



This document is scheduled to be published in the Federal Register on 02/06/2013 and available online at <http://federalregister.gov/a/2013-02393>, and on FDsys.gov

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

Energy Efficiency and Conservation Loan Program Programmatic Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a Programmatic Environmental Assessment.

SUMMARY: The U.S. Department of Agriculture, Rural Utilities Service (RUS), has prepared a Programmatic Environmental Assessment (PEA) for a new program that will implement the Energy Efficiency and Conservation Loan Program (EE). The PEA is available for a 30-day public review and comment period. Subsequent to the comment period RUS plans to issue a finding of no significant impact.

DATE: Written comments on this Notice must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Deirdre M. Remley, Environmental Protection Specialist, RUS, Water and Environmental Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Stop 1571, Washington, DC 20250-1571, Telephone: (202) 720-9640 or e-mail: deirdre.remley@wdc.usda.gov. The PEA is available online at <http://www.rurdev.usda.gov/UWP-ea.htm> or you may contact Ms. Remley for a hard copy.

SUPPLEMENTARY INFORMATION: On May 22, 2008, the U.S. Congress enacted the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) as Public Law 110-234. The 2008 Farm Bill amended Section 12 to authorize energy audits and energy efficiency measures and devices to reduce

demand on electric systems. Section 6101 of the 2008 Farm Bill amended Sections 2(a) and 4 of the Rural Electrification Act (RE Act) by inserting “efficiency and” before “conservation” each place it appears. Under the authority of the “efficiency” provisions added to the RE Act by the 2008 Farm Bill, RUS proposes to amend 7 CFR part 1710 by adding a new subpart H entitled “Energy Efficiency and Conservation Loan Program,” which expands upon policies and procedures specific to loans for a new Energy Efficiency and Conservation Loan program. The program would provide loans to eligible rural utility providers (Primary Recipients) who would act as intermediaries to make Energy Efficiency (EE) loans to consumers in the Primary Recipients’ service territories (Ultimate Recipients) for EE improvements at the Ultimate Recipients’ premises.

This program is funded through existing authorizations and appropriations. RUS expects that \$250 million per year will be dedicated to the EE program. On July 26, 2012, RUS published a proposed rulemaking in the Federal Register at 77 FR 43723, with a 60-day comment period, for the subpart H of 7 CFR part 1710, which would implement the EE program. The final rule will outline the procedures for providing loans to eligible Primary Recipients who will establish EE activities in their service territories and to pay reasonable administrative expenses associated with their loans under the program. The proposed rule defines an “Eligible Borrower” (Primary Recipient) as an electric utility that has direct or indirect responsibility for providing retail electric service to persons in a rural area.

Certain financing actions taken by RUS are Federal actions subject to compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), and RUS “Environmental Policies and Procedures” (7 CFR part 1794). There are two Federal actions under the new EE program being considered in this PEA: (1) Loans awarded by RUS to Primary Recipients, and (2) loans and other EE activities that the Primary Recipient executes for the benefit of Ultimate Recipients.

The levels of environmental review for RUS actions are classified in 7 CFR part 1794, subpart C, Classification of Proposals. Both agency actions for the EE program are classified in § 1794.22(b)(1)

(loan approvals) as categorically excluded proposals requiring an Environmental Report (ER). Due to the limited scope and magnitude of most EE loan activities, RUS finds that a programmatic environmental analysis of the new EE program will reduce paperwork, duplication of effort, and promote a more efficient decision-making process for program implementation. RUS reserves the right to update this programmatic analysis to take additional information into account or develop particular elements of the analysis more fully as may be warranted in individual circumstances.

In summary, RUS has determined that the implementation of the EE program would not significantly affect the human or natural environment. However, to minimize any potential for adverse effects to specific environmental resources, Primary Recipients will be required to comply with the following mitigation measures. These mitigation measures will be incorporated in Primary Recipients' EE program work plans and loan documents.

1. Land Use/Formally Designated Lands

RUS would provide guidance to Primary Recipients as part of the Environmental Compliance Tool Kit informing Primary Recipients of their obligations to coordinate with Federal, state and local agencies for approval of any activities that may occur on lands for which these agencies may have jurisdiction.

2. Indian Trust Resources

To ensure that RUS takes into consideration tribal concerns about EE program activities and to maintain the government-to-government relationship between RUS and tribal sovereign nations, RUS will provide guidance to Primary Recipients as part of the Environmental Compliance Tool Kit for implementing activities on Indian lands. If necessary, mitigation measures for effects to tribal trust resources will be developed and implemented on a case-by-case basis.

3. Floodplains

No mitigation measures or further review of floodplain impacts is required if the EE activity is: 1) restricted to the footprint of existing structures, or 2) not restricted to the footprint of existing structures, but a review of floodplain maps shows that the Ultimate Recipient's premise is not within a floodplain.

In accordance with Rural Development Instruction 426.2 II.C., and under the authority of the National

Flood Insurance Protection Act of 1968 as amended by the Flood Disaster Protection Act of 1973, RUS is prohibited from providing assistance to communities that do not participate in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency. Therefore, if a proposed EE activity does not meet either of the two exceptions listed above, and if a proposed structure cannot be placed outside a floodplain, the Ultimate Recipient must obtain flood insurance, if the structure is insurable.

