



# **RUS Environmental Update**

## ***Part 1***

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# Topics

- New environmental rule: 7 CFR Part 1970
- Changes from 7 CFR Part 1794
- NHPA Section 106 Update & Subpart H



# National Environmental Policy Act (NEPA)

# Don't fear the NEPA!

## NEPA is:

- Planning- look at impacts before taking action, revise the proposal as necessary
- Good for customers and communities- keep your air clean, water safe, and a healthy environment
- A tool to increase community engagement and consideration of alternatives = good for sustainability!

# Don't fear the NEPA!

NEPA is NOT:

- A barrier to taking action- NEPA provides a path to mitigate impacts for projects with valuable purpose and need
- A series of bureaucratic hoops- New regulation streamlines processes so that we focus analysis on actions where impacts occur
- A death sentence to projects- tools and guidance help borrowers to navigate the environmental process

# NEPA Process

- Are you in or out?
  - Where the Agency has sufficient control and responsibility for actions, they are generally subject to environmental review.
- You're in! What's next?
  - Projects are classified according to the regulation where documentation is categorical exclusion, environmental assessment or environmental impact statement.

# You're in

- **Categorical Exclusions (CATEX)**
  - Little likelihood of impact except in extraordinary circumstances
  - Analysis and documentation is minimal
- **Environmental Assessment (EA)**
  - Concise documentation of potential impacts, expected to be less than significant, more than minimal
  - Public notice/comment included
- **Environmental Impact Statement (EIS)**
  - Significant impacts or controversy
  - Engage public, propose mitigation

# Beyond NEPA

- Other environmental statutes, regulations and Executive Orders are incorporated
- National Historic Preservation Act (NHPA) and Endangered Species Act (ESA) have specific statutory timeframes
- Engage early to account for these processes!



# Applicant/Consultant Responsibilities

- Provide information to the Agency that the Agency deems necessary to evaluate the proposal's potential environmental impacts and alternatives. (7 CFR § 1970.5(b)(3))
- Send out consultation letters using RUS templates, when available
- Publish public notices when appropriate
- Get all permits prior to construction
- DO NOT take any action that would have an “adverse environmental impact or limit the choice of reasonable alternatives being considered” prior to RUS clearance

# RUS Responsibilities

- Assist applicants by outlining “the types of information and analyses required in guidance documents.” 7 CFR §1970.5(a)(2)
- Determine what agency actions are subject to NEPA and the appropriate level of NEPA review and documentation
- Assist borrowers in data collection and preparation of documentation
- Review and approve the adequacy of the prepared documentation
- Formally conclude RUS consultation responsibilities under ESA and NHPA
- Maintain an administrative record to substantiate impact determinations and decisions

# What is an environmental rule?

- The National Environmental Policy Act (1969) (NEPA) established, among other things, the Council on Environmental Quality (CEQ), in the Executive Office of the President
- CEQ issued implementing procedures (initially in 1971, covered only EISs); at 40 CFR parts 1500-1508
- The CEQ procedures are general, and called for each federal agency to develop its own procedures to supplement those of the CEQ

# Environmental rules

- Each agency's procedures have slightly different names, but they all describe how NEPA will be implemented within a given agency
- Agency NEPA implementing regulations typically integrate the requirements of other applicable environmental statutes, regulations, and Executive Orders

# The New 1970 Rule

- Consolidates all RD programs under one regulation
- Consistent implementation across programs and across the country
- Streamlines certain processes and documentation
- Reorganized to make easier to understand
- Provides a roadmap for implementation

# Simplification

- Revised and new Categorical Exclusions (CATEXs) have fewer requirements for documentation, public noticing; better guidance for applicants to focus documentation on what is necessary
- No more multiple classes of EA
- Simplified public involvement (EA review time now 14-30 days)
- Third-party contracting process for preparing EISs

# Updating

- 7 CFR 1794 was last updated in 2004
- New rule incorporates new Executive Orders and CEQ guidance
- Addresses new technologies (e.g., renewable energy) that were not covered in former rules
- Multiple reviews of the rule refined the language to be clear and concise

