

Intergovernmental Reviews

Executive Order 12372 signed by President Reagan on July 14, 1982 requires federal agencies to provide opportunities for consultation with state and local governments directly affected by federal financial assistance. It also set up the opportunity for each state to create a Single Point of Contact (SPOC) for this review process. There are about 20 states which have a SPOC. Texas had a SPOC until the fall of 2011 when budget cuts eliminated the program.

The SPOC in Texas was administered by 24 Texas Associations of Regional Councils which still exists and function for other duties other than as a SPOC. A Texas map indicating the regions is located here:

http://www.txregionalcouncil.org/display.php?page=regions_map.php .

Web links are listed for each region. Click on the region of interest and a name and contact information will be displayed. Or, scroll down to the list and click on the web site listed for each area, for the home page of the region. While Texas does not require these regions to reply to EO 12372 review requests, some appear to be continuing with their reviews.

It is unknown which regions will reply to Agency letters. It is assumed to be a dynamic situation and will be determined by each region's budget, personnel, and time available for such reviews. It is recommended to contact the region's email to inquire if they respond to EO 12372 review requests from federal agencies.

The Agency must determine which state or local government offices to contact directly to attempt to satisfy EO 12372. The type and size of the proposed project should be the indicator of which contacts to make.

A city building or local fire station is generally going to impact only the local area so contacting the local or city government appears appropriate. A county building, multiple doctor clinic, or small business may impact both city and county level governments so contacts should be adjusted accordingly. The County Judge may be the most appropriate contact. A large regional hospital or large industry may impact a large area and therefore the contact(s) may have to be broadened to cover the scale of the impact. Make contacts to what appears logical for the project.

The goal is to coordinate and address any local concerns for federally funded projects. For intergovernmental reviews **60 days** is allowed for a reply. Recommendations from this review process may be included with the environmental report, but inclusion or a reply to comments is not mandatory when there is no SPOC.

Some Agency programs are not subject to EO 12372 which include: single family housing, non-construction assistance, loan servicing, applications from tribes, and programs which state and local governments have elected not to review. The last exemption makes it difficult for the Agency to make a determination about whom to send letters. The rule of thumb is to do due diligence for the proposed project or document why intergovernmental letters are not required.

In January 2012, RD Instruction 1970-I was adopted regarding intergovernmental reviews. It updates and replaces RD Instruction 1940-J. The web page for this is found here:

<http://www.rurdev.usda.gov/SupportDocuments/1970i.pdf>.

The document is well written, and is generally user friendly. It has useful information about **exemptions**. Note the definition of “local government” in §1970.405. It is broader than you might expect. The last two pages, Exhibit A, include a suggested form letter and materials to include with the letter when conducting intergovernmental reviews. Since Texas does not have a SPOC, the wording requires adjustment to apply to specific local governments.

The National Office has updated the list for Programs which require and don't require Intergovernmental Reviews. The link to the list can be found here:

<https://rd.sc.egov.usda.gov/teamrd/rdps/env/SEC%20Materials/Forms/AllItems.aspx?RootFolder=%2fteamrd%2frdps%2fenv%2fSEC%20Materials%2fIntergovernmental%20Review&FolderCTID=&View=%7bC50E6E88%2dC325%2d4A73%2dB171%2d9035370469D8%7d>

Click on the link, “RD Programs subject to EO 12372 September 2012 update 101212” or newer update link if listed.

The National Office has indicated that they will keep the list current as needed. If the Program is listed as having to provide Intergovernmental Review, it is required regardless of the type of Environmental Report provided. Agency's Category Exclusion construction projects and Owner consultant's Phase I and II Environmental Site Assessments must have an Intergovernmental Review if the funding Program is listed as “yes” in the spreadsheet. Review RD Instruction 1970-I for exceptions to the requirements such as single family homes and funds for items like fire trucks.



