

THE NOT-SO-NEW ENVIRONMENTAL POLICY: IT'S EASIER THAN IT WAS

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The USDA Rural Development (RD) environmental policy, 7 CFR Part 1970, became effective 4/1/16 (no fooling!); it replaced RUS regulation 7 CFR 1794 and RHS/RBS regulation 7 CFR 1940-G, consolidating the environmental requirements to be the same over several programs. Not only was the formatting of the regulation simplified, the regulation change made the entire environmental process easier to understand and get through. Here are some of the main highlights of the new rule.

RD environmental requirements include the National Environmental Policy Act, affectionately called NEPA; the environmental process must be completed before actual commitment of RD funding can be made. It is (and always has been) up to the applicant (for RD funding) to provide all information required to support RD's environmental determination. NEPA has been updated to reflect new technology, such as solar and geothermal, and to more closely align with other agencies such as HUD and DOE. Other aspects of the environmental requirements still include the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA); these have statutory timeframes to follow, beyond the control of RD. Our new regulation has guidance for dealing with other entities.

There are now four categories of review: Categorical Exclusions, or CE, with little likelihood of the project causing impact; CE with environmental report (ER) for projects which might have some environmental impact; Environmental Assessment (EA) for those projects with impacts that are more than minimal but less than significant (with guidance on how to tell the difference); and Environmental Impact Statement (EIS), when there will be significant impacts or controversy. For the last two, public notice is required; the amount differs based on the significance of the impacts. The applicant and/or their consultant still provides information to RD in order for RD to determine the potential environmental impact and what category the project falls into; there's now a flowchart to help the applicant understand the process. The applicant also sends out letters to other entities, using templates provided by RD, and publishes the public notices if/as necessary. RD assists the applicant in determining what information is needed, what agencies need to be contacted, and

reviews all of the documentation for adequacy.

Under the old regulation, CEs were for routine financial and administrative actions; under the new regulation, CEs also include replacement of existing water or sewer lines within the existing right-of-way (ROW), as long as they are a similar size or increased in size to meet regulatory requirements. If extraordinary circumstances exist, such as a violation of permits, adverse effects to historical property, wetlands, floodplains, federally listed species, or other federal or state designated areas, more environmental information or an ER may be needed.

Under the new regulation, CEs requiring an ER include: infrastructure for water or wastewater systems; repair, rehabilitation, or restoration of water/flood control, impoundment, and drainage structures as long as there is little change in use, size, capacity, purpose, or design; improvement and expansion of existing water, waste water, and gas systems within one mile of currently served areas, or that increase capacity by not more than 30 percent based on user population; and replacement of utility lines where the relocation is within or immediately adjacent to a new road ROW. Small scale site-specific development, impacting less than 10 acres and not increasing traffic flow are also included in this category; these could include multi-family housing, business development, and community facilities. Projects that do not fit into the CE or CE with ER category are classified as EA or EIS, requiring more environmental review. There is more specific guidance in the new regulation to help determination of this and preparation of the ER and EIS.

The new USDA RD regulations can help streamline environmental review for USDA funding of projects. More information can be found at <http://www.rd.usda.gov/ny> and the regulation can be found at <http://www.rd.usda.gov/publications/regulations-guidelines/instructions>, and scroll down to 1970. And of course, if you have any questions or wish to discuss any of this in more detail, please contact your local RD Area Office, John Helgren (john.helgren@ny.usda.gov), or Marcy Newman (marcy.newman@ny.usda.gov).

Next issue: Stay tuned for an article about the soon to be rolled out ePER: "ePER, The Paperless Frontier!" 💧💧