

PART 1970 - ENVIRONMENTAL

Subpart I - Intergovernmental Review

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Exhibit A - Intergovernmental Review Consultation

PART 1970 - ENVIRONMENTAL

Subpart I - Intergovernmental Review

§ 1970.401 Purpose.

This subpart provides guidance to staff of Rural Development (RD), which includes: 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, 42 USC §§ 4321-4370 (specifically 40 CFR 1506.6);
- (d) Departmental Regulations, 2 CFR Part 415, Subpart C Intergovernmental Review of Department of Agriculture Programs and Activities;
- (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 Policies  
and Procedures

§ 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 state and local governments that are transmitted to the Agency in writing.
- (d) Incorporate the intergovernmental review under the Agency's NEPA process to streamline internal implementation. This incorporation 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 for the respective program area, 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 comments from state and local governments 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 necessity for government-to-government consultation.

§ 1970.405 Definitions.

Agency. The USDA RD 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 (e.g., 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 an SPOC, state, local government, or Tribe determines that it does 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]

The U.S. Department of Agriculture, Rural Development [*Rural Housing Service/Rural Business Service/Rural Utilities Service*] (Agency) is initiating the Executive Order 12372, "Intergovernmental Review of Federal Programs," process in order to obtain feedback and concurrence from interested parties on financing a proposal. The Agency is being asked to consider providing financial assistance for the proposal described below. Because this state does not have a State Point of Contact, this letter shall serve as your invitation to comment on this proposal.

Please complete the attached form and send any comments on this proposal or your letter of concurrence 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 its decision. If you have any questions concerning this proposal, please contact *[insert the name and contact information for the person who can answer questions on the proposal]*.

Sincerely,

*[signature]*  
*[typed name]*

Attachment 1: Proposal's Description and Maps *[All items listed below must be included as attachments]*

- 1) Project Description *[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 *[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) USGS Topographical Map *[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]*

- 4) Site plan [A site plan showing buildings, roads, resource locations and other key features of the proposed site]

**Attachment 2: USDA Rural Development Intergovernmental Review Consultation Form**

Project Name: \_\_\_\_\_

- 1) Is the proposal consistent with State or local government planning goals?

Yes       No

- 2) Does the proposal duplicate, run counter to, or need to be coordinated with other activities, or might it be revised to increase its effectiveness?

Yes       No

- 3) Will the proposal contribute to achieving state or local government goals relating to natural and human resources or economic and community development?

Yes       No

- 4) Are there environmental impacts and alternatives that should be considered in the Agency's environmental review?

Yes       No

- 5) Will the proposal influence area growth or delivery of services, including any disproportionate effects on minority groups?

Yes       No

6) Will the proposal impact energy resource supply and demand?

Yes       No

7) Will the proposal displace people or businesses?

Yes       No

8) Will the proposal be located in a Coastal Zone or Coastal Barrier Resource Area and is it consist with any State coastal management plan?

Yes       No

Comments:

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\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date