# Answers Many Questions

- What actions are subject to NEPA? § 1970.8
- What are RUS vs. applicant responsibilities?  
§ 1970.5
- When is the review performed and what is the applicant allowed or not allowed to do before environmental clearance?  
§§ 1970.11-12
- What level of review/documentation is required?  
§ 1970.51-55; 1970.101-104; 1970.151-156



# Changes from 1794

- New CATEXs without an ER:
  - Customer drops: 1970.53(c)(8)
  - Cable replacements (aerial or buried) in existing ROW: 1970.53(d)(1)
  - New aerial cable attached to existing poles: 1970.53(d)(1)
  - New buried cable in previously developed, existing ROW and in urban/rural settle areas (“in-town”): 1970.53(d)(2)
  - Co-location of telecommunications equipment on existing infrastructure if it will not adversely affect a historic property: 1970.53(d)(5)

# Changes from 1794

- CATEXs requiring preparation of an ER:
  - All new towers less than 450 ft above ground level: 1970.54(a)(6)
  - New linear facilities & equipment: 1970.54(b)(4)
  - New headquarters, microwave facilities, etc. need to support utility systems: 1970.54(a)(4)
- EAs are needed for new towers greater than 450 ft above ground level

# Extraordinary Circumstances

- Extraordinary Circumstances (§1970.52):  
“... unique situations presented by specific proposals ... (such that) a normally (categorically) excluded action will be the subject of an additional environmental review... (and) require an EA or EIS ...” [§ 1970.52(a)]

# Extraordinary Circumstances

- Extraordinary Circumstances (§1970.52):

- Violation of permits

- Siting, construction, or expansion of a RCRA-related facility

- Uncontrolled/unpermitted release of pollutants

- Adverse effect to:

- historic property; federally listed species/critical habitat/proposed or candidate species; wetland (conversions requiring an individual permit); floodplain; areas having formal federal or state designation; coastal barriers; coral reefs

- Controversy based on effects to human environment

# 1970 & Section 106 (NHPA)

## Subpart H –

- Extensive guidance for Section 106 documentation and responsibilities
- Templates for correspondence
- List of undertakings with no potential to affect historic or cultural resources (Currently being drafted)

# NHPA Section 106

- Borrowers can:
  - Initiate consultation with SHPOs
  - Engage with THPOs
  - Conduct studies and analysis
  
- RUS ONLY can:
  - Make decisions for the Agency on 106 issues
  - Consult with tribes
  - Conclude S. 106

# NHPA Section 106

Involve RUS when:

- Tribes want to engage beyond initial letter
- There is disagreement among consulting parties
- There is a determination that the action may have adverse effects
- Tribes request fees to engage
- Mitigation recommendations are significant

# Processing of Applications

- Operating under OGC policy that environmental reviews (including Section 106) must be complete before obligating funds to meet the requirements of the Anti-Deficiency Act.
  - Section 7: need to have concurrence letter from U.S. Fish and Wildlife Service for “likely to affect, but not adversely effect” determinations
  - Section 106: if not concluded, need to execute a Programmatic Agreement allowing for phased completion after obligations but before funds dispersal/construction





# Questions?

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# **RUS Environmental Update**

## ***Part 2***

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***May 12, 2016***

# Topics

- 1970 overview refresher
- Telecommunications Program:  
Programmatic Environmental Assessment
- Section 106 Program Alternative

# The New 1970 Rule

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- Streamlines certain processes and documentation
- Reorganized to make easier to understand
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# **Broadband Deployment to Rural America**

**Programmatic Environmental Assessment  
(PEA) of the RUS Telecommunications  
Program**



# Telecom Programs PEA

What are the objectives of this PEA?

