application submitted on or prior to April 1, 2016, either 7 CFR part 1794 or 7 CFR part 1940, subpart G, applies, as applicable. If the application was not complete prior to April 1, 2016, then 7 CFR part 1970 applies.

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**SUPPLEMENTARY INFORMATION:****I. Introduction and Background**

This section describes NEPA requirements, including the different levels of environmental review and how the Agency makes a determination regarding the appropriate level of environmental review. It also describes the Agency's mission and its existing NEPA-implementing regulations.

**A. National Environmental Policy Act**

NEPA (Pub. L. 91-190, 42 U.S.C. 4321-4370) established a national environmental policy to, among other things, "create and maintain conditions under which man and nature can exist in productive harmony" (42 U.S.C. 4331(a)); sets goals for the protection, maintenance, and enhancement of the environment; and provides a process for carrying out the policy and working toward those goals. NEPA also created the Council on Environmental Quality (CEQ), which was later directed, by Executive Order, to promulgate binding regulations to guide all Federal agencies in preparation of agency-specific regulations for implementing NEPA (Executive Order No. 11514, "Protection

and Enhancement of Environmental Quality" [March 5, 1970], as amended by Executive Order No. 11991, "Relating to Protection and Enhancement of Environmental Quality" [May 24, 1977]). The CEQ regulations are found at 40 CFR parts 1500-1508 (available online at: [https://ceq.doe.gov/ceq\\_regulations/Council\\_on\\_Environmental\\_Quality\\_Regulations.pdf](https://ceq.doe.gov/ceq_regulations/Council_on_Environmental_Quality_Regulations.pdf)) and are referenced in this preamble.

As set forth in CEQ's NEPA-implementing regulations, the NEPA process requires different levels of environmental review and analysis of Federal agency actions, depending on the nature of the proposed action and the context in which it would occur. The three levels of analysis are: Categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS).

A CE is a category of actions that each Federal agency determines, by regulation, does not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's procedures must provide for "extraordinary circumstances" in which a normally categorically excluded action may have a significant environmental effect. Examples of Agency CEs are routine financial transactions including but not limited to loans for purchase of real estate or equipment and small-scale construction. Even if a proposed action is classified by an agency as a CE, such proposed action is still screened for any extraordinary circumstances that would indicate a potential to have significant impacts. The CEs outlined in this rule are expected to have no or minimal environmental effects; however, extraordinary circumstances could include environmental effects limited or prohibited by other statutes, such as the Endangered Species Act or the National Historic Preservation Act, in a particular Federal action. If a CE applies, and the Federal agency determines that there are no extraordinary circumstances, the agency typically documents that determination in the project file. If, however, a CE applies and the agency determines that there are extraordinary circumstances, the agency would proceed to prepare an EA or an EIS.

An EA is prepared to determine whether the impacts of a particular proposal might be significant (40 CFR 1508.9). In an EA, the Federal agency briefly describes the need for the proposal, alternatives to the proposal, and the potential environmental impacts of the proposed agency action and alternatives to that action, including the no action alternative. An EA results in either a Finding of No Significant

Impact (FONSI) or a determination that the environmental impact may be significant and therefore an EIS is required.

A Federal agency is required to prepare an EIS for any major Federal action that may significantly affect the quality of the human environment (NEPA, 42 U.S.C. 4332(2)(C)). The EIS must include a detailed evaluation of: (1) The environmental impacts of the proposed action; (2) any adverse environmental effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and (5) any irreversible and irretrievable commitments of resources. NEPA requires that this evaluation be started once a proposal is concrete enough to warrant analysis and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect the consideration of environmental values.

#### *B. Agency's Mission*

By statutory authority, the Agency is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. The Agency supports these communities in a dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and new markets.

To achieve its mission, the Agency provides Federal financial assistance (including direct loans, grants, certain cooperative agreements, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. Like all Federal agencies, the Agency is responsible for determining the appropriate level of review for every proposed action it takes. As part of the Agency's environmental review responsibilities under NEPA, the Agency's responsible official examines an individual proposed action to determine whether it qualifies for a CE under the Agency's NEPA regulations. The Agency's process is consistent with that described in guidance issued by CEQ in 2010 on establishing, applying, and revising CEs ("Final Guidance for

Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act" (CEQ CE Guidance) (75 FR 75628)). This guidance states:

"When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation" in an EA or EIS (75 FR 75631).

The Agency requires applicants to describe their proposals in sufficient detail to enable the Agency to determine the required level of NEPA review. If the proposed action does not fall within an established CE or if there are extraordinary circumstances associated with the proposed action, the Agency's responsible official then determines if the action is one that normally requires the preparation of an EA or EIS. Those types of actions are specified in the Agency's final regulations.

If a proposed action, which is not a CE, does not normally require the preparation of an EIS, the Agency's responsible official will proceed to prepare an EA to determine if the potential environmental impacts of the proposed action may be significant. If the Agency concludes, based on the EA, that the impacts would not be significant, the Agency will prepare and issue a FONSI. If, however, the Agency concludes that the impacts may be significant, the Agency's responsible official will proceed to issue a notice of intent to prepare an EIS.

The Agency's procedures for determining whether to apply a CE or to prepare an EA or EIS and the manner in which those determinations are documented are set forth in the Agency's final NEPA regulations. To achieve the Agency's mission and to improve the delivery of its programs, the Agency consolidated and updated the existing environmental regulations into these final regulations to eliminate confusion between the two sets of NEPA regulations within the Agency, to promote consistency, and to facilitate NEPA reviews.

#### *C. Existing Agency NEPA Regulations*

Each Federal agency's NEPA implementing procedures are specific to the actions taken by that agency and supplement the CEQ regulations (40 CFR 1507.3). Both RBS/RHS and RUS

have promulgated Agency NEPA regulations. The Agency also completes various other review requirements for its programs under the umbrella of NEPA, including historic preservation reviews under 16 U.S.C. 470f of the National Historic Preservation Act, and consultation on federally-listed species under 16 U.S.C. 1536 of the Endangered Species Act.

The environmental policies and procedures that had been utilized by RBS and RHS to implement NEPA were published as a final rule by the Farmers Home Administration (FmHA) on January 30, 1984 (7 CFR part 1940, subpart G, 49 FR 3724) and were amended on September 19, 1988 (53 FR 36266). RBS and RHS are successor agencies to FmHA, which ceased to exist on October 20, 1994, pursuant to The Agricultural Reorganization Act of 1994 (Pub. L. 103-354). Also pursuant to this Act, the farm programs under FmHA were transferred to the Farm Service Agency (FSA) that was established by the 1994 USDA reorganization.

RUS was established as part of the same 1994 USDA reorganization that established RBS and RHS, and is comprised of Rural Electrification Administration (REA), Electric and Telecommunications Programs combined with the Water and Waste Program from the former FmHA. The environmental policies and procedures that had been applicable to RUS programs were published as a final rule on March 13, 1984, by the REA (7 CFR part 1794, 49 FR 9544), were revised and published as a final rule in 1998 (63 FR 68648) to accommodate the 1994 USDA reorganization, and have been amended through 2003 (68 FR 45157).

The Agency's existing regulations for implementing NEPA needed to be updated to reflect the Agency's current structure and programs, CEQ guidance documents, and Executive Orders. In addition, the Agency consolidated the Agency's approach to environmental reviews for all assistance programs within the USDA Rural Development mission area to promote consistency, rather than having separate NEPA procedures for RBS/RHS and RUS.

Under this final rule, 7 CFR part 1970 replaces 7 CFR part 1794 for RUS and 7 CFR part 1940, subpart G, for RBS and RHS. While 7 CFR part 1940, subpart G, no longer applies to RBS and RHS, it will continue to apply to FSA.

#### *D. Rulemaking Process*

The Agency published a notice of proposed rulemaking related to environmental policies and procedures on February 4, 2014 (79 FR 6740). At

that time, comments on the proposed rule were due no later than April 7, 2014. In response to a request, the Agency extended the comment period from April 7, 2014 to May 7, 2014 (79 FR 18482). The Agency received over 500 written comment letters from organizations and individuals during the public comment period. The Agency considered the comments individually and collectively and has modified the proposed rule in response to comments, as discussed more fully below.

**II. Purpose of Final Agency Environmental Regulations**

Under 7 CFR part 1970, subparts A through D, the Agency consolidates, simplifies, and updates the NEPA rules promulgated separately by RBS/RHS and RUS. Although some substantive policy changes were made to reflect recent environmental policies established by Executive Orders and CEQ guidance, the Agency's main goal is to update and merge the two sets of regulations, rather than to promulgate new rules or requirements. The Agency has determined that a consolidated environmental rule will be easier to read, understand, and use. In preparing the consolidated rule, the Agency sought to combine the requirements from both part 1940, subpart G, and part 1794 to eliminate redundancy; promote consistency among the RBS, RHS, and RUS programs; and reduce confusion on the part of applicants for Agency

financial assistance programs and the public.

The final changes are intended to (1) better align the Agency's regulations with the CEQ NEPA regulations and recent guidance, (2) update the provisions with respect to current technologies (e.g., renewable energy) and recent regulatory requirements, (3) promote consistency among the Agency's programs, and (4) reflect Agency practice.

The consolidation encompasses the CEs currently in part 1940, subpart G, and in part 1794. In addition, the Agency has modified and expanded its list of CEs in a manner consistent with CEQ regulations and guidance. CEQ encourages the development and use of CEs and has identified them as an "essential tool" in facilitating NEPA implementation so that more resource-intensive EAs and EISs can be "targeted toward proposed actions that truly have the potential to cause significant environmental impacts" (CEQ CE Guidance, 75 FR 75631). Appropriate reliance on CEs provides a reasonable, proportionate, and effective analysis for many proposed actions, thereby helping agencies reduce paperwork (40 CFR 1508.4) and delay (40 CFR 1508.5).

The final rule outlines the processes the Agency will use to ensure that Agency actions comply with NEPA and other applicable environmental requirements in order to make better decisions based on an understanding of

the environmental consequences of proposed actions, and take actions that protect, restore, and enhance the quality of the human environment. In this rule, NEPA review includes all applicable environmental review requirements such as those under the Endangered Species Act and the National Historic Preservation Act.

**III. Comments Received and Agency Responses**

The Agency received over 500 written comment letters from organizations and individuals. Almost all comment letters were submitted by rural electric cooperatives and associated organizations and were related to the application of the proposed rules to the RUS Electric Program. Approximately 70 commenters expressed support for the detailed comments submitted by the National Rural Electric Cooperative Association (NRECA), although several included additional substantive comments.

EarthJustice and the Natural Resources Defense Council (NRDC) also submitted detailed comments related to the RUS Electric Program. Comments were submitted by the Council for Rural and Affordable Housing, the National Association of Credit Specialists (NACS), and the Center for Equal Opportunity related to other aspects of the proposed regulations. Table 1 shows the major categories of comments received.

| Major comment category  | Affected NEPA rule sections                         |
|---|---|
| Definition of and NEPA compliance for loan-servicing actions and lien sharing   | § 1970.6, § 1970.8, § 1970.53.                      |
| CEs, including definition of extraordinary circumstances, proposed CE definitions, and inclusion of additional actions as CEs.                                  | § 1970.52, § 1970.53, § 1970.54.                    |
| EAs, including resources needed to determine appropriate level of NEPA documentation, use of environmental reports, public comment period, and supplementation. | § 1970.101, § 1970.102, § 1970.103.                 |
| EISs, including actions that require preparation of an EIS and procurement of environmental professional services for EIS preparation support.                  | § 1970.151, § 1970.152.                             |
| Authority to consider and impose mitigation measures  | § 1970.16.  |
| General NEPA compliance policy issues   | § 1970.4, § 1970.5, § 1970.9, § 1970.13, § 1970.14. |

The Agency received no comments on the following sections of the proposed rule and, in the final rule, is not making any substantive changes beyond those discussed in the Notice of Proposed Rulemaking: In subpart A, §§ 1970.1, 1970.3, 1970.10, 1970.11, 1970.12, 1970.15, 1970.17, and 1970.18; in subpart B, §§ 1970.51 and 1970.55; in subpart C, § 1970.104; and in subpart D, §§ 1970.153, 1970.154 and 1970.155. The responses to comments in this section of the Preamble do not reflect minor changes made in the final rule for purposes of clarity, format, or readability. These changes are

summarized in Section IV of the Preamble.

*A. Procedural Comments*

*Comment:* NRECA requested the Agency extend the public comment period for 60 days.

*Response:* The Agency extended the comment period on the proposed rule for 30 days, to May 7, 2014 (79 FR 18482).

*Comment:* NRECA, with numerous rural electric cooperatives expressing support for the NRECA comments (referred to hereinafter as NRECA et al.), also requested the Agency to modify the proposed rules and reissue them as a

revised draft for additional public comment.

*Response:* The responses to the public comments received on the proposed rule do not require and have not resulted in extensive changes to the proposed rule. A number of the changes clarify and reflect Agency practice under current Agency regulations. In addition, the public had a total of 60 days to submit comments on the proposed rule which, as noted, resulted in the receipt of over 500 comment letters. For these reasons, the Agency has determined that the public has had a sufficient opportunity to review and comment on the proposed rule and that

issuance of a revised draft is not warranted.

#### B. General Comments on Proposed Rule

*Comment:* A commenter stated that the proposed rule (§§ 1970.4, 1970.6, and 1970.14) appears to equate Native Hawaiians with Indian tribes, which is incorrect since the former classification is racial/ethnic while the latter is tribal.

*Response:* The references to Native Hawaiians, Native Alaskans, and Indian tribes used in the proposed rule are consistent with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, and applicable regulations (36 CFR part 800). For this reason, the Agency retains its proposed language and has made no modification to the proposed rule in response to this comment.

#### C. Modifications Related to Servicing Actions and Lien Sharing

*Comments:* A substantial majority (approximately 90%) of the comments received on the proposed rule were in response to proposed § 1970.8, “Actions requiring environmental review”—specifically proposed §§ 1970.8(b)(2) and (b)(2)(iii) relating to loan-servicing actions and lien sharing, respectively. These comments also referred to the related definition for loan-servicing actions in proposed § 1970.6. While the primary intent of the proposed rule was to consolidate the environmental rules of the three agencies (RBS, RHS, and RUS) that are under the Rural Development mission area, the overwhelming majority of the comments on these sections were directed at RUS’s Electric Program with respect to its borrowers.

The commenters had opposing viewpoints with respect to their recommendations for the definition and Agency handling of loan-servicing actions and lien sharing as a “major Federal action.” Some commenters wanted the definition of loan-servicing to be expanded and to include more Agency actions, such as “lien accommodations, lien subordinations and lien releases” and that such actions should be included as “major Federal actions.” They argued that when RUS chooses to share, subordinate, or release its lien on the assets of an existing borrower to allow that borrower to obtain new financing for new generation capacity (the example cited most often), RUS is providing that borrower with financial assistance that furthers the new generation project.

Other commenters, however, wanted the list of actions requiring environmental review in § 1970.8 to exclude most loan-servicing actions because they are actions that “involve

no reasonably foreseeable physical changes in the real world and are therefore unlikely to have the potential to significantly affect the human environment.” They also argued that RUS lacks sufficient Federal control and responsibility over any subsequent lien sharing for actions to be undertaken by borrowers that involve no direct Agency financial assistance. They stated that the proposed rule should define as “major Federal actions” only those actions likely to have an effect on the environment and that involve appropriate Federal involvement, control and responsibility. One commenter was not clear as to whether lien accommodations, lien subordinations, and lien releases are included within the definition of financial assistance or the definition of loan-servicing actions.

Of the commenters arguing to include loan-servicing actions as Federal actions requiring environmental review, and to expand the definition of loan-servicing, several of the commenters asserted that, in addition to all agency “consents” being loan-servicing actions, the regulation should further clarify that all “approvals” are also Federal actions, including approvals issued pursuant to existing loan contracts and mortgages. These commenters also stated that the definition should include decisions to grant a trust indenture that “allows third parties to take over administration of the loan contracts and mortgages governing an existing borrower’s debt.” The commenters’ concerns appeared to focus on the use of coal and its effects.

In contrast, a substantial number of other commenters stated that neither consents nor approvals should be Federal actions for purposes of NEPA. These commenters stated that consents and approvals routinely provided by RUS under its contractual agreements and security instruments do not involve construction and do not have the potential to foreseeably change the use of the property. Additionally, these commenters concluded that such actions were “unlikely to have the potential to significantly affect the human environment” and should not be considered major Federal actions. As one lender stated in its comments, loan-servicing actions aid lenders in facilitating the technicalities of their respective financing arrangements and, “by their very nature are not major federal actions” because they are routine in nature and “certainly lack the potential to meet the NEPA standard of significantly affecting the human environment.”

Several commenters stated that the proposed rule did not articulate any

rationale or justification for the “180 degree shift” in the Agency’s departure from its longstanding policy. Since 1998, RUS’s environmental regulations specifically stated that “[a]pprovals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of [the RUS NEPA regulations] and the provisions of [the RUS NEPA regulations] shall not apply to the exercise of such approvals” (7 CFR 1794.3).

*Response:*

#### Introduction

The Agency’s response to these comments addresses the following: (1) Use of the term “major Federal action” in the proposed rule; (2) a clarification and description of “loan-servicing actions” which includes processes for the collection of debt, methods for modifying existing debt, lien releases of security instruments, approvals and consents, and decisions related to the use of different security instruments, including trust indentures; and (3) the extent to which lien sharing and lien subordination require NEPA review.

It is important to note that loan-servicing actions and lien sharing are very different matters. In addition, lien sharing (also referred to as a lien accommodation) is different from lien subordination. Lien sharing and lien subordination are treated differently under the Agency’s final environmental rule as explained more fully below. For clarity, the Agency has modified and added to the definitions in § 1970.6 and has modified § 1970.8, which describes actions requiring environmental review.

This response also provides additional detail on the Agency’s final position on loan-servicing and loan security actions, including some historical background on the unique nature of the RUS Electric and Telecommunications Programs and the process by which the Agency monitors and administers the financial assistance until the end of a grant or until a loan or loan guarantee is paid in full. This discussion further supports the clarifications to §§ 1970.6 and 1970.8 in the final rule.

#### Major Federal Actions

The Agency has concluded based on comments received that it inadvertently introduced confusion by using the term “major Federal action” in proposed § 1970.8. Commenters seemed to interpret the use of that term as shorthand for “major Federal action significantly affecting the quality of the human environment” and thus as an

indication that the Agency proposed to prepare an EIS for all actions described in proposed § 1970.8(b). That was not the Agency's intention and the Agency has deleted the word "major" in the final rule to avoid confusion.

NEPA requires Federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment. . . ." 42 U.S.C. 4332(C). The CEQ regulations define "major Federal action" as including actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly. 40 CFR 1508.18.

Thus, actions over which a Federal agency has sufficient control and responsibility are Federal actions to which NEPA applies and for which environmental review is required. However, only those major Federal actions significantly affecting the quality of the human environment must be the subject of an EIS.

Agency actions that could have significant environmental impacts will be the subject of an EIS as described in § 1970.151. Agency actions that will not individually or cumulatively have a significant environmental impact are listed as CEs in §§ 1970.53–1970.55. Agency actions not within these categories will be the subject of an EA as described in § 1970.101. Actions over which the Agency does not have sufficient control and responsibility are not Federal actions and thus are not subject to NEPA.

#### Servicing Actions

The Agency has determined that the definition and treatment of loan-servicing actions needs further clarification in this final rule. The terminology itself is the first area of clarification. Although the comments received and the discussion thus far refer to "loan-servicing", it is recognized that the concept of servicing is not restricted to loans, but applies to guarantees and grants as well although the particular servicing actions may differ. Therefore, "loan-servicing" and "loan-servicing action" have been changed to "servicing" and "servicing action".

Proposed § 1970.6 defined "loan-servicing actions" as "[a]ll Agency actions on a particular loan after loan closing or, in the case of guaranteed loans, after the issuance of the loan guarantee, including, but not limited to transfers, assumptions, consents, or leases of Agency-owned real property obtained through foreclosure." In addition, proposed § 1970.8(b)(2) stated

that "[c]ertain loan-servicing actions" are "major Federal actions." After review of its servicing actions, the Agency has determined that the definition of the term "loan-servicing actions" needs to be revised in accordance with the plain meaning, industry usage, and to be more inclusive as noted above. Specifically, the Agency is clarifying that servicing actions are routine, ministerial, or administrative actions that are expected to occur as part of providing the particular type of financial assistance. As such, these actions fall within the original review of the financial assistance request, are not in and of themselves Federal actions requiring NEPA review, and will not be subject to new or additional NEPA reviews. The final rule reflects this clarification. This is consistent with past Agency pattern and practice, other federal agencies, industry standards, and the nature of servicing loans, loan guarantees, and grants after a financial assistance decision has been approved. Additional background in support of the change to servicing actions in the final rule is provided below. While the comments and the discussion below focus on RUS Electric and Telecommunications Programs, the final rule applies to all programs within the USDA Rural Development mission area that provide financial assistance.

NEPA is a procedural and planning statute under which Federal agencies are required to integrate the consideration of environmental values in their decision-making processes. Based on Agency experience and lending industry standards, its servicing actions involve routine, ministerial, or administrative standard actions related to direct financial assistance for which an appropriate NEPA review has already been conducted and on which a funding commitment decision has already been made. That is, the life cycle of financial assistance includes routine, ministerial, or administrative servicing activities that are conducted until the grant purpose ends or until a loan or loan guarantee is paid in full in accordance with the terms and conditions of its financial assistance documents, including security instruments. Servicing actions are an integral part of the Agency's obligation and responsibility for extending, managing, monitoring, servicing, and collecting its debt and assuring that its collateral is maintained. NEPA reviews for subsequent routine, ministerial, or administrative servicing actions would be not only duplicative of the NEPA review originally conducted for the financial assistance decision, but also

unnecessary because these actions have no potential to affect the human environment.

This definition of servicing actions is consistent with lending industry standards and Agency practice. In the lending industry, usage of the term "loan-servicing" relates to collection, disbursement, billing, and payments made to service a debt. The U.S. Treasury Department, Financial Management Service, *Managing Federal Receivables, A Guide for Managing Loans and Administrative Debt* (May 2005), states that basic servicing includes: Billing the debtor, processing and crediting payment, monitoring the account, timely responding to borrower inquiries, and providing agency management with regular aggregate reports on receivables and debt collection reports. Compromising, adjusting, reducing or charging-off debts or claims and modifying or releasing the terms of security instruments, leases, contracts, and agreements, are also routine collection activities available to the Agency pursuant to Section 1981(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)), the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, 3711–3720E). The Office of Management and Budget (OMB) requires federal lending agencies to vigorously pursue debt collection (OMB Circular A–129, *Policies for Federal Credit Programs and Non-Tax Receivables* (Jan. 2013)). It was not the Agency's intent in the draft rule to make these actions separate Federal actions requiring separate NEPA review.

As stated previously, the Agency reviewed its servicing actions, including its administrative "back office" actions. These servicing actions do not involve new projects, substantive changes to a project, new construction not reviewed under the original request for financial assistance, or a change in the use of the property that was the purpose of the original financial assistance. These servicing actions are for projects or facilities previously receiving financial assistance and the appropriate environmental review was conducted for the action prior to the time financial assistance was made. As a lender and as part of its due diligence and rural development mission, the Agency analyzes and assesses the risk that the proposed project will not be completed and that a loan would not be repaid. The Agency has specific statutory tools to deal with the risk of default after the funds have been advanced. The need for such servicing actions is known and contemplated at the time the financing is made and these actions are

considered part of one action, *i.e.*, providing financial assistance. The life cycle of financial assistance includes all of these activities from loan origination through final repayment and, in the case of a grant, through completion of the original purpose, evaluation of such purpose, and closeout of the grant. As a result, the Agency is clarifying that servicing actions are included within the original review of the financing and will not be subject to new or additional NEPA reviews in this final rule. As mentioned previously, this is consistent with past Agency pattern and practice, industry standards, and the nature of servicing loans, loan guarantees, and grants after financial assistance has been provided. This is consistent with the practices of the U.S. Department of Justice, the major collector of delinquent debt on behalf of the Federal government.

#### Actions on Delinquent Debt of Financially Troubled Borrowers

The Agency considers debt restructuring, as referred to by many commenters, as a generic term for actions authorized by statute, as previously discussed, including compromising, adjusting, reducing, or charging-off debts or claims, and modifying or releasing the terms of security instruments, leases, contracts, and agreements (Section 1982(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b))). In addition, many RD program regulations provide for specific workout options for financially troubled borrowers, such as debt rescheduling, consolidation, writedown, extended terms and/or reduced interest rates. All of these actions are included within the definition of servicing actions. Most often, when repayment of debt is in jeopardy, default, or a borrower is experiencing financial distress, some form of compromising, adjusting, reducing, or charging-off debts or claims is requested after the project is already completed. These actions are intended to avoid default on existing debt, improve the borrower's repayment ability, and maximize recovery to the Agency. Such actions relate specifically to financial assistance already made and advanced, and would not require separate environmental review. If, however, the Agency were asked to provide new financial assistance along with such debt restructuring, a new environmental review would be required for the new financial assistance.

#### Prepayments and Lien Releases of Security Instruments

When a borrower pays its debt in full or in part, the acceptance of the funds and any releasing of the secured lien is ministerial and non-discretionary. A majority of the Agency programs have agreements or promissory notes that allow prepayments. Generally, in the lending industry, a borrower has a right to prepay its debt in full or in part unless specifically prohibited in writing. When a borrower prepays its debt it is exercising its contractual rights. The Agency simply accepts the funds in a prepayment in accordance with the terms of the agreement or promissory note. As such, prepayments are included in the definition of servicing actions. Furthermore, the Agency is required generally by state law to release the applicable security instrument since it no longer has any debt that is secured. For this reason, a lien release is a ministerial action and not a separate action requiring a NEPA review. The term "lien release" is also included in the definition of servicing actions under "modifying or releasing the terms of security instruments, leases, contracts, and agreements."

#### Consents and Approvals

Consents and approvals the Agency may give pursuant to its contractual documents and security instruments are included within the definition of servicing actions. They are routine, ministerial, or administrative in nature. Further, they are assumed as part of the Agency's decision on its initial approval of financial assistance and the Agency's subsequent monitoring and administration of its debt and collateral, and have no potential to affect the quality of the human environment within the meaning of NEPA. For these reasons, no additional NEPA analysis and documentation is required.

The United States Court of Appeals, seventh Circuit has held that RUS, as a lending agency, can only protect itself and compensate for borrowers' risk of default by setting terms and conditions on its extension of financial assistance. See *Wabash Valley Power Assoc. v. Rural Electrification Administration*, 988 F. 2d 1480 (7th Cir. 1993). In Circular A-129, *Policies for Federal Credit Programs and Non-Tax Receivables* (January 2013), OMB advises agencies to have contractual agreements that include all covenants and restrictions necessary to protect the Federal Government's interest. RUS has established a unique contractual relationship with its borrowers and its general scheme of consents and

approvals are made to assure that its collateral is maintained during the term of its loan or loan guarantee.

RUS's Electric Program provides system financing to furnish and improve electric services to rural Americans in rural areas, as defined at 7 U.S.C. 901 *et seq.* Additionally by statute, RUS is required to certify that a loan will be repaid in the time agreed upon and is adequately secured. As such, RUS's contractual provisions and security instruments are focused on assuring that the loan funds are used for statutory purposes in rural areas and steps are taken to protect RUS's security. Since 1998, the existing RUS environmental regulation has specifically stated that "[a]pprovals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of [the RUS NEPA regulations] and the provisions of [the RUS NEPA regulations] shall not apply to the exercise of such approvals." (7 CFR 1794.3).

The Agency agrees with the substantial majority of commenters who believe that providing consents and approvals per se, does not make those consents or approvals additional or new Federal actions that have the potential to affect the quality of the human environment within the meaning of NEPA. To the contrary, RUS has reviewed the consents and approvals it may give pursuant to its contractual documents and security instruments and has determined that they are routine, ministerial, or administrative in nature and consistent with standard lending practices to protect collateral and maintain its first lien position. For example, consents and approvals for depreciation rates, accounting compliance, rates to members (sufficient to pay debt), contracts for operation and management, patronage refunds, transmission agreements, termination of franchises and territory, contracts for power supply and requirements or contracts for financial transactions all involve actions to protect the security of and repayment to the Federal Government. The Agency, as a lender, agrees with the substantial majority of commenters that its consents and approvals are not separate actions requiring environmental review, and in fact are known and contemplated within the context of standard lending processes and practices at the time the Agency decides whether or not to provide financial assistance. Therefore, these actions are included in the definition of servicing actions for a loan, loan guarantee, or grant. This is

consistent with RUS's past and current administrative pattern and practice.

#### Trust Indentures

Contrary to some commenters' assertions, RUS's decision to use a trust indenture as a security instrument is not a Federal action. Rather, as explained below, a trust indenture documents what collateral secures the debt and how the collateral will be maintained. As such, it is simply a documentation of the financial assistance decision, not a separate decision subject to additional NEPA analysis and documentation. The original provision of financial assistance is the Federal action.

