

PART 1940 - GENERAL

Subpart J - Intergovernmental Review of Rural Development
Programs and Activities.

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Exhibit A

PART 1940 - GENERAL

Subpart J - Intergovernmental Review of Rural Development Programs
and Activities

§ 1940.451 Purpose.

(a) This subpart implements Executive Order 12372 issued July 14, 1982, titled "Intergovernmental Review of Federal Programs" and the Departmental regulations, 7 CFR part 3015, subpart V (attached as Exhibit A of this subpart). These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) Executive Order 12372 is intended to foster an intergovernmental partnership and a strengthened Federalism relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development.

§ 1940.452 Policy.

The Agency will consider comments submitted by a State single point of contact when making decisions on loan and grant applications.

§ 1940.453 Scope.

(a) The Agency programs and activities that are subject to the Executive Order and this subpart and that a State may choose to include in their review process are as follows: (Revised 10-15-02, SPECIAL PN.)

- (1) 10.405 - Farm Labor Housing Loans and Grants
- (2) 10.411 - Rural Housing Site Loans & Self Housing Land Development Loans
- (3) 10.415 - Rural Rental Housing Loans
- (4) 10.420 - Rural Self-Help Housing Technical Assistance Grants
- (5) 10.427 - Rural Rental Assistance Payments
- (6) 10.433 - Rural Preservation Grants
- (7) 10.438 - Rural Rental Housing Guaranteed Loans

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§ 1940.453(a) (Con.)

- (8) 10.441 - Technical and Supervisory Assistance Grants
- (9) 10.442 - Housing Application Packaging Grants
- (10) 10.760 - Water and Waste Disposal Systems for Rural Communities
- (11) 10.761 - Technical Assistance and Training Grants
- (12) 10.762 - Solid Waste Management Grants
- (13) 10.763 - Emergency Community Water and Assistance Grants
- (14) 10.764 - Resource Conservation and Development Loans
- (15) 10.765 - Watershed Protection and Flood Prevention Loans
- (16) 10.766 - Community Facilities Loans
- (17) 10.767 - Intermediary Relending Program
- (18) 10.768 - Business and Industrial Loans
- (19) 10.769 - Rural Development Grants (RBEG) (TDG)
- (20) 10.770 - Water and Waste Disposal Loans and Grants
(Section 306C)
- (21) 10.771 - Rural Cooperative Development Grants in subpart F of
Part 4284 of this title
- (22) 10.773 - Rural Business Opportunity Grants
- (23) 10.854 - Rural Economic Development Loan and Grants

(b) Natural Resource and Conservation Service clearance. The Natural Resource and Conservation Service (NRCS) is responsible for clearing Watershed Protection and Flood Prevention and Resource Conservation and Development plans. This clearance responsibility will apply to individual projects within the Watershed Work Plans. NRCS may not have obtained clearance of all projects mentioned in Resource Conservation and Development Plans. When an application for a Watershed Protection and Flood Prevention loan or Resource Conservation and Development loan is received, the Rural Development State Director will determine from the State Soil Conservationist whether the specific project has been cleared and, if cleared, obtain a copy of any comments which may have been made. If a specific project has not been cleared, the State Director will request the applicant to obtain clearance in accordance with this subpart.

§ 1940.453 (Con.)

(c) Applications from Indian tribes. Applications from federally recognized Indian tribes are not subject to the requirements of this subpart. However, Indian tribes may voluntarily participate in the review system explained in this Subpart and are encouraged to do so. When a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, or entities, Rural Development will, on request of such Tribal Government transmitted through OMB, require that applications for assistance be subject to review by the Tribal coordinating mechanism as though it were a part of the consultation process under this Subpart.

(d) Exclusion of disposition of property held by the Secretary, transfers and assumptions. Applications associated with disposition of property held by the Secretary, transfers and assumptions are excluded from the provisions of this Subpart.

review system explained in this Subpart and are encouraged to do so. When a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, or entities, Rural Development will, on request of such Tribal Government transmitted through OMB, require that applications for assistance be subject to review by the Tribal coordinating mechanism as though it were a part of the consultation process under this Subpart.

(d) Exclusion of disposition of property held by the Secretary, transfers and assumptions. Applications associated with disposition of property held by the Secretary, transfers and assumptions are excluded from the provisions of this Subpart.

§1940.454 Definitions.

For the purpose of this Subpart, "State" means that office or official designated by any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

§1940.455 Intergovernmental consultation system for programs a State has elected to review.

Whenever appropriate, Rural Development personnel will inform any prospective applicant of whether the State has adopted a process for the program for a intergovernmental consultation system and the name of the contact point.

