

§ 1970.5

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 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

7 CFR Ch. XVIII (1–1–18 Edition)

(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 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.

§ 1970.6

7 CFR Ch. XVIII (1-1-18 Edition)

(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.

(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