

354 should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F TO SUBPART A OF PART 1962  
[RESERVED]

## PART 1965—REAL PROPERTY

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989, 42 U.S.C. 1480.

### Subparts A–E [Reserved]

## PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES

### Subpart A—Environmental Policies

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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.

SOURCE: 81 FR 11032, Mar. 2, 2016, unless otherwise noted.

### 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).

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### § 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.*);

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(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 Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps,

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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

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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

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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.

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(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 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 ap-

plicant’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

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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

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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

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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 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:

(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.

[81 FR 11032, Mar. 2, 2016, as amended at 83 FR 59271, Nov. 23, 2018; 84 FR 49648, Sept. 23, 2019]

**§ 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

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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.

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(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 informa-

tion 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.

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**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.

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(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 pro-

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posal 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

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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;

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(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 cross-arms; 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.

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(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 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

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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

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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.

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### § 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 sec-

tions 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

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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**

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