Historically, RUS's Electric Program did not provide project financing but provided 100% system financing and took a secured first lien on an electric borrower's entire utility system through a system-wide mortgage. In the late 1960s and thereafter, due to limited RUS funding and because the utility industry is so capital intensive, most RUS borrowers began financing all or a part of their capital needs with commercial lenders. The use of trust indentures became more prevalent with RUS borrowers as RUS became unable to finance 100% of all of its borrowers' capital needs as it had in the past. A few commenters took issue with the use of trust indentures by some RUS borrowers, asserting that under an indenture, a trustee "take[s] over" "governing an existing borrower's debt," and that RUS delegates its administrative tasks to third parties. The Agency disagrees with this assertion, which is a misunderstanding of an indenture. A trust indenture, as used by lenders, is simply a shared security instrument.

The Administrator of RUS, for example, is required by the Rural Electrification Act to insure and certify that prior to making a loan, the security for the loan is reasonably adequate and that such loan will be repaid within the time agreed (7 U.S.C. 904). RUS has historically required its loans to be secured in order for them to be repaid according to the terms and conditions of its loan documents. A trust indenture secures the assets of a borrower for lenders in case of a default and sets terms (*i.e.*, financial ratios) for the debt to be secured once a lender has agreed to make a loan or guarantee a loan. The indenture trustee neither takes over the role of any lender nor governs the existing borrower's debt. The trustee's duties are ministerial and non-discretionary prior to a default.

As a result, the Agency also disagrees with the commenter's assertion that RUS delegates its administrative tasks to

third parties. This, again, is a misunderstanding of the nature of a security instrument, whether a mortgage or an indenture. If RUS is the actual lender or guarantor, the appropriate environmental review will be conducted for the project at the time a decision is made on whether or not to provide financial assistance. The type and use of security instruments, such as trust indentures, does not have any effect on the environmental review process completed at the time RUS makes a decision on whether or not to provide financial assistance. The use of an indenture by RUS and a borrower does not "outsource its decision-making authority."

The Agency does not agree that the use of a trust indenture "should itself trigger environmental review as appropriate." As stated previously, a trust indenture is merely one form of a security instrument that is executed and delivered to document and secure a debt after a determination is made to provide financial assistance. Just like a promissory note that documents repayment of the debt, a trust indenture documents what collateral secures the debt and how the collateral will be maintained.

#### Lien Sharing

The Agency has included a definition of lien sharing (referred to in comments as a lien accommodation) in the final rule. Lien sharing is an agreement between lenders to pro-rata payment on shared secured collateral without priority preference (see § 1970.6). As discussed below, it is not considered to be a servicing action. If, however, the Agency were asked to provide new financial assistance along with a request to share its lien, a new environmental review would be required.

The Agency agrees with commenters who argued that the Agency has no authority or control and responsibility over future actions to be taken as a result of a private lender's request for lien sharing and thus has clarified in the final rule (§ 1970.8(d)) that lien sharing is not a Federal action to which NEPA applies.

Any lien sharing for RBS, RHS and certain RUS programs would occur as part of the original request for financial assistance. These programs generally provide financial assistance for specific projects. The security for these projects relies on the project's revenues and assets for repayment of its debt. As a project financier, the Agency's focus is on the borrower, the Agency's security interest, and on the project financed until the financial assistance is repaid in full.

A project requires 100% funding in order to be completed to serve rural America. If the Agency does not fund the entire project, it is possible that it will need to "share" a first lien on the project with other lenders. Therefore, the sharing of the lien has already been anticipated and considered. As such, the appropriate NEPA review has been performed prior to the approval of financial assistance for the original loan or loan guarantee.

Lien sharing for RUS Electric and other Telecommunications Programs is unique. In these programs, RUS provides system-wide financial assistance to borrowers for furnishing and improving electric service to persons in rural areas and for the construction and improvement of facilities for telecommunication service in rural areas. It should be noted that there are instances where system-wide liens are taken in the Water and Waste Disposal Program. RUS relies on all of the borrower's revenues, and repayment is secured by a lien on all of the borrower's electric and telecommunications assets (*i.e.*, its entire utility system) at the time the first loan or loan guarantee is made. In addition, RUS takes a secured first lien on all assets subsequently acquired by the borrower. RUS typically makes multiple loans and loan guarantees to its borrowers. RUS tries to maximize repayment where repayment terms are initially set for 35 years and each subsequent loan or guarantee extends the term of its system-wide first lien for another 35 years. In these programs, lien sharing is expected after initial loans and loan guarantees are made.

In addition, for the Electric and Telecommunications Programs, RUS is not a lender of last resort. When considering its financial needs and timing of its projects, a borrower has options and choices that are solely within the borrower's discretion. The borrower can determine to seek financing from any lender at any time for any project. RUS has no influence or control over the outcome of these private transactions.

As RUS borrowers have utilized non-Federal lenders and incurred additional non-Federal debt, RUS could be over secured at any time during the long-term repayment period and RUS has become a minority debt holder. In order for RUS's Electric and Telecommunications Programs' borrowers to effectively and efficiently manage their business operations and financing, they have contractually agreed to give RUS a long-term secured first system-wide lien on all assets and all after-acquired assets, but they

reasonably expect and have relied on RUS to share its lien to facilitate the use of non-Federal funds for financing infrastructure.

In 1993, at the request of a private lender providing financing to an Electric Program borrower for a capital investment and as a result of legislation (7 U.S.C. 936e), Congress directed the USDA Secretary to expeditiously either offer to share the Federal Government's lien on the borrower's (if equity exceeds 110%) system or offer to subordinate the government's lien on the assets financed by the private lender. In the mandate to share the Federal Government's first lien, Congress intended for RUS's Electric and Telecommunications Programs' borrowers to have access to private-sector financing for facilitating infrastructure development. Congress also stated clearly that any regulations implementing this requirement were to focus only on maintaining reasonably adequate security for a RUS loan or loan guarantee. Sharing its first lien also shares the risk of lending with other lenders. RUS shares its lien on a pro-rata basis. The actual "sharing" only occurs following a default and enforcement remedy against the system or in the bankruptcy proceedings. Currently, RUS's Electric Program has a default rate of 0.04%. It is clear that Congress intended the sharing of the Federal Government's system-wide first lien to facilitate the use of non-Federal funds to finance infrastructure and that RUS's primary interests are repayment of the borrowers' debt. In following this Congressional mandate, and in actual practice as stated above, RUS lacks significant discretion and control or responsibility related to sharing its secured system-wide first liens and, as discussed below, any subsequent activities taken between the borrower and a non-Federal lender.

Some commenters suggested that RUS can "influence the type of generation its borrowers construct or acquire;" the Agency does not agree with this statement. RUS's Electric Program has approximately 550 borrowers, of which approximately 40 are involved in generation and most of those are not currently building new generation. Since 2003, RUS has provided 100% direct financing to a borrower for one coal plant and to two borrowers to purchase minority interests in coal-based generation facilities constructed by investor-owned utilities. RUS can only determine what projects or facilities for which it will provide financial assistance and cannot substitute its business judgment for that of its borrowers with regard to projects

or facilities for which the borrower seeks to use non-Federal financing.

RUS routinely consents to private-lender requests for sharing its lien unless it would adversely affect RUS's financial interests, *i.e.*, the borrower cannot repay its RUS loans or guarantees due to the new loan. If a RUS Electric Program borrower borrows non-Federal funds or places a lien on its system without RUS sharing, RUS's remedy is to sue the borrower for contractual breach or refuse to provide the borrower with any additional RUS financial assistance. RUS cannot directly control whether the borrower accepts private-sector financing and what it does with that financing.

For there to be a Federal action to which NEPA applies, there must be Federal control and responsibility. In the lien sharing context, the non-Federal lender provides the financial assistance and sets its own terms and conditions for the project it finances. Negotiation of any terms or conditions are between the lender and its borrower, and the non-Federal lender makes its own risk and security assessments. RUS cannot choose its borrowers' lender and is not a party to the lender's loan contracts or decision making. RUS's consent is not a prerequisite to construction, nor can RUS require the borrower to consider alternatives, change locations, or prevent, alter, or manage construction of the project. Because RUS does not have any permitting or independent regulatory authority, it has insufficient legal or regulatory control over what, where, or when a project will be constructed. In addition, RUS is a lender and not a regulator; therefore, the Agency does not have sufficient control and responsibility over the non-Federal lenders or borrowers or the non-Federally financed project to trigger NEPA review. All of those non-Federally funded projects are instead under the regulatory control and oversight of applicable Federal and state environmental agencies, laws, and regulations.

Therefore, in consideration of all the comments on this matter, the Agency has concluded that it does not have sufficient control and responsibility over projects or facilities that it does not finance. Simply sharing its first lien with a non-Federal lender is not a Federal action for purposes of NEPA, and such sharing does not "Federalize" the project.

#### Lien Subordination

Unlike lien sharing, lien subordination is a Federal action subject to NEPA review. Lien subordination is addressed in Circular A-129, *Policies*

*for Federal Credit Programs and Non-Tax Receivables* (January 2013), where OMB advises Federal agencies not to subordinate the Federal Government's interest since a subordination increases the risk of loss to the government because non-Federal lenders would have first claim on a borrower's assets. The Agency agrees that subordinating its lien is different from lien sharing, and is to be used sparingly since it imposes greater financial risk to the Agency since other creditors would have first claim on the borrower's assets. The Agency considers Subordination to be a form of financial assistance and will require the appropriate environmental review. The Agency has clarified this in the final rule (§ 1970.8), and has included a new definition of lien subordination (§ 1970.6).

#### Joint Ownership

Some commenters suggested changes to the percent of ownership thresholds for Federal actions (as described in § 1970.8(c)), or that there be additional flexibility in environmental review requirements at certain ownership levels. Response: The provisions in § 1970.8(c) are unchanged from those in 7 CFR 1794.20, based on the Agency's experience that the approach used has proven reasonable and not a burden to applicants. Furthermore, it is the Agency's experience that applicants having a minority interest in an action as defined in part 1794 and part 1970 is equivalent to having no control. Section 1970.8(c) remains unchanged in the final rule.

#### Approval of Planning Documents, Timing

Two commenters recommended that the Agency clarify that the approval of planning documents, such as construction work plans, is not a federal action subject to environmental review. Response: In accordance with 40 CFR 1505.1(b) and 1970.8(b)(1), the Agency has defined the Federal action and major decision point at which NEPA must be complete as the approval of financial assistance, not approval of planning documents (See 1970.8(b)(1)).

All of the Agency's programs require planning documents that, for example, define the purpose and need for the proposal, determine project eligibility, or address legal, financial, design, and environmental considerations during the underwriting process. Therefore, planning documents establish and define the basis for applications of financial assistance but are not major decision points for the purposes of NEPA and other environmental or historic preservation statutes and



regulations. That decision point is the approval of the request for financial assistance.

Another commenter asserted that the timing of the environmental review process could be changed to allow obligation of funds prior to completion of the environmental review. Response: The objective of NEPA and other statutes integrated into part 1970, are that Federal agencies consider the effects of their actions before decisions are made and before actions are taken. For example, in accordance with 40 CFR 1500.1(b), NEPA procedures must insure that environmental information is available to public officials and citizens *before* [emphasis added] decisions are made and *before* [emphasis added] actions are taken. In addition and in accordance with 36 CFR 800.1(c), the agency official must complete the section 106 process *prior to the approval of any Federal funds* [emphasis added] on the undertaking.” Based on these regulations and other requirements, the Agency has established that the approval of financial assistance is the Agency’s major decision point prior to which the environmental review process must be completed. In addition, the timing of the environmental review process is addressed at § 1970.11, and this section remains unchanged from the proposed rule.

#### Guaranteed Loans

Comments suggested that the proposed rule does not go far enough when considering projects involving loan guarantees. One commenter said guaranteed lenders should not be included in the definition of “applicants”, while another asserted that loan guarantee transactions have been erroneously included in the NEPA review process and should in fact be totally exempted from the process. Response: The Agency considers providing guaranteed loans as a form of financial assistance. This is consistent with Federal credit law and OMB policies (OMB Circular A–129). In addition, excluding Section 313A of the RE Act, as amended, part 1940, subpart G and part 1794 have classified guaranteed loans as “Federal actions” subject to NEPA since 1984.

#### Summary Revisions to Final Rule

In light of the discussion above, the Agency is revising proposed §§ 1970.6 and 1970.8 as described below. While the revisions address comments that primarily focused on RUS’s Electric and Telecommunications Programs, as stated previously, the final rules apply to all financial assistance programs (*i.e.*,

RBS, RHS and RUS) within the USDA Rural Development mission area.

The Agency is clarifying the definitions for financial assistance and servicing actions; and providing new definitions for lien sharing, lien subordination, loan, grant, loan guarantee, and cooperative agreement in the final rule (§ 1970.6). The definition of multi-tier action was revised to include similar Agency relending programs and actions. Both revised and new definitions are set forth in the regulatory text of this rule at § 1970.6.

In addition, the Agency is modifying § 1970.8 (1) to delete the word “major” from “major Federal action” to avoid confusion and to be consistent with CEQ regulations, (2) to make it clear that servicing actions do not require separate NEPA reviews, (3) to make it clear that lien sharing is not a Federal action for purposes of NEPA, and (4) to require that requests for lien subordination be subject to NEPA review. The Agency has revised § 1970.8(a) and (b) and added new paragraphs (d) and (e) as set forth in the regulatory text of this rule.

Further, the Agency has made conforming changes to § 1970.53(a) by deleting proposed § 1970.53(a)(1) referring to refinancing of debt and that portion of proposed § 1970.53(a)(5) that refers to servicing actions. As explained in detail in Section III.C, actions on debt are included in the definition of servicing actions in revised § 1970.6, and servicing actions are routine, ministerial, or administrative components of financial assistance and do not require separate NEPA review.

#### D. Specific Comments on Proposed Rule—Subpart A

##### Section 1970.4 Policies

*Comment:* One commenter requested that § 1970.4 be removed from the proposed rulemaking because it appeared to impose substantive obligations that are beyond the procedural mandate of NEPA as written, and likely to create ambiguity about the obligations of the Agency when implementing NEPA (*e.g.*, the borrower would be required, whenever practicable, to avoid or minimize “adverse environmental impacts” as well as to avoid conversion of wetlands and farmlands and development in floodplains (including 500-year floodplains)). The commenter also identified a perceived conflict between the use of the term “practicable” in § 1970.4(a) and another statement in the preamble of the proposed rule that stated that the modifier “practicable” is not to be used in the proposed rule in order to be consistent with CEQ

regulations. Finally, this same commenter identified § 1970.4(g), related to reductions in greenhouse gas emissions (GHG), as another example of ambiguity being introduced into the process by requiring an evaluation of opportunities to reduce a project’s potential emission of substantial quantities of GHG, where the Agency does not have the statutory authority under NEPA to require the reduction of GHG emissions. The commenter also stated that the Agency did not provide a clear definition of what would be considered a substantial quantity, and that, if the borrower were to exceed the unclear threshold, there would be no clear understanding on what reducing greenhouse gases to the “maximum extent feasible” would mean. The commenter recommended removal of this section entirely because the Agency does not have authority to require GHG reductions, and inclusion of this language is not consistent with CEQ regulations.

*Response:* The Agency has an obligation under NEPA to protect the environment and it is Agency policy to avoid funding projects with adverse environmental impacts and to minimize impacts where financial assistance is approved. The term “adverse” is not as broad as the commenter concludes, but rather is specific to the context of the various Executive Orders and statutes, such as Executive Order 11988 which is listed in § 1970.3(gg). While the term “practicable” is used in the rule language in § 1970.4 (“where a practicable alternative exists”), its use was explained in the preamble of the proposed rule that tied it directly to language found in Executive Order 11988; it is not specific to § 1970.4. Rather than prohibit the use of “practicable”, the Agency simply noted in the preamble to the proposed rule that the Executive Order uses “practicable” while NEPA requires the term “reasonable”. The terms are essentially interchangeable, as both involve the consideration of relevant constraints imposed by environmental, economic, legal, social and technological parameters (see also 7 CFR 1940.302(h) and 40 CFR 1505.2(b)). The Agency identified no inconsistency with use of the term “practicable”.

Regarding the language related to GHG reductions, the insertion of this Executive Order language is not regulatory but reflects new USDA policies and is consistent with Executive Order 13514 on Federal Sustainability that requires the Federal government to reduce GHG pollution by 28 percent by 2020; and by an even more recent Executive Order 13693

signed by the President on March 19, 2015, calling for even greater reductions in GHG (40 percent from 2008 levels over the next decade). The inclusion of GHG emission reduction language was also recommended by CEQ. No change has been made to the regulations in response to the comments relating to § 1970.4. However, the Agency recognizes the ambiguity in some of the phrasing related to GHG reductions in particular, and has developed additional guidance for applicants to further clarify how GHG emissions are to be considered and evaluated in applicant proposals.

*Comment:* Many commenters stated that the policy statement regarding the need for electric generating facilities (which are identified as critical actions/facilities in § 1970.6) to avoid development within the 500-year floodplain exceeded the requirements of NEPA and Executive Order 11988 (Floodplain Management). Some commenters also wanted the Agency to recognize that many of the areas served are rural, less-developed, and much more prone to be within the 500-year floodplain than more urban and developed areas. Commenters stated that the Agency should recognize that adequate protection measures can be implemented in the 500-year floodplain without requiring burdensome practicability analyses, and that the Agency should change the rule to prohibit development within the 100-year floodplain instead of the 500-year floodplain. They also requested clarification on how an applicant is supposed to show “demonstrated significant need” to justify development within the floodplain.

*Response:* The proposed 500-year floodplain language is consistent with guidance from the Federal Interagency Floodplain Task Force to all Federal agencies in implementing Executive Order 11988. While Executive Order 11988 itself does not discuss critical actions within the 500-year floodplain, the Water Resources Council Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) do, in their discussion of Step 1 of the 8-step decision-making process. The definition of critical action is sufficiently comprehensive and consistent with the definition issued by FEMA in 44 CFR 9.4 (Floodplain Management and Protection of Wetlands, Definitions). The Agency does not consider the proposed language to be a prohibition. The statement—“unless there is a demonstrated, significant need for the proposal and no practicable alternative exists”—provides sufficient flexibility

in considering specific project actions in the Agency’s decision-making capacity. The key is that the applicant and Agency need to demonstrate that there is no practicable alternative to locating there, with the 8-step process essentially providing the means to do so. The facility would also have to be designed to a higher protection standard, and have flood evacuation plans, including identification of access roads that would be usable during a flood. The Agency wishes to maintain consistency with the Federal guidelines and has not changed the rule to prohibit development within the 100-year floodplain, instead of the 500-year floodplain, as requested. That said, the Agency also acknowledges that some of the phrasing in the rule may be too limiting and has eliminated the phrase “there are no exceptions to this policy” in the last sentence of § 1970.4(a). The revised language is consistent with the USDA Departmental Regulation 9500–3 (Land Use Policy, issued March 22, 1983), § 6(i), Responsibilities: “When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or floodplains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon floodplains, unless (1) there is demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly or indirectly.”

Additionally, Executive Order 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, January 30, 2015) modifies and expands upon Executive Order 11988, establishing a new flood risk management standard, and acts to revise the Water Resources Council’s Floodplain Management Guidelines. The Agency also wishes to be consistent with this Executive Order and associated standards and guidelines.

No other changes have been made to the regulation in response to these comments.

#### Section 1970.5 Responsible Parties

*Comment:* Many commenters recommended that the provision for applicants to cooperate with the Agency on achieving environmental goals as a requirement for financial assistance is not appropriate in the NEPA rule.

*Response:* The Agency has an obligation under NEPA to protect,

restore and enhance the environment and it is Agency policy to avoid or minimize funding projects with adverse environmental impacts. The intent of part 1970 is to provide a necessary framework for the consideration of environmental impacts of its actions. There is no intent to condition financial assistance on anything other than the action under consideration and only those actions over which the Agency has control and responsibility. The proposed language in § 1970.5(b) was specifically provided to address uncooperative applicants and applicants which provide insufficient documentation on those projects requiring applicant-prepared documentation. In either instance, if the applicant does not provide a complete information package, the Agency cannot complete the necessary environmental impact analysis and process the application. For these reasons, no changes were made to the regulation in response to these comments.

#### Section 1970.6 Definitions

*Comment:* Many commenters requested clarification on the definition of loan-servicing actions.

*Response:* These comments have been addressed in a separate discussion relating to NEPA compliance for loan-servicing actions in Section III.C of this preamble.

*Comment:* Another commenter requested clarification of the definition for “previously disturbed or developed land,” specifically as it related to another description of previously disturbed land found elsewhere in the preamble. This commenter also requested clarification on what is considered mitigation under the proposed regulations and recommended that a definition of mitigation be included in § 1970.6. A third commenter was confused about whether the categories of “environmental reports” currently used by RUS will continue to be used.

*Response:* The Agency agrees that the definition of previously disturbed or developed land should be clarified and has modified the language accordingly. With respect to mitigation, the Agency did not include a definition in § 1970.6 in the final rule because it considers the definition of mitigation found in the CEQ regulations at 40 CFR 1508.20 as the controlling definition and there is no need for duplication. However, the Agency will provide further clarification and examples of types of mitigation in guidance documents for applicants; this guidance will be available on the Agency’s Web site. See also related

comments and responses in § 1970.16 Mitigation.

Regarding use of the term “environmental report,” the Agency has reconsidered and decided to continue to use this term. In the final rule, the term “environmental report” (ER) is being used to apply only to the environmental documentation required for CEs classified in § 1970.54. A definition of environmental report has been added to the final rule (§ 1970.6) to clarify its meaning and use.

#### Section 1970.8 Actions Requiring Environmental Review

*Comment:* All of the comments received on the proposed section, which comprised the majority of comments on the proposed rule, were in response to § 1970.8(b) relating to the inclusion of loan-servicing actions as “major Federal actions.”

*Response:* These comments have been addressed in a separate discussion relating to NEPA compliance for loan-servicing actions in Section III.C of this preamble.

#### Section 1970.9(c) Levels of Environmental Review

*Comment:* Many commenters stated that the language used to describe “connected actions” in § 1970.9(c) went beyond what the CEQ regulations provide with respect to the Agency’s use of the term “closely related.” While CEQ regulations describe “connected actions” to be “closely related,” CEQ goes on to provide three specific tests and does not use “closely related” as part of any test for determining whether an action is connected. Commenters were particularly concerned about fully integrated electric transmission systems where many projects that are not “connected” could be interpreted to be “closely related” because they occur near one another in time or space or are each solving different parts of a local or regional problem. The commenters recommended that the Agency only provide that the scope of analysis for EAs and EISs will include “connected actions” as defined by CEQ. Another commenter requested that the Agency clarify the roles and responsibilities of each entity, when multiple organizations are involved in developing a single environmental document, and also consider providing guidance on how to determine the analysis boundaries for connected actions.

*Response:* Section 1970.9(c) is fully consistent with the CEQ regulations at 40 CFR 1508.24, which requires a scope of actions that are closely related (*e.g.*, connected, similar, cumulative) to be

analyzed in the same NEPA document in order to fully assess the potential combined and cumulative impacts of these actions. In particular, determining whether an action is “connected” involves considering whether an action would automatically trigger another action, would not or could not proceed unless other actions were taken previously or simultaneously, or are interdependent parts of a larger action (40 CFR 1508.24(a)(1)). However, to ensure clarity on the issue, the Agency has deleted the term “closely related” in § 1970.9(c) because, as noted by commenters, “closely related” is already included in the definition of “scope” under “connected actions” in 40 CFR 1508.25. In addition, while not all closely related actions may be connected actions under 40 CFR 1508.25, they could be similar or cumulative and, if so, should be analyzed in the same NEPA document, at least as part of a cumulative impact assessment.

As part of the scoping process and its responsibility to emphasize interagency cooperation and public involvement in evaluating the environmental considerations of its actions, the Agency will work with all appropriate entities on jointly funded, specific actions in determining the scope of analysis for each action to be considered in preparing a single environmental document. Determining the scope of each action applies to CEs as well as EAs and EISs. CEQ has issued guidance to ensure that connected actions and related actions with cumulatively significant impacts are considered in the same NEPA document, including CEs (*Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*, 75 FR 75628).

The Agency will request additional information, on an as-needed basis and using its discretion and expertise, from the applicant and other agencies to determine the scope of the action to be analyzed. Respective roles and responsibilities would also be defined, possibly through a memorandum of understanding or similar document. No additional Agency guidance is necessary at this time.

The Agency has made a similar conforming change to § 1970.51(b)(3) to clarify the applicability of a CE relative to cumulative actions.

#### Section 1970.9(d) Levels of Environmental Review

*Comment:* A commenter stated that the submittal of construction work plans

by an applicant is a form of application for funding and, in accordance with § 1970.9(d), will require environmental documentation at the time of submittal (“the Agency may request any additional environmental information at or prior to the time of approval”). However, the proposed rule does not clearly state what environmental documentation is required when submitting a construction work plan. As noted in § 1970.6, projects identified in construction work plans can have long lead times, which means they can change in scope over time or may never occur. As a result, the commenter stated that multiple unavoidable revisions would need to be made to NEPA documents for projects contained in construction work plans and requested that § 1970.9(d) in the final rule require that only a determination of future NEPA requirements be made for these projects.

*Response:* The Agency understands that the processing requirements for construction work plans/loan designs are different than the single project/single application/single loan process more typical of many Agency programs. Construction work plans, for example, are a prerequisite to a loan application for some programs. The Agency also understands that construction work plan descriptions of projects often lack sufficient information to provide a preliminary NEPA classification, and this is the reason that the Agency may request additional information on multi-year project construction as specified in § 1970.9(d). Such requests could include information on project construction (*e.g.*, percent pole replacement on transmission line rebuilds) or maps/other environmental resource information to correctly classify a project. The Agency expects that this type of information can be gathered through public database searches, *e.g.*, facility locations relative to federally-designated critical habitat, federally-owned/managed lands, tribal lands, etc. The final rule language does state that additional environmental information may be required at this stage of the financial assistance application process, recognizing that different types of documentation are required at various stages in the application and approval process. For example, if after review of a construction work plan, the Agency determines that a proposed action may be eligible for a CE under § 1970.54, the Agency would ask the applicant to provide an environmental report (see below) in order to determine if there were extraordinary circumstances that would prevent the application of the CE.

The Agency is now using the term “environmental report,” previously required by RUS in support of both CEs that required the preparation of ERs and EAs, as the environmental documentation that is required to support a proposed action’s classification as a CE classified in § 1970.54, and only a CE. A new definition of environmental report has been added to § 1970.6. If the Agency determines the proposed action should be the subject of an EA, the Agency would ask the applicant to prepare the EA in accordance with § 1970.102. No changes have been made to the rule language except to the final sentence in § 1970.9 to clarify that any request for additional environmental information would occur prior to the time of loan approval.

#### Section 1970.13 Consideration of Alternatives

*Comment:* A commenter recommended that the Agency consider a full range of alternative solutions to a given need, and to consider alternatives such as energy efficiency and distributed generation where the need is generation- or transmission-based. The commenter stated that not only are these solutions economically and technically feasible, they are often the easiest to procure and cost the least.

*Response:* The Agency will consider all reasonable alternatives to the proposed action, where reasonable alternatives would include those that meet the underlying purpose and need to which the Agency is responding. No change has been made to the regulation in response to this comment. However, the Agency has developed additional guidance relating to alternative development and analysis for electric generation and transmission projects that addresses the need to consider a full range of alternatives, including load management, energy conservation, and other generation technologies (e.g., natural gas, nuclear, wind, solar). This guidance is available on the Agency’s Web site.

#### Section 1970.14 Public Involvement

*Comment:* A commenter stated that non-Federal parties under proposed § 1970.14 may try to utilize the proposed rules simply to block the development of certain properties (e.g., housing for low-income, elderly and disabled persons).

*Response:* Public involvement is an important component of the NEPA process. That participants in the NEPA process may oppose a proposed action is not a valid reason to curtail public involvement. Blocking a proposed

action can be achieved when the Federal agency fails to comply with NEPA, including failing to ensure public comments are sought and considered. This rule does not provide a formal appeal process per se, but one objective of NEPA and other related environmental statutes, regulations, and Executive Orders, is to provide for public involvement activities. Section 1970.14 provides for these public involvement processes. No change has been made to the regulation in response to this comment.

#### Section 1970.16 Mitigation

*Comment:* Commenters questioned the Agency’s authority to consider and impose mitigation measures. They stated that the Agency should recognize that its ability to impose substantive mitigation requirements must be based on some other legal authority and not as a function of NEPA which is a procedural statute. They also stated that, while agencies must analyze possible mitigation measures, those measures need not be legally enforceable, funded or even in final form to comply with NEPA’s procedural requirement, as recognized in a CEQ 2011 guidance letter referenced by the commenters. The CEQ letter stated that agencies should not commit to mitigation measures if there are insufficient legal authorities or if it is not reasonable to foresee the availability of sufficient resources to perform or ensure performance of mitigation.

*Response:* Although NEPA is a procedural statute, the Agency notes that it also has an action-forcing component in Section 102(2)(c). Further, courts have recognized that the absence of a discussion of possible mitigation in NEPA documents undermines this action-forcing component. Additionally, 40 CFR 1505.3(a) and (b) state that agencies shall “include appropriate conditions in grants, permits or other approvals” and “condition funding of actions on mitigation”.