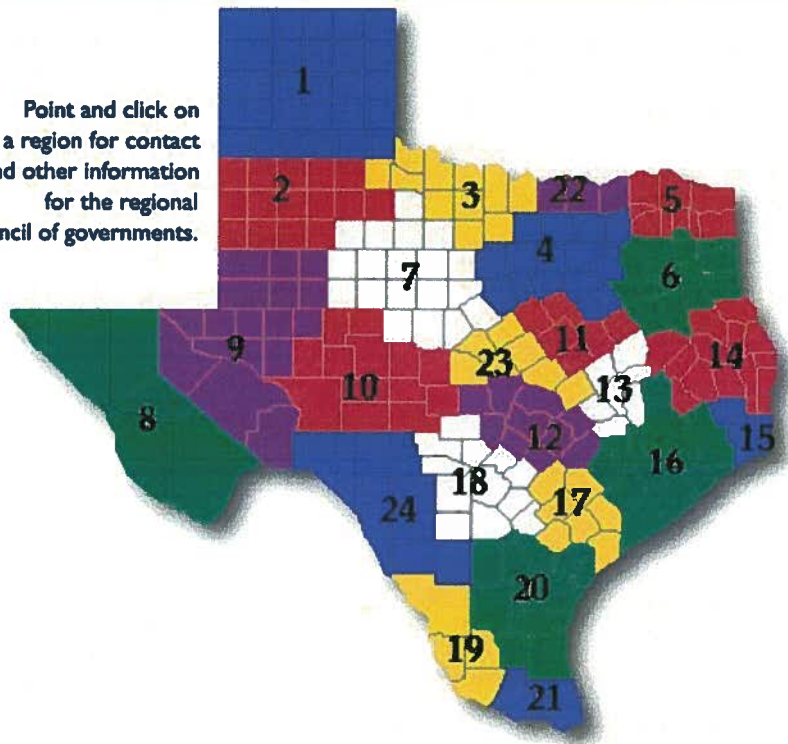
TEXAS ASSOCIATION OF REGIONAL COUNCILS

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Find Your COG

Regions

Point and click on a region for contact and other information for the regional council of governments.



Region Name	Number	Abbreviation	Web Site
Alamo Area Council of Governments	18	AACOG	www.aacog.com
Ark-Tex Council of Governments	5	ARK-TEX	www.atcog.org
Brazos Valley Council of Governments	13	BVCOG	www.bvcog.org
Capital Area Council of Governments	12	CAPCOG	www.capcog.org
Central Texas Council of Governments	23	CTCOG	www.ctcog.org
Coastal Bend Council of Governments	20	CBCOG	cbcog98.org
Concho Valley Council of Governments	10	CVCOG	www.cvcog.org
Deep East Texas Council of Governments	14	DETCOG	www.detcog.org
East Texas Council of Governments	6	ETCOG	www.etcog.org
Golden Crescent Regional Planning Commission	17	GCRPC	www.gcrpc.org
Heart of Texas Council of Governments	11	HOTCOG	www.hotcog.org
Houston-Galveston Area Council	16	H-GAC	www.h-gac.com
Lower Rio Grande Valley Development Council	21	LRGVDC	www.lrgvdc.org
Middle Rio Grande Development Council	24	MRGDC	www.mrgdc.org
Nortex Regional Planning Commission	3	NORTEX	www.nortexprpc.org
North Central Texas Council of Governments	4	NCTCOG	www.nctcog.org
Panhandle Regional Planning Commission	1	PRPC	www.prpc.cog.tx.us
Permian Basin Regional Planning Commission	9	PBRPC	www.pbrpc.org
Rio Grande Council of Governments	8	RGCOG	www.riocog.org
South East Texas Regional Planning Commission	15	SETRPC	www.setrpc.org
South Plains Association of Governments	2	SPAG	www.spag.org
South Texas Development Council	19	STDC	www.stdc.cog.tx.us
Texoma Council of Governments	22	TEXOMA	www.texoma.cog.tx.us
West Central Texas Council of Governments	7	WCTCOG	www.wctcog.org

PART 1970 - ENVIRONMENTAL

Subpart I - Intergovernmental Review

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PART 1970 - ENVIRONMENTAL

Subpart I - Intergovernmental Review

§ 1970.401 Purpose.

This subpart provides guidance to staff of Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service (collectively referred to as the "Agency") regarding the implementation and integration of intergovernmental review into the Agency's environmental review as part of the public involvement process. Effective intergovernmental review is necessary to comply with various statutes and Executive Orders, to strengthen intergovernmental partnerships, and to foster cooperation and coordination between all levels of government on Agency program activities.

§ 1970.402 Authority.

The Agency will conduct intergovernmental reviews in order to implement the following:

- (a) Intergovernmental Cooperation Act of 1968, 42 U.S.C., §§ 4201-4233;
- (b) Demonstration Cities and Metropolitan Development Act of 1966, 42 USC § 3334;
- (c) National Environmental Policy Act (NEPA) of 1969, as amended (specifically 40 CFR 1506.6);
- (d) Departmental Regulations, 7 CFR Part 3015, Subpart V Intergovernmental Review of Department of Agriculture Programs and Activities, as revised January 1, 2002;
- (e) Executive Order 12372: Intergovernmental Review of Federal Programs, issued July 14, 1982, as amended by Executive Order 12416, issued April 8, 1983; and
- (f) Executive Order 13352: Facilitation of Cooperative Conservation, issued August 26, 2004.

