



Final Rule RD Environmental Policies and Procedures – 7 CFR 1970

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Presentation Outline

- NEPA overview
- Why a new rule?
- What is the rule comprised of?
- What are the changes from the current rules?
- What has changed since the proposed rule went out in 2014?
- What are the activities moving forward?

Don't fear the NEPA!

- NEPA is:
 - Planning- look at impacts before taking action, revise the proposal as necessary
 - Good for customers and communities- keep your air clean, water safe, and a healthy environment
 - A tool to increase community engagement and consideration of alternatives = good for sustainability!

Don't fear the NEPA!

- NEPA is NOT:
 - A barrier to taking action- NEPA provides a path to mitigate impacts for projects with valuable purpose and need
 - A series of bureaucratic hoops- New regulation streamlines processes so that we focus analysis on actions where impacts occur
 - A death sentence to projects- tools and guidance help borrowers to navigate the environmental process

NEPA Process

- Are you in or out?
 - Where the Agency has sufficient control and responsibility for actions, they are generally subject to environmental review.
- You're in! What's next?
 - Projects are classified according to the regulation where documentation is categorical exclusion, environmental assessment or environmental impact statement.

You're in

- Categorical Exclusions- CATEX
 - Little likelihood of impact except in extraordinary circumstances
 - Analysis and documentation is minimal
- Environmental Assessment
 - Concise documentation of potential impacts, expected to be less than significant, more than minimal
 - Public notice/comment included
- Environmental Impact Statement
 - Significant impacts or controversy
 - Engage public, propose mitigation

Beyond NEPA

- Other environmental statutes, regulations and Executive Orders are incorporated
- National Historic Preservation Act (NHPA) and Endangered Species Act (ESA) have specific statutory timeframes
- Engage early to account for these processes!

What is an environmental rule?

- The National Environmental Policy Act (1969) (NEPA) established, among other things, the Council on Environmental Quality (CEQ), in the Executive Office of the President
- CEQ issued implementing procedures (initially in 1971, covered only EISs); at 40 CFR parts 1500-1508
- The CEQ procedures are general, and called for each federal agency to develop its own procedures to supplement those of the CEQ

Environmental rules

- Each agency's procedures have slightly different names, but they all describe how NEPA will be implemented within a given agency
- Agency NEPA implementing regulations typically integrate the requirements of other applicable environmental statutes, regulations, and Executive Orders

The new 1970 rule

- Consolidates all RD programs under one regulation
- Consistent implementation across programs and across the country
- Streamlines certain processes and documentation
- Reorganized to make easier to understand
- Provides a roadmap for implementation

7 CFR 1970 – Why a new rule?

USDA Rural Development (RD) has issued a new regulation that unifies, simplifies, and updates RD's two former environmental regulations that implement the National Environmental Policy Act (NEPA) and other applicable environmental requirements:

- 7 CFR Part 1794 (RUS) and
- 7 CFR Part 1940-G (RHS and RBS).

Unification

- Working with two rules caused confusion among state office staff who implement WEP and housing/business programs
- Each regulation had different requirements for classification, documentation, and public noticing
- Different levels of reliance on environmental professionals to prepare documents

Simplification

- Revised and new Categorical Exclusions (CEs) have fewer requirements for documentation, public noticing; better guidance for applicants to focus documentation on what is necessary
- No more multiple classes of EA
- Simplified public involvement (EA review time now 14-30 days)
- Third-party contracting process for preparing EISs

Updating

- 7 CFR 1940-G dated from 1988, 7 CFR 1794 was last updated in 2004; much has changed in the environmental impact assessment world
- New rule incorporates new Executive Orders and CEQ guidance
- Addresses new technologies (e.g., renewable energy) that were not covered in former rules
- Multiple reviews of the rule refined the language to be clear and concise

1970 Rule - Preamble

- The preamble, rule and conforming changes comprise the complete rule
- The preamble provides a more detailed introduction and background, describes the purpose of the rule, summarizes the comments received and the agency responses, and concludes with a section-by-section analysis of the rule.

1970 Rule – Subparts A-D

- These subparts cover, respectively, Environmental Policies, Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements
- Recall the purpose or function of an environmental rule – these Subparts describe how RD will implement NEPA
- Primarily staff instruction, but some are directed at applicants, e.g., *Guide to Applicants for Preparing Environmental Assessments*

1970 Rule – Subparts A-D

- Subparts A-D form the rule, but each also has a number of supporting Exhibits
- These supporting Exhibits provide even more detail in the form of guides for preparing or reviewing documents, process flowcharts, and template documents (notices, letters, decision documents)

1970 Rule – Subparts A through O

Subpart A – Environmental Policies

Glossary of Terms: NEPA, Electric &
Telecommunication Terms

SEC Info: PD/Performance Standards, Appointment
Form, Training Recommendations

Public Involvement

Preparing an Environmental Resource Directory

Subpart B – Categorical Exclusions (CE or CE with documentation)