Under its organic statutes, the Agency has authority to impose reasonable terms and conditions on its provision of financial assistance. As a condition to receiving financial assistance, the Agency can require substantive mitigation measures to reduce potential environmental impacts. Mitigation measures, for the purposes of NEPA, do not include those measures that are otherwise required by Federal, state, or local statutes or regulations.

Regarding the request to add a definition of mitigation to § 1970.5, the Agency does not see a need because it would simply duplicate the definition

of mitigation already included in the CEQ regulations at 40 CFR 1508.20. However, the Agency has developed examples of types of mitigation (e.g., spatial or temporal construction restrictions based on the presence of endangered species) to include in Agency guidance documents available on its Web site. Such guidance also addresses the development and use of formal mitigation plans by applicants and the Agency, to include oversight roles and responsibilities for mitigation implementation. No changes to the regulation have been made in response to this comment.

#### E. Specific Comments on Proposed Rule—Subpart B

##### Section 1970.51 Applying CEs

*Comment:* Commenters stated that the Agency exceeded CEQ requirements in the discussion of cumulative actions and cumulative effects as discussed in § 1970.51(b)(3). They state that CEQ requires an agency to consider cumulative actions but does not apply any “related to” standard. Rather, the courts consider a number of factors to help determine whether an action is a cumulative action that should be considered with a proposed action. Commenters requested that the expanded scope of analysis be removed and the Agency simply incorporate or refer to the CEQ requirement.

*Response:* With respect to the language in § 1970.51(b)(3) relating to cumulative actions and effects, the Agency agrees that the proposed rule language needs further clarification. The Agency has clarified § 1970.51(b)(3) to better describe the applicability of a CE relative to cumulative effects, consistent with 40 CFR 1508.25(a)(2).

However, it is important to point out that the purpose of § 1970.51(b)(3) is to ensure that connected actions and related actions with cumulative significant impacts are considered in the same NEPA analysis, including a CE. An applicant may not split up one proposed action into smaller parts in an effort to qualify for a CE, rather than preparing an EA (or an EIS). CEQ has issued guidance which specifically addresses this potential occurrence:

“When developing a new or revised categorical exclusion, Federal agencies must be sure the proposed category captures the entire proposed action. Categorical exclusions should not be established or used for a segment or an interdependent part of a larger proposed action. The actions included in the category of actions described in the categorical exclusion must be stand-alone actions that have independent utility”. *Final Guidance for Federal Departments and Agencies on Establishing, Applying, and*

*Revising Categorical Exclusions under the National Environmental Policy Act (75 FR 75632).*

The Agency recognizes that applicant proposals may be related (such as for integrated infrastructure), although not connected. As long as the proposals have independent utility, they would not be considered as connected actions. However, if the proposals, taken together, could have cumulatively significant impacts, the Agency would be required to prepare an EA (or an EIS). No other changes have been made to the regulation in response to this comment.

#### Section 1970.52 Extraordinary Circumstances

*Comment:* One commenter requested clarification on whether the crossing of a waterbody with a special use designation would qualify as a CE under the proposed rulemaking.

*Response:* Based on the information provided, a state special use water designation would fall within the definition of extraordinary circumstances in § 1970.52(b)(4)(v), areas having formal Federal or state designations. The Agency would need additional information on the specific project before making a determination as to whether application of a CE was appropriate. The critical issue is whether there is an “adverse effect” on “specially designated waters” from the crossing, not simply its presence.

*Comment:* Another commenter requested a definition of the term “important” as it relates to sensitive resources in § 1970.52, clarification as to whether the presence of a sensitive resource or the occurrence of an adverse impact will trigger an EA, and asked whose opinion would be used to determine the trigger for an EA—the Agency or the agency which had regulatory authority over the sensitive resource in question.

*Response:* The term “important” is not used in § 1970.52. It is used in the preamble to the draft regulations, in the context of important farmland. Important farmland is defined by the USDA Natural Resources Conservation Service in Departmental Regulation 9500–3, and reference to important farmland is also currently included in the existing Agency rules at 7 CFR 1794.6 and 7 CFR 1940.304.

The presence of an extraordinary circumstance would typically require the preparation of an EA to determine whether the proposed action could pose significant environmental impacts. However, the Agency also recognizes that there may be a situation where a sensitive resource is present, but it is clear there would be no environmental

impacts from the proposed action. Thus, the trigger for an EA or an EIS would be present if the Agency, after consultation with the appropriate regulatory or natural resource agency, concludes the impacts would be significant. Therefore, determining effects to the listed resource or situation in § 1970.52 is based on both the presence of a special resource and the proposal’s potential to cause significant adverse environmental effects on that resource. Section 1970.52(c) has been deleted and Section 1970.52(a) revised to clarify that a higher level of NEPA review would be triggered “in the event of an extraordinary circumstance,” rather than “in the presence of an extraordinary circumstance.”

It is the Agency’s sole responsibility to determine whether to prepare an EA (or an EIS) and not apply a categorical exclusion. As needed, the Agency could consult with the appropriate agency with expertise on the resource to assist in the determination.

#### Section 1970.53 CEs Involving No or Minimal Disturbance Without an Environmental Report

*Comment:* Many commenters stated that the proposed rule included no discussion of how the Agency would document the CE process at the time the decision is made, thereby putting the Agency’s determination at risk of being classified as a post-hoc rationalization in any subsequent litigation. The commenters also stated that the Agency should require concise documentation supporting CE decisions but also not impose too onerous a burden on documentation.

*Response:* It is important to clarify that there are two types of documentation related to CEs. First, for those CEs listed in § 1970.53, applicants are not expected to submit any environmental documentation in most situations. The Agency, however, reserves the right to request additional documentation from applicants if needed to support their determinations. For those CEs listed in § 1970.54, CEs involving small-scale development, applicants are required to submit an environmental report to the Agency. The titles of these two subsections have been edited to clarify whether an environmental report is required, e.g., § 1970.53 CEs involving no or minimal disturbance without an environmental report and § 1970.54 CEs involving small-scale development with an environmental report. Section 1970.54 identifies the minimum documentation requirements an applicant must provide. The Agency has developed applicant guidance for preparing an

environmental report required for these actions. This guidance is available on the Agency’s Web site.

Second, for all CEs, the Agency will prepare internal documentation for its files to demonstrate that, prior to a decision to approve an action with a CE, the Agency considered the potential for extraordinary circumstances and determined whether the application of a CE was appropriate in the circumstances. The Agency’s internal documentation will include a description of the proposed action, rationale for why the proposed action fits within a CE, and confirmation that no extraordinary circumstances exist. The details associated with this Agency requirement are addressed in internal Agency guidance for staff. Such Agency guidance has been developed and includes a CE form that will be used by Agency staff to document application of CEs. No change has been made to the final regulation in response to this comment.

*Comment:* A commenter stated that some actions in § 1970.53 have the potential to result in adverse impacts and should require documentation. This commenter used an example of financial assistance that enabled an existing coal plant to continue operations, which could result in greater impacts than enabling the same coal plant to expand operation at greater capacity than before. The commenter recommended that the Agency require environmental documentation for RUS’s loan-servicing actions and for its loans for upgrades to generation facilities because many of these actions have the potential for extraordinary circumstances.

*Response:* Routine financial transactions that provide financial assistance to existing businesses or other entities to facilitate their continuing operations (with no expansion of size or capacity) are categorically excluded under § 1970.53(a) because they do not impose or facilitate the imposition of any new environmental impacts. If the Agency had been involved in the financing for the original construction of the facility, a NEPA document would likely have been prepared at that time. Financial assistance for the expansion of an existing coal plant, as described in the comment, would not qualify for a CE under § 1970.53. The Agency’s position on loan-servicing actions, in general, is addressed in the discussion under § 1970.8 and in Section III.C. No change has been made to the regulation based on these comments.

*Comment:* A commenter recommended that the Agency expand the list of CEs in § 1970.53, involving no

or minimal disturbance, to clearly include the collocation of telecommunications facilities and promote deployment of distributed antenna systems and small cell networks. The commenter stated that collocation of telecommunications facilities on existing infrastructure accelerates deployment of broadband networks without the need to develop duplicative, potentially environmentally disruptive new sites. The commenter provided examples from other agency regulations, including a similar U.S. Department of Energy (DOE) CE at 10 CFR part 1021 Appendix B4.7.

*Response:* The Agency agrees with the commenter and has added a new CE at § 1970.53(d)(5) in the final rule to categorically exclude the collocation of telecommunications equipment and deployment of distributed antenna systems and small cell networks provided that the latter technologies are not attached to and will not cause adverse effects to historic properties. Related revisions were also made in the final rule to § 1970.53(d)(1), which categorically excludes upgrading and rebuilding existing telecommunication facilities (both wired and wireless) or the addition of aerial telecommunication cables to electric power lines, and the new § 1970.53(d)(2), which categorically excludes burying facilities for communication purposes in previously developed, existing rights-of-way. Additional language has been added to this CE to indicate that its use is intended for areas already committed to urbanized development or rural settlements. The Agency has determined that adding additional aerial cables on existing electric power lines, whether at distribution or transmission voltages, has minimal or no potential for affecting environmental resources. Construction activities related to adding an additional cable to existing structures, based on Agency experience and other Federal agency practice, typically occur on previously disturbed, existing rights-of-way similar to routine maintenance activities by utility crews.

#### Section 1970.53(a) Routine Financial Actions

CE § 1970.53(a)(1) [Related to Refinancing of Debt]

*Comment:* Many commenters recommended that the Agency revise the CE in three ways: (1) Clarify that the debt refinancing covered by the CE is limited to when RUS provides the refinancing or continues to extend credit to the borrower under the refinancing; (2) clarify that because debt

refinancing may be undertaken in a debt restructuring, the Agency should include both debt refinancing and debt restructuring in the CE; and (3) remove the proviso that the CE does not apply if the applicant is using refinancing as a means to avoid compliance with environmental requirements. Rather, the commenters stated, the Agency should use the “extraordinary circumstances” review to ensure that refinancing or restructuring does not include a feature that makes the exclusion inappropriate. Other commenters asked for clarification on what refinancing actions are covered by this CE, and requested that the proposed rule specify that debt refinancing may require an environmental review, depending on both the nature and purpose of the refinancing.

*Response:* Based on the number of comments received, this section requires clarification. The Agency reviewed the nature of and use of refinancing. Prepayments, as previously discussed, are different from refinancing. “Refinancing” to simply change an interest rate is a servicing action. There are no changes in the scope of the project as originally approved and financed, or no new projects or facilities requiring a new NEPA review. RBS, RHS and RUS each have limited or no authority to “refinance” in this manner.

Another type of refinancing occurs if the Agency provides financial assistance to pay off all or a portion of existing debt and the refinancing involves new projects or facilities. At the time the Agency makes a decision to refinance and to provide financial assistance for the new project or facility, the appropriate NEPA review would occur in accordance with § 1970.8(b)(1).

Yet another type of refinancing or other financial assistance involves financing provided by a non-Federal lender and is generally referred to as “up-front,” “bridge,” “construction,” or “interim” financing. These actions usually involve short-term temporary financing. The purpose of the temporary financing is that it provides a bridge to and is to be replaced by the Agency at a specified time. The Agency’s financial assistance is a replacement of the temporary financing with permanent long-term financing. In all of these cases, the Agency knows in advance that the applicant will request permanent long-term Agency financial assistance, and the applicant and the Agency conduct the appropriate NEPA review before any Agency financial assistance is approved. These actions are covered under § 1970.8(1),” providing financial assistance.” For

these reasons, the Agency is deleting “refinancing of debt” as a CE in § 1970.53(a).

Debt restructuring is a generic term that includes compromising, adjusting, reducing, or charging-off debts or claims and other debt workout options. These types of actions are also included within the definition of servicing action in § 1970.6. However, if additional financial assistance is requested along with any such actions, the Agency would undertake the appropriate NEPA review at that time.

CE § 1970.53(a)(5) [Related to Loan-Servicing Actions]

*Comment:* A commenter identified a potential inconsistency between § 1970.9(c) which requires the Agency to complete a single environmental document evaluating an applicant’s proposal and other activities within the scope of analysis, and § 1970.53(a)(5), which the commenter says seems to allow (and in fact requires under some circumstances) at least two separate reviews. The commenter stated that the Agency cannot take an action but defer some portion of the NEPA analysis to a subsequent review. If what the Agency intends is that an appropriate environmental analysis will occur for a separate and later Agency action, the Agency should remove references to “such actions” and “separate environmental review” in this CE. Commenters also expressed confusion about the Agency’s reference to “such actions [not being] ripe for immediate review” and whether it was referring to a loan-servicing action or to reasonably foreseeable construction or changes in operation. Further, as noted in Section III.C, many commenters did not agree with the Agency’s inclusion of loan-servicing actions as major Federal actions requiring NEPA analysis.

*Response:* As explained in Section III.C, servicing actions are directly related to financial assistance and do not require separate NEPA review. Sections 1970.6 and 1970.8 have been revised to clarify the definition and treatment of servicing actions, and conforming changes have been made to § 1970.53(a)(5). Specifically, the Agency is removing servicing actions as a CE in § 1970.53(a)(5) in the final rule. Other revisions to proposed § 1970.53(a)(5), re-numbered as § 1970.53(a)(4) in the final rule, include removal of the last sentence relating to actions not being ripe for immediate review to help eliminate any confusion related to this matter.

With respect to § 1970.9, there is no inconsistency between § 1970.9 and § 1970.53(a)(5) in the proposed rule.

Section 1970.9 simply explains the three types of NEPA reviews: CE, EA and EIS. Subsection (c) notes that, for each type, the Agency will evaluate the proposal and closely related actions in the same NEPA document. Proposed § 1970.53(a)(5) described one type of action that is categorically excluded from formal NEPA documentation, although not NEPA review. To the extent that separate reviews are required, they would occur at different times and under different circumstances. See also the discussion of modifications to § 1970.9(c), above.

*Comment:* A commenter was unable to find where § 1970.53(a) covered subsequent loans for project cost overruns and recommended that, if it was not covered, then it needed to be cited as a CE without documentation.

*Response:* Providing subsequent loans for project cost overruns was not specifically addressed in the draft rule but has been added to the final rule as a CE without documentation. Additional funding for a cost overrun would involve financial assistance and thus is subject to NEPA review. However, a request for additional funding to address a cost overrun where there is no substantial change to the original proposal would be eligible for a CE, and added as a new CE in § 1970.53(a)(5). This addition is consistent with the CE currently included in 7 CFR 1794.21(c)(4).

#### CE § 1970.53(c) Minor Construction Proposals

*Comment:* One commenter stated that the 15-acre land-clearing threshold for minimal disturbance under proposed § 1970.53(c)(9) should be applied to all proposed actions. Therefore, if less than 15 acres of land clearing was required for a project, it would fall under proposed § 1970.53(c)(9).

*Response:* Proposed § 1970.53(c)(9) refers to only land clearing operations (e.g., timber harvesting) that would not include any site development activities after the land was cleared. This CE does not apply to any site development activities that may occur on the land after it was cleared. CEs in § 1970.54, CEs involving small-scale development with an environmental report, use a 10-acre threshold. The use of this 10-acre limit is based on the current threshold of 10 acres currently found in § 1794.21(a)(22), which allows construction of facilities and buildings involving no more than 10 acres of physical disturbance. The Agency has made no change to the final regulation with respect to that threshold value. To eliminate any confusion over the 15-acre limit for land clearing in CE

§ 1970.53(c)(9), the Agency has revised this CE to clarify that it refers to biomass harvesting and has moved the CE to 1970.54(a)(10).

*Comment:* A commenter requested that the replacement of existing water and sewer lines in the same trench should be considered as a CE without documentation, citing reasons that there will be no new disturbance of additional area and the new lines are just replacing the older existing ones with no new additional connections.

*Response:* The Agency agrees and has added a new CE under § 1970.53(c) (specifically, § 1970.53(c)(6) in the final rule) that allows for the replacement of existing water and sewer lines under certain conditions. Any improvements or expansion of an existing utility network, which could include additional ground disturbance or trigger new growth or development, would remain a CE under § 1970.54(b)(2) but would require the preparation of an environmental report.

#### Proposed CE § 1970.53(c)(7) Related to New Utility Service Connections

*Comment:* A commenter recommended that the Agency make clear that its proposed rules are technology-neutral and include wireless technologies. The commenter stated that the proposed rules are inconsistent in their treatment of telecommunications facilities and do not uniformly track the language of the existing rules, which could confuse the interpretation of the new rules. Some examples were provided by the commenter (e.g., reference to utility service connections), where use of “utility” as a substitute for “power lines, substations, or telecommunications facilities” may introduce ambiguity. The commenter also recommended that the Agency consider adopting environmental rules that have already proven effective by other Federal agencies.

*Response:* It is the Agency’s intent that wireless telecommunications infrastructure be included in the broader term “utility” and that wireless telecommunications infrastructure would be eligible for this and other CEs if the criteria are met. The proposed rule included a class of CEs relating to energy or telecommunication proposals. The Agency has clarified in the final rule (see § 1970.53(d)(1)) that telecommunications facilities include both wired and wireless telecommunications infrastructure and they would also be eligible for CEs, similar to other utilities, as long as the criteria were met. In addition, the Agency has included in the new § 1970.53(d)(2) additional types of

facilities for communication purposes as discussed elsewhere in the rule.

#### CE § 1970.53(c)(2) and § 1970.54(c)(12) Related to Pollution Prevention

*Comment:* Many commenters requested that these two CEs be amended to apply to activities done for purposes of “pollution control” in addition to “pollution prevention” so as to apply to pollution control devices more generally. The commenters requested that these CEs also apply to decommissioning and shutdown measures, in addition to repairs, upgrades, modifications, or enhancement.

*Response:* The Agency agrees and has added activities done for purposes of “pollution control.” However, the Agency disagrees that these CEs should be made applicable to decommissioning and shutdown measures. Because Agency loans are associated with assets as collateral, it is unlikely that the Agency could provide financial assistance for an asset with no remaining useful life and that asset could not serve as collateral for the Agency, which are the conditions which must be met for this CE.

#### CE § 1970.53(c)(2), § 1970.53(d)(9), and § 1970.54(c)(12)

*Comments:* Many commenters requested that the Agency revise “energy efficiency” to “energy efficiency, including heat rate efficiency” to ensure that projects to upgrade or modify units to improve heat rate efficiencies, or to return those efficiencies to the original design rates, are covered in the CE. They stated that improvements to heat rate efficiencies allow a generator to generate the same amount of electricity using less fuel and thus generate and emit fewer pollutants. Therefore, these projects are unlikely to have significant environmental effects and should be included in these CEs.

*Response:* The Agency agrees and has revised language in the Final Rule to add “heat rate efficiency” to the phrase “energy efficiency” as appropriate.

#### CE § 1970.53(d)(1) Related to Energy or Telecommunication Proposals (Pole Replacements)

*Comment:* The commenter noted a potential contradiction between proposed § 1970.53(d)(1) and § 1794.22(a)(5) in the existing RUS regulations. According to the commenter, because some pole replacements and uprating projects using phase raisers and associated reconductoring involve minimal environmental disturbance or risk, these activities should fit within a CE that

would not require environmental documentation by the applicant.

*Response:* The Agency agrees that no documentation would be necessary for this CE and has included it within § 1970.53 which includes no applicant documentation requirements. This is a change from what is currently in § 1794.22(a)(5) which requires an environmental report. The renumbered and final § 1970.53(d)(3) uses a component of the existing § 1794.22(a)(5) to encompass pole replacement (less than 20 percent), which the Agency has determined, based on past experience, does not result in significant impact to environmental resources. Rather than retain the 20 percent threshold reference used in § 1794.22(a)(5), the Agency added provisions similar to an existing CE promulgated by the U.S. Bureau of Land Management relating to upgrading of existing facilities which involve no additional disturbance outside the right-of-way boundary. Such provisions help ensure there is no potential for significant impact and there is no need for additional documentation.

#### CE § 1970.53(d)(2) Related to Electric Distribution Lines

*Comment:* Commenters requested clarification on the definition of “rebuilding” as used in this CE. They identified various examples of types of actions and asked whether the Agency would consider them as “rebuilding” or not, such as: (1) The re-spanning of existing overhead line and overhead-to-underground conversions; and (2) rebuilding in existing disturbed utility rights-of-way (transmission lines, roads, pipelines), and in or adjacent to existing buried utility or pipeline rights-of-way.

*Response:* The Agency agrees that the term “rebuilding” warrants further clarification and has revised this CE to describe what “rebuilding” includes, *i.e.*, pole replacements within existing rights-of-way similar to an existing CE promulgated by the U.S. Bureau of Land Management relating to upgrading of existing facilities which involve no additional disturbance outside the right-of-way boundary. Such provisions help ensure there is no potential for significant impact and there is no need for additional documentation. In addition, the CE does not include overhead-to-underground conversions. These changes were made to the renumbered and final § 1970.53(d)(4).

#### CE § 1970.53(d)(9) Related to Environmental Improvements

*Comment:* Many commenters stated that the conditions imposed in this CE would prevent its use for the

installation of most or all pollution control devices by stipulating the CE cannot apply if the improvement results in an increase in pollutant emissions, effluent discharges, or waste products. The commenters provided examples of some pollution control devices that reduce emissions of one type of pollutant but increase an emission or discharge of another pollutant or waste product. They stated that a CE, rather than a longer and more resource-intensive EA, is appropriate even if installation of a pollution control device at a facility allows it to remain in operation longer and delays introduction of other sources of electric generation that might emit fewer pollutants. They requested that the Agency recognize that installation of these pollution control devices usually occurs in close coordination with the appropriate permitting authorities and that the Agency should defer to these permitting authorities in determining whether the activities are unlikely to have significant environmental effects or not. The commenters requested that the Agency rewrite the CE to encompass pollution control devices more broadly; specifically that the CE should apply to the installation of pollution control devices consistent with applicable Federal, tribal, state or local requirements or that are approved by relevant permitting authorities or consistent with existing permits, similar to a Department of Homeland Security CE that applies to pollution prevention and pollution control equipment. These commenters further recommended that the Agency include as a CE a borrower's proposal to shut down, decommission, or remove an asset from service in order to meet operational or pollution control targets.

In contrast, other commenters stated that the Agency's decision to fund the addition, replacement, or upgrade of pollution control equipment at existing electric generation facilities is environmentally significant and should be subject to NEPA review. Specific concerns included the effect that such actions can have on extending the working life of a facility with environmental impacts that would not otherwise be financially viable. These commenters recommended that loans for facilities under this CE should entail full environmental review for significant actions and, at a minimum, require environmental documentation where a CE is applied.

*Response:* With respect to the comments suggesting that the installation of any pollution control device should be categorically excluded without qualification, the Agency has

determined that such actions could have significant environmental impacts unless limitations are in place. While installation of pollution control devices is typically done in coordination with permitting agencies, that fact does not excuse the Agency from complying with NEPA. In addition, the fact that a permitting agency may authorize installation of pollution control equipment does not indicate that the action would have no significant environmental impacts. Permitting agencies only determine whether applicable regulatory standards are met, not whether environmental impacts could be significant.

Although the renumbered and final § 1970.53(d)(11) requires that the proposed action not cause an increase in pollutant emissions, effluent discharges, or waste products, a CE in § 1970.54(c)(12) applies to modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility and that are undertaken for the purpose of improving energy efficiency, promoting pollution prevention, safety, reliability, or security. Thus, installation of a pollution control device that would not meet the requirements of § 1970.53(d)(11) could still be eligible for a CE under § 1970.54(c)(12). To support the application of this CE, the applicant would be required to prepare and submit an environmental report. Such documentation would likely include waste management plans and required permits to verify proper handling and disposal of wastes. The Agency has determined that the conditions included in § 1970.53(d)(11) and the documentation requirements of § 1970.54(c)(12) provide the Agency with sufficient assurance that no significant impact would occur as a result of a proposal to install pollution control equipment.

Regarding the suggestion that § 1970.53(d)(11) include actions when the borrower shuts down or decommissions or removes an asset from service to meet operational or pollution control targets, the Agency does not provide financing for decommissioning as discussed above. For this reason, the Agency has not included decommissioning as a CE.

With respect to the comments suggesting that the addition, replacement, or upgrade of pollution control equipment at existing electric generation facilities should be the subject of a full environmental review, the Agency believes that the conditions included in this CE (*i.e.*, proposal does not result in a change to the design capacity or function of the facility and



does not result in an increase in pollutants) are sufficient to ensure that such actions would not result in significant environmental impacts. There are numerous factors that influence the useful life of a facility. It is a complicated issue and also subject to Federal and state control and jurisdiction. It would be difficult for the Agency to determine whether its financial assistance for an addition, replacement, or upgrade of pollution control equipment directly contributed to an extension of useful life, or simply was used to meet environmental requirements. As such, the Agency does not believe it is appropriate to require full environmental review.

#### § 1970.54 CEs Involving Small-Scale Development With an Environmental Report

*Comment:* A commenter requested the Agency to provide additional guidance for documentation requirements to address CE decisions proposed in § 1970.54 and to maintain the current criteria in § 1794.21 and § 1794.22. This commenter also described how the Agency currently requires the applicant to prepare and submit a project description or environmental report for projects that meet appropriate criteria for a CE; and referred to checklists the Agency had used in the past, and guidance previously provided in RUS Bulletin 1974–600 which documents the categories of projects requiring an environmental report. Another commenter identified the CE documentation that should be included (a description of proposed action, the rationale for why the action fits within a CE, and confirmation that no extraordinary circumstances exist), and stated that with respect to the particular actions relevant to this commenter, the use of a construction work plan is the most efficient means for documentation. Another commenter recommended that the Agency develop a NEPA questionnaire, perhaps similar to DOE's Smart Grid Investment Grant Program, for submittal with construction work plans—allowing Agency staff to determine what level of NEPA review will be required, and to satisfy the requirements contained in § 1970.9(a); and that environmental documents should only be required for projects that are realized. This commenter also stated that the use of a questionnaire was mentioned in the preamble for the proposed rule but not included in the rule language itself, and encouraged the Agency to formalize a NEPA questionnaire or short evaluation format that could be used in place of the RUS

environmental report referred to in the existing RUS regulations.

*Response:* The proposed rule suggested the elimination of the use of environmental reports in lieu of a form of “environmental documentation” that had been unnamed at the time; however, in the final rule, the Agency recognizes that continued use of an environmental report (which was required by RUS in part 1794) will be an efficient way to capture the necessary information and serve as the required CE documentation. The Agency has developed guidance for preparing environmental reports (ERs) for CEs described in § 1970.54. This guidance is available on the Agency's Web site. The information to be captured will be consistent with the documentation content requirements identified by the commenter. Program specific guides and forms are not published as part of the final rule but will be available on agency Web sites as separate guidance to applicants.

#### CE § 1970.54(b)(1) Related to Small-Scale Corridor Development

*Comment:* The commenter recommended that the construction of roads, sidewalks, etc., in existing areas should be moved to § 1970.53 as a CE without documentation. Similar to the argument for replacing existing utility lines in the same trench area, the re-construction or overlay of roads in an existing right-of-way does not require the disturbance of additional area and thus would not impact the environment.

*Response:* The construction or repair of roads, streets and sidewalks would likely include new ground disturbance with the potential for significant environmental impact, depending on what resources may be present and potentially affected. The difference between § 1970.54(b)(1) and previous CEs that did not require documentation is that § 1970.54(b)(1) includes “construction” while the other CEs included re-construction, replacement or restoration activities. Section 1970.53(c)(3) does categorically exclude proposals involving minimal external modifications, restoration, and replacement in kind. For these reasons, no change has been made to this section in response to this comment.

#### CE § 1970.54(b)(3) Related to Small-Scale Corridor Development

*Comment:* A commenter stated that the documentation requirements associated with § 1970.54(b)(3), relating to utility line replacement required by a non-Agency road re-construction project, will hold up road construction for the Agency for at least 2 months and

has the potential to back up road construction into the next year putting budgets at risk given the review requirements, including a minimum 30-day public comment period. The commenter also pointed out that even if a NEPA review were required for the road re-construction activity undertaken by non-Agency applicants, the non-Agency applicant is under no obligation to share the studies with the utilities that are required to move their lines because of the road re-construction. Any additional review required by the Agency related to utility replacement or relocation would duplicate the NEPA review by the non-Agency lead which is the opposite of the intent of proposed part 1970.

*Response:* This particular CE envisions that the replacement of utility lines is necessitated by road reconstruction activities that have been undertaken by others (e.g., state or Federal transportation agency). The use of a CE (rather than an EA) for the utility replacement portion of the work is expected to shorten the current review process such that it should not take two months; as a CE, it would not require a 30-day public comment period. Thus, it is unlikely that road construction would be delayed by the application of this CE. The Agency requirement for an environmental report would ensure that no extraordinary circumstances would be present in such projects, given that ground disturbing activities would be involved. In the event that the associated road reconstruction does include its own separate NEPA review, the applicant could further streamline the CE documentation process by referencing and providing the documentation prepared by the project (road construction) proponent as part of the environmental report required by the Agency. No change has been made to this section in response to this comment.

With regard to the commenter's assertion that a non-Agency applicant is under no obligation to share the studies with the utilities that are required to move their lines because of the road re-construction, the Agency has never experienced the reluctance to share environmental studies, nor has it ever been denied, upon request, copies of such studies. In most if not all cases, the environmental studies referenced are being prepared for either a state or Federal agency and once the studies are submitted to that agency, the study is public information (unless the studies contain information that is being withheld from disclosure to the public because, for example, it contains data about the location, character, or

ownership of a historic property). If an applicant experiences a reluctance to share relevant studies, the applicant is encouraged to contact the Agency and Agency staff will request copies from the state or Federal agency involved in the activity.