(a) Notification. Any prospective applicant for financial assistance of a type listed in §1940.453 (a) will comply with the State adopted consultation process prior to submission to Rural Development of a preapplication or applications.

(b) State review and response.

(1) If the applicant does not receive any comments from a State within 60 days of notifying the State of the proposed project, the application may be submitted to Rural Development for consideration.

(2) Applications for the renewal or continuation of grants or applications not submitted to, or acted upon, by Rural Development within 1 year after completion of State review will be subject to another review upon request of the State.

(c) State comments and recommendations. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The State's comments and/or recommendations on the following factors as appropriate, will be of assistance in Rural Development's evaluation of the proposed project:

(1) The extent to which the project is consistent with or contributes to the fulfillment of goals of planning for the State, area, or locality.

(2) The extent to which the project duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area, or might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

(3) The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development, specifically:

(i) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(ii) Wise development and conservation of natural resources, such as land, water, minerals, and wildlife.

(iii) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, or other modes for the movement of people and goods.

(iv) Adequate outdoor recreation and open space.

(v) Protection of areas of unique natural beauty, historical, and scientific interest.

(vi) Properly planned community facilities, such as utilities supplying power, water, and communications and providing for the safe disposal of wastes.

(vii) Concern for high standards of design.

(4) The extent to which the project significantly affects the environment, as provided under section 102 (2) (C) of the National Environmental Policy Act of 1969. Specifically:

(i) The environmental impact of the project.

(ii) Any adverse environmental effects that cannot be avoided.

(iii) Alternatives to the project.

(iv) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term uses.

(v) Any irreversible and irretrievable commitments of resources that would be involved in the project or action should it be implemented.

(5) The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

(6) Effects on energy resource supply and demand.

(7) The extent to which people or businesses will be displaced and the availability of relocation resources.

(8) As provided under section 307(d) of the Coastal Zone Management Act of 1972, in the case of a project located in the coastal zone, the relationship of the project to the approved State program for the management of the coastal zone and its consistency therewith.

§1940.456. Submission of State comments and recommendations.

The State single point of contact is required by Department Regulations to submit any comments and recommendations to the Office of Finance and Management (OPM), Room 143-W, Administration Building, Washington, D.C. 20250, Attention: E.O. 12372. The comments and recommendations will, in turn, be forwarded by OFM to the appropriate Rural Development State Office. State Directors are encouraged, therefore, to work closely with the State single point of contact to obtain concurrently the comments and recommendations sent to OFM.

§§1940.457 - 1940.459 [Reserved]

§1940.460 Accommodation of State and local concerns.

(a) Coordination with State governments. The State Director will work closely with the State(s) in implementing the provisions of E.O. 12372. State Directors will advise County Supervisors and District Directors of the address of the State office or official that has been designated as the single point of contact.

(b) Review of comments. When the State comments on an application, Rural Development will:

(1) Consider such comments during the agency's review of the application, and

(2) In those situations where a State's comments cannot be accommodated, Rural Development will provide the State with a timely explanation of the basis for its decision. Rural Development will not implement its decision for 15 days after the State receives the explanation, unless unusual circumstances make the 15 day waiting period not feasible. The

explanation will take the form of a written explanation and may be supplemented by telephone, meeting or other telecommunication.

(c) Documentation. Any pertinent information appropriate to this Subpart will be documented in the case file.

§1940.461 Responsibilities.

Rural Development will:

(a) Receive Executive Order 12372 correspondence forwarded by OFM;

(b) Accept the State process recommendation or reach a mutually agreeable solution with the parties preparing the recommendation (accommodation), or provide the single point of contact with an explanation for not accepting the recommendation of reaching a mutually agreeable solution (nonaccommodation) when such recommendations are transmitted under the State process through the single point of contact,

(c) Respond in writing to nonaccommodations under the Executive Order and provide a courtesy copy of such responses to OFM;

(d) Delay implementation of a decision to nonaccommodate a State process recommendation for at least 15 days after sending the explanation to the single point of contact;

(e) Consider comments which do not constitute a State process recommendation, in accordance with existing consultation requirements such as those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966;

(f) Review applicable State plans which have been simplified, consolidated or substituted and accept such plans only if their contents meet Federal requirements; and

(g) Keep records of all situations in which emergency waivers were used and notify OFM of all instances of such waivers.

§1940.462 Waivers.

In an emergency, the Secretary may make an exception to any provisions within this subpart.

§§1940.463 - 1940.500 [Reserved]

Attachment: Exhibit A

Exhibit A in PDF ONLY.