

**TO:** Rural Development State Directors

**ATTN:** Rural Development Program Directors, Rural Development Managers, Community Development Managers and State Environmental Coordinators

**FROM:** James C. Alsop                    *(Signed by James C. Alsop)*  
Acting Administrator  
Rural Housing Service

John Rosso                                *(Signed by John Rosso)*  
Administrator  
Rural Business-Cooperative Service

**SUBJECT:** Environmental Compliance When Construction Has Been Initiated

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to clarify the environmental requirements contained in RD Instruction 1940-G when construction has been initiated prior to application and related issues. The related issues are applications for equipment purchase, refinancing of existing debt, and requests for authorization of interim financing. For the purposes of this AN Rural Housing Service (RHS) and the Rural Business-Cooperative Service (RBS), are collectively referred to as the "Agency."

**COMPARISON WITH PREVIOUS AN:**

This is a revision and reissue of RD AN No. 3741 (1940-G) that expired April 30, 2003.

EXPIRATION DATE:  
June 30, 2005

FILING INSTRUCTIONS:  
Preceding RD Instruction 1940-G

## **IMPLEMENTATION RESPONSIBILITIES:**

Notice to the applicants and lenders: When a preapplication or application is filed, the Agency will immediately notify the applicant that during the period of application review and processing, the applicant must not take any actions, such as initiation of construction, that may have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process.

In addition, the applicant will be notified that the environmental review must be completed prior to the issuance of a conditional commitment for guaranteed loans or prior to loan approval or obligation of funds for direct loans and grants. The Agency will ensure that all guaranteed lenders and relenders (such as intermediaries) are aware of this requirement and will recommend that the lenders provide this notice to their clients at the earliest point of contact between the guaranteed lender and their client. Refer to RD Instruction 1940-G, 1940.309(e) and 1940.315.

Construction and the Environmental Review: It is very difficult for the Agency to satisfy its environmental compliance responsibilities when construction has been completed or is underway at the time of application. If construction is in progress at the time of preapplication or application, the Agency must determine and document whether or not there is any evidence that the applicant initiated construction to avoid environmental compliance requirements, such as ignoring prior Agency notice. If evidence to that effect exists, then the Agency is not in a position to complete an environmental review or to consider a financial assistance request.

If the Agency is able to ascertain that no evidence exists of an attempt to avoid environmental compliance, then the application is subject to the same environmental requirements as any other application. The following guidance applies when construction is still in progress:

The applicant must be informed that the Agency must fulfill its environmental compliance responsibilities and that if environmental compliance cannot be achieved, the approval for financial assistance may be in jeopardy. It is recommended that the applicant halt or delay construction until the Agency has completed the environmental review.

The Agency must document in the environmental review, to the extent practicable, whether protected resources have been affected or destroyed by the construction. Immediate steps must be taken by the Agency to identify any remaining resources and to put in place appropriate mitigation measures to protect remaining resources from the construction's progress.

The Agency is required to consult with other Federal and State agencies in order to identify what resources may have been affected or destroyed, what remains, and to develop appropriate mitigation measures for those remaining. This may mean that the applicant must halt or delay the construction's progress until such consultations can take place. If the applicant is unwilling or unable to cooperate, or if the agencies with regulatory jurisdiction are unwilling to participate, the Agency may be unable to complete the environmental review.

Agencies with regulatory jurisdiction may provide notice that their opportunity to comment has been foreclosed by the initiation of construction. In this case, it is recommended that immediate consultation be undertaken to resolve the situation. The regulatory agency should be advised that there is nothing in the Agency program regulations to prevent an applicant from initiating construction prior to filing a preapplication or application. The regulatory agency should also be informed that the Agency reviewed the actions of the applicant and has found no evidence that the applicant initiated construction to avoid environmental compliance requirements, if that is the case. If, after consultation, the regulatory agency is unwilling to assist in the environmental review process the applicant should be informed that the Agency is unable to complete its environmental review. The Agency will either have to deny the request for assistance or raise the issue to a higher level with the regulatory agency.

If construction has been completed at the time of application, the Agency will follow a process similar to that outlined above for construction that has been initiated.

To avoid the above situations the Agency should counsel applicants and consultants, and guaranteed lenders should counsel their clients, to consider their total financial assistance needs at the earliest planning stages of their proposals. Applications to the Agency will be filed prior to the start of construction whenever possible. In addition, the Agency will ensure that all parties have a clear understanding of the Agency's environmental review process and their respective responsibilities while that review is in process.

Interim financing : If a guaranteed lender requests that the Agency authorize interim financing the Agency must complete the appropriate level of environmental review prior to giving such authorization. Authorization for interim financing cannot be given "subject to" completion of the environmental review.

Equipment purchase: A proposal to purchase equipment for an existing facility is normally considered a categorical exclusion, however, this assumes that such a proposal is not part of larger action and that there are no connected actions which must also be examined as part of the same environmental review. A common example of connected actions is when the equipment purchase is dependent upon the construction of a new facility or the expansion of an existing facility. In this example, the scope of the environmental review must be broadened to cover the environmental impacts of the construction, whether the construction is in progress or proposed, and regardless of the source of financing for the construction.

Additional guidance on related activities may be found in:

- RD Instruction 1940-G, 1940.317(d)
- RD Instruction 1940-G, Exhibit H, II, Primary Beneficiaries and Related Activities
- The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act at 40 CFR part 1508.25.

Refinancing existing debt: A proposal to refinance existing debt for a facility is normally considered a categorical exclusion, unless there is ongoing or recently completed construction. In such a case, refer to the paragraph on Construction and the environmental review.

If there are any questions regarding these issues, they should be discussed with your State Environmental Coordinator. You may also contact Linda Rodgers at (202) 720-9647, email: [linda.rodgers@usda.gov](mailto:linda.rodgers@usda.gov) or Baxter Hill at (202) 720-1499, email: [baxter.hill@usda.gov](mailto:baxter.hill@usda.gov) in the Program Support Staff, Rural Housing Service.