#### CE § 1970.54(c) Related to Small-Scale Energy Proposals

*Comment:* Commenters requested revision and clarification for several of the CEs within this category relating to the proposed distance limits on small-scale energy proposals (e.g., transmission lines). They stated that the Agency is disregarding its own experience and instead relying on the experience of another agency (i.e., DOE) in determining the threshold distance limits, when there is no evidence that there are problems with the limits included in the existing RUS regulations, e.g., the existing 25-mile transmission line limit in § 1794.22(a)(1) as compared to the 10-mile limit in proposed § 1970.54(c)(2). Commenters did not agree that the proposed regulations needed to be consistent with DOE regulations and did not find compelling reasons for changing the existing CE requirements such as those contained in § 1794.22(a)(1). The commenters recommended that the Agency rely on its own experience and remove the new length restrictions.

*Response:* In proposing the new limits, the Agency saw merit in developing regulations consistent with the DOE regulations on this matter, such as benefiting from DOE's experience that transmission lines within certain limits have not resulted in significant environmental impacts. However, the commenters are correct that the Agency's own decades-long experience with several of the CEs justifies use of the existing limitations, and the Agency agrees that RUS' administrative record provides a lengthy historical context. After further consideration, the Agency is reverting to the original language and threshold distance values in § 1794.22(a)(1) to replace the limits in proposed § 1970.54(c)(2). These limits for new construction are also being used, for consistency, to support the threshold distance in § 1970.54(c)(3) related to reconstruction. In general, reconstruction and minor relocations would have less impact than new construction.

#### F. Specific Comments on Proposed Rule—Subpart C

##### Section 1970.101 General

*Comment:* A commenter stated that the Agency will not have the resources

available to engage in the level of consultation needed to meet the requirements of § 1970.101(c), which requires the Agency to determine the proper level of classification of the applicant's proposal; and § 1970.103, which requires the Agency to identify any unique environmental requirements associated with the applicant's proposal. The commenter requests additional guidance on how the Agency will determine "the proper classification of an applicant's proposal."

*Response:* The Agency currently expends resources to properly classify an applicant's proposal under the existing NEPA regulations. The Agency expects the promulgation of the updated NEPA regulations to decrease the number of environmental reviews and to streamline the reviews that are undertaken. One intent of the revised NEPA regulations is to streamline the Agency NEPA process, particularly for CEs; this will likely decrease the Agency's paperwork burden and review times and conserve Agency resources. Applicants also can help conserve Agency resources by fully describing the action for which they are seeking financial assistance and by submitting complete information packages, as addressed in the final rule. No change has been made to the proposed regulation in response to this comment.

##### Section 1970.102 Preparation of EAs

*Comment:* A commenter requested that the Agency clarify the language used in the preamble relating to environmental reports and whether these categories of reports will still be used by RUS. Under the existing RUS regulations, environmental reports are prepared by applicants and normally serve as the EA (or CEs if appropriate) following RUS review and approval. In addition, the commenter requested that the Agency provide guidance regarding when the 14-day or 30-day public comment period will be used. In particular, the commenter asked why, as in the example provided in the preamble to the draft regulation (79 FR at 6755), a 14-day comment period would be needed if "there is no public concern."

*Response:* Under the existing RUS regulations, environmental reports are prepared by applicants in support of both CEs and EAs; for EAs, the environmental report normally served as the EA following RUS review and approval as the commenter described. Under the final rule, the Agency has specifically eliminated the requirement for environmental reports for EAs. Applicants are required to prepare EAs

when an EA is required (§ 1970.5(b)(3)(iv)(C)). However, under the final rule, the environmental documentation that applicants are required to prepare for certain CEs are being referred to as environmental reports. A definition of environmental report has been added to § 1970.6 to clarify this term. With respect to the comment period, the Agency may believe that there is "likely no public concern" (which would make a 14-day comment period appropriate), but would not know for sure until the EA was made available for public review. The preamble language in the proposed rule also provided an example of when a 30-day review period would be appropriate (79 FR at 6755). No change has been made to the proposed regulation in response to this comment. The Agency has developed guidance on effective public involvement that addresses review and comment periods on EAs. That guidance will be made available on its Web site.

##### Section 1970.103 Supplementing EAs

*Comment:* Many commenters recommended that the Agency revise its standards for supplementing an EA to be consistent with CEQ regulations and the Agency's standards for supplementing an EIS, by replacing inconsistent language in the first sentence with the language used in § 1970.155(a)(1) and (2). They stated that 1970.103 strays from the CEQ regulation in several ways, including: (1) The proposed supplemental EA language omits the word "significant" and only uses the phrase "new relevant environmental information"; (2) the proposed supplemental EA provision that supplementation may be necessary after issuance of an EA or FONSI differs from CEQ regulations, and language in § 1970.155 provides that supplementing only occurs before the action is taken; and (3) the provision governing supplemental EAs omits a key phrase in CEQ regulations where the changes or new information (to be considered) are "relevant to environmental concerns." Commenters requested that the Agency include exclusions providing that a supplemental analysis is not required where new information or new circumstances result in a lessening of adverse environmental impacts previously evaluated without causing other impacts that are significant and were not previously evaluated. One commenter also stated that there does not appear to be any definition of what constitutes a substantial change, and requested additional guidance on this topic. Of particular concern to one commenter was a situation where the

changes are related to project modifications made at the direction of a landowner or a state public utility commission (e.g., as part of regulatory process to build new transmission facilities and the associated routing considerations).

*Response:* The Agency disagrees that there is any inconsistency between the cited regulations. The language in § 1970.155 is consistent with the CEQ regulations at 40 CFR 1502.9(c). The language in § 1970.103 does not need to be consistent with either § 1970.155 or the CEQ regulations because it addresses supplementing EAs, which is not addressed in either the CEQ regulations or in § 1970.155. Further, § 1970.103 notes that new information may require supplementation, but supplementation is not always required. The word “significant” is used in § 1970.155 because it refers to supplementation of EISs and is consistent with the CEQ regulations; “substantial” change is a more appropriate term relating to an EA than “significant.” Whether a change is considered “substantial” will depend on the circumstances. In addition, by using the term “relevant environmental information,” the Agency intends that any new information must be relevant to the potential environmental impacts of the proposal that was the subject of the EA.

With respect to the suggestion that supplementing an EA not be required where new information or new circumstances result in a lessening of adverse environmental impacts, the Agency notes that such a determination would not be possible unless an evaluation of previously evaluated impacts and potential new impacts were conducted. In other words, the Agency must prepare a supplemental EA in order to evaluate whether new information or circumstances would result in an increase or a decrease in environmental impacts as compared to those previously evaluated.

The Agency has clarified § 1970.103 to state that supplementing an EA may be required after the issuance of an EA or FONSI, but before the action has been implemented. No other changes have been made in the final rule relating to § 1970.103 in response to this comment.

#### G. Specific Comments on Proposed Rule—Subpart D

##### Section 1970.151 General

*Comment:* A commenter disagreed with the exclusion of “other than gas-fired combustion turbines, of more than 50 average MW output, and all associated electric transmission

facilities” from “new electric generating facilities” in the non-exclusive list of Agency actions for which an EIS is required. The commenter stated that the impacts from natural gas can be significant and points to the emissions of greenhouse gases and the recent boom in hydraulic fracturing as concerns that should be taken into account.

*Response:* In accordance with § 1970.101, the potential impacts of natural gas combustion turbines would be evaluated in an EA. If, on the basis of the EA, the Agency determines that the environmental impacts could be significant, an EIS will be prepared. The preparation of an EA is consistent with current RUS regulations at § 1794.25(a)(1). Because all previous Agency EAs for gas-fired combustion turbines of more than 50 average MW output have resulted in FONSI, an EA—not an EIS—is the appropriate level of NEPA review.

*Comment:* A commenter stated that proposed § 1970.151 is as flawed as proposed § 1970.8(b) in that the Agency has determined an EIS is required without any analysis of whether such actions listed are a “major Federal action.” Rather, the commenter states that the Agency should decide on a case-by-case basis as to whether the action is a major Federal action before requiring an EIS. With respect to the exception for gas-fired turbines in § 1970.151(b)(4), the commenter states that “gas-fired turbine” may not be an inclusive enough term and offers a more appropriate term of “gas-fired prime movers” to include gas-fired turbines and gas engines.

*Response:* The Agency agrees that the use of the term “gas-fired prime movers” (defined as gas-fired turbines and gas engines) is more inclusive and appropriate for this section and has changed the language in the final rule (§ 1970.151(b)(4)). In addition, the Agency is modifying the language in this section to make it clear that the Agency will prepare an EIS for new electric generating facilities including all new associated electric transmission facilities, except for gas-fired prime movers. This change is intended to clarify the scope of the proposed action to be analyzed in an EIS.

However, the Agency does not agree to the requested change in identifying specific actions that require an EIS. Section 1970.151 follows the CEQ regulations that require agencies to identify classes of action that normally require EISs (40 CFR 1507.3(b)(2)(i)). In addition, as noted in the CEQ regulations, “major reinforces but does not have a meaning independent of

significantly” (40 CFR 1508.18). No other change has been made to this section in response to this comment.

##### Section 1970.152 EIS Funding and Professional Services

*Comment:* Commenters stated that applicants should be capable of securing outside professional environmental services for EISs without using the Federal procurement process, and want the rule to be clear that Federal Acquisition Regulations do not apply.

*Response:* The Agency agrees that applicants may and should secure outside environmental professional services for EISs without the use of or reliance on the Federal procurement process. The Agency does support the use of a third-party contracting process as described in Question 16 in CEQ’s *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations* (46 FR 18026) where CEQ stated that the “Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.” While the Agency’s policy and standard practice is to solicit and procure professional services of qualified contractors under a third-party contracting process that is consistent with 40 CFR 1506.5(c), the Agency reserves the right to consider alternate procurement methods. To avoid any conflicts of interest, the Agency maintains responsibility for selecting the contractor, in accordance with 40 CFR 1506.5(c), and the applicant must not initiate any procurement of professional services without written prior approval of the Agency. This has been clarified in the final rule.

#### IV. Section-by-Section Analysis of the Final Agency NEPA Regulation

This section provides a detailed discussion of the final Agency NEPA rule. For each section, the changes made to the final rule are briefly described, along with the reason for the change. In most cases, the reason for the change is addressed in Section III in response to public comments. In a few instances, the Agency has initiated the change, such as to include Executive Orders and a Departmental Regulation that were either overlooked in the proposed rule or issued since publication of the proposed rule, provide further clarification of an important point, or correct a previous oversight. Overall, the final rule includes the same language as the proposed rule language which, in turn, is the same as an existing regulation or includes only minor modifications. This section only

includes those sections of the final rule that have been revised since publication of the proposed rule.

#### A. Subpart A—Environmental Policies

##### Authority (§ 1970.3)

The Agency has included references to Executive Orders 13653, “Preparing the United States for the Impacts of Climate Change”, 13690, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input”, and 13693, “Planning for Federal Sustainability in the Next Decade” in the final rule. Executive Order 13653 was not included in the proposed rule, and Orders 13690 and 13693 were issued by the President in January 2015 and March 2015, respectively, after publication of the proposed rule.

##### Definitions and Acronyms (§ 1970.6)

The Agency has revised the definitions of applicant, guaranteed lender, financial assistance, servicing actions, and previously disturbed or developed land in the final rule in order to provide further clarification in response to public comments. In particular, a definition of servicing actions has been added to clarify what actions are included (e.g., consents and approvals). Although not in response to public comments, the Agency has changed “loan-servicing actions” to the more inclusive “servicing actions” to cover routine post-financial assistance actions related to guarantees, grants and cooperative agreements too. The Agency has also added definitions in the final rule for the following new terms to help clarify commenter confusion over their use in the proposed rule: Cooperative agreement, environmental report, grant, loan, loan guarantee, lien sharing, and lien subordination. The Agency added a definition of substantial improvement as this term is used in regard to flood impact evaluations; it added a definition of cooperative agreement as these have been added as a type of financial assistance; it also added a definition of average megawatt to substantiate the use of this term in defining classes of actions. The Agency revised the definition of guaranteed lender to make it clear that the Federal Financing Bank (FFB) is not a guaranteed lender for the purposes of this regulation because RUS prepares the appropriate NEPA documentation, performs underwriting, and collects and services the loans for FFB, which is unlike the typical guarantor role for other Agency programs. Finally, the Agency added two significant new programs and three

existing programs to the list of programs in the definition of multi-tier action; the new programs are the Energy Efficiency and Conservation Loan Program and the Rural Energy Savings Program, and the existing programs are Section 313A of the Rural Electrification Act of 1936, Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes, the Rural Microentrepreneur Assistance Program, and the Rural Business Development Grant Program.

##### Actions Requiring Environmental Review (§ 1970.8)

The Agency has revised § 1970.8(a) and (b) to: (1) Delete the word “major” when referring to a Federal action to avoid confusion; and (2) require that requests for lien subordination be the subject of NEPA review. The Agency also added new paragraphs (d) and (e) to make it clear that lien sharing is not a Federal action for purposes of NEPA (unless additional financial assistance is included in the request for lien sharing) and that servicing actions do not require separate NEPA reviews as discussed above. With respect to servicing actions, the Agency has determined that such actions are routine, ministerial or administrative actions that occur as part of the monitoring and administering of financial assistance. Thus, the Agency determined that these subsequent actions fall within the original environmental review of the financial assistance application and will not be the subject of new or additional NEPA reviews. Accordingly, the Agency revised § 1970.8(b)(2) to: (1) Eliminate loan-servicing actions and related examples of consents and approvals and lien sharing as actions requiring NEPA review; (2) further clarify which post-financial assistance actions are considered Federal actions (e.g., lien subordination); and (3) add one new action requiring NEPA review—one that includes a substantial change in scope of projects receiving financial assistance not previously considered (§ 1970.8(b)(2)(iii)).

##### Levels of Environmental Review (§ 1970.9)

In response to public comment, the Agency clarified in the final sentence in § 1970.9(d) that any request for additional environmental information would occur prior to financial assistance being made.

##### Public Involvement (§ 1970.14)

Text was moved from § 1970.153(a)(2) to § 1970.14(d)(2) regarding the applicant’s responsibility to obtain proof of publication of notices to clarify

that this responsibility applies to all levels of environmental review.

#### B. Subpart B—NEPA Categorical Exclusions

##### Applying CEs (§ 1970.51)

The Agency has clarified the language in § 1970.51(b)(3) to better describe the applicability of a CE relative to a cumulative action, consistent with 40 CFR 1508.25(a)(2).

##### Extraordinary Circumstances (§ 1970.52)

The Agency added text to paragraph (b)(4)(iii) to explain the circumstances under which an alternatives analysis is or is not required.

The Agency modified paragraph (b)(4)(iv) to delete reference to specific executive orders relating to floodplains, consistent with Agency rulemaking procedures. Language was also added to this paragraph to include a reference to substantial improvements and explain requirements related to purchasing structures within floodplains.

##### CEs Involving No or Minimal Disturbance Without an Environmental Report (§ 1970.53)

The Agency added text to the introduction to explain how certain actions in this section will be identified by the Agency as requiring no further review under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act.

##### 1970.53(a) Routine Financial Actions

The Agency deleted proposed § 1970.53(a)(1) referring to refinancing of debt and significantly modified proposed § 1970.53(a)(5) to eliminate servicing actions as a CE because they are not Federal actions separate from the original Federal financing, so they do not need a CE. As explained in Section III, “refinancing” of debt to change interest rate without additional financing is included in the definition of servicing actions in final § 1970.6, and servicing actions are routine, ministerial, or administrative components of financial assistance and do not require separate NEPA review. Language has been added to § 1970.53(a)(2)(iii) to include replacement or conversion of equipment to enable use of renewable fuels. Section 1970.53(a)(5) (renumbered in the final rule as § 1970.53(a)(4)) has been revised so that it relates only to the sale or lease of Agency-owned real property.

The Agency has added back a CE (see § 1970.53(a)(5)) to address financial assistance for cost overruns where there is no change to the proposal as originally approved. While providing

additional financial assistance for cost overruns was not specifically addressed in the proposed rule, it is included in existing RUS regulations at 7 CFR 1794.21(c)(4).

The Agency has revised the language in § 1970.53(a)(7) to clarify that this CE is for a guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the sole purpose of (a) refinancing existing debt instruments of a lender organized on a not-for-profit basis, or (b) for the purpose of prepaying outstanding notes or bonds made to or guaranteed by the Agency. The Agency reviewed the actions under Section 313A(a) and determined that these refinancings were the primary types of actions taken under this statute. The primary refinancing done under Section 313A(a) involves outstanding bonds or notes of the not-for-profit lender itself. These were issued by the not-for-profit lender for projects or facilities already constructed. Prepayment of outstanding bonds or notes of the Agency involves projects or facilities that previously were reviewed by the Agency for the appropriate environmental action when it provided the financial assistance. All other types of actions under Section 313A(a) will be a multi-tier action under § 1970.55.

#### 1970.53(c) Minor Construction Proposals

The agency has revised § 1970.53(c)(1) to change “location” to “geographic scope” for clarity and to ensure location includes the scope of the minor amendments or revisions.

The Agency has revised § 1970.53(c)(2) in response to public comments to clarify that energy efficiency includes heat rate efficiency, and to add activities done for purposes of “pollution control.” Language was also added to this section to include replacement or conversion of equipment to enable use of renewable fuels. The Agency also deleted the terms “fixtures” and “reconstruction” to account for any potential Section 106 concerns.

The Agency has added a new CE (§ 1970.53(c)(6)), in response to public comments, that allows for the replacement of existing water and sewer lines under certain conditions. Any improvements or expansion of an existing utility network, which could include additional ground disturbance or trigger new growth or development, will remain a CE under § 1970.54(b)(2) and will require an environmental report. Proposed CEs in § 1970.53(c)(6) through (c)(8) have been renumbered as § 1970.53(c)(7) through (c)(9).

The Agency has revised the proposed § 1970.53(c)(9) in response to public comments, to clarify that this CE refers to the *harvesting* of no more than 15 acres of vegetative biomass under specific conditions. This clarification was made to eliminate any confusion over the 10-acre limit for site development in § 1970.54(a). The CE has been moved to § 1970.54(a)(10) to account for potential impacts not previously considered. Proposed § 1970.53(c)(10) for conversion of pastureland to agricultural production was deleted because it was determined not to be relevant to Agency programs.

#### 1970.53(d) Energy or Telecommunication Proposals

The Agency has revised § 1970.53(d)(1), in response to public comments, to clarify the Agency’s intent that wireless telecommunications infrastructure is included in the broader term under telecommunications “facilities” and that wireless telecommunications technologies are eligible for this and other CEs if the criteria are met. The term “changes” was also revised for clarification to “upgrading or rebuilding.” The addition or attachment of aerial cables “for communication purposes” to electric power lines also has been added to this CE. The phrase was part of § 1970.53(d)(3) in the proposed rule. In addition, references to changes to transmission lines were revised and moved to the renumbered 1970.53(d)(3).

Also in response to public comments, the Agency has added a new CE (see § 1970.53(d)(5)) for collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks. The final CE includes certain conditions related to the effects on historic properties.

The Agency also made conforming changes to the remaining CEs in § 1970.53(d) as follows:

- Added a new § 1970.53(d)(2) to create a separate CE for a portion of the old § 1970.53(d)(1). This was done for clarity. Changed the term “telecommunication cables” previously used in § 1970.53(d)(3) to “facilities for communication purposes” in § 1970.53(d)(2) to include smartgrid proposals.

- Revised § 1970.53(d)(4) (numbered as § 1970.53(d)(2) in the proposed rule), in response to public comments, to clarify what is meant by “rebuilding” of electric distribution lines. The final CE describes that “rebuilding” includes pole replacements within existing ROWs, but not overhead-to-underground conversions. The phrase

“telecommunication facilities” was deleted and those actions were added to the final § 1970.53(d)(1). Language was also added to specify that actions eligible for this CE must not affect the environment beyond the previously developed, existing rights-of-way.

- Added language to § 1970.53(d)(7) (numbered as § 1970.53(d)(5) in proposed rule) to include installation adjacent to existing structures that would not affect the environment beyond the previously developed facility area and stated that the CE would not apply if there were adverse effects to historic properties.

The Agency has renumbered the subsequent CEs in § 1970.53(d)(6) through (9) as § 1970.53(d)(8) through (11) and made a minor edit to § 1970.53(d)(10) (numbered as § 1970.53(d)(8) in the proposed rule) for clarity. The term “power” was deleted between electric and transmission; the Agency determined it was redundant.

#### 1970.53(e) Emergency Actions

Section 1970.53(e) was added to address actions necessary in emergency situations. This CE was inadvertently left out of the proposed rule. It was present in § 1794.21(a)(4) and § 1940.322(b). The subsequent CEs in § 1970.53(e) through (g) have been renumbered as § 1970.53(f) through (h).

#### CEs Involving Small-Scale Development With an Environmental Report (§ 1970.54)

##### 1970.54(b) Small-Scale Corridor Development

The Agency deleted § 1970.54(b)(4) (“Construction of new distribution lines and associated facilities less than 69 kilovolts (kV)”) because it determined that this CE is addressed in § 1970.54(c)(2).

The Agency clarified proposed § 1970.54(b)(4)(formerly (b)(5)), which requires environmental documentation (*i.e.*, an environmental report), to help distinguish it from a similar CE in § 1970.53(d)(4) that does not require environmental documentation. Both CEs involve actions relating to telecommunications facilities. The Agency also revised this CE by adding “new linear” telecommunication facilities to provide more descriptive language and to distinguish it from § 1970.53(d)(1) and (d)(2). The previous term “lines, cables” was changed to “facilities” and the phrase “and infrastructure” was included for clarity.

##### 1970.54(c) Small-Scale Energy Proposals

The Agency revised proposed § 1970.54 (c)(2) and (c)(3) in response to

public comments relating to the proposed distance limits on small-scale energy proposals (e.g., transmission lines). The Agency has reverted to the language in the existing regulations and threshold distance values in § 1794.22(a)(1) to replace the limits in proposed § 1970.54(c)(2) and support the limit in final § 1970.54(c)(3).

The Agency added a new section 1970.54(c)(8) to include Agency programs that fund small biomass projects, and established an upper threshold for projects to qualify for a CE with report. Similarly, the Agency added “geothermal heating or cooling projects” to § 1970.54(c)(9) and (10)(formerly (c)(8) and (9)).

The Agency revised proposed § 1970.54(c)(13)(formerly (c)(12)) in response to public comments to clarify that energy efficiency includes heat rate efficiency, and to add activities done for purposes of “pollution control.”

#### *C. Subpart C—NEPA Environmental Assessments*

##### Preparation of EAs (§ 1970.102)

The Agency modified proposed § 1970.102(b)(6)(ii) to include online publication of notices.

##### Supplementing EAs (§ 1970.103)

The Agency clarified proposed § 1970.103 to state that supplementing an EA may be required after the issuance of an EA or FONSI, but before the action has been implemented. No other changes have been made in the final rule relating to § 1970.103.

#### *D. Subpart D—NEPA Environmental Impact Statements*

##### General (§ 1970.151)

The Agency revised § 1970.151(b)(4), in response to public comments, to refer to “gas-fired prime movers,” which the Agency agrees is more inclusive and appropriate for this section. For clarity, the Agency also modified the text to make it clear that the scope of an EIS prepared for a new electric generating facility would include “all associated electric transmission facilities.” The Agency also added renewable systems (solar, wind, geothermal) as being excluded from this section. Commenters generally expressed that the Agency support renewable energy and encouraged the Agency to consider the actions that would encourage the use of renewable systems.

##### EIS Funding and Professional Services (§ 1970.152)

The Agency revised proposed § 1970.152(b), in response to public comments, to clarify its intent to use a

“third-party contracting process” that is consistent with Question 16 of CEQ’s “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (46 FR 18026). Using this process, Federal procurement requirements will not apply to the Agency because it will incur no obligations or costs under the contract and will not procure anything under the contract. While the Agency intends to use the third-party contracting process, it reserves the right to consider alternate procurement methods. The Agency retains the responsibility for selecting the contractor, in accordance with 40 CFR 1506.5(c). The applicant may not initiate any procurement of professional services without written prior approval of the Agency.

#### **Required Determinations**

##### *Executive Order 12866, Regulatory Planning and Review*

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this EO.

The Agency determined that this regulation involves combining two existing intra-Agency regulations that supplement the NEPA procedures of the Council on Environmental Quality, the National Historic Preservation Act (NHPA) procedures of the Advisory Council on Historic Preservation, and the Endangered Species Act that are established bodies of technical regulations which the Agency must necessarily update routinely to keep the regulations operationally current. The Agency has concluded that the net effect of the rule will be beneficial due to the streamlining and updated adherence to statutes and, therefore, does not warrant preparation of a regulatory evaluation as the anticipated impact is positive.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule would consolidate and update the Agency’s existing rules governing compliance with NEPA to better align the Agency’s regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current programs and regulatory requirements. The final rule would result in no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

#### *National Environmental Policy Act*

In this rule, the Agency proposes amendments that modify and clarify procedures for considering the environmental effects of the Agency’s actions within the agencies’ decision making process, thereby enhancing compliance with the letter and spirit of NEPA. The Agency has reviewed 7 CFR part 1940, subpart G, “Environmental Program” and part 1794, “Environmental Policies and Procedures” and determined that this final rule qualifies for categorical exclusion (CE) under 7 CFR 1940.310(e)(3) and 7 CFR 1794.21(a)(1), because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, the Agency has determined that promulgation of this final rule is not a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA of 1969, 42 U.S.C. 4321 *et seq.*,

an Environmental Impact Statement is not required.

*Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

*Executive Order 13132, Federalism*

The Agency has examined this final rule and determined, under E.O. 13132, "Federalism," that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this final rule would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this final rule will not have a significant economic impact on a substantial number of these small entities for the reasons explained below. Consequently, the Agency has not prepared a regulatory flexibility analysis. This determination is based on the purpose of this regulation, which is to update and streamline the environmental review for proposed actions, resulting in

a decrease in the burdens associated with carrying out such reviews. The revisions included in this rule are expected to reduce the aggregate amount of environmental documentation required from applicants due primarily to decreased RUS CE documentation requirements and decreased numbers of EAs required for all programs. This results from: (1) New CEs based upon the Agency's extensive experience over many years under both existing Agency NEPA rules in completing EAs for those actions resulting in findings of no significant effect, and (2) reduction in the amount of information required under the RUS existing NEPA rule by applicants for CEs. In addition, the only impacts are on those who choose to participate in Agency programs, whereby small entity applicants will not be affected to a greater extent than individuals or large entity applicants.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The Agency analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Agency has not designated it as a significant energy action and therefore, does not require a Statement of Energy Effects under Executive Order 13211.

*Executive Order 12372, Intergovernmental Review of Federal Programs*

This rule is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials, because this rule provides general guidance on NEPA and related environmental reviews of applicants' proposals. Applications for Agency programs will be reviewed individually under E.O. 12372 as required by program procedures.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal

Governments." Executive Order 13175 requires Rural Development to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

In response to the publication of the proposed rule under this title, the Agency hosted a combined Tribal consultation webinar/toll-free teleconference with USDA's Farm Service Agency. The webinar and teleconference occurred on December 17, 2013, during the comment period of the proposed rule. This was a cost effective way to consult with tribes on this rule and allowed maximum participation from tribal leaders and/or their designees. This allowed the Agency to gain input from elected Tribal officials, or their designees, concerning the impact of the proposed rule on Tribal governments, Tribal producers and Tribal members. This session was intended to establish a baseline for future consultation on individual program actions.

Changes incorporated into the final rule, do not have any additional implications or substantial direct effects on one or more Indian Tribes, therefore no further Tribal consultation is necessary on the final rule. The policies contained in this rule do not have Tribal implications that preempt Tribal law. The Agency will continue to work directly with Tribes and Tribal applicants to improve access to Agency programs. This includes providing focused outreach to Tribes regarding the implementation of this final rule. Additionally, the Agency will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. For further information on the Agency's Tribal consultation efforts, please contact the Agency's Native American Coordinator at [aian@wdc.usda.gov](mailto:aian@wdc.usda.gov) or 720–544–2911.

