



DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1970

RIN 0572-AC44

Rural Development Environmental Regulation for Rural Infrastructure Projects

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

ACTION: Direct final rule.

SUMMARY: The United States Department of Agriculture (USDA) Rural Development (RD), comprised of the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and

Rural Utilities Service (RUS), hereafter referred to as the Agency, is issuing a direct final rule to update the Agency's Environmental Policies and Procedures regulation (7 CFR 1970) to allow the Agency Administrators limited flexibility to obligate federal funds for infrastructure projects prior to completion of the environmental review while ensuring full compliance with National Environmental Policy Act (NEPA) procedures prior to project construction and disbursement of any RD funding. This change will allow RD to more fully meet the Administration's goals to speed the initiation of infrastructure projects and encourage planned community economic development without additional cost to taxpayers or change to environmental review requirements.

DATES: This rule is effective [**Insert date 45 days from date of publication in the Federal Register**], without further action, unless the Agency receives significant adverse comments or, an intent to submit a significant adverse comment, by [**Insert 30 days from date of publication in the Federal Register**]. Written significant adverse comments or, an intent to submit a significant adverse comment, must be received by Rural Development or carry a postmark or equivalent no later than [**Insert 30 days from date of publication in the Federal Register**]. If significant adverse comments are received, the Agency will publish a timely Federal Register document withdrawing this rule. The Agency is publishing a proposed rule contemporaneously with this final rule.

ADDRESSES: Submit your comments on this rule by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS-18-AGENCY-0005 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Rural Development Innovation Center, Regulations Team Lead, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Room 1562, Washington, DC 20250. Please state that your comment refers to Docket No. RUS-18-AGENCY-0005.

Other Information: Additional information about Rural Development and its programs is available on the Internet at <https://www.usda.gov/topics/rural>.

FOR FURTHER INFORMATION CONTACT: Kellie McGinness Kubena, Director, Engineering and Environmental Staff, Rural Utilities Service, USDA Rural Development, 1400 Independence Ave, SW, Mail Stop 1571, Room 2242, Washington, DC 20250-1571
Phone: 202-720-1649.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 12372

This final rule is not subject to the requirements of Executive Order 12372, “Intergovernmental Review,” as implemented under USDA’s regulations at 2 CFR part 415, subpart C, because this rule provides general guidance on NEPA and related environmental reviews of applicants’ proposals. Applications for Agency programs will be reviewed individually under Executive Order 12372 as required by program procedures.

Regulatory Flexibility Act Certification

The Agency has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. §§ 601 *et seq.*), given that the amendment is only an administrative, procedural change on the government's part with respect to obligation of funds.

National Environmental Policy Act

In this final rule, the Agency proposes to create limited flexibility for the timing of obligation of funds relative to the completion of environmental review. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbers assigned to the RD Programs affected by this rulemaking are as follows:

10.760 - Water & Waste Disposal System Systems for Rural Communities.

10.761 - Technical Assistance and Training Grants.

10.762 - Solid Waste Management Grants.

10.763 - Emergency Community Water Assistance Grants.

10.770 - Water & Waste Disposal Loan and Grants (Section 306C).

- 10.766 - Community Facilities Loans and Grants.
- 10.850 - Rural Electrification Loans and Loan Guarantees.
- 10.851 - Rural Telephone Loans and Loan Guarantees.
- 10.855 - Distance Learning & Telemedicine Grants.
- 10.857 - State Bulk Fuel Revolving Loan Fund.
- 10-858 - Assistance to High Energy Cost-Rural Communities.
- 10.863 - Community Connect Grants.
- 10.865 - Biorefinery, Renewable Chemical, & Biobased Product Manufacturing Assistance Program.
- 10.866 - Repowering Assistance Program.
- 10.867 - Advanced Biofuel Payment Program.
- 10.868 - Rural Energy for America Program.
- 10.886 - Rural Broadband Access Loan and Loan Guarantee Program.

All active CFDA programs can be found at www.cfda.gov. The Catalog is available on the Internet at <http://www.cfda.gov> and the General Services Administration's (GSA's) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <http://bookstore.gpo.gov>.

Rural Development infrastructure programs not listed in this section nor on the CFDA website, but which are enacted pursuant to the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, the Consolidated Farm and Rural Development Act of 1972, 7 U.S.C. 1921 *et seq.*, or any other Congressional act for Rural Development, will be covered by the requirements of this action when enacted.

Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The latest revision of the Agency’s Environmental Policies and Procedures in 2016 involved Tribal consultation via comment period and webinar as a baseline for future consultation on individual program actions. The creation of limited flexibility for the timing of obligation of funds relative to the completion of environmental review is only an administrative, procedural change on the government’s part and in no way abridges or alters that agreement. Therefore, no further consultation is necessary on this rule change. The policies contained in this final rule do not have Tribal implications that preempt Tribal law. The Agency will continue to work directly with Tribes and Tribal applicants to improve access to Agency programs. This includes providing focused outreach to Tribes regarding implementation of this rule change. Additionally, the Agency will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. For further information on the Agency’s Tribal consultation efforts, please contact Rural Development’s Native American Coordinator at (720) 544–2911 or AIAN@wdc.usda.gov.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this final rule has been approved by the Office of Management and Budget (OMB) under the currently approved OMB Control Number 0575–0197. The Agency has determined that changes contained in this regulatory action do not substantially change current data collection that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

The United States Department of Agriculture (USDA) Rural Development (RD) programs provide loans, grants and loan guarantees to support investment in rural infrastructure to spur rural economic development, create jobs, improve the quality of life, and address the health and safety needs of rural residents. Infrastructure investment is an important national policy priority. As directed by EO 13807 in 2017, USDA as a member of the Federal Permitting Improvement Steering Council has reviewed its NEPA implementing regulations and policies to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects. This final rule is part of that effort to improve the efficiency and effectiveness of RD’s environmental reviews and authorizations for infrastructure projects in rural America.

On April 25, 2017, the President created the Interagency Task Force on Agriculture and Rural Prosperity (Task Force) through E.O. 13790 and appointed the Secretary of Agriculture as the Task Force’s Chair. Among the purposes and functions of the Task Force was to,

“ . . . identify legislative, regulatory, and policy changes to promote in rural America agriculture, economic development, job growth, infrastructure improvements,

technological innovation, energy security, and quality of life, including changes that remove barriers to economic prosperity and quality of life in rural America.”

The Task Force Report issued on October 21, 2017, included calls to action on achieving e-Connectivity for Rural America, improving rural quality of life, harnessing technological innovation and developing the rural economy.

Purpose of the Regulatory Action

This rulemaking fulfills the mandate of EO 13807 as well as the goals of the President’s Interagency Task Force on Agriculture and Rural Prosperity by identifying regulatory changes that promote economic development and improve the quality of life in rural America. The RD infrastructure projects impacted by this rule are often critical to the health and safety and quality of life in rural communities. In some cases, funding decisions made by Rural Development are the first step upon which a much larger process of community economic development depends. This amendment to existing regulation will allow the Agency to obligate funding *conditioned upon* the full and satisfactory completion of environmental review for infrastructure projects. This change will give applicants, and often the distressed communities they represent, some comfort to proceed with an economic development strategy, including the planning process associated with NEPA, without fear that funds may be rescinded before the NEPA process is completed. With this change in place, RD can more fully meet the government’s goals of speeding up the initiation of infrastructure projects, encouraging planned community economic development, and leveraging investment without additional cost to taxpayers or any change in environmental review requirements. Infrastructure projects covered by this final rule include

those, such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment.

Changes to the Current Regulation

Nothing in this final rule reduces RD's obligation to complete the NEPA planning process prior to foreclosing reasonable alternatives to the federal action. The current regulation at 7 CFR 1970.6 ("Financial assistance") states that the Agency defines the major decision point for completion of NEPA as the approval of financial assistance. Similarly, 7 CFR 1970.11(b) identifies Agency obligation as the point by which the environmental review must be concluded. As amended by this final rule, 7 CFR 1970.11(b) will now provide RD Administrators limited flexibility to obligate funds for infrastructure projects prior to the completion of the environmental review process where the assurance that funds will be available is important for community health, safety, or economic development. As a result, the environmental review process must be completed prior to disbursement of any RD funds, or any other action that would have adverse environmental impact or limit the choice of reasonable alternatives. The conditions of obligation will be defined in the documentation of the agreement approving the financial assistance between the Agency and the applicant. If, however, the conditions of obligation are not met, or the agency chooses not to proceed with the project after considering the results of the NEPA process, the Agency will rescind the obligated funds. With these conditions, the Agency retains control of the final decision to authorize construction and release funds based on the satisfactory completion of the environmental review. Note, this final rule will not, and does not, change any of the requirements for environmental reviews. Should an applicant choose to commence a project and thus foreclose reasonable alternatives, such action

would result in de-obligation of federal funding, thereby eliminating any federal action for NEPA purposes on the part of Rural Development. Until the Agency concludes the environmental review and decides to proceed with the project, the obligated funds will be reserved for the infrastructure project and less susceptible to Congressional rescission.

List of Subjects in 7 CFR Part 1970

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

Accordingly, for reasons set forth in the preamble, chapter XVII, of subtitle B, title 7, Code of Federal Regulations is amended as follows:

PART 1970 – ENVIRONMENTAL POLICIES AND PROCEDURES

1. The authority citation for part 1970 continues to read as follows:

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.

2. Revise §1970.11(b) to read as follow:

§1970.11 Timing of the environmental review process.

* * * * *

(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.

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Dated: November 9, 2018.

Anne C. Hazlett,
Assistant to the Secretary, Rural Development.

Bill Northey,
Under Secretary, Farm Production and Conservation.

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