Subpart C – Environmental Assessments

Subpart D – Environmental Impact Statements

Subpart E – Environmental Justice (published)

Subpart F – Floodplains

Subpart G – Wetlands

Subpart H – Historic Preservation

Subpart I – Intergovernmental Review (published)

Subpart J – Environmental Due Diligence

Subpart L – Land Use and Formally Classified Lands

Subpart N – Biological Resources

Subpart O – Other Protected Resources and Guides

Emergency Procedures

Global Climate Change

Air Quality Issues

Sole Source Aquifers

Coastal Barriers

Cumulative Impact Assessments

Noise Impact Assessments

Visual Impact Assessments

Transportation Impact Assessments

Electric Program Guides

Coastal Zone and Barrier Areas

Changes from 1794/1940-G	Changes since Proposed Rule
1) Better align the Agency's regulations with the CEQ NEPA regulations and recent guidance, EOs (more CEs, EOs on energy efficiency, floodplain management)	1) Preamble and rule text were modified to respond to over 500 comment letters received on the proposed rule regarding application of NEPA to certain loan servicing and lien sharing actions.
2) Update the provisions with respect to current technologies (e.g., renewable energy, biofuels) and recent regulatory requirements,	2) Proposed Rule was changed to reflect proper NEPA categorization for servicing actions, and reduced the NEPA requirements for certain lien sharing activities.
3) Promote consistency among the Agency's programs. (CEs and EAs aligned with other federal agencies)	3) Changes were made to the preamble and rule to add clarity, include additional Executive Orders issued since the proposed rule, and update other information as necessary.
4) Shortened Review Times- Notice of Availability of EA review goes from 30 days to 14 to 30 days .	4) Extensive discussions led to revised language regarding treatment of actions under S. 313A of the Rural Electrification Act, Guarantees for Bonds and Notes
5) Clarify reliance on applicant's design professionals for preparation of ERs and EAs	5) Changes as a result of additional internal program and OGC review.
6) Addition of section on multi-tier actions.	

Key changes

- Shorter public comment periods
- More focused documentation; maximize relevant information, minimize irrelevant, save time and money for preparers and reviewers
- Increased applicability of CEs not requiring documentation
- No more multiple classes of EAs

Categorical Exclusions

- What exactly is a categorical exclusion?
- It is a level of NEPA review, not a 'free pass'
- "Classes of actions determined not to have, individually or cumulatively, a significant effect on the human environment"
- Must be substantiated by an "administrative record", and approved by CEQ
- Each agency determines its own CEs
- "Extraordinary circumstances" will require higher level of review

Extraordinary Circumstances

- “... unique situations presented by specific proposals ... (such that) 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 EIS ...” [§ 1970.52(a)]

Classification – What About EAs?

- (All) of the EAs listed in §§ 1794.23 and 1794.24, will continue to require EAs under the 7 CFR Part 1970. There were three types of EA under 1940-G; Class I EAs will now mostly be CEs (w/o or w/ report), Class II EAs will remain EAs
- The rule requires that an EA be prepared for all Agency actions that are neither a CE nor an EIS; essentially the same as 1794, and similar to 1940-G, which called for an EA for actions above CE thresholds, but did not define any EIS-level actions
- An EA (or an EIS if required) would be prepared for a normally categorically excluded action if there were extraordinary circumstances

Environmental Impact Statements

- EISs are rare in the water, telecomm, and RBS/RHS programs
- Historically, most are in the electric program
- New rule defines actions similar to 1794, but adds two regarding hazardous waste facilities and large land use conversion
- Of course, an EIS is prepared any time an EA concludes that significant impacts would occur that cannot be mitigated

Status and Upcoming Activities

- Rule published March 2, 2016, and will become effective April 1, 2016.
- Subparts will be completed prior to the rule effective date
- Immediate scheduling of webinars for internal staff and various stakeholder groups
- Focused training of Agency staff beginning soon in accordance with our training plan

Rollout Training

- Significant internal and external training effort
- Internally, program staff and State Environmental Coordinators
- Externally, industry groups, consultants, possibly NGOs
- Both live and web-based training

Top 10 Reasons to Love 1970!

1. Welcome to the 21st Century: Online public notice!
2. More categorical exclusions!
3. Public comment times can be shorter (14 days-30 days)!
4. Template letters galore!
5. Detailed staff and applicant instructions
6. Third-party contracting for Environmental Impact Statements
7. Multi-Tier is Here! Post-obligation NEPA for relenders.
8. Focus environmental documentation where it is needed.
9. Clear levels of NEPA review: Catex, Environmental Assessment, and Environmental Impact Statement
10. One Set of Rules for All RD Programs



Questions or Concerns?

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