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(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(1)).

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 Micro-entrepreneur Assistance Program (7

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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

RHS, RBS, RUS, FSA, USDA

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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.