*Programs Affected*

The Agency's programs affected by this final rulemaking are shown in the Catalog of Federal Domestic Assistance (CFDA) with numbers as indicated:

| CFDA No. | Program title  |
|----------|--|
| 10.350   | Technical Assistance to Cooperatives.  |
| 10.352   | Value-Added Producer Grants.   |
| 10.405   | Farm Labor Housing Loans and Grants.   |
| 10.411   | Rural Housing Site Loans and Self-Help Housing Land Development Loans.         |
| 10.415   | Rural Rental Housing Loans.  |
| 10.420   | Rural Self-Help Housing Technical Assistance.                                  |
| 10.427   | Rural Rental Assistance Payments.  |
| 10.433   | Rural Housing Preservation Grants.   |
| 10.441   | Technical and Supervisory Assistance Grants.                                   |
| 10.442   | Housing Application Packaging Grants.  |
| 10.446   | Rural Community Development Initiative.  |
| 10.760   | Water and Waste Disposal Systems for Rural Communities.                        |
| 10.761   | Technical Assistance and Training Grants.                                      |
| 10.762   | Solid Waste Management Grants.   |
| 10.763   | Emergency Community Water Assistance Grants.                                   |
| 10.766   | Community Facilities Loans and Grants.   |
| 10.767   | Intermediary Relending Program.  |
| 10.768   | Business and Industry Loans.   |
| 10.769   | Rural Business Enterprise Grants.  |
| 10.770   | Water and Waste Disposal Loans and Grants (Section 306C).                      |
| 10.771   | Rural Cooperative Development Grants.  |
| 10.773   | Rural Business Opportunity Grants.   |
| 10.781   | Water and Waste Disposal Systems for Rural Communities—ARRA.                   |
| 10.788   | Very Low to Moderate Income Housing Loans—Direct.                              |
| 10.789   | Very Low to Moderate Income Housing Loans—Guaranteed.                          |
| 10.850   | Rural Electrification Loans and loan guarantees.                               |
| 10.851   | Rural Telephone Loans and Loan guarantees.                                     |
| 10.854   | Rural Economic Development Loans and Grants.                                   |
| 10.855   | Distance Learning and Telemedicine Loans and Grants.                           |
| 10.856   | 1890 Land Grant Institutions Rural Entrepreneurial Outreach Program.           |
| 10.857   | State Bulk Fuel Revolving Fund Grants.   |
| 10.858   | RUS Denali Commission Grants and Loans.  |
| 10.859   | Assistance to High Energy Cost-Rural Communities.                              |
| 10.861   | Public Television Station Digital Transition Grant Program.                    |
| 10.863   | Community Connect Grant Program.   |
| 10.864   | Grant Program to Establish a Fund for Financing Water and Wastewater Projects. |
| 10.886   | Rural Broadband Access Loans and Loan Guarantees.                              |

All active CDFA programs can be found at [www.cdfa.gov](http://www.cdfa.gov) under Department of Agriculture, Rural Development. Programs not listed in this section or not listed on the CDFA Web site but are still being serviced by the Agency will nevertheless be covered by the requirements of this action.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this rule has been approved by the Office of Management and Budget (OMB) under the currently approved OMB Control Number 0575–0197. The Agency has determined that changes contained in this regulatory action do not substantially change current data collection.

#### *Review Under E-Government Act Compliance*

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects**

##### *7 CFR Part 25*

Community development, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1703*

Community development, Grant programs—education, Grant programs—health, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1709*

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

##### *7 CFR Part 1710*

Electric power, Electric power rates, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1717*

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1720*

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1721*

Electric power, Loan programs—energy, Rural areas.

##### *7 CFR Part 1724*

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1726*

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.



*7 CFR Part 1737*

Loan programs—communication, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1738*

Broadband, Loan programs—communications, Rural areas, Telecommunications, Telephone.

*7 CFR Part 1739*

Broadband, Grant programs—Communications, Rural areas, Telecommunications, Telephone.

*7 CFR Part 1740*

Grant programs—Digital televisions, Communications, Rural areas, Television.

*7 CFR Part 1753*

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

*7 CFR Part 1774*

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

*7 CFR Part 1775*

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1779*

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

*7 CFR Part 1780*

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds

*7 CFR Part 1781*

Community development, Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1782*

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant

programs—Agriculture, Insurance, Loan programs—Agriculture, Reporting and recordkeeping requirements.

*7 CFR Part 1784*

Agriculture, Alaska, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Watersheds.

*7 CFR Part 1794*

Environmental impact statements, Reporting and recordkeeping requirements.

*7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy Conservation, Housing, Housing Standards, Loan programs—Agriculture, Low and moderate income housing, Rural housing.

*7 CFR Part 1940*

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture.

*7 CFR Part 1942*

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

*7 CFR Part 1944*

Administrative practice and procedure, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Reporting requirements, Rural housing.

*7 CFR Part 1948*

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Planning, Rural areas, Transportation.

*7 CFR Part 1951*

Accounting servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

*7 CFR Part 1955*

Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

*7 CFR Part 1970*

Administrative practice and procedure, Buildings and facilities, Environmental impact statements, Environmental protection, Grant programs, Housing, Loan programs, Natural resources, Utilities.

*7 CFR Part 1980*

Home improvement, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

*7 CFR Part 3550*

Administrative practice and procedure, Conflict of interests, Equal credit opportunity, Fair housing, Grant programs—Housing and community development, Housing.

*7 CFR Part 3555*

Administrative practice and procedure, Conflict of interest, Credit, Fair housing, Flood insurance, Home improvement, Housing, Loan programs—housing and community development, Low and moderate income housing, Manufactured homes, Mortgages, Rural areas.

*7 CFR Part 3560*

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—Housing and community development, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 3565*

Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages.

*7 CFR Part 3570*

Accounting, Account servicing, Administrative practice and procedure, Conflicts of interests, Debt restructuring, Foreclosure, Fair Housing, Government

property management, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas, Sale of government acquired property, Subsidies.

7 CFR Part 3575

Community facilities, Guaranteed loans, Loan programs—Community Facilities.

7 CFR Part 4274

Community development, Economic Development, Loan programs—Business, Rural areas.

7 CFR Part 4279

Loan programs—Business and industry, Loan Programs—Rural development assistance, Rural areas.

7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

7 CFR Part 4284

Business and industry, Economic development, Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas,

7 CFR Part 4287

Loan Programs—Business and industry, Loan Programs—Rural development assistance, Rural areas

7 CFR Part 4288

Administrative practice and procedure, Biobased products, Energy, Reporting and recordkeeping requirements.

7 CFR Part 4290

Community development, Government securities, Grant programs—business, Reporting and recordkeeping requirements, Rural areas, Securities, Small business.

For the reasons set forth in the preamble, subtitle A, and chapters XVII, XVIII, XXXV and XLII of subtitle B, title 7, Code of Federal Regulations are amended as follows:

**Subtitle A—Office of the Secretary of Agriculture**

**PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES**

- 1. The authority citation for part 25 continues to read as follows:

**Authority:** 5 U.S.C. 301; 26 U.S.C. 1391; Pub. L. 103–66, 107 Stat. 543; Pub. L. 105–34, 111 Stat. 885; Sec. 766, Pub. L. 105–277, 112 Stat. 2681–37; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

**Subpart G—Round II and Round IIS Grants**

- 2. Amend § 25.622 by revising paragraph (b) to read as follows:

**§ 25.622 Other considerations.**

\* \* \* \* \*

(b) *Environmental review requirements.* Grants made under this subpart must comply with environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Subtitle B—Regulations of the Department of Agriculture**

**CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 1703—RURAL DEVELOPMENT**

- 3. The authority citation for part 1703 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

**Subpart E—Distance Learning and Telemedicine Grant Program**

- 4. Revise § 1703.125(j) to read as follows:

**§ 1703.125 Completed application.**

\* \* \* \* \*

(j) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant should use the "Programmatic Environmental Assessment", available from RUS, to assist in complying with the requirements of this section.

\* \* \* \* \*

**Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program**

- 5. Revise § 1703.134 (h) to read as follows:

**§ 1703.134 Completed application.**

\* \* \* \* \*

(h) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant should use the "Programmatic Environmental Assessment", available from RUS, to assist in complying with the requirements of this section.

\* \* \* \* \*

**Subpart G—Distance Learning and Telemedicine Loan Program**

- 6. Revise § 1703.144 (h) to read as follows:

**§ 1703.144 Completed application.**

\* \* \* \* \*

(h) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant should use the "Programmatic Environmental Assessment", available from RUS, to assist in complying with the requirements of this section.

\* \* \* \* \*

**PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES**

- 7. The authority citation for part 1709 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

**Subpart A—General Requirements**

- 8. Revise § 1709.17(a) and (c) to read as follows:

**§ 1709.17 Environmental review.**

(a) Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency in accordance with 7 CFR part 1970 prior to final

award approval. The Agency may require the selected applicant to submit additional information, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

\* \* \* \* \*

**Subpart B—RUS High Cost Energy Grant Program**

■ 9. Revise § 1709.117(b)(12) to read as follows:

**§ 1709.117 Application requirements.**

\* \* \* \* \*

(b) \* \* \*

(12) *Environmental review requirements.* Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 10. Revise § 1709.124(a) to read as follows:

**§ 1709.124 Grant award procedures.**

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete environmental review requirements in accordance with 7 CFR part 1970, and to meet other pre-award conditions.

\* \* \* \* \*

**PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES**

■ 11. The authority citation for part 1710 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart C—Loan Purposes and Basic Policies**

■ 12. Revise § 1710.117 to read as follows:

**§ 1710.117 Environmental review requirements.**

Borrowers are required to comply with the environmental review requirements in accordance with 7 CFR part 1970, and other applicable environmental laws, regulations and Executive orders.

**Subpart D—Basic Requirements for Loan Approval**

■ 13. Revise § 1710.152(d) to read as follows:

**§ 1710.152 Primary support documents.**

\* \* \* \* \*

(d) *Environmental review requirements.* A borrower must comply with the environmental review requirements in accordance with 7 CFR part 1970.

**Subpart F—Construction Work Plans and Related Studies**

■ 14. Revise § 1710.250(i) to read as follows:

**§ 1710.250 General.**

\* \* \* \* \*

(i) A borrower's CWP or special engineering studies must be supported by the appropriate level of environmental review documentation, in accordance with 7 CFR part 1970.

**Subpart I—Application Requirements and Procedures for Loans**

■ 15. Revise § 1710.501(c)(2)(iii) to read as follows:

**§ 1710.501 Loan application documents.**

\* \* \* \* \*

(c) \* \* \*  
(2) \* \* \*

(iii) Environmental review documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

■ 16. The authority citation for part 1717 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing**

■ 17. Revise § 1717.850(d) to read as follows:

**§ 1717.850 General.**

\* \* \* \* \*

(d) *Environmental review requirements.* The environmental review requirements of 7 CFR part 1970 apply to applications for subordinations.

\* \* \* \* \*

■ 18. Revise § 1717.855(f) to read as follows:

**§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities and certain other community infrastructure.**

\* \* \* \* \*

(f) Environmental documentation, in accordance with 7 CFR part 1970;

\* \* \* \* \*

**PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES**

■ 19. The authority citation for part 1720 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940C.

■ 20. Add § 1720.16 to read as follows:

**§ 1720.16 Environmental review requirements.**

Guarantees made under this subpart are subject to the environmental review requirements in accordance with 7 CFR part 1970.

**PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS**

■ 21. The authority citation for part 1721 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

**Subpart A—Advance of Funds**

■ 22. Revise § 1721.1(c) to read as follows:

**§ 1721.1 Advances.**

\* \* \* \* \*

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of \$100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number. For a minor project not included in a RUS approved borrower's CWP or CWP amendment, the Borrower shall describe the project and do one of the following to satisfy RUS' environmental review requirements in accordance with 7 CFR part 1970:

(1) If applicable, state that the project is a categorical exclusion of a type described in § 1970.53 of this title; or

(2) If applicable, state that the project is a categorical exclusion of a type that normally requires the preparation of an environmental report (see § 1970.54 of this title) and then submit the

environmental report with the request for funds to be approved for advance.

\* \* \* \* \*

#### **PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES**

■ 23. The authority citation for part 1724 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

##### **Subpart A—General**

■ 24. Revise § 1724.9 to read as follows:

##### **§ 1724.9 Environmental review requirements.**

Borrowers must comply with the environmental review requirements in accordance with 7 CFR part 1970.

#### **PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES**

■ 25. The authority citation for part 1726 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

##### **Subpart A—General**

■ 26. Amend § 1726.14 to revise the definition of *approval of proposed construction* to read as follows:

##### **§ 1726.14 Definitions.**

\* \* \* \* \*

*Approval of proposed construction* means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 27. Revise § 1726.18 to read as follows:

##### **§ 1726.18 Pre-loan contracting.**

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all environmental review requirements in accordance with 7 CFR part 1970, have been met.

#### **PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS**

■ 28. The authority citation for part 1737 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

##### **Subpart C—The Loan Application**

■ 29. Revise § 1737.22(b)(4) to read as follows:

##### **§ 1737.22 Supplementary information.**

\* \* \* \* \*

(b) \* \* \*

(4) Environmental review documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

##### **Subpart E—Interim Financing of Construction of Telephone Facilities**

■ 30. Revise § 1737.41(b)(2)(iii) to read as follows:

##### **§ 1737.41 Procedure for obtaining approval.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Evidence that the borrower has complied with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

##### **Subpart J—Financial Loan Approval Procedures**

■ 31. Revise § 1737.90(a)(6) to read as follows:

##### **§ 1737.90 Loan approval requirements.**

(a) \* \* \*

(6) All environmental review requirements must be met in accordance with 7 CFR part 1970.

\* \* \* \* \*

#### **PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES**

■ 32. The authority citation for part 1738 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*

##### **Subpart D—Direct Loan Terms**

■ 33. Revise § 1738.156(a)(8) to read as follows:

##### **§ 1738.156 Other Federal requirements.**

(a) \* \* \*

(8) 7 CFR part 1970;

\* \* \* \* \*

##### **Subpart E—Application Review and Underwriting**

■ 34. Revise § 1738.212(a)(8) to read as follows:

##### **§ 1738.212 Network design.**

(a) \* \* \*

(8) Environmental review documentation prepared in accordance with 7 CFR part 1970; and

\* \* \* \* \*

##### **Subpart F—Closing, Servicing, and Reporting**

■ 35. Revise § 1738.252(a) to read as follows:

##### **§ 1738.252 Construction.**

(a) Construction paid for with broadband loan funds must comply with 7 CFR part 1788, the environmental review requirements in accordance with 7 CFR part 1970, RUS Bulletin 1738-2, and any other guidance from the Agency.

\* \* \* \* \*

#### **PART 1739—BROADBAND GRANT PROGRAM**

■ 36. The authority citation for part 1739 continues to read as follows:

**Authority:** Title III, Pub. L. 108-199, 118 Stat. 3.

##### **Subpart A—Community Connect Grant Program**

■ 37. Revise § 1739.15(d) and (l)(8) to read as follows:

##### **§ 1739.15 Completed application.**

\* \* \* \* \*

(d) *System design.* A system design of the Project that is economical and practical, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs. In addition, a network diagram detailing the proposed system must be provided. The system design must also comply with the environmental review requirements in accordance with 7 CFR part 1970;

\* \* \* \* \*

(l) \* \* \*

(8) Environmental review documentation prepared in accordance with 7 CFR part 1970.

\* \* \* \* \*

#### **PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM**

■ 38. The authority citation for part 1740 continues to read as follows:

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Pub. L. 108-447.

Subpart A—Public Television Station Digital Transition Grant Program

■ 39. Revise § 1740.9(k) to read as follows:

§ 1740.9 Grant application. \* \* \* \*

(k) Environmental review requirements. The applicant must provide details of the digital transition's impact on the human environment and historic properties, and comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 40. The authority citation for part 1753 continues to read as follows:

Authority: 5 U.S.C. 501, 7 U.S.C. 901 et seq.

Subpart D—Construction of Buildings

■ 41. Revise § 1753.25(f)(3) to read as follows:

§ 1753.25 General. \* \* \* \*

(f) \* \* \* (3) 7 CFR part 1970. \* \* \* \*

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 42. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A—General Provisions

■ 43. Revise § 1774.7 to read as follows:

§ 1774.7 Environmental requirements.

Grants made under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

■ 44. Revise § 1774.8(d) to read as follows:

§ 1774.8 Other Federal Statutes. \* \* \* \*

(d) 7 CFR part 1970. \* \* \* \*

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 45. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Provisions

■ 46. Revise § 1775.7 to read as follows:

§ 1775.7 Environmental requirements.

Grants made for the purposes in §§ 1775.36 and 1775.66 must comply with the environmental review requirements in accordance with 7 CFR part 1970.

■ 47. Revise § 1775.8(d) to read as follows:

§ 1775.8 Other Federal statutes. \* \* \* \*

(d) 7 CFR part 1970. \* \* \* \*

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

■ 48. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

■ 49. Revise § 1779.9 to read as follows:

§ 1779.9 Environmental review requirements.

Facilities financed under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970. In accordance with Agency guidance documents, the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. The lender must assist the Agency in ensuring that the borrower complies with the Agency's environmental review requirements and implements any mitigation measure identified in the environmental review document or Conditional Commitment for Guarantee.

■ 50. Revise § 1779.52(b)(3) to read as follows:

§ 1779.52 Processing. \* \* \* \*

(b) \* \* \* (3) Environmental review documentation in accordance with 7 CFR part 1970. \* \* \* \*

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 51. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart B—Loan and Grant Application Processing

■ 52. Revise § 1780.31(e) to read as follows:

§ 1780.31 General. \* \* \* \*

(e) During the earliest discussion with prospective applicants, the Agency will advise prospective applicants on environmental review requirements and evaluation of potential environmental impacts of the proposal. In accordance with 7 CFR part 1970, environmental review requirements shall be performed by the applicant simultaneously and concurrently with the proposal's engineering planning and design.

■ 53. Revise § 1780.33(f) introductory text to read as follows:

§ 1780.33 Application requirements. \* \* \* \*

(f) Environmental review requirements. The applicant must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \*

Subpart C—Planning, Designing, Bidding, Contracting, Construction and Inspection

■ 54. Revise § 1780.55 to read as follows:

§ 1780.55 Preliminary engineering reports and environmental review documentation.

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental review documentation must comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1781 RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND ADVANCES

■ 55. The authority citation for part 1781 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 56. Revise § 1781.11(g) to read as follows:

**§ 1781.11 Other considerations.**

\* \* \* \* \*

(g) *Environmental review requirements.* Actions will be taken to comply with the environmental review requirements in accordance with 7 CFR part 1970. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by NRCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the NRCS environmental review fails to meet the requirements of 7 CFR part 1970. If the environmental impact statement or environmental assessment is satisfactory, the Agency should formally adopt the document in accordance with 7 CFR part 1970. If a determination is made that further analysis of the environmental impact is needed, the Agency will make necessary arrangements with the NRCS State Conservationist for such action to be taken before a loan is made.

\* \* \* \* \*

**PART 1782—SERVICING OF WATER AND WASTE PROGRAMS**

- 57. The authority citation for part 1782 continues to read as follows:  
**Authority:** 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.
- 58. Revise § 1782.9 to read as follows:

**§ 1782.9 Environmental review requirements.**

Servicing actions involving lease or sale of Agency-owned property must comply with the environmental review requirements in accordance with 7 CFR part 1970.

**PART 1784—RURAL ALASKAN VILLAGE GRANTS**

- 59. The authority citation for part 1784 continues to read as follows:  
**Authority:** 7 U.S.C. 1926d.

**Subpart C—Application Processing**

- 60. Revise § 1784.22(d) and (n) to read as follows:

**§ 1784.22 Other requirements.**

\* \* \* \* \*

(d) 7 CFR part 1970.

\* \* \* \* \*

(n) Project planning, including engineering reports and environmental review documentation, to the maximum extent feasible, must address all water or waste disposal needs for a community in a coordinated manner

with other community development projects and take into consideration information presented in available community strategic and comprehensive plans. Any reports or designs completed with funds must be consistent with sound engineering practices and USDA regulations, including 7 CFR part 1970.

- 61. Revise § 1784.23(c), (d), and (f)(1) to read as follows:

**§ 1784.23 Lead Agency Environmental Review.**

\* \* \* \* \*

(c) RUS will, to the extent possible and in accordance with 40 CFR 1506.2 and 7 CFR part 1970, participate with DEC, IHS, and ANTHC to cooperatively or jointly prepare environmental review documents so that one document will comply with all applicable laws.

(d) For projects administered by DEC and ANTHC, RUS agrees to participate as a cooperating agency in accordance with 40 CFR 1501.6 and 7 CFR part 1970, and relies upon those agencies' procedures for implementing NEPA as further described below.

\* \* \* \* \*

(f) \* \* \*

(1) *Rural Utilities Service Lead Agency.* If RUS is the lead agency, the environmental review process, including all findings and determinations, will be completed in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 1794—[REMOVED AND RESERVED]**

- 62. Under 7 U.S.C 6941 *et seq.*, 42 U.S.C. 4231 *et seq.*; 40 CFR parts 1500–1508, and as discussed in the Preamble, the Department of Agriculture amends 7 CFR chapter XVII by removing and reserving part 1794.

**CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS–COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE**

**SUBCHAPTER H—PROGRAM REGULATIONS**

**PART 1924—CONSTRUCTION AND REPAIR**

- 63. The authority citation for part 1924 continues to read as follows:  
**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Planning and Performing Construction and Other Development**

- 64. Revise § 1924.6(a)(9) to read as follows:

**§ 1924.6 Performing development work.**

\* \* \* \* \*

(a) \* \* \*

(9) *National Environmental Policy Act.* Loans and grants, including those being assisted under the HUD section 8 housing assistance payment program for new construction, must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Exhibit I To Subpart A of Part 1924—[Amended]**

- 65. Amend section 300–1 of *Exhibit I To Subpart A* by removing “subpart G of part 1940 of this chapter” and adding in its place “7 CFR part 1970”.
- 66. In *Exhibit J to Subpart A*:
  - a. In Part A—Introduction, revise the introductory text of the third paragraph of section II, and section V.B.3 to read as follows:
  - b. In Part B, revise paragraph (C) and (D) of section I, the introductory text of section II, and the introductory text of section III to read as follows:

**Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation, and Set-Up**

\* \* \* \* \*

*Part A—Introduction*

\* \* \* \* \*

II. \* \* \*

7 CFR part 1970 applies on scattered sites, in subdivisions and rental projects with regard to the development, installation and set-up of manufactured homes. To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved will be considered as equivalent to one housing unit or lot. Because the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development, two of the purposes of this exhibit are to:

- \* \* \* \* \*
- V. \* \* \*
- B. \* \* \*
- 3. 7 CFR part 1970.
- \* \* \* \* \*

*Part B—Construction and Land Development*

I. \* \* \*

C. The finished grade elevation beneath the manufactured home or the first floor elevation of the habitable space, whichever is lower, must be above the 100-year flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. As is stated in EO 11988 and 7 CFR part 1970, it is the Agency's policy not to approve or fund any proposal in a 100-

year floodplain area unless there is no practicable alternative to such a floodplain location.

D. Essential services such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

II. *Development on Scattered Sites and in Subdivisions.*—A. General. Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, subpart C of part 1924, and 7 CFR part 1970, and the applicable Agency/MPS or Model Building Codes acceptable to the Agency. Manufactured homes for development in a manufactured home community shall:

\* \* \* \* \*

III. *Rental Housing Project Development.* A. General. Manufactured housing rental developments shall be planned and constructed in accordance with requirements of subpart C of part 1924; this subpart; 7 CFR part 1970, the Agency/MPS; and the requirements of subpart E of part 1944 of this chapter.

\* \* \* \* \*

**Subpart C—Planning and Performing Site Development Work**

■ 67. Revise § 1924.106(a) introductory text and (a)(2) to read as follows:

**§ 1924.106 Location.**

(a) *General.* It is RHS’s policy to promote compact community development and to finance projects that avoid or minimize conversion of wetlands or important farmlands, avoid unwarranted alterations or encroachment on floodplains, and avoid unwarranted adverse effects to historic properties (including those listed or eligible for listing on the National Register of Historic Places), when practicable alternatives exist to meet development needs; RHS is prohibited from financing development within the Coastal Barrier Resource System, or on a barrier island. A complete listing of the environmental review requirements is found in 7 CFR part 1970. In order to be eligible for RHS participation:

\* \* \* \* \*

(2) The site must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 68. In Exhibit C to subpart C, revise section I(A) to read as follows:

**Exhibit C to Subpart C of Part 1924— Checklist of Visual Exhibits and Documentation for RRH, RCH and LH Proposals**

\* \* \* \* \*

I. \* \* \*

A. *Environmental review requirements.* As requested by the Agency, the applicant is responsible for providing details of the project’s potential impact on the human environment and historic properties, in accordance with 7 CFR part 1970. Guidance concerning the environmental review requirements is available at any Agency office or on the Agency’s Web site.

\* \* \* \* \*

**SUBCHAPTER H—PROGRAM REGULATIONS**

**PART 1940—GENERAL**

■ 69. The authority citation for Part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

**Subpart G—Environmental Program**

■ 70. Revise § 1940.301(a) to read as follows:

\* \* \* \* \*

**§ 1940.301 Purpose.**

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA or its successor agency under Public Law 103–354 decision-making process is also outlined. This subpart does not apply to programs administered by the Rural Housing Service or the Rural Business-Cooperative Service, which are subject to 7 CFR part 1970.

\* \* \* \* \*

**Subpart T—System for Delivery of Certain Rural Development Programs**

■ 71. Revise § 1940.968(h)(2) to read as follows:

**§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).**

\* \* \* \* \*

(h) \* \* \*

(2) Environmental review requirements. Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 1942—ASSOCIATIONS**

■ 72. The authority citation for Part 1942 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

**Subpart A—Community Facility Loans**

■ 73. Revise § 1942.2(b) to read as follows:

**§ 1942.2 Processing applications.**

\* \* \* \* \*

(b) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Starting with the earliest discussions with prospective applicants or review of pre-applications and continuing through application processing, environmental issues must be considered.

\* \* \* \* \*

■ 74. Revise § 1942.17(j)(7) to read as follows:

**§ 1942.17 Community facilities.**

\* \* \* \* \*

(j) \* \* \*

(7) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 75. Revise § 1942.18(d)(1) and (2) to read as follows:

**§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.**

\* \* \* \* \*

(d) \* \* \*

(1) *Natural resources.* Facility planning should be responsive to the owner’s needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency’s environmental review requirements are found at 7 CFR part 1970.

(2) *Historic preservation.* Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C 470), as implemented by 36 CFR part 800, and Executive Order 11593, “Protection and Enhancement of the Cultural Environment.” 7 CFR part 1970 sets forth procedures for the protection of historic and archaeological properties.

\* \* \* \* \*

**Subpart C—Fire and Rescue and Other Small Community Facilities Projects**

■ 76. Revise § 1942.105 to read as follows:

**§ 1942.105 Environmental review requirements.**

Loans made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

■ 77. Revise § 1942.126(l)(6)(i)(E) to read as follows:

**§ 1942.126 Planning, bidding, contracting, constructing, procuring.**

\* \* \* \* \*

(l) \* \* \*

(6) \* \* \*

(i) \* \* \*

(E) Any applicable requirements of 7 CFR part 1970 have been met.

\* \* \* \* \*

**PART 1944—HOUSING**

■ 78. The authority citation for Part 1944 continues to read as follows:

Authority: 5 U.S.C 301; 42 U.S.C. 1480.

**Subpart B—Housing Application Packaging Grants**

■ 79. Revise § 1944.66(c) to read as follows:

**§ 1944.66 Administrative requirements.**

\* \* \* \* \*

(c) Grants made under the subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Subpart I—Self-Help Technical Assistance Grants**

■ 80. Revise § 1944.410(b)(1)(ii) and (c)(1) to read as follows:

**§ 1944.410 Processing preapplications, applications, and completing grant docket.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Documentation required in accordance with 7 CFR part 1970.

\* \* \* \* \*

(c) \* \* \*

(1) If the applicant is eligible and after the State Director has returned the pre-application information and, as appropriate, the environmental review documentation required in 7 CFR part 1970 to the Area Office, the Area Director will, within 10 days, prepare and issue Form AD-622. The original Form AD-622 will be signed and delivered to the applicant along with

the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

\* \* \* \* \*

**Subpart K—Technical and Supervisory Assistance Grants**

■ 81. Revise § 1944.523 to read as follows:

**§ 1944.523 Other administrative requirements.**

The policies of 7 CFR part 1970 apply to grants made under this subpart regarding historic properties and environmental compliance.

■ 82. Revise § 1944.526(a)(5), (b)(1)(i), (b)(1)(ii), (c)(1)(i), and (c)(1)(ii) to read as follows:

**§ 1944.526 Preapplication procedures.**

(a) \* \* \*

(5) Environmental review documentation in accordance with 7 CFR part 1970.

(b) \* \* \*

(1) \* \* \*

(i) Complete any required environmental review documentation in accordance with 7 CFR part 1970, and attach to the application.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Make a determination regarding the appropriate level of environmental review in accordance with 7 CFR part 1970.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

\* \* \* \* \*

■ 83. Amend § 1944.531 to revise paragraph (c)(10), remove paragraphs (c)(11) and (c)(12), and redesignate paragraph (c)(13) as (c)(11), to read as follows:

**§ 1944.531 Applications submission.**

\* \* \* \* \*

(c) \* \* \*

(10) Environmental review documentation and historical and archaeological review in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 84. Amend Exhibit B to Subpart K to revise paragraph A.4. to read as follows:

**Exhibit B to Subpart K of Part 1944—Administrative Instructions for State Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program**

A. \* \* \*

4. Environmental review documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 85. Amend Exhibit C to Subpart K to revise paragraph A.4. to read as follows:

**Exhibit C to Subpart K OF Part 1944—Instructions for District Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program**

A. \* \* \*

4. Environmental review documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Subpart N—Housing Preservation Grants**

■ 86. Revise the section heading, introductory text, and paragraphs (a) and (d) of § 1944.672 to read as follows:

**§ 1944.672 Environmental review requirements.**

Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(a) The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings is classified as a Categorical Exclusion, pursuant to § 1970.53. As part of their pre-application materials, applicants shall submit environmental documentation in accordance with 7 CFR part 1970, for the geographical areas proposed to be served by the program. The applicant shall refer to Part 1944 Subpart N Exhibit F-1.