- **Expedite** the preparation and evaluation of applicant submittals to facilitate the deployment and expansion of broadband infrastructure to rural America
- **Save** RUS and applicants substantial time, resources, and funds
- **Ensure** consistent and accurate evaluation of broadband projects and efficient compliance with pertinent laws and regulations
- **Avoid** unnecessary duplication and repetitive efforts in planning, environmental review, regulatory compliance, permitting, and decision-making

# Telecom Programs PEA

What is a Programmatic  
Environmental Assessment?  
(Chp 1)



# Telecom Programs PEA

Detailed description of activities

(Chp 2)

# Telecom Programs PEA

## Program-level environmental analyses (Chp 3):

Groundwater

Surface water

Soil erosion

Native vegetation

Air quality

Greenhouse gas emissions

Noise

Electromagnetic radiation

Migratory birds

Environmental Justice

*Analyses for these resources are complete and do not need further analysis at project-level planning if identified standard operating procedures and mitigation as described in PEA are implemented*

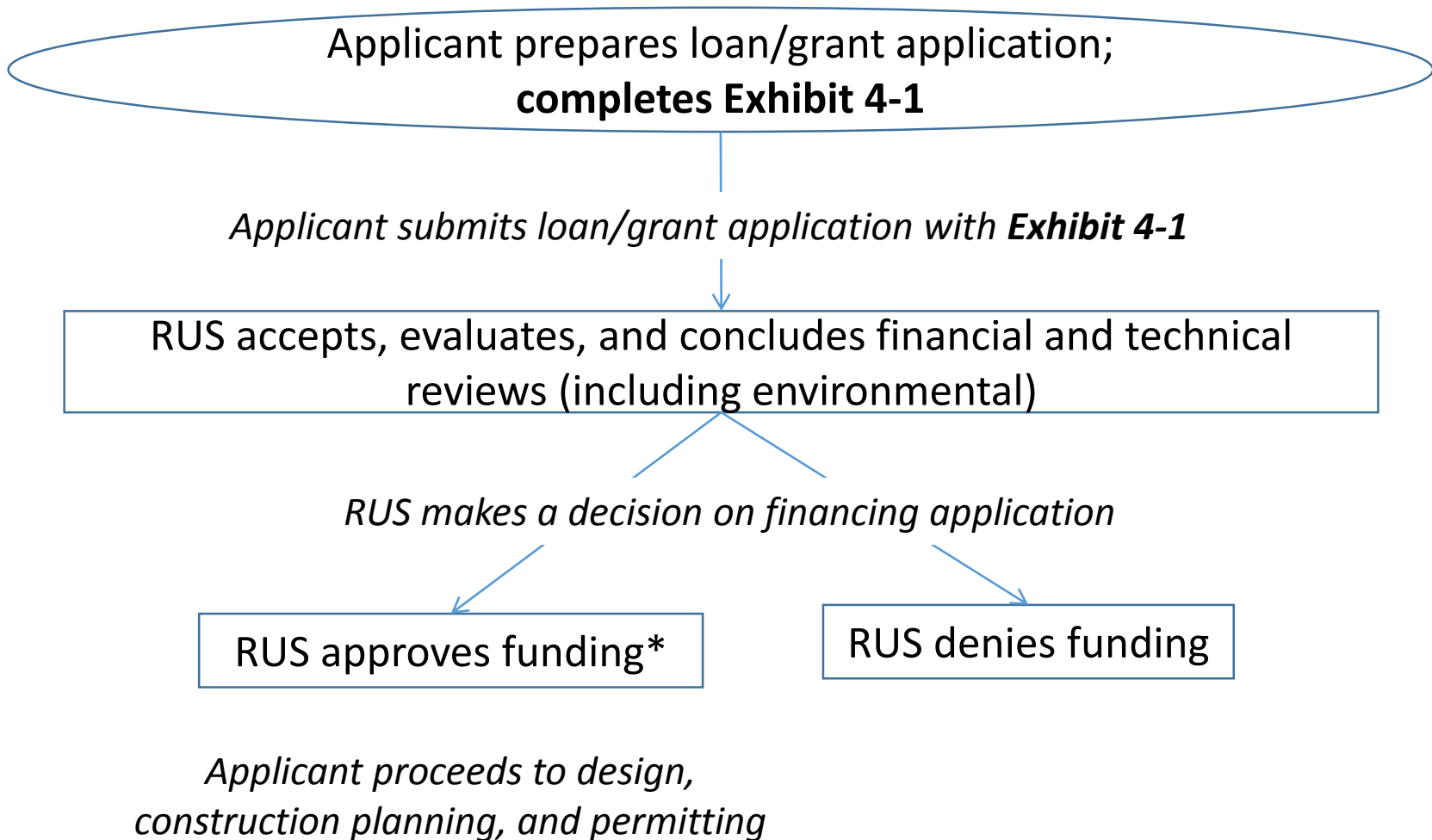


# Telecom Programs PEA

Tiering Process

(Chp 4)

# PEA Tiering Process



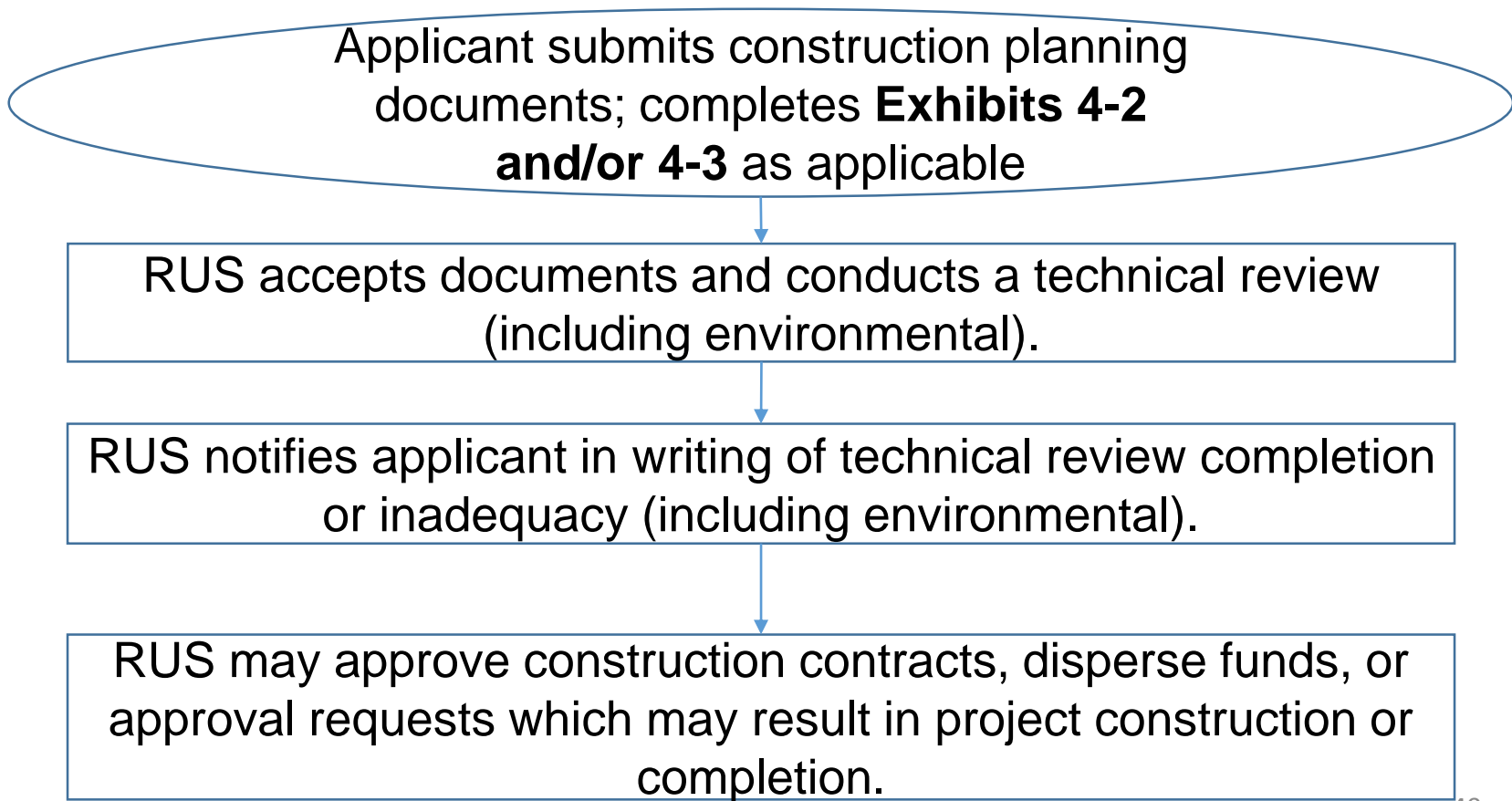
# PEA Tiering Process

## Tiered-analyses: **Exhibit 4-1** (Appendix J)

- Documents that every project or kind of activity included in a borrowers loan or grant application has been analyzed in the PEA
- Allows for RUS to make a funding decision based on the PEA/Finding
- If subsequent tiered or site-specific environmental review is needed, borrower cannot begin site preparation or project construction

# PEA Tiering Process, Pt 2

*Applicant proceeds to design, construction planning, and permitting*





# PEA Tiering Process, Pt 2

Tiered-analyses: **Exhibit 4-2: linear projects**  
(Appendix J)

**Land Uses: public vs. private land**

**Federally listed species/designated critical habitat**

**Historic Properties**

Wetland/waters of the US conversions requiring an individual permit

Farmland soil conversion, AD 1006 if not sited in existing ROW

Coastal barrier resource area



# PEA Tiering Process, Pt 2

## Tiered-analyses: **Exhibit 4-3: towers/buildings** (Appendix J)

Land Uses: public vs. private land

Federally listed species/designated critical habitat

Historic Properties

Floodplain conversions

Wetland/waters of the US conversions

Farmland soil conversions (AD 1006)

Coastal barrier resource area

# PEA Status

- PEA publication: March 2016
  - Comment Period ended: April 1, 2016
  - Received 2 comments that will be incorporated in agency Finding
  
- Finding: planned for end of FY 2016 but could be sooner

# Using the PEA

For RUS: Completion of **Exhibit 4-1** (Appendix J) is needed before RUS can make a funding decision.

Applicant must confirm that all activities are consistent with:

- Technologies analyzed (Chp 2)
- Environmental conditions/mitigation (Chp 3)

# Using the PEA

## Outside of RUS: Appendices

- App C & D: info on NEPA & land use authorization regulations for federal permits
- App. G: links to environmental databases
- App. I: Section 106 templates and guidance specific to telecommunications program

*Use Chp 2 when coordinating with agencies to describe activities included in your application*



# **Broadband Deployment to Rural America**

## **Program Alternative Section 106 (NHPA) Consultation**

# Section 106 (NHPA)

36 CFR § 800.1(c):

**[Agencies] must complete the section 106 process prior to the approval** of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license. This does not prohibit [agencies] from conducting or authorizing nondestructive project planning activities before completing compliance with section 106...

# S106 Program Alternative

36 CFR § 800.14:

Agencies may develop procedures to implement S106 and substitute them for all or part of the ACHP's S106 rule.

- Programmatic Agreement
- Program Comment



# S106 Program Comment Process

- ➔ 1. Agency request to Advisory Council
- 2. Public participation
- 3. Advisory Council consultation with SHPO, THPO, and tribes
- 4. Advisory Council action within 45 days of agency request

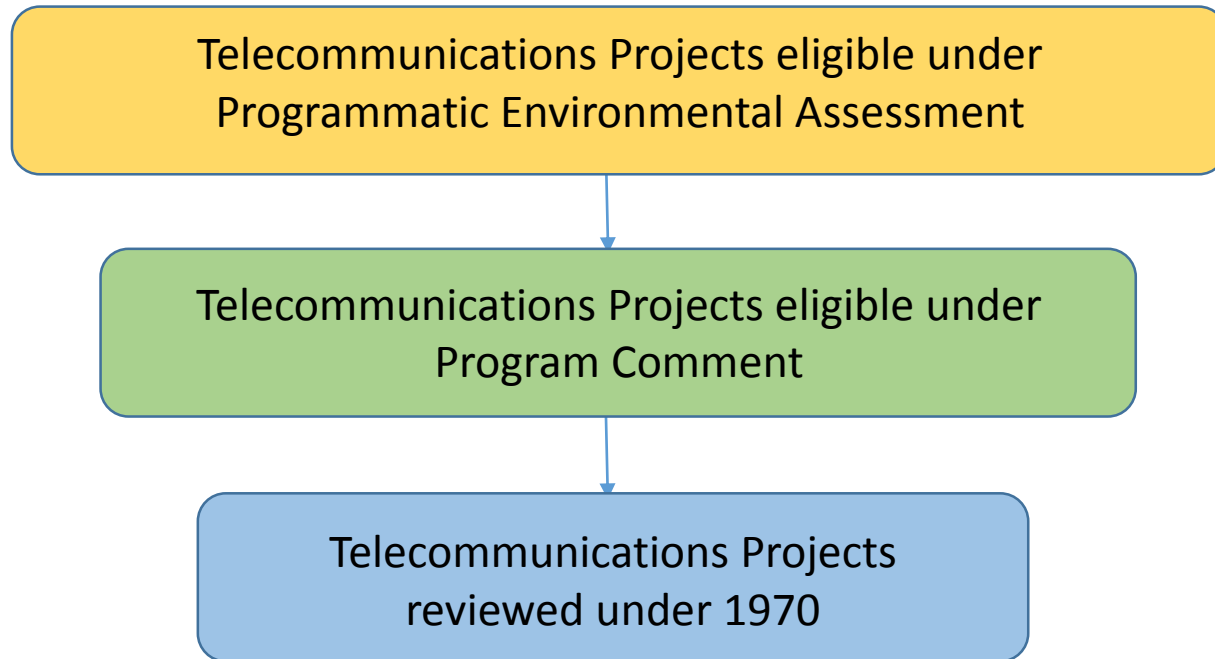
# S106 Program Comment Process

- Jan 2016: RUS sent a letter to interested parties seeking feedback on the timing issue (obligation before completion of S106) and the use of a program comment.
- Received 6 letters
- Plan to file official request to Advisory Council and present at the ACHP meeting in July 2016

# Processing of Applications PEA/Finding & Prog. Comment

- When the agency's Finding (NEPA) and a Program Comment (Section 106) are issued, RUS can make a funding decision based on the completion of **Exhibit 4-1** of the PEA.
  - No individual programmatic agreements (Section 106) should be needed for each loan design or grant application.

# Processing of Applications PEA/Finding & Prog. Comment



# What do I do now?

- Prior to issuance of FONSI for PEA
  - Review projects under 1970
- Upon issuance of FONSI for PEA
  - Review projects for eligibility under PEA
    - If eligible, follow PEA
    - If not eligible, review under 1970
  - Pursue state programmatic agreements (Section 106) where needed
- Upon issuance of Program Comment
  - Same review under PEA
  - If eligible under Program Comment, no individual programmatic agreements (Section 106) should be needed for each loan design or grant application.
  - If not eligible, pursue state programmatic agreements

# Environmental Review Process

## Pre-loan

- Prepare environmental documentation and send to loan origination group
- Loan origination group will send to EES
- EES sends environmental review to engineering
- Engineering includes environmental clearance in letter to the borrower

## Post-loan

- Where changes in scope of project require amending the original environmental review

# Don't forget to include...

- A good project description:
  - Maps!
  - What kind of disturbance and specifically where
  - Connected actions
  - Looking for extraordinary circumstances
- Top Impacts that can be road blocks
  - ESA- document effects (if no effect, document to file)
  - S. 106- look at the potential to impact resources that are present
  - Closing the loop- do you need permits, concurrences, etc?
  - Are there Federal Lands involved?

# Have you considered?

Floodplains

Wetlands

Farmlands

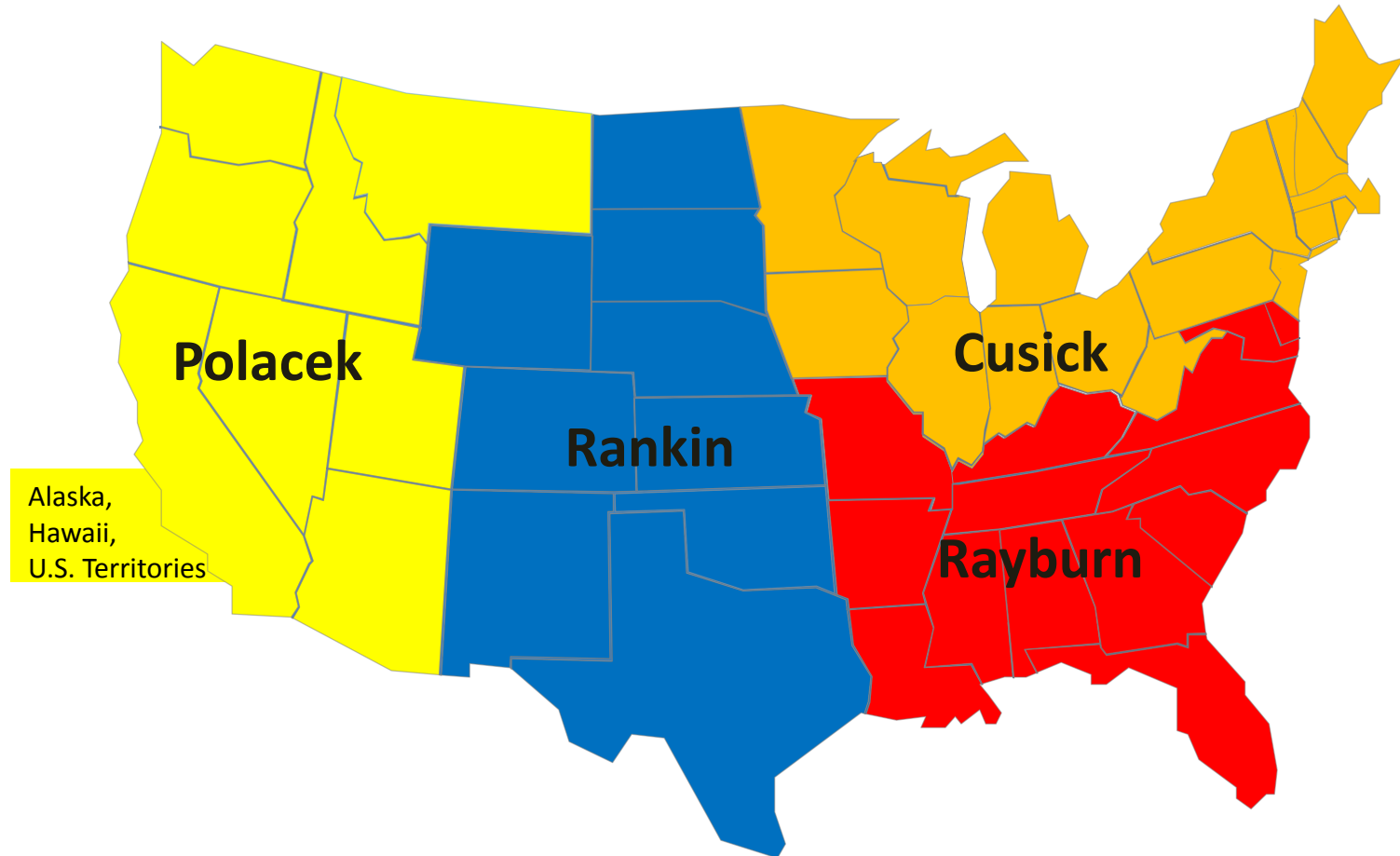
Coastal Areas

Historic Properties/Cultural Resources

Protected Biological Resources



# EES Staff Assignments



# Where are the sub-parts?

- <http://www.rd.usda.gov/publications/regulations-guidelines/instructions>
- Scroll down to 1970 Section



# Questions?

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