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Environmental

§ 1970.403 Policy.

The Agency will:

- (a) Apply intergovernmental review requirements to all existing and future Agency programs, except the following:
- (1) All single family housing programs;
 - (2) Applications for non-construction type assistance such as refinancing of debt, transfers of ownership, purchase of equipment, provision of operating capital, vehicle purchases, minor amendments to previously approved proposals and technical assistance;
 - (3) Applications from federally-recognized Indian tribes (refer to 1970.406(a)(1) for more information);
 - (4) Loan servicing actions such as the disposition of inventory property held by the Secretary, transfers or assumptions;
 - (5) Programs where their codified rules specifically state that Executive Order 12372 is not applicable; and
 - (6) Programs which States and local governments through written notice to the Agency, have elected not to review or provide comment.
- (b) Afford States and local governments the opportunity to review program activities as described in 1970.503(a) and located in areas subject to their legal jurisdiction prior to approval by the Agency.
- (c) Accommodate, to the extent possible, all concerns and recommendations of States and local governments that are transmitted to the Agency in writing. 1970.403(a)
- (d) Incorporate the intergovernmental review under the Agency's NEPA process to streamline internal implementation. This is in accordance with the Council on Environmental Quality's (CEQ) regulations at 40 CFR 1506.6(b), where intergovernmental review is a part of the public involvement process of NEPA.

§ 1970.404 Responsible parties.

(a) Administrator. The Administrator will ensure compliance with this subpart within their respective program areas, but have waiver authority as described in § 1970.408.

(b) Environmental staff. The Environmental staff at both the National and State Office levels will provide guidance and training on this subpart, as well as provide oversight on it during review of NEPA documents and management control reviews.

(c) Agency staff. The Agency staff will initiate intergovernmental reviews and ensure that State and local governments' comments are given due consideration as mitigation measures, if appropriate, within a NEPA review and/or as conditions for financial assistance. Staff may authorize applicants to initiate consultation with State and local governments, but not tribal governments due to tribal sovereignty and the government-to-government consultation necessary.

§ 1970.405 Definitions.

Agency. The USDA, Rural Development mission area including Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS).

Applicant. An individual or entity requesting financial assistance through the Agency's various programs.

Local government. Any local unit of government including specifically, a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1974), any other regional or interstate government entity, or any agency or instrumentality of a local government. (from Departmental Regulation Part 3015 subpart V)

Single Point of Contact (SPOC). A State adopted process pursuant to Executive Order 12372 to consolidate State and local government reviews and responses on proposed Federal program activities through one State portal.

State. Any of the fifty states, the District of Columbia, and all U.S. territories, political unions and protectorates including Guam, Federated States of Micronesia, Marshall Islands, Commonwealth of the Northern Mariana Islands, U.S. Virgin Islands, and Puerto Rico. (from Departmental Regulation Part 3015 subpart V)

§ 1970.406 Initiation of intergovernmental review.

(a) The Agency will decide which of the three following methods will be used to initiate intergovernmental review:

(1) If a State has established a single point of contact (SPOC), the SPOC will be contacted for all intergovernmental reviews. A listing of all the federally recognized SPOCs are at <http://www.whitehouse.gov/omb/grants/spoc.html>. All Agency environmental staff will determine if the States under their jurisdiction have a SPOC and will contact the SPOC to establish a mutually agreed upon process for all intergovernmental reviews. The SPOC has responsibility to receive, disseminate, evaluate, and provide comments to the Agency on the federally-assisted proposal. The SPOC is responsible for ensuring that comments from State, area-wide, regional or local officials and entities are transmitted in writing to the Agency within 60 days of receiving a request by the Agency.

(2) If a State does not have a SPOC, the Agency must still seek and consider the views of State and local governments in accordance with the Intergovernmental Cooperation Act of 1968; however, the Agency is not obligated to accommodate the State's recommendations, as it is where a SPOC has been established pursuant to Executive Order 12372. In those cases, the Agency Environmental staff will determine the appropriate State and local government offices to send intergovernmental review requests in consultation with the State. (For example, these may be the State's Department of Environmental Protection, Department of Commerce, or other

§ 1970.406(a)(2) (Con.)

bureau as applicable. At the local government level, these may be the County Planning Commission or a Regional Council of Governments.)

(3) For proposals from entities other than a Tribe and located upon tribal lands, federally recognized tribes may voluntarily participate in intergovernmental reviews and are encouraged to do so. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, or entities, and has made a request to the Agency in writing, the Agency will require that applications for proposals on tribal lands be subject to review as though it were a part of the consultation process with a SPOC. (Applications from federally recognized tribes are exempt from Executive Order 12372 as stated in p(a)(2) of this section.