4. Wetlands

No mitigation measures or further review of wetlands impacts is required if the EE activity is: 1) restricted to the footprint of the existing structures or area of previous disturbance, or 2) not restricted to the footprint of existing structures or area of previous disturbance, but a review of National Resources Conservation Service (NRCS) soils maps shows that the Ultimate Recipient's premises is not within a hydric soil unit which is one of the three positive indicators of identifying wetlands (USACE Wetlands Delineation Manual, 1987).

EE program activities that involve new construction of facilities outside the footprint of existing structures or areas of previous disturbance will require a review of NRCS soil maps, and the Environmental Compliance Tool Kit would provide guidance on using NRCS soils data and on interpreting U.S. Army Corps of Engineers (USACE) requirements for wetlands. The tool kit will also provide guidance on whether an existing Nationwide Permit may apply to the action, or if hydric soils are present at a proposed project site and cannot be avoided. If wetlands are potentially affected and if the proposed action is under the jurisdiction and is authorized under the general conditions of a USACE Nationwide Permit(s), the tool kit would also provide a template Preconstruction Notice for a Primary or Ultimate Recipient to prepare and send to the District Engineer, USACE having jurisdiction over the proposed project area.

5. Coastal Barrier Resources

The Coastal Barrier Resources Act of 1982 designated units of the Coastal Barrier Resources System (CBRS) and created restrictions on most new Federal expenditures and financial assistance in these units

to prevent Federal actions that may encourage development on barrier islands. If a Primary Recipient has reason to believe that any of its Ultimate Recipients may have premises in a unit of the CBRS, they will coordinate with RUS to consult with the U.S. Fish and Wildlife System (USFWS). RUS must receive written approval from the USFWS before any proposed action within a unit of the CBRS can be taken.

6. Species of Concern

To mitigate the potential for a “take” under the Endangered Species Act or the Migratory Bird Treaty Act, the Environmental Compliance Tool Kit would provide guidance on identifying potential impacts to special status species that could result from EE program activities. The tool kit would provide instructions on how to find site-specific information for a given activity and how and when to consult with the USFWS.

7. Health and Safety

To mitigate the potential for exposure to lead paint, work that may disturb painted surfaces in pre-1978 structures would be performed by a contractor with the appropriate lead certification. To mitigate the potential for exposure to asbestos, field personnel planning EE program activities at Ultimate Recipients’ premises would be trained to identify asbestos. If asbestos is found and if there is potential for it to be disturbed by a given activity, the asbestos must be removed by an asbestos remediation professional prior to the start of work on the project.

8. Historic Properties

To meet responsibilities under Section 106 of the NHPA and its implementing regulation (36 CFR Part 800) for the EE program and its activities, RUS is pursuing the development of a program alternative in accordance with 36 CFR § 800.14. In August 2012, RUS invited the ACHP, State Historic Preservation Officers (SHPO), Indian tribes, and selected industry and tribal organizations to participate in consultation to develop this program alternative. With the invitation, RUS included a Conceptual Outline which described the EE Program and the challenges it presents for Section 106 review, and provided an analysis that concluded that a nationwide Programmatic Agreement (PA) developed pursuant to 36 CFR § 800.14(b) to be the program alternative appropriate for the EE Program. The objective of the program

alternative is to streamline Section 106 review, focusing Federal, state and tribal resources where they are most needed. On August 23 and 24, 2012, RUS hosted a series of webinars for SHPOs and Indian tribes, respectively, to discuss and solicit their comments on a nationwide PA, as the appropriate program alternative, and topical areas it might address.

While explicit terms of a nationwide PA have not yet been drafted, RUS recognizes, as presented in the Conceptual Outline, that any proposed program alternative must establish programmatic exemptions or thresholds for EE program activities that have little or no potential to cause effects to historic properties and standard methods for the EE Program to treat defined categories of historic properties, activities, and effects.

As part of the Environmental Compliance Tool Kit, RUS will develop a specialized toolkit for Section 106 requirements that will be part of the loan commitment documentation which RUS provides to Primary Recipients. RUS will require Primary Recipients to evaluate each action taken with an Ultimate Recipient to ensure consistency with the terms of the executed program alternative.

Primary Recipients will be responsible for documenting activities that fall below the established threshold. RUS will review the Primary Recipient's documentation of actions that fall below the threshold prior to providing reimbursement with Federal funds.

Any EE Program activity for which exemptions and standard treatments are not applicable would be subject to Section 106 review under procedures established by the PA or other program alternative.

Therefore, the program alternative must define a clear threshold for RUS involvement in Section 106 review.

Although few in number, the comments on the Conceptual Outline received thus far have been supportive of the development of a nationwide PA, the need for streamlining, especially given the large number of reviews expected to be generated by EE Program activities, and the approach reflected in the Conceptual Outline. Based on these comments, RUS is proceeding with development of the first draft of

the nationwide PA. The program alternative will be executed prior to RUS issuing a finding of no significant impact (FONSI). Both the FONSI and documents related to the program alternative will be made available to the public on RUS's website at <http://www.rurdev.usda.gov/UWP-ea.htm>.

Dated: January 29, 2013

Nivin Elgohary, Assistant Administrator
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[FR Doc. 2013-02393 Filed 02/05/2013 at 8:45 am; Publication Date: 02/06/2013]