\* \* \* \* \*

(d) When an HPG proposal does not qualify as a categorical exclusion under § 1970.53 and may require either an environmental report under § 1970.54 or an environmental assessment, the applicant will immediately contact the RHS office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the applicant, RHS must complete the environmental review process in accordance with 7 CFR part 1970, with the assistance of the applicant, as necessary.

\* \* \* \* \*

■ 87. Revise § 1944.676(c) to read as follows:

**§ 1944.676 Preapplication procedures.**

\* \* \* \* \*



(c) Grants made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 1948—RURAL DEVELOPMENT**

**Subpart B—Section 601 Energy Impacted Area Development Assistance Program**

■ 88. The authority citation for Part 1948, subpart B continues to read as follows:

**Authority:** Sec. 601, Pub. L. 95–620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

■ 89. Revise § 1948.62(a) to read as follows:

**§ 1948.62 Environmental review requirements.**

(a) Issuance of grants and other actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 90. Amend § 1948.84 by:

- a. Revising paragraphs (d)(8), (e)(2), and (i)(13);
- b. Removing paragraph (i)(14); and
- c. Redesignating paragraphs (i)(15), (i)(16), and (i)(17) as (i)(14), (i)(15), and (i)(16) respectively.

The revisions read as follows:

**§ 1948.84 Application procedure for site development and acquisition grants.**

\* \* \* \* \*

(d) \* \* \*

(8) Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

(e) \* \* \*

(2) Comply with environmental review requirements in accordance with 7 CFR part 1970;

\* \* \* \* \*

(i) \* \* \*

(13) Environmental review documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 1951—SERVICING AND COLLECTIONS**

■ 91. The authority citation for part 1951 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

**Subpart E—Servicing of Community and Direct Business Programs Loans and Grants**

■ 92. Revise § 1951.210 to read as follows:

**§ 1951.210 Environmental requirements.**

Servicing actions as defined in § 1970.6 of this chapter are part of the financial assistance already provided and do not require additional NEPA review. Actions such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, must comply with the environmental review requirements in accordance with 7 CFR part 1970.

**Subpart R—Rural Development Loan Servicing**

■ 93. Revise § 1951.900 to read as follows:

**§ 1951.900 OMB control number.**

The information collection requirement obtained for this part is pending OMB approval at the time of this rule's publication in the **Federal Register**.

**PART 1955—PROPERTY MANAGEMENT**

■ 94. The authority citation for part 1955 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart C—Disposal of Inventory Property—Consolidated Farm and Rural Development Act (CONACT) Real Property.**

■ 95. Revise § 1955.136(a) introductory text to read as follows:

**§ 1955.136 Environmental review requirements.**

(a) Prior to a final decision on some disposal actions, the action must comply with the environmental review requirements in accordance with each agency's environmental policies and procedures. For Farm Service Agency actions the environmental policies and procedures are found in Subpart G of Part 1940 of this chapter and for Rural Development programs the environmental policies and procedures are found in 7 CFR part 1970.

\* \* \* \* \*

■ 96. Revise § 1955.137(a)(3)(i) to read as follows:

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) \* \* \*

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and non-program (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined, for farm loan program actions, in paragraph 3b(1) and (2) of Exhibit C of subpart G of part 1940 for Farm Service Agency Programs and in 7 CFR part 1970, for Rural Development programs.

\* \* \* \* \*

■ 97. Revise § 1955.140(a) to read as follows:

**§ 1955.140 Sale in parcels.**

(a) *Individual property subdivided.* An individual property, other than Farm Loan Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with § 1955.107. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects related to Farm Service Agency program actions should also be considered pursuant to subpart G of part 1940 of this chapter. For Rural Development program actions, environmental review requirements must comply with 7 CFR part 1970. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955–3C, “Acquired Property—Subdivision,” in accordance with the FMI.

\* \* \* \* \*

■ 98. Add part 1970 to read as follows:

**PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES**

**Subpart A—Environmental Policies Sec.**

- 1970.1 Purpose, applicability, and scope.
- 1970.2 [Reserved]
- 1970.3 Authority.
- 1970.4 Policies.
- 1970.5 Responsible parties.
- 1970.6 Definitions and acronyms.
- 1970.7 [Reserved]
- 1970.8 Actions requiring environmental review.
- 1970.9 Levels of environmental review.
- 1970.10 Raising the level of environmental review.
- 1970.11 Timing of the environmental review process.
- 1970.12 Limitations on actions during the NEPA process.
- 1970.13 Consideration of alternatives.
- 1970.14 Public involvement.
- 1970.15 Interagency cooperation.
- 1970.16 Mitigation.
- 1970.17 Programmatic analysis and tiering.
- 1970.18 Emergencies.
- 1970.19—1970.50 [Reserved]

#### Subpart B—NEPA Categorical Exclusions

- 1970.51 Applying CEs.
- 1970.52 Extraordinary circumstances.
- 1970.53 CEs involving no or minimal disturbance without an environmental report.
- 1970.54 CEs involving small-scale development with an environmental report.
- 1970.55 CEs for multi-tier actions.
- 1970.56—1970.100 [Reserved]

#### Subpart C—NEPA Environmental Assessments

- 1970.101 General.
- 1970.102 Preparation of EAs.
- 1970.103 Supplementing EAs.
- 1970.104 Finding of No Significant Impact.
- 1970.105—1970.150 [Reserved]

#### Subpart D—NEPA Environmental Impact Statements

- 1970.151 General.
- 1970.152 EIS funding and professional services.
- 1970.153 Notice of Intent and scoping.
- 1970.154 Preparation of the EIS.
- 1970.155 Supplementing EISs.
- 1970.156 Record of decision.
- 1970.157—1970.200 [Reserved]

**Authority:** 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4241 *et seq.*; 40 CFR parts 1500–1508; 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

#### Subpart A—Environmental Policies

##### § 1970.1 Purpose, applicability, and scope.

(a) *Purpose.* The purpose of this part is to ensure that the Agency complies with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), and other applicable environmental requirements in order to make better decisions based on an understanding of the environmental consequences of proposed actions, and take actions that protect, restore, and enhance the quality of the human environment.

(b) *Applicability.* The environmental policies and procedures contained in this part are applicable to programs administered by the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS); herein referred to as “the Agency.”

(c) *Scope.* This part integrates NEPA with other planning, environmental review processes, and consultation procedures required by other Federal laws, regulations, and Executive Orders applicable to Agency programs. This part also supplements the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500 through 1508. To the extent appropriate, the Agency will take into account CEQ guidance and memoranda. This part also incorporates and complies with the procedures of Section 106 (36 CFR part 800) of the National Historic Preservation Act (NHPA) and Section 7 (50 CFR part 402) of the Endangered Species Act (ESA).

##### § 1970.2 [Reserved]

##### § 1970.3 Authority.

This part derives its authority from a number of statutes, Executive Orders, and regulations, including but not limited to those listed in this section. Both the Agency and the applicant, as appropriate, must comply with these statutes, Executive Orders, and regulations, as well as any future statutes, Executive Orders, and regulations that affect the Agency’s implementation of this part.

(a) National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(b) Council on Environmental Quality Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500 through 1508);

(c) U. S. Department of Agriculture, NEPA Policies and Procedures (7 CFR part 1b).

(d) Department of Agriculture, Enhancement, Protection and Management of the Cultural Environment (7 CFR parts 3100 through 3199);

(e) Archaeological and Historic Preservation Act of 1960, as amended, (16 U.S.C. 469 *et seq.*);

(f) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*);

(g) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(h) Clean Air Act (42 U.S.C. 7401 *et seq.*);

(i) Clean Water Act (Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*);

(j) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(k) Coastal Barrier Improvement Act (42 U.S.C. 4028 *et seq.*);

(l) Coastal Zone Management Act (16 U.S.C. 1456);

(m) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103) (CERCLA);

(n) Consolidated Farm and Rural Development Act, Sections 307(a)(6)(A) (7 U.S.C. 1927(a)(6)(A)) and 363 (7 U.S.C. 2006e);

(o) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(p) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(q) Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 *et seq.*);

(r) Housing and Community Development Act of 1992 (42 U.S.C. 542(c)(9));

(s) Migratory Bird Treaty Act (16 U.S.C. 703–711);

(t) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(u) National Trails System Act (16 U.S.C. 1241 *et seq.*);

(v) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*);

(w) Noise Control Act (42 U.S.C. 4901 *et seq.*);

(x) Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*);

(y) Resource Conservation and Recovery Act (42 U.S.C. 6901);

(z) Safe Drinking Water Act—(42 U.S.C. 300f *et seq.*);

(aa) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*);

(bb) Wilderness Act (16 U.S.C. 1131 *et seq.*);

(cc) Compact of Free Association between the United States and the Republic of the Marshall Islands and between the United States and the Federated States of Micronesia (Public Law 108–188);

(dd) Compact of Free Association between the United States and the Republic of Palau (Public Law 99–658);

(ee) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(ff) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(gg) Executive Order 11988, Floodplain Management;

(hh) Executive Order 11990, Protection of Wetlands;

(ii) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations;

(jj) Executive Order 12372, Intergovernmental Review;

(kk) Executive Order 13112, Invasive Species;

(ll) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments;

(mm) Executive Order 13287, Preserve America;

(nn) Executive Order 13016, Federal Support of Community Efforts along American Heritage Rivers;

(oo) Executive Order 13352, Facilitation of Cooperative Conservation;

(pp) Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management;

(qq) Executive Order 13653, Preparing the United States for the Impacts of Climate Change;

(rr) Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input;

(ss) Executive Order 13693, Planning for Federal Sustainability in the Next Decade;

(tt) Agriculture Departmental Regulation (DR) 5600–2, Environmental Justice;

(uu) Agriculture Departmental Regulation (DR) 9500–3, Land Use Policy;

(vv) Agriculture Departmental Regulation (DR) 9500–4, Fish and Wildlife Policy;

(ww) Agriculture Departmental Regulation (DR) 1070–001, U.S. Department of Agriculture (USDA) Policy Statement on Climate Change Adaptation; and

(xx) Agriculture Departmental Manual (DM) 5600–001, Environmental Pollution Prevention, Control, and Abatement Manual.

#### § 1970.4 Policies.

(a) Applicants' proposals must, whenever practicable, avoid or minimize adverse environmental impacts; avoid or minimize conversion of wetlands or important farmlands (as defined in the Farmland Protection Policy Act and its implementing regulations issued by the USDA Natural Resources Conservation Service) when practicable alternatives exist to meet development needs; avoid unwarranted alterations or encroachment on floodplains when practicable alternatives exist to meet developmental needs; and avoid or minimize potentially disproportionate and adverse impacts to minority or low-income populations within the proposed action's area of impact. Avoiding development in floodplains includes avoiding development in the 500-year floodplain, as shown on the

Agency's (FEMA) Flood Insurance Rate Maps, where the proposed actions and facilities are defined as critical actions in § 1970.6. The Agency shall not fund the proposal unless there is a demonstrated, significant need for the proposal and no practicable alternative exists to the proposed conversion of the above resources.

(b) The Agency encourages the reuse of real property defined as brownfields per Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) where the reuse of such property is complicated by the presence or potential presence of a hazardous substance, pollutant, or other contaminant, provided that the level of such presence does not threaten human health and the environment for the proposed land use. The Agency will defer to the agency with regulatory authority under the appropriate law in determining the appropriate level of contaminant for a specific proposed land use. The Agency will evaluate the risk based upon the applicable regulatory agency's review and concurrence with the proposal.

(c) The Agency and applicant will involve other Federal agencies with jurisdiction by law or special expertise, state and local governments, Indian tribes and Alaska Native organizations, Native Hawaiian organizations, and the public, early in the Agency's environmental review process to the fullest extent practicable. To accomplish this objective, the Agency and applicant will:

(1) Ensure that environmental amenities and values be given appropriate consideration in decision making along with economic and technical considerations;

(2) At the earliest possible time, advise interested parties of the Agency's environmental policies and procedures and required environmental impact analyses during early project planning and design; and

(3) Make environmental assessments (EA) and environmental impact statements (EIS) available to the public for review and comment in a timely manner.

(d) The Agency and applicant will ensure the completion of the environmental review process prior to the irreversible and irretrievable commitment of Agency resources in accordance with § 1970.11. The environmental review process is concluded when the Agency approves the applicability of a Categorical Exclusion (CE), issues a Finding of No Significant Impact (FONSI), or issues a Record of Decision (ROD).

(e) If an applicant's proposal does not comply with Agency environmental policies and procedures, the Agency will defer further consideration of the application until compliance can be demonstrated, or the application may be rejected. Any applicant that is directly and adversely affected by an administrative decision made by the Agency under this part may appeal that decision, to the extent permissible under 7 CFR part 11.

(f) The Agency recognizes the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, will lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of humankind's world environment in accordance with NEPA, 42 U.S.C. 4321 *et seq.*

(g) The Agency will use the NEPA process, to the maximum extent feasible, to identify and encourage opportunities to reduce greenhouse gas (GHG) emissions caused by proposed Federal actions that would otherwise result in the emission of substantial quantities of GHG.

#### § 1970.5 Responsible parties.

(a) *Agency.* The following paragraphs identify the general responsibilities of the Agency.

(1) The Agency is responsible for all environmental decisions and findings related to its actions and will encourage applicants to design proposals to protect, restore, and enhance the environment.

(2) If the Agency requires an applicant to submit environmental information, the Agency will outline the types of information and analyses required in guidance documents. This guidance is available on the Agency's Web site. The Agency will independently evaluate the information submitted.

(3) The Agency will advise applicants and applicable lenders of their responsibilities to consider environmental issues during early project planning and that specific actions listed in § 1970.12, such as initiation of construction, cannot occur prior to completion of the environmental review process or it could result in a denial of financial assistance.

(4) The Agency may act as either a lead agency or a cooperating agency in the preparation of an environmental review document. If the Agency acts as a cooperating agency, the Agency will fulfill the cooperating agency

responsibilities outlined in 40 CFR 1501.6.

(5) Mitigation measures described in the environmental review and decision documents must be included as conditions in Agency financial commitment documents, such as a conditional commitment letter.

(6) The Agency, guaranteed lender, or multi-tier recipients will monitor and track the implementation, maintenance, and effectiveness of any required mitigation measures.

(b) *Applicants.* Applicants must comply with provisions found in paragraphs (b)(1) through (8) of this section.

(1) Consult with Agency staff to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process.

(2) Where appropriate, contact state and Federal agencies to initiate consultation on matters affected by this part. This part authorizes applicants to coordinate with state and Federal agencies on behalf of the Agency. However, applicants are not authorized to initiate consultation in accordance with Section 106 of the National Historic Preservation Act with Indian tribes on behalf of the Agency. In those cases, applicants need the express written authority of the Agency and consent of Indian tribes in order to initiate consultation.

(3) Provide information to the Agency that the Agency deems necessary to evaluate the proposal's potential environmental impacts and alternatives.

(i) Applicants must ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the Agency office processing the application. Incomplete materials or delayed submittals may jeopardize consideration of the applicant's proposal by the Agency and may result in no award of financial assistance.

(ii) Applicants must clearly define the purpose and need for the proposal and inform the Agency promptly if any other Federal, state, or local agencies are involved in financing, permitting, or approving the proposal, so that the Agency may coordinate and consider participation in joint environmental reviews.

(iii) As necessary, applicants must develop and document reasonable alternatives that meet their purpose and

need while improving environmental outcomes.

(iv) Applicants must prepare environmental review documents according to the format and standards provided by the Agency. The Agency will independently evaluate the final documents submitted. All environmental review documents must be objective, complete, and accurate in order for them to be finally accepted by the Agency. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents.

(A) Applicants are not generally required to prepare environmental documentation for proposals that involve Agency activities with no or minimal disturbance listed in § 1970.53. However, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(B) For CEs listed in § 1970.54, applicants must prepare environmental documentation as required by the Agency; the environmental documentation required for CEs is referred to as an environmental report(ER).

(C) When an EA is required, the applicant must prepare an EA that meets the requirements in subpart C of this part, including, but not limited to, information and data collection and public involvement activities. When the applicant prepares the EA, the Agency will make its own independent evaluation of the environmental issues and take responsibility for the scope and content of the EA.

(D) Applicants must cooperate with and assist the Agency in all aspects of preparing an EIS that meets the requirements specified in subpart D of this part, including, but not limited to, information and data collection and public involvement activities. Once authorized by the Agency in writing, applicants are responsible for funding all third-party contractors used to prepare the EIS.

(4) Applicants must provide any additional studies, data, and document revisions requested by the Agency during the environmental review and decision-making process. The studies, data, and documents required will vary depending upon the specific project and its impacts. Examples of studies that the Agency may require an applicant to provide are biological assessments under the ESA, archeological surveys under the NHPA, wetland delineations, surveys to determine the floodplain

elevation on a site, air quality conformity analysis, or other such information needed to adequately assess impacts.

(5) Applicants must ensure that no actions are taken (such as any demolition, land clearing, initiation of construction, or advance of interim construction funds from a guaranteed lender), including incurring any obligations with respect to their proposal, that may have an adverse impact on the quality of the human environment or that may limit the choice of reasonable alternatives during the environmental review process.

Limitations on actions by an applicant prior to the completion of the Agency environmental review process are defined in CEQ regulations at 40 CFR 1506.1 and 7 CFR 1970.12.

(6) Applicants must promptly notify the Agency processing official when changes are made to their proposal so that the environmental review and documentation may be supplemented or otherwise revised as necessary.

(7) Applicants must incorporate any mitigation measures identified and any required monitoring in the environmental review process into the plans and specifications and construction contracts for the proposals. Applicants must provide such mitigation measures to consultants responsible for preparing design and construction documents, or provide other mitigation action plans. Applicants must maintain, as applicable, mitigation measures for the life of the loans or refund term for grants.

(8) Applicants must cooperate with the Agency on achieving environmental policy goals. If an applicant is unwilling to cooperate with the Agency on environmental compliance, the Agency will deny the requested financial assistance.

#### § 1970.6 Definitions and acronyms.

(a) *Definitions.* Terms used in this part are defined in 40 CFR part 1508, 36 CFR 800.16, and this section. If a term is defined in this section and in one or both of the other referenced regulations, such term will have the meaning as defined in this subpart.

*Agency.* USDA Rural Development, which includes RBS, RHS, and RUS, and any successor agencies.

*Applicant.* An individual or entity requesting financial assistance including but not limited to loan recipients, grantees, guaranteed lenders, or licensees.

*Average megawatt.* The equivalent capacity rating of a generating facility based on the gross energy output

generated over a 12-month period or one year.

**Construction work plan.** An engineering planning study that is used in the Electric Program to determine and document a borrower's 2- to 4-year capital construction investments that are needed to provide and maintain adequate and reliable electric service to a borrower's new and existing members.

**Cooperative agreement.** For the purposes of this part, a cooperative agreement is a form of financial assistance in which the Agency provides funding that is authorized by public statute, not to be repaid, and for a purpose that includes substantial involvement and a mutual interest of both the Agency and the cooperator.

**Critical action.** Any activity for which even a slight chance of flooding would be hazardous as determined by the Agency. Critical actions include activities that create, maintain, or extend the useful life of structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; maintain irreplaceable records; or provide essential utility or emergency services (such as data storage centers, electric generating facilities, water treatment facilities, wastewater treatment facilities, large pump stations, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid death or serious injury in a flood.

**Design professional.** An engineer or architect providing professional design services to applicants during the planning, design, and construction phases of proposals submitted to the Agency for financial assistance.

**Distributed resources.** Sources of electrical power that are not directly connected to a bulk power transmission system, having an installed capacity of not more than 10 Mega volt-amperes (MVA), connected to an electric power system through a point of common coupling. Distributed resources include both generators (distributed generation) and energy storage technologies.

**Emergency.** A disaster or a situation that involves an immediate or imminent threat to public health or safety as determined by the Agency.

**Environmental report.** The environmental documentation that is required of applicants for proposed actions eligible for a CE under § 1970.54.

**Environmental review.** Any or all of the levels of environmental analysis described under this part.

**Financial assistance.** A loan, grant, cooperative agreement, or loan guarantee that provides financial assistance, provided by the Agency to an applicant. In accordance with 40 CFR 1505.1(b), the Agency defines the major decision point at which NEPA must be complete, as the approval of financial assistance.

**Grant.** A form of financial assistance for a specified purpose without scheduled repayment.

**Guaranteed lender.** The organization making, servicing, or collecting the loan which is guaranteed by the Agency under applicable regulations, excluding the Federal Financing Bank.

**Historic property.** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (See 36 CFR 800.16(l)).

**Indian tribe.** An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (see 36 CFR 800.16(m)).

**Lien sharing.** Agreement to pro rata payment on shared secured collateral without priority preference.

**Lien subordination.** The circumstance in which the Agency, as a first lien holder, provides a creditor with a priority security interest in secured collateral.

**Loan.** The provision of funds by the Agency directly to an applicant in exchange for repayment with interest and collateral to secure repayment.

**Loan guarantee.** The circumstance in which the Agency guarantees all or a portion of payment of a debt obligation to a lender.

**Loan/System design.** An engineering study, prepared to support a loan application under this part, demonstrating that a system design provides telecommunication services most efficiently to proposed subscribers in a proposed service area, in accordance with the Telecommunications Program guidance.

**Multi-tier action.** Financial assistance provided by specific programs administered by the Agency, that provides financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or other organizations with similar financial arrangements who, in turn, provide financial assistance to eligible recipients. The entities or organizations receiving the initial Agency financial assistance are considered "primary recipients." As the direct recipient of this financial assistance, "primary recipients" provide the financial assistance to other parties, referred to as "secondary recipients" or "ultimate recipients." The multi-tier action programs include Housing Preservation Grants (42 U.S.C. 1490m), Multi-Family Housing Preservation Revolving Loan Fund (7 CFR part 3560), Intermediary Relending Program (7 U.S.C. 1932 note and 42 U.S.C. 9812), Rural Business Development Grant Program (7 U.S.C. 940c and 7 U.S.C. 1932(c)), Rural Economic Development Loan and Grant Program (7 U.S.C. 940c), Rural Microentrepreneur Assistance Program (7 U.S.C. 1989(a), 7 U.S.C. 2008s), Household Water Well System Grant Program (7 U.S.C. 1926e), Revolving Funds for Financing Water and Wastewater Projects (Revolving Fund Program) (7 U.S.C. 1926(a)(2)(B)), Energy Efficiency and Conservation Loan Program (7 U.S.C. 901), Section 313A, Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c-1), Rural Energy Savings Program (7 U.S.C. 8107a), and any other such programs or similar financial assistance actions to primary recipients as described above.

**No action alternative.** An alternative that describes the reasonably foreseeable future environment in the event a proposed Federal action is not taken. This forms the baseline condition against which the impacts of the proposed action and other alternatives are compared and evaluated.

**Preliminary Architectural/Engineering Report.** Documents prepared by the applicant's design professional in accordance with applicable Agency guidance for Preliminary Architectural Reports for housing, business, and community facilities proposals and for Preliminary Engineering Reports for water and wastewater proposals.

**Previously disturbed or developed land.** Land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas

that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

*Servicing actions.* All routine, ministerial, or administrative actions for Agency-provided financial assistance that do not involve new financial assistance, including, but not limited to:

(1) Advancing of funds, billing, processing payments, transfers, assumptions, refinancing involving only a change in an interest rate, and accepting prepayments;

(2) Monitoring collateral; foreclosure; compromising, adjusting, reducing, or charging off debts or claims; and modifying or releasing the terms of security instruments, leases, contracts, and agreements; and

(3) Consents or approvals provided pursuant to loan contracts, agreements, and security instruments.

*Substantial improvement.* Any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) before the repair or improvement is started, or, if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places. (See 44 CFR 59.1.)

*Third-party contractor.* Contractors for the preparation of EISs, under the Agency's direction, and paid by the applicant. Under the Agency's direction and in compliance with 40 CFR 1506.5(c), the applicant may undertake the necessary paperwork for the solicitation of a field of candidates. Federal procurement requirements do not apply to the Agency because it incurs no obligations or costs under the contract, nor does the Agency procure anything under the contract.

(b) *Acronyms.*

aMW—Average megawatt  
CE—Categorical Exclusion

CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act  
CEQ—Council on Environmental Quality  
EA—Environmental Assessment  
ER—Environmental Report  
EIS—Environmental Impact Statement  
EPA—United States Environmental Protection Agency  
ESA—Endangered Species Act  
FEMA—Federal Emergency Management Agency  
FONSI—Finding of No Significant Impact  
GHG—Greenhouse Gas  
kV—kilovolt (kV)  
kW—kilowatt (kW)  
MW—megawatt  
MVA—Mega volt-amperes  
NEPA—National Environmental Policy Act  
NHPA—National Historic Preservation Act  
NOI—Notice of Intent  
RBIC—Rural Business Investment Company  
RBS—Rural Business-Cooperative Service  
RHS—Rural Housing Service  
RUS—Rural Utilities Service  
ROD—Record of Decision  
SEPA—State Environmental Policy Act  
USDA—United States Department of Agriculture  
USGS—United States Geological Survey

#### § 1970.7 [Reserved]

#### § 1970.8 Actions requiring environmental review.

(a) The Agency must comply with the requirements of NEPA for all Federal actions within the:

(1) United States borders and any other commonwealth, territory or possession of the United States such as Guam, American Samoa, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico; and

(2) Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, subject to applicable Compacts of Free Association.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, the provisions of this part apply to administrative actions by the Agency with regard to the following to be Federal actions:

- (1) Providing financial assistance;
- (2) Certain post-financial assistance actions with the potential to have an effect on the environment, including:
  - (i) The sale or lease of Agency-owned real property;
  - (ii) Lien subordination; and

(iii) Approval of a substantial change in the scope of a project receiving financial assistance not previously considered.

(3) Promulgation of procedures or regulations for new or significantly revised programs; and

(4) Legislative proposals (see 40 CFR 1506.8).

(c) For environmental review purposes, the Agency has identified and established categories of proposed actions (§§ 1970.53 through 1970.55, 1970.101, and 1970.151). An applicant may propose to participate with other parties in the ownership of a project. In such a case, the Agency will determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Only if there is such control and responsibility as described below will the Agency consider its action with regard to the project to be a Federal action for purposes of this part. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

(1) Five percent (5%) or less, the project is not considered a Federal action subject to this part;

(2) Thirty-three and one-third percent (33⅓%) or more, the project shall be considered a Federal action subject to this part;

(3) More than five percent (5%) but less than thirty-three and one-third percent (33⅓%), the Agency will determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that the Agency's action will be considered a Federal action subject to this part. In making this determination, the Agency will consider such factors as:

(i) Whether construction would be completed regardless of the Agency's financial assistance or approval;

(ii) The stage of planning and construction;

(iii) Total participation of the applicant;

(iv) Participation percentage of each participant; and

(v) Managerial arrangements and contractual provisions.

(d) Lien sharing is not an action for the purposes of this part.

(e) Servicing actions are directly related to financial assistance already provided, do not require separate NEPA review, and are not actions for the purposes of this part.

#### § 1970.9 Levels of environmental review.

(a) The Agency has identified classes of actions and the level of

environmental review required for applicant proposals and Agency actions in subparts B (CEs), C (EAs), and D (EISs) of this part. An applicant seeking financial assistance from the Agency must sufficiently describe its proposal so that the Agency can properly classify the proposal for the purposes of this part.

(b) If an action is not identified in the classes of actions listed in subparts B, C, or D of this part, the Agency will determine what level of environmental review is appropriate.

(c) A single environmental document will evaluate an applicant's proposal and any other activities that are connected, interdependent, or likely to have significant cumulative effects. When a proposal represents one segment of a larger interdependent proposal being funded jointly by various entities, the level of environmental review will normally include the entire proposal.

(d) Upon submission of multi-year planning documents, such as Telecommunications Program Loan/System Designs or multi-year Electric Program Construction Work Plans, the Agency will identify the appropriate classification for all proposals listed in the applicable design or work plan and may request any additional environmental information prior to the time of loan approval.

#### **§ 1970.10 Raising the level of environmental review.**

Environmental conditions, scientific controversy, or other characteristics unique to a specific proposal can trigger the need for a higher level of environmental review than described in subparts B or C of this part. As appropriate, the Agency will determine whether extraordinary circumstances (see § 1970.52) or the potential for significant environmental impacts warrant a higher level of review. The Agency is solely responsible for determining the level of environmental review to be conducted and the adequacy of environmental review that has been performed.

#### **§ 1970.11 Timing of the environmental review process.**

(a) Once an applicant decides to request Agency financial assistance, the applicant must initiate the environmental review process at the earliest possible time to ensure that planning, design, and other decisions reflect environmental policies and values, avoid delays, and minimize potential conflicts. This includes early coordination with the Agency, all funding partners, and regulatory

agencies, in order to minimize duplication of effort.

(b) The environmental review process must be concluded before completion of the obligation of funds.

