

TO: State Directors, Rural Development

ATTN: Business Program Directors, Area Directors, Business Loan Specialists,
Renewable Energy Coordinators, and State Environmental Coordinators

FROM: Lilian Salerno
Acting Administrator
Business and Cooperative Programs

RE: NEPA Compliance for Flexible Fuel Pump Proposals

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice is to provide clarification and guidance on the application of the National Environmental Policy Act of 1969 (NEPA) process under RD Instruction 1940-G to proposed actions that fund the installation of flexible fuel pumps, authorized under the Rural Energy for America Program (REAP).

COMPARISON WITH PREVIOUS AN:

This Administrative Notice (AN) replaces RD AN No. 4581 dated June 17, 2011, which expired on June 1, 2012. There have been no changes to this AN.

IMPLEMENTATION RESPONSIBILITIES:

Flexible fuel pumps are defined under RD Instruction 4280-B, Section 4280.103 as a retail pump that combines and dispenses a blended liquid transportation fuel. Pumps may use existing underground tanks or may include a new tank installation. Proposals to the Agency to fund such flexible fuel pumps may be grants, guaranteed loans, or a combination of both.

NEPA Compliance: RD Instruction 1940-G provides procedures for Agency implementation of the NEPA regulations by listing those actions classified as normally requiring an EA, an EIS, or are categorically excluded (CE) from NEPA review. For the purposes of NEPA compliance, flexible fuel pumps at existing service stations may be categorically excluded from NEPA review under RD Instruction 1940-G, section 1940.310(c)(2): “projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of

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FILING INSTRUCTIONS:
RD Instruction 1940-G

facilities, structures, or businesses, for replacement, or restoration purposes with minimal changes in use, size, capacity, purpose or location from the original facility . . .” The application of this CE to flexible fuel pump systems can only be applied to existing service stations where any construction will be to reuse or replace an underground (or above ground) storage tank with another tank of similar or smaller size, and in accordance with all State and local regulations for tank removal and replacement.

NEPA Compliance for Flexible Fuel Pump Proposals. Excavation of undisturbed areas for underground tank installation as part of any flexible fuel pump system would not be included under this CE and would be considered a Class I EA, addressed under RD Instruction 1940-G, section 1940.311. Installation of a new above ground storage tank would be included under this CE if such installation was on existing paved areas.

National Historic Preservation Act (NHPA) Compliance: The Agency generally addresses Section 106 NHPA compliance as part of its NEPA review process. In the case of an action that is classified as a CE, Section 106 can be addressed by consultation with the State Historic Preservation Officer (SHPO) where the Agency has determined the Federal undertaking, the likely impact to any historic resources, and the likely area of potential effect. In the case of flexible fuel pumps at existing service stations less than 50 years old where there is no new construction, the Agency may conclude that this will be an undertaking with no potential to cause effects to historic resources. According to 36 CFR 800.3(a)(1), the Agency simply needs to document this conclusion, and does not need to consult the SHPO. For those proposed flexible fuel pumps which involve new construction of a fuel storage tank, the Agency will assess the historic records prior to making any finding of effects to historic properties, and will consult with SHPOs, or Tribes, as appropriate.

Environmental Due Diligence: For grants where there is no security interest taken in a property, the Agency does not require environmental due diligence; for guaranteed loans, the Agency requires that the lender follow its standard environmental due diligence practices for business loans, typically a Phase I Environmental Site Assessment (ESA). The Agency should request and review such Phase I ESA’s prior to loan guarantee issuance. Service station tanks are permitted and regulated by States, and any tank removal or reuse for flexible fuel pumps will follow the appropriate State processes.

If you have any questions, please contact your State Environmental Coordinator. If they are unavailable you may contact Frank Mancino in the National Office Program Support Staff at (202) 720-1827.