(b) If a SPOC, State, local government or Tribe determines that they do not wish to review certain Federal programs, they should notify the Agency in writing of their decisions. Records of these decisions will be maintained by the Agency office receiving them to justify why intergovernmental reviews are not being initiated by the Agency. A copy of that letter will be filed in the proposal's NEPA review documents as proof that intergovernmental review was attempted by the Agency.

(c) Exhibit A will be used to initiate Intergovernmental Review. A copy of the original letter sent to request intergovernmental review comments on a proposal and any response letters will be filed within the proposal's NEPA review documents.

§ 1970.407 Agency consideration of intergovernmental review comments.

(a) The Agency will wait 60 days for comments in accordance with the Executive Orders and Departmental Regulation.

(b) Upon receipt of any response, the Agency will evaluate the comments and recommendations and confer with the State, local government or Tribe as needed. The Agency will either:

RD Instruction 1970-I
§ 1970.407(b) (Con.)

- (1) Accept the recommendations by including the intergovernmental review comments within the Agency's NEPA review document and using those comments as mitigation measures when appropriate;
- (2) Reach a mutually agreeable resolution of concerns and proceed as above; or
- (3) Provide a written explanation for not accepting the recommendation and not reaching a mutually agreeable solution when such recommendations were through a SPOC. In addition, the Agency will inform the SPOC of a 15-day delay in decision-making by the Agency from the date of SPOC notification before making its funding decision, unless unusual circumstances make the 15 day waiting period not feasible. All documentation will be retained within the Agency's NEPA review document.

§ 1970.408 Waivers.

(a) In emergency situations, as defined by the Agency's NEPA regulations, an Agency Administrator may grant a written waiver to any requirement or provision of this subpart provided such waivers are not inconsistent with the authorizing statute or other applicable law. This authority will be used sparingly to deal with unforeseen situations or other problems beyond Agency control. Records will be kept in the proposal's NEPA review documents of any waiver granted and the reasons for it. In addition, the Administrator will maintain records of all waivers granted.

(b) If the emergency waiver provision is used, individuals with programmatic responsibility will attempt, to the extent feasible and meaningful, to involve the State or other affected entities, in subsequent decision-making concerning the matter.

§§ 1970.409 - 1970.450 [Reserved]

Attachment: Exhibit A

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Intergovernmental Review Consultation

(place on Agency or applicant's letterhead)

Dear (insert name) :

(insert date)

We are initiating the Executive Order 12372, "Intergovernmental Review of Federal Programs" process on behalf of the U.S. Department of Agriculture, Rural Development (Agency). The Agency is being asked to consider providing financial assistance for the proposal described below and your comments are invited on this proposal regarding:

- 1) Consistency with State and local government planning goals;
- 2) Extent to which the proposal duplicates, runs counter to, or needs to be coordinated with other activities, or might be revised to increase its effectiveness;
- 3) Contribution to achieving State or local government goals relating to natural and human resources, or economic and community development;
- 4) Extent of environmental impacts and alternatives that should be considered in the Agency's environmental review;
- 5) Influence on area growth or delivery of services, including any disproportionate effects on minority groups;
- 6) Impacts on energy resource supply and demand;
- 7) Possible displacement of people or businesses; and
- 8) Location in a Coastal Zone or Coastal Barrier Resource Area and consistency with any State coastal management plan.

Please send your comments directly to the Agency at (insert Agency address). If you choose not to respond within 60 days of this correspondence, the Agency will assume that you have chosen not to respond and may proceed with their decision. If you have any questions concerning this proposal, please contact (insert person's name and contact information who can answer questions on the proposal).

Sincerely,

(signature)

(typed name)

Attachments: Proposal's Description and Maps

(include all items listed below in attachment)

Proposal's Description and Maps

To be included as attachments to the Review Letter:

- 1) *A description of the proposed activity including type and amounts of Agency program funding anticipated, kind of action proposed, purpose of the proposal, size or scale, estimated cost, and other relevant characteristics of the proposal;*
- 2) *Environmental information relating to compliance of the proposed activity with applicable environmental statutes, description of the current environmental condition of the proposed site, and potential impacts to protected resources;*
- 3) *The geographic location of the proposal in the form of a USGS 7.5 minute quadrangle map showing the proposed site, alternative sites considered, and area of potential impacts; and*
- 4) *Site plan showing buildings, roads, resource locations and other key features of the proposed site.*