(c) The environmental review process is formally concluded when all of the following have occurred:

(1) The Agency has reviewed the appropriate environmental review document for completeness;

(2) All required public notices have been published and public comment periods have elapsed;

(3) All comments received during any established comment period have been considered and addressed, as appropriate by the Agency;

(4) The environmental review documents have been approved by the Agency; and

(5) The appropriate environmental decision document has been executed by the Agency after paragraphs (c)(1) through (4) of this section have been concluded.

(d) For proposed actions listed in § 1970.151 and to ensure Agency compliance with the conflict of interest provisions in 40 CFR 1506.5(c), the Agency is responsible for selecting any third-party EIS contractor and participating in the EIS preparation. For more information regarding acquisition of professional services and funding of a third-party contractor, refer to § 1970.152.

#### **§ 1970.12 Limitations on actions during the NEPA process.**

(a) *Limitations on actions.* Applicants must not take actions concerning a proposal that may potentially have an environmental impact or would otherwise limit or affect the Agency's decision until the Agency's environmental review process is concluded. If such actions are taken prior to the conclusion of the environmental review process, the Agency may deny the request for financial assistance.

(b) *Anticipatory demolition.* If the Agency determines that an applicant has intentionally significantly adversely affected a historic property with the intent to avoid the requirements of Section 106 of the NHPA (such as demolition or removal of all or part of the property) the Agency may deny the request for financial assistance in accordance with section 110(k) of the NHPA.

(c) *Recent construction.* When construction is in progress or has recently been completed by applicants who can demonstrate no prior intent to seek Agency assistance at the time of

application submittal to the Agency, the following requirements apply:

(1) In cases where construction commenced within 6 months prior to the date of application, the Agency will determine and document whether the applicant initiated construction to avoid environmental compliance requirements. If any evidence to that effect exists, the Agency may deny the request for financial assistance.

(2) If there is no evidence that an applicant is attempting to avoid environmental compliance requirements, the application is subject to the following additional requirements:

(i) The Agency will promptly provide written notice to the applicant that the applicant must halt construction if it is ongoing and fulfill all environmental compliance responsibilities before the requested financing will be provided;

(ii) The applicant must take immediate steps to identify any environmental resources affected by the construction and protect the affected resources; and

(iii) With assistance from the applicant and to the extent practicable, the Agency will determine whether environmental resources have been adversely affected by any construction and this information will be included in the environmental document.

(d) *Minimal expenditures.* In accordance with 40 CFR 1506.1(d), the Agency will not be precluded from approving minimal expenditures by the applicant not affecting the environment (e.g., long lead-time equipment, purchase options, or environmental or technical documentation needed for Agency environmental review). To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Agency, and must not compromise the objectivity of the Agency's environmental review process.

#### **§ 1970.13 Consideration of alternatives.**

The purpose of considering alternatives to a proposed action is to explore and evaluate whether there may be reasonable alternatives to that action that may have fewer or less significant negative environmental impacts. When considering whether the alternatives are reasonable, the Agency will take into account factors such as economic and technical feasibility. The extent of the analysis on each alternative will depend on the nature and complexity of the proposal. Environmental review

documents must discuss the consideration of alternatives as follows:

(a) For proposals subject to subpart C of this part, the environmental effects of the “No Action” alternative must be evaluated. All EAs must evaluate other reasonable alternatives whenever the proposal involves potential adverse effects to environmental resources.

(b) For proposals subject to subpart D of this part, the Agency will follow the requirements in 40 CFR part 1502.

#### § 1970.14 Public involvement.

(a) *Goal.* The goal of public involvement is to engage affected or interested parties and share information and solicit input regarding environmental impacts of proposals. This helps the Agency to better identify potential environmental impacts and mitigation measures and allows the public to review and comment on proposals under consideration by the Agency. The nature and extent of public involvement will depend upon the public interest and the complexity, sensitivity, and potential for significant environmental impacts of the proposal.

(b) *Responsibility to involve the public.* The Agency will require applicant assistance throughout the environmental review process, as appropriate, to involve the public as required under 40 CFR 1506.6. These activities may include, but are not limited to:

(1) Coordination with Federal, state, and local agencies; Federally recognized American Indian tribes; Alaska Native organizations; Native Hawaiian organizations; and the public;

(2) Providing meaningful opportunities for involvement of affected minority or low-income populations, which may include special outreach efforts, so that potential disproportionate effects on minority or low-income populations are reduced to the maximum extent practicable;

(3) Publication of notices;

(4) Organizing and conducting meetings; and

(5) Providing translators, posting information on electronic media, or any other additional means needed that will successfully inform the public.

(c) *Scoping.* In accordance with 40 CFR 1501.7, scoping is an early and open process to identify significant environmental issues deserving of study, de-emphasize insignificant issues, and determine the scope of the environmental review process.

(1) Public scoping meetings allow the public to obtain information about a proposal and to express their concerns directly to the parties involved and help determine what issues are to be

addressed and what kinds of expertise, analysis, and consultation are needed. For proposals classified in §§ 1970.101 and 1970.151, scoping meetings may be required at the Agency’s discretion. The Agency may require a scoping meeting whenever the proposal has substantial controversy, scale, or complexity.

(2) If required, scoping meetings will be held at reasonable times, in accessible locations, and in the geographical area of the proposal at a location the Agency determines would best afford an opportunity for public involvement.

(3) When held, applicants must attend and participate in all scoping meetings. When requested by the Agency, the applicant must organize and arrange meeting locations, publish public notices, provide translation, provide for any equipment needs such as those needed to allow for remote participation, present information on their proposal, and fulfill any related activities.

(d) *Public notices.* (1) The Agency is responsible for meeting the public notice requirements in 40 CFR 1506.6, but will require the applicant to provide public notices of the availability of environmental documents and of public meetings so as to inform those persons and agencies who may be interested in or affected by an applicant’s proposal. The Agency will provide applicants with guidance as to specific notice content, publication frequencies, and distribution requirements. Public notices issued by the Agency or the applicant must describe the nature, location, and extent of the applicant’s proposal and the Agency’s proposed action; notices must also indicate the availability and location of pertinent information.

(2) Notices generally must be published in a newspaper(s) of general circulation (both in print and online) within the proposal’s affected areas and other places as determined by the Agency. The notice must be published in the non-classified section of the newspaper. If the affected area is largely non-English speaking or bilingual, the notice must be published in both English and non-English language newspapers serving the affected area, if both are available. The Agency will determine the use of other distribution methods for communicating information to affected individuals and communities if those are more likely to be effective. The applicant must obtain an “affidavit of publication” or other such evidence from all publications (or equivalent verification if other distribution methods were used) and must submit such evidence to the Agency to be made

a part of the Agency’s Administrative Record.

(3) The number of times notices regarding EAs must be published is specified in § 1970.102(b)(6)(ii). Other distribution methods may be used in special circumstances when a newspaper notice is not available or is not adequate. Additional distribution methods may include, but are not limited to, direct public notices to adjacent property owners or occupants, mass mailings, radio broadcasts, internet postings, posters, or some other combination of public announcements.

(4) Formal notices required for EIS-level proposals pursuant to 40 CFR part 1500 will be published by the Agency in the **Federal Register**.

(e) *Public availability.* Documents associated with the environmental review process will be made available to the public at convenient locations specified in public notices and, where appropriate, on the Agency’s internet site. Environmental documents that are voluminous or contain hard-to-reproduce graphics or maps should be made available for viewing at one or more locations, such as an Agency field office, public library, or the applicant’s place of business. Upon request, the Agency will promptly provide interested parties copies of environmental review documents without charge to the extent practicable, or at a fee not to exceed the cost of reproducing and shipping the copies.

(f) *Public comments.* All comments should be directed to the Agency. Comments received by applicants must be forwarded to the Agency in a timely manner. The Agency will assess and consider all comments received.

#### § 1970.15 Interagency cooperation.

In order to reduce delay and paperwork, the Agency will, when practicable, eliminate duplication of Federal, state, and local procedures by participating in joint environmental document preparation, adopting appropriate environmental documents prepared for or by other Federal agencies, and incorporating by reference other environmental documents in accordance with 40 CFR 1506.2 and 1506.3.

(a) *Coordination with other Federal agencies.* When other Federal agencies are involved in an Agency action listed in § 1970.101 or § 1970.151, the Agency will coordinate with these agencies to determine cooperating agency relationships as appropriate in the preparation of a joint environmental review document. The criteria for making this determination can be found at 40 CFR 1501.5.



(b) *Adoption of documents prepared for or by other Federal agencies.* The Agency may adopt EAs or EISs prepared for or by other Federal agencies if the proposed actions and site conditions addressed in the environmental document are substantially the same as those associated with the proposal being considered by the Agency. The Agency will consider age, location, and other reasonable factors in determining the usefulness of the other Federal documents. The Agency will complete an independent evaluation of the environmental document to ensure it meets the requirements of this part. If any environmental document does not meet all Agency requirements, it will be supplemented prior to adoption. Where there is a conflict in the two agencies' classes of action, the Agency may adopt the document provided that it meets the Agency's requirements.

(c) *Cooperation with state and local governments.* In accordance with 40 CFR 1500.5 and 1506.2, the Agency will cooperate with state and local agencies to the fullest extent possible to reduce delay and duplication between NEPA and comparable state and local requirements.

(1) *Joint environmental documents.* To the extent practicable, the Agency will participate in the preparation of a joint document to ensure that all of the requirements of this part are met. Applicants that request Agency assistance for specific proposals must contact the Agency at the earliest possible date to determine if joint environmental documents can be effectively prepared. In order to prepare joint documents the following conditions must be met:

(i) Applicants must also be seeking financial, technical, or other assistance such as permitting or approvals from a state or local agency that has responsibility to complete an environmental review for the applicant's proposal; and

(ii) The Agency and the state or local agency may agree to be joint lead agencies where practicable. When state laws or local ordinances have environmental requirements in addition to, but not in conflict with those of the Agency, the Agency will cooperate in fulfilling these requirements.

(2) *Incorporating other documents.* The Agency cannot adopt a non-Federal environmental document under NEPA. However, if an environmental document is not jointly prepared as described in paragraph (c)(1) of this section (e.g., prepared in accordance with a state environmental policy act [SEPA]), the Agency will evaluate the document as

reference or supporting material for the Agency's environmental document.

#### **§ 1970.16 Mitigation.**

(a) The goal of mitigation is to avoid, minimize, rectify, reduce, or compensate for the adverse environmental impacts of an action. The Agency will seek to mitigate potential adverse environmental impacts resulting from Agency actions. All mitigation measures will be included in Agency commitment or decision documents.

(b) Mitigation measures, where necessary for a FONSI or a ROD, will be discussed with the applicant and with any other relevant agency and, to the extent practicable, incorporated into Agency commitment documents, plans and specifications, and construction contracts so as to be legally binding.

(c) The Agency, applicable lenders, or any intermediaries will monitor implementation of all mitigation measures during development of design, final plans, inspections during the construction phase of projects, as well as in future servicing visits. The Agency will direct applicants to take necessary measures to bring the project into compliance. If the applicant fails to achieve compliance, all advancement of funds and the approval of cost reimbursements will be suspended. Other measures may be taken by the Agency to redress the failed mitigation as appropriate.

#### **§ 1970.17 Programmatic analyses and tiering.**

In accordance with 40 CFR 1502.20 and to foster better decision making, the Agency may consider preparing programmatic-level NEPA analyses and tiering to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

#### **§ 1970.18 Emergencies.**

When an emergency exists and the Agency determines that it is necessary to take emergency action before preparing a NEPA analysis and any required documentation, the provisions of this section apply.

(a) *Urgent response.* The Agency and the applicant, as appropriate, may take actions necessary to control the immediate impacts of an emergency (see § 1970.53(e)). Emergency actions include those that are urgently needed to restore services and to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the Agency and the applicant, when applicable, will take into account

the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(b) *CE- and EA-level actions.* If the Agency proposes longer-term emergency actions other than those actions described in paragraph (a) of this section, and such actions are not likely to have significant environmental impacts, the Agency will document that determination in a finding for a CE or in a FONSI for an EA prepared in accordance with this part. If the Agency finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or EA, the Agency will identify alternative arrangements for compliance with this part with the appropriate agencies.

(1) Alternative arrangements for environmental compliance are limited to actions necessary to control the immediate impacts of the emergency.

(2) Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part.

(c) *EIS-level actions.* If the Agency proposes emergency actions other than those actions described in paragraphs (a) or (b) of this section and such actions are likely to have significant environmental impacts, then the Agency will consult with the CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

#### **§§ 1970.19–1970.50 [Reserved]**

### **Subpart B—NEPA Categorical Exclusions**

#### **§ 1970.51 Applying CEs.**

(a) The actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment (referred to as “categorical exclusions” or CEs).

(1) Actions listed in § 1970.53 do not normally require applicants to submit environmental documentation with their applications. However, these applicants may be required to provide environmental information at the Agency's request.

(2) Actions listed in § 1970.54 normally require the submission of an environmental report (ER) by an applicant to allow the Agency to determine whether extraordinary circumstances (as defined in § 1970.52(a)) exist. When the Agency

determines that extraordinary circumstances exist, an EA or EIS, as appropriate, will be required and, in such instances, applicants may be required to provide additional environmental information later at the Agency's request.

(3) Actions listed in § 1970.55 relate to financial assistance whereby the applicant is a primary recipient of a multi-tier program providing financial assistance to secondary or ultimate recipients without specifying the use of such funds for eligible actions at the time of initial application and approval. The decision to approve or fund such initial proposals has no discernible environmental effects and is therefore categorically excluded provided the primary recipient enters into an agreement with the Agency for future reviews. The primary recipient is limited to making the Agency's financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application. Second-tier funding of proposals to secondary or ultimate recipients will be screened for extraordinary circumstances by the primary recipient and monitored by the Agency. If the primary recipient determines that extraordinary circumstances exist on any second-tier proposal, it must be referred to the Agency for the appropriate level of review under this part in accordance with subparts C and D.

(b) To find that a proposal is categorically excluded, the Agency must determine the following:

(1) The proposal fits within a class of actions that is listed in §§ 1970.53 through 1970.55;

(2) There are no extraordinary circumstances related to the proposal (see § 1970.52); and

(3) The proposal is not "connected" to other actions with potentially significant impacts (see 40 CFR 1508.25(a)(1)) or is not considered a "cumulative action" (see 40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1.

(c) A proposal that consists of more than one action may be categorically excluded only if all components of the proposed action are eligible for a CE.

(d) If, at any time during the environmental review process, the Agency determines that the proposal does not meet the criteria listed in §§ 1970.53 through 1970.55, an EA or EIS, as appropriate, will be required.

(e) Failure to achieve compliance with this part will postpone further consideration of an applicant's proposal until such compliance is achieved or the applicant withdraws the proposal. If

compliance is not achieved, the Agency will deny the request for financial assistance.

#### **§ 1970.52 Extraordinary circumstances.**

(a) Extraordinary circumstances are unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA. In the event of extraordinary circumstances, a normally excluded action will be the subject of an additional environmental review by the Agency to determine the potential of the Agency action to cause any significant adverse environmental effect, and could, at the Agency's sole discretion, require an EA or an EIS, prepared in accordance with subparts C or D of this part, respectively.

(b) Significant adverse environmental effects that the Agency considers to be extraordinary circumstances include, but are not limited to:

(1) Any violation of applicable Federal, state, or local statutory, regulatory, or permit requirements for environment, safety, and health.

(2) Siting, construction, or major expansion of Resource Conservation and Recovery Act permitted waste storage, disposal, recovery, or treatment facilities (including incinerators), even if the proposal includes categorically excluded waste storage, disposal, recovery, or treatment actions.

(3) Any proposal that is likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products.

(4) An adverse effect on the following environmental resources:

(i) Historic properties;

(ii) Federally listed threatened or endangered species, critical habitat, Federally proposed or candidate species;

(iii) Wetlands (Those actions that propose to convert or propose new construction in wetlands will require consideration of alternatives to avoid adverse effects and unwarranted conversions of wetlands. For actions involving linear utility infrastructure where utilities are proposed to be installed in existing, previously disturbed rights-of-way or that are authorized under applicable Clean Water Act, Section 404 nationwide permits will not require the consideration of alternatives. Those

actions that require Section 404 individual permits would create an extraordinary circumstance);

(iv) Floodplains (those actions that introduce fill or structures into a floodplain or propose substantial improvements to structures within a floodplain will require consideration of alternatives to avoid adverse effects and incompatible development in floodplains. Actions that do not adversely affect the hydrologic character of a floodplain, such as buried utility lines or subsurface pump stations, would not create an extraordinary circumstance; or purchase of existing structures within the floodplain will not create an extraordinary circumstance but may require consideration of alternatives to avoid adverse effects and incompatible development in floodplains when determined appropriate by the Agency);

(v) Areas having formal Federal or state designations such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; or marine sanctuaries;

(vi) Special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region);

(vii) Coastal barrier resources or, unless exempt, coastal zone management areas; and

(viii) Coral reefs.

(5) The existence of controversy based on effects to the human environment brought to the Agency's attention by a Federal, tribal, state, or local government agency.

#### **§ 1970.53 CEs involving no or minimal disturbance without an environmental report.**

The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist. In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) and its implementing regulations under 36 CFR 800.3(a), the Agency has determined that the actions in this section are undertakings, and in accordance with 36 CFR 800.3(a)(1) has identified those undertakings for which no further review under 36 CFR part 800 is required because they have no

potential to cause effects to historic properties. In accordance with section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations at 50 CFR part 402, the Agency has determined that the actions in this section are actions for purposes of the Endangered Species Act, and in accordance with 50 CFR 402.06 has identified those actions for which no further review under 50 CFR part 402 is required because they will have no effect to listed threatened and endangered species.

(a) *Routine financial actions.* The following are routine financial actions and, as such, are classified as categorical exclusions identified in paragraphs (a)(1) through (7) of this section.

(1) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable.

(i) Real property includes land and any existing permanent or affixed structures.

(ii) "No or minimal change in use is reasonably foreseeable" means no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.

(2) Financial assistance for the purchase, transfer, or lease of personal property or fixtures where no or minimal change in operations is reasonably foreseeable. These include:

(i) Approval of minimal expenditures not affecting the environment such as contracts for long lead-time equipment and purchase options by applicants under the terms of 40 CFR 1506.1(d) and 7 CFR 1970.12;

(ii) Acquisition of end-user equipment and programming for telecommunication distance learning;

(iii) Purchase, replacement, or installation of equipment necessary for the operation of an existing facility (such as Supervisory Control and Data Acquisition Systems (SCADA), energy management or efficiency improvement systems (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, standby internal combustion electric generators, battery energy storage systems, and associated facilities for the primary purpose of providing emergency power);

(iv) Purchase of vehicles (such as those used in business, utility, community, or emergency services operations);

(v) Purchase of existing water rights where no associated construction is involved;

(vi) Purchase of livestock and essential farm equipment, including crop storing and drying equipment; and

(vii) Purchase of stock in an existing enterprise to obtain an ownership interest in that enterprise.

(3) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses.

(4) Sale or lease of Agency-owned real property, if the sale or lease of Agency-owned real property will have no or minimal construction or change in current operations in the foreseeable future.

(5) The provision of additional financial assistance for cost overruns where the purpose, operation, location, and design of the proposal as originally approved has not been substantially changed.

(6) Rural Business Investment Program (7 U.S.C. 1989 and 2009cc *et seq.*) actions as follows:

(i) Non-leveraged program actions that include licensing by USDA of Rural Business Investment Companies (RBIC); or

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such Federal assistance is used to finance construction or development of land.

(7) A guarantee provided to a guaranteed lender for the sole purpose of refinancing outstanding bonds or notes or a guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the purpose of:

(i) Refinancing existing debt instruments of a lender organized on a not-for-profit basis; or

(ii) Prepaying outstanding notes or bonds made to or guaranteed by the Agency.

(b) *Information gathering and technical assistance.* The following are CEs for financial assistance, identified in paragraphs (b)(1) through (3) of this section.

(1) Information gathering, data analysis, document preparation, real estate appraisals, environmental site assessments, and information dissemination. Examples of these actions are:

(i) Information gathering such as research, literature surveys, inventories, and audits;

(ii) Data analysis such as computer modeling;

(iii) Document preparation such as strategic plans; conceptual designs; management, economic, planning, or

feasibility studies; energy audits or assessments; environmental analyses; and survey and analyses of accounts and business practices; and

(iv) Information dissemination such as document mailings, publication, and distribution; and classroom training and informational programs.

(2) Technical advice, training, planning assistance, and capacity building. Examples of these actions are:

(i) Technical advice, training, planning assistance such as guidance for cooperatives and self-help housing group planning; and

(ii) Capacity building such as leadership training, strategic planning, and community development training.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur. This includes, but is not limited to, air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; and installation of small-scale air, water, or weather monitoring equipment.

(c) *Minor construction proposals.* The following are CEs that apply to financial assistance for minor construction proposals:

(1) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, geographic scope, or design of the project as originally approved;

(2) Repair, upgrade, or replacement of equipment in existing structures for such purposes as improving habitability, energy efficiency (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, pollution prevention, or pollution control;

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance, and replacement in-kind to an existing facility or structure;

(4) Construction of or substantial improvement to a single-family dwelling, or a Rural Housing Site Loan project or multi-family housing project serving up to four families and affecting less than 10 acres of land;

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(6) Replacement of existing water and sewer lines within the existing right-of-way and as long as the size of pipe is either no larger than the inner diameter of the existing pipe or is an increased diameter as required by Federal or state requirements. If a larger pipe size is required, applicants must provide a copy of written administrative requirements mandating a minimum

pipe diameter from the regulatory agency with jurisdiction;

(7) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the replacement well;

(8) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities; and

(9) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest.

(d) *Energy or telecommunication proposals.* The following are CEs that apply to financial assistance for energy or telecommunication proposals:

(1) Upgrading or rebuilding existing telecommunication facilities (both wired and wireless) or addition of aerial cables for communication purposes to electric power lines that would not affect the environment beyond the previously-developed, existing rights-of-way;

(2) Burying new facilities for communication purposes in previously developed, existing rights-of-way and in areas already in or committed to urbanized development or rural settlements whether incorporated or unincorporated that are characterized by high human densities and within contiguous, highly disturbed environments with human-built features. Covered actions include associated vaults and pulling and tensioning sites outside rights-of-way in nearby previously disturbed or developed land;

(3) Changes to electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(4) Phase or voltage conversions, reconductoring, upgrading, or rebuilding of existing electric distribution lines that would not affect the environment beyond the previously developed, existing rights-of-way. Includes pole replacements but does not include overhead-to-underground conversions;

(5) Collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks provided the latter technologies are not attached to and will not cause adverse effects to historic properties;

(6) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously developed land;

(7) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on or adjacent to an existing structure and that would not affect the environment beyond the previously developed facility area and are not attached to and will not cause adverse effects to historic properties;

(8) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(9) Construction of small standby electric generating facilities with a rating of one average megawatt (MW) or less, and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(10) Additions or modifications to electric transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock, grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms; and

(11) Safety, environmental, or energy efficiency (including heat rate efficiency) improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.

(e) *Emergency situations.* Repairs made because of an emergency situation to return to service damaged facilities of an applicant's utility system or other actions necessary to preserve life and control the immediate impacts of the emergency.

(f) *Promulgation of rules or formal notices.* The promulgation of rules or formal notices for policies or programs that are administrative or financial procedures for implementing Agency assistance activities.

(g) *Agency proposals for legislation.* Agency proposals for legislation that have no potential for significant environmental impacts because they

would allow for no or minimal construction or change in operations.

(h) *Administrative actions.* Agency procurement activities for goods and services; routine facility operations; personnel actions, including but not limited to, reduction in force or employee transfers resulting from workload adjustments, and reduced personnel or funding levels; and other such management actions related to the operation of the Agency.

**§ 1970.54 CEs involving small-scale development with an environmental report.**

The CEs in this section are for proposals for financial assistance that require an applicant to submit an ER with their application to facilitate Agency determination of extraordinary circumstances. At a minimum, the ER will include a complete description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quadrangle map; and information from authoritative sources acceptable to the Agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The ER submitted must be accurate, complete, and capable of verification. The Agency may request additional information as needed to make an environmental determination. Failure to submit the required environmental report will postpone further consideration of the applicant's proposal until the ER is submitted, or the Agency may deny the request for financial assistance. The Agency will review the ER and determine if extraordinary circumstances exist. The Agency's review may determine that classification as an EA or an EIS is more appropriate than a CE classification.

(a) *Small-scale site-specific development.* The following CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. These CEs are identified in paragraphs (a)(1) through (a)(9) of this section. This paragraph does not apply to new industrial proposals (such as ethanol and biodiesel production facilities) or those classes of action listed in §§ 1970.53, 1970.101, or 1970.151.

(1) Multi-family housing and Rural Housing Site Loans.

(2) Business development.

(3) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(4) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems. This does not include proposals that either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters, or cause substantial increase in a withdrawal or discharge at an existing site.

(5) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(6) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(7) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility.

(8) Installation or enlargement of irrigation facilities on an applicant's land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(9) Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s).

(10) Vegetative biomass harvesting operations of no more than 15 acres, provided any amount of land involved in harvesting is to be conducted managed on a sustainable basis and according to a Federal, state, or other governmental unit approved management plan.

(b) *Small-scale corridor development.* The following CEs apply to financial assistance for:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use,

size, capacity, purpose, or location from the original infrastructure;

(2) Improvement and expansion of existing water, waste water, and gas utility systems:

(i) Within one mile of currently served areas irrespective of the percent of increase in new capacity, or

(ii) Increasing capacity not more than 30 percent of the existing user population;

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way; and

(4) Installation of new linear telecommunications facilities and related equipment and infrastructure.

(c) *Small-scale energy proposals.* The following CEs apply to financial assistance for:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(2) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less than 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles of line are involved; or

(iii) 230 kV or greater involving no more than three miles of line, but not for the integration of major new generation resources into a bulk transmission system;

(3) Reconstruction (upgrading or rebuilding) or minor relocation of existing electric transmission lines (230 kV or less) 25 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas;

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to a rating of 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which

results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, with a rating of 10 average MW or less. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(8) Siting, construction, and operation of small biomass projects (except small electric generating facilities projects fueled with biomass) producing not more than 3 million gallons of liquid fuel or 300,000 million british thermal units annually, developed on up to 10 acres of land;

(9) Geothermal electric power projects or geothermal heating or cooling projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(10) Solar electric projects or solar thermal projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(11) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(12) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(13) Modifications or enhancements to existing facilities or structures that would not substantially change the

footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency (including heat rate efficiency), promoting pollution prevention or control, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

#### **§ 1970.55 CEs for multi-tier actions.**

The CEs in this section apply solely to providing financial assistance to primary recipients in multi-tier action programs.

(a) The Agency's approval of financial assistance to a primary recipient in a multi-tier action program is categorically excluded under this section only if the primary recipient agrees in writing to:

(1) Conduct a screening of all proposed uses of funds to determine whether each proposal that would be funded or financed falls within § 1970.53 or § 1970.54 as a categorical exclusion;

(2) Obtain sufficient information to make an evaluation of those proposals listed in § 1970.53 and prepare an ER for proposals under § 1970.54 to determine if extraordinary circumstances (as described in § 1970.52) are present;

(3) Document and maintain its conclusions regarding the applicability of a CE in its official records for Agency verification; and

(4) Refer all proposals that do not meet listed CEs in § 1970.53 or § 1970.54, and proposals that may have extraordinary circumstances (as described in § 1970.52) to the Agency for further review in accordance with this part.

(b) The primary recipient's compliance with this section will be monitored and verified in Agency compliance reviews and other required audits. Failure by a primary recipient to meet the requirements of this section will result in penalties that may include written warnings, withdrawal of Agency financial assistance, suspension from participation in Agency programs, or other appropriate action.

(c) Nothing in this section is intended to delegate the Agency's responsibility for compliance with this part. The Agency will continue to maintain ultimate responsibility for and control over the environmental review process in accordance with this part.

#### **§§ 1970.56–1970.100 [Reserved]**

### **Subpart C—NEPA Environmental Assessments**

#### **§ 1970.101 General.**

(a) An EA is a concise public document used by the Agency to determine whether to issue a FONSI or prepare an EIS, as specified in subpart D of this part. If, at any point during the preparation of an EA, it is determined that the proposal will have a potentially significant impact on the quality of the human environment, an EIS will be prepared.

(b) Unless otherwise determined by the Agency, EAs will be prepared for all "Federal actions" as described in § 1970.8, unless such actions are categorically excluded, as determined under subpart B of this part, or require an EIS, as provided under subpart D of this part;

(c) Preparation of an EA will begin as soon as the Agency has determined the proper classification of the applicant's proposal. Applicants should consult as early as possible with the Agency to determine the environmental review requirements of their proposals. The EA must be prepared concurrently with the early planning and design phase of the proposal. The EA will not be considered complete until it is in compliance with this part.

(d) Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

#### **§ 1970.102 Preparation of EAs.**

The EA must focus on resources that might be affected and any environmental issues that are of public concern.

