

## **RHS, RBS, RUS, FSA, USDA**

## **§ 1970.8**

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.

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(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

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(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 the obligation of funds; except for infrastructure projects where the assurance that funds will be available for community health, safety, or economic development has been determined as necessary by the Agency Administrator. At the discretion of the Agency Administrator, funds may be obligated contingent upon the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives. Funds so obligated shall be rescinded if the Agency cannot conclude the environmental review process before the end of the fiscal year after the year in which the funds were obligated, or if the Agency determines that it cannot proceed with approval based on findings in the environmental review process. For the purposes of this section, infrastructure projects shall include projects such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment, but not investments authorized in the Housing Act of 1949.

(c) The environmental review process is formally concluded when all of the following have occurred: