



Post-Obligation Completion of NEPA & Section 106

USDA RUS ReConnect Program



Rural Development

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Agenda

- 1970 Section 11.B
- NPA
- Common Closing Conditions

Post Obligation Scenarios for Complying with 7 CFR Part 1970, Rural Development's Environmental Policies and Procedures

- Must comply with NEPA, associated laws and authorities, **prior** to taking an action with adverse effects on the environment or limit the choice of reasonable alternatives
 - Defined as “obligation” in 2016 adoption of 7 CFR 1970
 - Regulatory change adopted in September 2019 to allows RD administrators to approve post-obligation completion of environmental reviews on a case by case basis
- Requires compliance with 46 laws and authorities (§ 1970.3)
- National Historic Preservation Act is the primary focus of the environmental review process, due to the nature of Rural Development's projects
 - Nationwide Programmatic Section 106 Agreement allows for post-obligation completion of the Section 106 process

Status of Environmental Reviews for ReConnect Round 1

Status	# of Projects
Environmental Review Complete	23
Incomplete Reviews Obligated with 1970.11(b)(1) Authority	55
Incomplete Environmental Reviews Obligated Using NPA	8

Exercising the 1970 Section 11.B Provision



- 1970 Section 11.B allowed USDA to award applications that were still undergoing environmental review
- Construction of project is **not** permissible for applicants awarded under 1970 Section 11.B with a pending NEPA/Section 106 completion status
- Applications initially cleared, environmentally, can still be held to conditions requested at a later point in time
 - EX: The applicant must comply with yearly surveys for species identified in the project area, if requested to do so by the USFWS

Applying the NPA

- The Nationwide Programmatic Agreement (NPA) is a Section 106 agreement that allows RD agencies to obligate funds prior to completing Section 106
- Applicants that utilized the NPA to submit an application must complete Section 106 **prior to construction**
- All awardees who applied the NPA, received notice that they must initiate Section 106 within 90 calendar days of the announcement of obligation

Common Closing Conditions

- Examples of environmental conditions:
 - Cabinets need to be installed on existing aerial poles, buried vault or handhold small in size, or located outside of wetland
 - Applicant must elevate the proposed building structure to be above the 500-year floodplain elevation
 - Applicant must use directional boring or plowing installation methods in order to avoid impacts to wetlands resources
 - Applicant cannot construct on Army Corps of Engineers, BLM, or any formally classified lands that were identified as not be crossing, despite what the ReConnect construction mapping tool indicated.
- If any condition/mitigant has been levied against you that you would like to contend, you must submit a request for an amendment





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