(a) The amount of information and level of analysis provided in the EA should be commensurate with the magnitude of the proposal's activities and its potential to affect the quality of the human environment. At a minimum, the EA must discuss the following:

(1) The purpose and need for the proposed action;

(2) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(3) The environmental impacts of the proposed action including the No Action alternative, and, if a specific project element is likely to adversely affect a resource, at least one alternative to that project element;

(4) Any applicable environmental laws and Executive Orders;

(5) Any required coordination undertaken with any Federal, state, or local agencies or Indian tribes regarding compliance with applicable laws and Executive Orders;

(6) Mitigation measures considered, including those measures that must be adopted to ensure the action will not have significant impacts;

(7) Any documents incorporated by reference, if appropriate, including information provided by the applicant for the proposed action; and

(8) A listing of persons and agencies consulted.

(b) The following describes the normal processing of an EA under this subpart:

(1) The Agency advises the applicant of its responsibilities as described in subpart A of this part. These responsibilities include preparation of the EA as discussed in § 1970.5(b)(3)(iv)(B).

(2) The applicant provides a detailed project description including connected actions.

(3) The Agency verifies that the applicant's proposal should be the subject of an EA under § 1970.101. In addition, the Agency identifies any unique environmental requirements associated with the applicant's proposal.

(4) The Agency or the applicant, as appropriate, coordinates with Federal, state, and local agencies with jurisdiction by law or special expertise; tribes; and interested parties during EA preparation.

(5) Upon receipt of the EA from the applicant, the Agency evaluates the completeness and accuracy of the documentation. If necessary, the Agency will require the applicant to correct any deficiencies and resubmit the EA prior to its review.

(6) The Agency reviews the EA and supporting documentation to determine whether the environmental review is acceptable.

(i) If the Agency finds the EA unacceptable, the Agency will notify the applicant, as necessary, and work to resolve any outstanding issues.

(ii) If the Agency finds the EA acceptable, the Agency will prepare or review a "Notice of Availability of the EA" and direct the applicant to publish the notice in local newspapers or through other distribution methods as approved by the Agency. The notice must be published for three consecutive issues (including online) in a daily newspaper, or two consecutive weeks in a weekly newspaper. If other distribution methods are approved, the

Agency will identify equivalent requirements. The public review and comment period will begin on the day of the first publication date or equivalent if other distribution methods are used. A 14- to 30-day public review and comment period, as determined by the Agency, will be provided for all Agency EAs.

(7) After reviewing and evaluating all public comments, the Agency determines whether to modify the EA, prepare a FONSI, or prepare an EIS that conforms with subpart D of this part.

(8) If the Agency determines that a FONSI is appropriate, and after preparation of the FONSI, the Agency will prepare or review a public notice announcing the availability of the FONSI and direct the applicant to publish the public notice in a newspaper(s) of general circulation, as described in § 1970.14(d)(2). In such case, the applicant must obtain an "affidavit of publication" or other such proof from all publications (or equivalent verification if other media were used) and must submit the affidavits and verifications to the Agency.

#### § 1970.103 Supplementing EAs.

If the applicant makes substantial changes to a proposal or if new relevant environmental information is brought to the attention of the Agency after the issuance of an EA or FONSI, supplementing an EA may be necessary before the action has been implemented. Depending on the nature of the changes, the EA will be supplemented by revising the applicable section(s) or by appending the information to address potential impacts not previously considered. If an EA is supplemented, public notification will be required in accordance with § 1970.102(b)(7) and (8).

#### § 1970.104 Finding of No Significant Impact.

The Agency may issue a FONSI or a revised FONSI only if the EA or supplemental EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Agency will follow the requirements of subpart D of this part before taking action on the proposal.

(a) A FONSI must include:

(1) A summary of the supporting EA consisting of a brief description of the proposed action, the alternatives considered, and the proposal's impacts;

(2) A notation of any other EAs or EISs that are being or will be prepared and that are related to the EA;

(3) A brief discussion of why there would be no significant impacts;

(4) Any mitigation essential to finding that the impacts of the proposed action would not be significant;

(5) The date issued; and

(6) The signature of the appropriate Agency approval official.

(b) The Agency must ensure that the applicant has committed to any mitigation that is necessary to support a FONSI and possesses the authority and ability to fulfill those commitments. The Agency must ensure that mitigation, and, if appropriate, a mitigation plan that is necessary to support a FONSI, is made a condition of financial assistance.

(c) The Agency must make a FONSI available to the public as provided at 40 CFR 1501.4(e) and 1506.6.

(d) The Agency may revise a FONSI at any time provided that the revision is supported by an EA or a supplemental EA. A revised FONSI is subject to all provisions of this section.

#### §§ 1970.105—1970.150 [Reserved]

### Subpart D—NEPA Environmental Impact Statements

#### § 1970.151 General.

(a) The purpose of an EIS is to provide a full and fair discussion of significant environmental impacts and to inform the appropriate Agency decision maker and the public of reasonable alternatives to the applicant's proposal, the Agency's proposed action, and any measures that would avoid or minimize adverse impacts.

(b) Agency actions for which an EIS is required include, but are not limited to:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated;

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261;

(3) Proposals that change or convert the land use of an area greater than 640 contiguous acres;

(4) New electric generating facilities, other than gas-fired prime movers (gas-fired turbines and gas engines) or renewable systems (solar, wind, geothermal), with a rating greater than 50 average MW, and all new associated electric transmission facilities;

(5) New mining operations when the applicant has effective control (*i.e.*, applicant's dedicated mine or purchase of a substantial portion of the mining equipment); and

(6) Agency proposals for legislation that may have a significant environmental impact.

(c) Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until the Agency determines that such compliance has been achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

#### § 1970.152 EIS funding and professional services.

(a) *Funding for EISs.* Unless otherwise approved by the Agency, an applicant must fund an EIS and any supplemental documentation prepared in support of an applicant's proposal.

(b) *Acquisition of professional services.* Applicants shall solicit and procure professional services in accordance with and through the third-party contractor methods specified in 40 CFR 1506.5(c), and in compliance with applicable state or local laws or regulations. Applicants and their officers, employees, or agents shall not engage in contract awards or contract administration if there is a conflict of interest or receipt of gratuities, favors or any form of monetary value from contractors, subcontractors, potential contractors or subcontractors, or other parties performing or to perform work on an EIS. To avoid any conflicts of interest, the Agency is responsible for selecting the EIS contractor and the applicant must not initiate any procurement of professional services to prepare an EIS without prior written approval from the Agency. The Agency reserves the right to consider alternate procurement methods.

(c) *EIS scope and content.* The Agency will prepare the scope of work for the preparation of the EIS and will be responsible for the scope, content and development of the EIS prepared by the contractor(s) hired or selected by the Agency.

(d) *Agreement Outlining Party Roles and Responsibilities.* For each EIS, an agreement will be executed by the Agency, the applicant, and each third-party contractor, which describes each party's roles and responsibilities during the EIS process.

(e) *Disclosure statement.* The Agency will ensure that a disclosure statement is executed by each EIS contractor. The disclosure statement will specify that the contractor has no financial or other interest in the outcome of the proposal.

#### § 1970.153 Notice of Intent and scoping.

(a) *Notice of Intent.* The Agency will publish a Notice of Intent (NOI) in the

**Federal Register** that an EIS will be prepared and, if public scoping meetings are required, the notice will be published at least 14 days prior to the public scoping meeting(s).

(1) The NOI will include a description of the following: the applicant's proposal and possible alternatives; the Agency's scoping process including plans for possible public scoping meetings with time and locations; background information if available; and contact information for Agency staff who can answer questions regarding the proposal and the EIS.

(2) The applicant must publish a notice similar to the NOI, as directed and approved by the Agency, in one or more newspapers of local circulation, or provide similar information through other distribution methods as approved by the Agency. If public scoping meetings are required, such notices must be published at least 14 days prior to each public scoping meeting.

(b) *Scoping.* In addition to the Agency and applicant responsibilities for public involvement identified in § 1970.14 and as part of early planning for the proposal, the Agency and the applicant must invite affected Federal, state, and local agencies and tribes to inform them of the proposal and identify the permits and approvals that must be obtained and the administrative procedures that must be followed.

(c) *Significant issues.* For each scoping meeting held, the Agency will determine, as soon as practicable after the meeting, the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues that are not significant, have been covered by prior environmental review, or are not determined to be reasonable alternatives.

#### § 1970.154 Preparation of the EIS.

(a) The EIS must be prepared in accordance with the format outlined at 40 CFR 1502.10.

(b) The EIS must be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers must be appropriate to address the potential environmental impacts associated with the proposal. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts such as those at universities; local, state, and Federal agencies; and Indian tribes.

(c) The Agency will file the draft and final EIS with the U. S. Environmental

Protection Agency's (EPA) Office of Federal Activities.

(d) The Agency will publish in the **Federal Register** a Notice of Availability announcing that either the draft or final EIS is available for review and comment. The applicant must concurrently publish a similar announcement using one or more distribution methods as approved by the Agency in accordance with § 1970.14.

(e) Minimum public comment time periods are calculated from the date on which EPA's Notice of Availability is published in the **Federal Register**. The Agency has the discretion to extend any public review and comment period if warranted. Notification of any extensions will occur through the **Federal Register** and other media outlets.

(f) When comments are received on a draft EIS, the Agency will assess and consider comments both individually and collectively. With support from the third-party contractor and the applicant, the Agency will develop responses to the comments received. Possible responses to public comments include: Modifying the alternatives considered; negotiating with the applicant to modify or mitigate specific project elements of the original proposal; developing and evaluating alternatives not previously given serious consideration; supplementing or modifying the analysis; making factual corrections; or explaining why the comments do not warrant further response.

(g) If the final EIS requires only minor changes from the draft EIS, the Agency may document and incorporate such minor changes through errata sheets, insertion pages, or revised sections to be incorporated into the draft EIS. In such cases, the Agency will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as the final EIS. The Agency will not circulate the draft EIS again; although, if requested, a copy of the draft EIS may be provided in a timely fashion to any interested party.

#### § 1970.155 Supplementing EISs.

(a) A supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS (see 7 CFR 1970.154). Supplements to a draft or final EIS will be prepared if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information pertaining to the proposal arise which are relevant to

environmental concerns and the proposal or its impacts.

(b) The Agency will publish an NOI to prepare a supplement to a draft or final EIS.

(c) The Agency, at its discretion, may issue an information supplement to a final EIS where the Agency determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). The Agency and the applicant must concurrently have separate notices of availability published. The notice requirements must be the same as for a final EIS and the information supplement must be circulated in the same manner as a final EIS. The Agency will take no final action on any proposed modification discussed in the information supplement until 30 days after the Agency's notice of availability or the applicant's notice is published, whichever occurs later.

#### § 1970.156 Record of Decision.

(a) The ROD is a concise public record of the Agency's decision. The required information and format of the ROD will be consistent with 40 CFR 1505.2.

(b) Once a ROD has been executed by the Agency, the Agency will issue a **Federal Register** notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the **Federal Register**.

#### § § 1970.157—1970.200 [Reserved]

### PART 1980—GENERAL

■ 99. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

#### Subpart E—Business and Industrial Loan Program

■ 100. Revise § 1980.432 to read as follows:

#### § 1980.432 Environmental review requirements.

[See subpart A, § 1980.40 and 7 CFR part 1970.] *Administrative*

Loans made under this part must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

■ 101. Amend § 1980.451 to revise paragraphs (h)(3) and *Administrative, B. Miscellaneous Administrative Provisions* 7. Par(i)(table) to read as follows:

#### § 1980.451 Filing and processing applications.

\* \* \* \* \*



(h) \* \* \*

(3) Environmental review documentation as required in accordance with 7 CFR part 1970.  
\* \* \* \* \*

*Administrative*  
*B. Miscellaneous Administrative provisions:*  
*7. Par (i) \* \* \**

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

|                 |   | Filing position |
|-----------------|---|-----------------|
| AD-425 .....    | Contractor's Affirmative Action Plan For Equal Employment Opportunity ..... | 1               |
| RD 400-1 .....  | Equal Opportunity Agreement .....   | 6               |
| RD 400-3 .....  | Notice to Contractors and Applicants .....                                  | 6               |
| RD 400-4 .....  | Assurance Agreement .....   | 3               |
| RD 400-6 .....  | Compliance Statement .....  | 6               |
| RD 410-8 .....  | Applicant Reference Letter .....  | 3               |
| RD 410-9 .....  | Statement Required by the Privacy Act .....                                 | 3               |
| RD 410-10 ..... | Privacy Act Statement to References .....                                   | 3               |
| RD 424-12 ..... | Inspection Report .....   | 6               |
| RD 1940-3 ..... | Request for Obligation of Funds—Guaranteed Loans; Filing Position 2 .....   | 2               |
| RD 1970-1 ..... | Environmental Checklist for Categorical Exclusions .....                    | 3               |
|                 | Environmental Reports .....   | 3               |
|                 | Environmental Assessments .....   | 3               |
|                 | Environmental Impact Statements .....                                       | 3               |
| RD 440-57 ..... | Acknowledgement of Obligated Funds/Check Request .....                      | 2               |
| RD 449-1 .....  | Application for Loan and Guarantee .....                                    | 3               |
| RD 449-2 .....  | Statement of Collateral .....   | 5               |
| RD 449-4 .....  | Statement of Personal History .....   | 3               |
|                 | Loan Closing Opinion of Lender's Legal Counsel .....                        |                 |

\* \* \* \* \*

■ 102. Revise § 1980.490(p)(8) to read as follows:

**§ 1980.490 Business and industry buydown loans.**

\* \* \* \* \*

(p) \* \* \*

(8) *Sodbuster and swampbuster requirements.* The requirements found in 7 CFR part 1970 will apply to loans made to enterprises engaged in agricultural production.

■ 103. Revise § 1980.49 (m)(9) to read as follows:

**§ 1980.498 Business and Industry Disaster Loans.**

\* \* \* \* \*

(m) \* \* \*

(9) *Sodbuster and swampbuster requirements.* The requirements found in 7 CFR part 1970 will apply to loans made to enterprises engaged in agricultural production.

■ 104. In Appendix K to Subpart E, revise the introductory text of section K, and paragraph C.12. of section IX. Servicing to read as follows:

**Appendix K to Subpart E of Part 1980—Regulations for Loan Guarantees for Disaster Assistance For Rural Business Enterprises**

\* \* \* \* \*

**K. Sodbuster and Swampbuster requirements**

The provisions of 7 CFR part 1970 will apply to loans made to rural business

enterprises engaged in agricultural production.  
\* \* \* \* \*

**IX. Servicing.**

\* \* \* \* \*

C. \* \* \*

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, or otherwise are in compliance with 7 CFR part 1970.

\* \* \* \* \*

**CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS**

■ 105. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

**Subpart A—General**

■ 106. Revise § 3550.5(b) to read as follows:

**§ 3550.5 Environmental review requirements.**

\* \* \* \* \*

(b) *Regulatory references.* Processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

**Subpart D—Regular Servicing**

■ 107. Revise § 3550.159(c)(5) to read as follows:

**§ 3550.159 Borrower actions requiring RHS approval.**

\* \* \* \* \*

(c) \* \* \*

(5) Environmental requirements are met and environmental documentation is submitted in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 3555—GUARANTEED RURAL HOUSING PROGRAM**

■ 108. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

**Subpart A—General**

■ 109. Revise § 3555.5(b) to read as follows:

**§ 3555.5 Environmental review requirements.**

\* \* \* \* \*

(b) *Regulatory references.* Loan processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

\* \* \* \* \*

**PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS**

■ 110. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

**Subpart A—General Provisions and Definitions**

■ 111. Revise § 3560.3 to read as follows:

**§ 3560.3 Environmental review requirements.**

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 of this title are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8 of this title, are actions for the purposes of this part.

**Subpart B—Direct Loan and Grant Origination**

■ 112. Revise § 3560.54(b)(4) to read as follows:

**§ 3560.54 Restriction on the use of funds.**

\* \* \* \* \*

(b) \* \* \*

(4) The completion of environmental review requirements in accordance with 7 CFR part 1970.

■ 113. Revise § 3560.56(d)(7) to read as follows:

**§ 3560.56 Processing section 515 housing proposals.**

\* \* \* \* \*

(d) \* \* \*

(7) Completion of environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 114. Revise § 3560.59 to read as follows:

**§ 3560.59 Environmental review requirements.**

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review requirements in accordance with 7 CFR part 1970. Likewise, the applicant should be informed that the environmental review must be completed and approved before the Agency can make a commitment of resources to the project.

■ 115. Revise § 3560.71(b)(4) to read as follows:

**§ 3560.71 Construction financing.**

\* \* \* \* \*

(b) \* \* \*

(4) An environmental review in accordance with 7 CFR part 1970 must be completed prior to issuance of the interim financing letter.

\* \* \* \* \*

■ 116. Revise § 3560.73(e) to read as follows:

**§ 3560.73 Subsequent loans.**

\* \* \* \* \*

(e) *Environmental review requirements.* Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Subpart I—Servicing**

■ 117. Revise § 3560.406(d)(4) to read as follows:

**§ 3560.406 MFH ownership transfers or sales.**

\* \* \* \* \*

(d) \* \* \*

(4) Prior to Agency approval of an ownership transfer or sale, the appropriate level of environmental review in accordance with 7 CFR part 1970 must be completed by the Agency on all property related to the ownership transfer or sale. If releases of or contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

\* \* \* \* \*

■ 118. Revise § 3560.407(a) to read as follows:

**§ 3560.407 Sales or other disposition of security property.**

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. Agency approvals of sales or other dispositions of security property are not subject to the requirements outlined in 7 CFR part 1970.

\* \* \* \* \*

■ 119. Revise § 3560.408(a) to read as follows:

**§ 3560.408 Lease of security property.**

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. Agency approvals of lease agreements are considered loan servicing actions under 7 CFR part 1970, and as such do not require additional NEPA analysis and documentation.

\* \* \* \* \*

■ 120. Revise § 3560.409(a) introductory text to read as follows:

**§ 3560.409 Subordinations or junior liens against security property.**

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property, or lien subordination, (*i.e.*, granting of a prior interest to another lender.) Prior to Agency consent, environmental review requirements must be completed in accordance with 7 CFR part 1970. Borrowers must use an Agency approved lien subordination agreement.

\* \* \* \* \*

**Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions**

■ 121. Revise § 3560.458(d) to read as follows:

**§ 3560.458 Special property circumstances.**

\* \* \* \* \*

(d) *Due diligence.* When the Agency has completed an environmental site assessment in accordance with 7 CFR part 1970, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to releases of or the presence of contamination from hazardous substances, hazardous

wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its environmental site assessment.

**PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM**

■ 122. The authority citation for part 3565 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—General Provisions**

■ 123. Revise § 3565.7 to read as follows:

**§ 3565.7 Environmental review requirements.**

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

**Subpart E—Loan Requirements**

■ 124. Revise § 3565.205(b) to read as follows:

**§ 3565.205 Eligible uses of loan proceeds.**

\* \* \* \* \*

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A, as well as any applicable historic preservation and environmental review requirements in accordance with 7 CFR part 1970.

**Subpart F—Property Requirements**

■ 125. Revise § 3565.255 to read as follows:

**§ 3565.255 Environmental review requirements.**

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved by the Agency until the Agency has completed the environmental review process in accordance with 7 CFR part 1970.

**Subpart G—Processing Requirements**

■ 126. Revise § 3565.303(b)(1) to read as follows:

**§ 3565.303 Issuance of loan guarantee.**

\* \* \* \* \*

(b) \* \* \*

(1) Completion of environmental review requirements in accordance with 7 CFR part 1970; and

\* \* \* \* \*

**Subpart J—Assignment, Conveyance, and Claims**

■ 127. Revise § 3565.451(c) to read as follows:

**§ 3565.451 Preclaim requirements.**

\* \* \* \* \*

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, are subject to a NEPA analysis in accordance with 7 CFR part 1970.

**PART 3570—COMMUNITY PROGRAMS**

■ 128. The authority citation for part 3570 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

**Subpart B—Community Facilities Grant Program**

■ 129. Revise § 3570.69 to read as follows:

**§ 3570.69 Environmental review requirements, intergovernmental review, and public notification.**

Grants awarded under this subpart, including grant-only awards, must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970, to the intergovernmental review requirements of 7 CFR 3015, subpart V and RD Instruction 1970–I, “Intergovernmental Review,” and the public information process in 7 CFR 1942.17(j)(9).

**PART 3575—GENERAL**

■ 130. The authority citation for part 3575 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

**Subpart A—Community Programs Guaranteed Loans**

■ 131. Revise § 3575.9 to read as follows:

**§ 3575.9 Environmental review requirements.**

Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. The lender must assist the Agency to ensure that the lender’s applicant complies with any mitigation measures required by the Agency’s environmental review for the purpose of avoiding or reducing adverse environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender’s applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency’s environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant’s request or any commitment of Agency resources.

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 4274—DIRECT AND INSURED LOANMAKING**

■ 132. The authority citation for part 4274 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

**Subpart D—Intermediary Relending Program (IRP)**

■ 133. Amend § 4274.337 by revising paragraph (b) to read as follows:

**§ 4274.337 Other regulatory requirements.**

(b) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970, as specified in § 1970.51(a)(3) for multi-tier actions. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Intermediaries must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

■ 134. Revise § 4274.343(a)(3) to read as follows:

**§ 4274.343 Application.**

(3) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, an agreement in writing to the environmental requirements in accordance with 7 CFR part 1970.

■ 135. Revise § 4274.361(b)(2) to read as follows:

**§ 4274.361 Requests to make loans to ultimate recipients.**

(2) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, required environmental documentation in accordance with 7 CFR part 1970.

**PART 4279—GUARANTEED LOANMAKING**

■ 136. The authority citation for part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; and 7 U.S.C. 1989.

**Subpart A—General**

■ 137. Revise § 4279.30(c) to read as follows:

**§ 4279.30 Lenders' functions and responsibilities.**

(c) *Environmental responsibilities.* Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(1) Lenders must assist the borrower in providing details of the projects impact on the environment and historic properties, in accordance with 7 CFR part 1970, when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(2) Lenders must ensure the borrower has:

(i) Provided the necessary environmental information to enable the Agency to approve the environmental review in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(3) Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

■ 138. Revise § 4279.43(g)(1)(iii) and (g)(2) to read as follows:

**§ 4279.43 Certified Lender Program.**

(g) (1) (iii) Environmental documentation in accordance with 7 CFR part 1970.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and, in accordance with 7 CFR part 1970, approval of the environmental documentation, except that refinancing of existing lender debt

in accordance with § 4279.113(q) will not be approved without a credit analysis by the Agency of the borrower's complete financial statement. The Agency may request such additional information as it determines is needed to make a decision.

**Subpart B—Business and Industry Loans**

■ 139. Revise § 4279.161(b)(3) to read as follows:

**§ 4279.161 Filing preapplications and applications.**

(3) Environmental documentation in accordance with 7 CFR part 1970.

■ 140. Revise § 4279.165(b) to read as follows:

**§ 4279.165 Evaluation of application.**

(b) *Environmental requirements.* The environmental review process must be completed in accordance with 7 CFR part 1970 prior to the issuance of the conditional commitment, loan approval, or obligation of funds, whichever occurs first.

**Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans Lender Functions and Responsibilities**

■ 141. Revise § 4279.216(b)(1) to read as follows:

**§ 4279.216 Environmental responsibilities.**

(1) Provided the necessary environmental documentation to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits.

■ 142. Revise § 4279.261(k)(4) and (k)(8)(iv)(B)(2) to read as follows:

**§ 4279.261 Application for loan guarantee content.**

(4) Environmental documentation in accordance with 7 CFR part 1970.

(8) (iv) (B) (2) Environmental documentation in accordance with 7 CFR part 1970.

**PART 4280—LOANS AND GRANTS**

■ 143. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c and 7 U.S.C. 1932(c).

**Subpart A—Rural Economic Development Loan and Grant Programs**

■ 144. Revise § 4280.36(k) to read as follows:

**§ 4280.36 Other laws that contain compliance requirements for these Programs.**

\* \* \* \* \*

(k) *Environmental requirements.* Actions taken under this subpart, including the loans made from the revolving loan fund using Agency funds, must comply with 7 CFR part 1970. However, revolving loan funds derived from repayments by third parties are not considered Federal financial assistance for the purposes of 7 CFR part 1970.

\* \* \* \* \*

■ 145. Revise § 4280.39(a)(9) to read as follows:

**§ 4280.39 Contents of an application.**

\* \* \* \* \*

(a) \* \* \*  
(9) Environmental documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 146. Revise § 4280.41 to read as follows:

**§ 4280.41 Environmental review of the application.**

The Agency will review the environmental documentation in accordance with 7 CFR part 1970. Intermediaries will be informed by the Agency if additional information is required from the intermediary to complete the environmental review process. The environmental review process must be completed before the application can be considered for approval by the Agency.

**Subpart B—Rural Energy for America Program General**

■ 147. Amend § 4280.108 by revising the introductory text of paragraph (d) to read as follows:

**§ 4280.108 U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements.**

\* \* \* \* \*

(d) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to

contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

\* \* \* \* \*

■ 148. Revise § 4280.110(h)(2) to read as follows:

**§ 4280.110 General Applicant, application, and funding provisions.**

\* \* \* \* \*

(h) \* \* \*  
(2) *Technical report modifications.* If a technical report is prepared prior to the Applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

■ 149. Revise § 4280.117(a)(5) to read as follows:

**§ 4280.117 Grant applications for RES and EEI projects with total project costs of \$200,000 and greater.**

\* \* \* \* \*

(a) \* \* \*  
(5) Environmental documentation in accordance with 7 CFR part 1970. The Applicant should contact the Agency to determine what documentation is required to be provided.

\* \* \* \* \*

■ 150. Revise § 4280.119(b)(1)(v) to read as follows:

**§ 4280.119 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*  
(v) Environmental documentation in accordance with 7 CFR part 1970. The Applicant should contact the Agency to determine what documentation is required to be provided.

\* \* \* \* \*

■ 151. Revise § 4280.124(d)(1) to read as follows:

**§ 4280.124 Construction planning and performing development.**

\* \* \* \* \*

(d) \* \* \*  
(1) *Environmental requirements.* Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR

part 1970. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

\* \* \* \* \*

■ 152. Revise § 4280.137 (b)(2)(ii) to read as follows:

**§ 4280.137 Application and documentation.**

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*  
(ii) Environmental documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

**Subpart E—Rural Business Development Grants General**

■ 153. Amend § 4280.408 by revising paragraph (d) introductory text, and paragraph (d)(4) to read as follows:

**§ 4280.408 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.**

\* \* \* \* \*

(d) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

\* \* \* \* \*

(4) Applications for Technical Assistance or Planning Projects are generally excluded from the environmental review process by 7 CFR 1970.53 provided the assistance is not related to the development of a specific site. However, as further specified in 7 CFR 1970.53, the grantee for a Technical Assistance grant, in the process of providing Technical Assistance, must consider the potential environmental impacts of the recommendations

provided to the recipient of the Technical Assistance as requested by the Agency and in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 4284—GRANTS**

■ 154. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

**Subpart A—General Requirements for Cooperative Services Grant Programs**

■ 155. Amend § 4284.16 by revising paragraph (a) to read as follows:

**§ 4284.16 Other considerations.**

(a) *Environmental requirements.* Grants made under this subpart must comply with 7 CFR part 1970. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1970.53, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

\* \* \* \* \*

**Subpart J—Value-Added Producer Grant Program**

■ 156. Revise § 4284.907 to read as follows:

**§ 4284.907 Environmental requirements.**

Grants made under this subpart must comply with 7 CFR part 1970. Applications for both Planning and Working Capital grants are generally excluded from the environmental review process by § 1970.53.

**PART 4287—SERVICING**

■ 157. The authority citation for part 4287 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

**Subpart B—Servicing Business and Industry Guaranteed Loans**

■ 158. Revise § 4287.157(j) introductory text to read as follows:

**§ 4287.157 Liquidation.**

\* \* \* \* \*

(j) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment by the lender of non-Agency owned property will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review. Examples where abandonment may be considered include, but are not limited to:

\* \* \* \* \*

**Subpart D—Servicing Biorefinery, Renewable Chemical, and Biobased Manufacturing Assistance Guaranteed Loans**

■ 159. Revise § 4287.357(i) to read as follows:

**§ 4287.357 Liquidation.**

\* \* \* \* \*

(i) *Abandonment of collateral.* When the Lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain Collateral and receives Agency concurrence, the Lender may abandon that Collateral. When the Lender makes a recommendation for abandonment of Collateral, it will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review.

\* \* \* \* \*

**PART 4288—PAYMENT PROGRAMS**

■ 160. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

**Subpart A—Repowering Assistance Payments to Eligible Biorefineries**

■ 161. Revise § 4288.20(b)(5) to read as follows:

**§ 4288.20 Submittal of applications.**

\* \* \* \* \*

(b) \* \* \*

(5) Environmental documentation in accordance with 7 CFR part 1970.

\* \* \* \* \*

**PART 4290—RURAL BUSINESS INVESTMENT COMPANY (RBIC) PROGRAM**

■ 162. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2009cc *et seq.*

**Subpart M—Miscellaneous**

■ 163. Revise § 4290.1940(h) to read as follows:

**§ 4290.1940 Integration of this part with other regulations application to USDA's programs.**

\* \* \* \* \*

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with 7 CFR part 1970. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

\* \* \* \* \*

Dated: February 11, 2016.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

Dated: February 12, 2016.

**Michael Scuse,**

*Under Secretary, Farm and Foreign Agricultural Services.*

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