

§ 2201.14

be bound by all actions, and/or failures to act, of the Agent. The Board and the Administrator shall be entitled to rely upon such actions and/or failures to act of the Agent as binding all Lenders.

§ 2201.14 Eligible Loan purposes.

To be guaranteed under the Program, a Loan must be made for the purpose of financing the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals will be delivered to a Nonserved Area or Underserved Area.

§ 2201.15 Ineligible Loan purposes.

(a) The proceeds of the Loan shall not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding.

(b) The Applicant shall not transfer proceeds of the Loan to any Affiliate(s).

(c) The Board will not fund a Project that is designed primarily to serve one or more of the top 40 Designated Market Areas.

(d) The Board will not fund a Project that would alter or remove National Weather Service warnings from Local Television Broadcast Signals.

(e) No Guarantee may be granted or used to provide funds to a Project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the enactment of the Act, is covered by a cable franchise agreement that expressly obligates a cable operator to serve such area.

§ 2201.16 Environmental requirements.

(a) *General.* (1) Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and other applicable authorities. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed in 40 CFR parts 1500 through 1508.

7 CFR Ch. XX (1-1-09 Edition)

(ii) With respect to this Program, these actions typically include:

(A) Any Project, permanent or temporary, that will involve construction and/or installations;

(B) Any Project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any Project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Applicant.* (i) Environmental data or documentation concerning the use of the proceeds of any Loan guaranteed under this Program must be provided by the Applicant to the Board to assist the Board in meeting its legal responsibilities.

(ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the Loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the Loan at issue; and

(D) Any other information that can be used by the Board to ensure compliance with environmental laws.

(iii) All information supplied by the Applicant is subject to verification by the Board.

(b) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of Project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision, etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific Projects can be obtained from the Board by contacting: Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919-S, Stop 1575; Washington, DC 20250-1575.

(c) *National Environmental Policy Act—(1) Purpose.* The purpose of this paragraph (c) is to adopt procedures for

Local Television Loan Guarantee Board

§ 2201.16

compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working capital loan means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to the Secretary of the Board.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Secretary of the Board. The Secretary of the Board will prepare or, at his or her discretion, coordinated replies to such correspondence.

(ii) With respect to actions of the Board, the Board will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word "normally" is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Applicant, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) The Board will request that the Lender and Applicant prepare an environmental assessment that provides information concerning all potentially significant environmental impacts of the Applicant's proposed Project. The Board, consulting at its discretion with CEQ, will review the information provided by the Lender and Applicant. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed Project should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed Project.

(ii) An environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the Project for

which the proceeds of the Loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) If, on the basis of the environmental assessment, the Board determines that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Board shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919-S, Stop 1575; Washington, DC 20250-1575. Prior to a final Guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after the environmental assessment has been completed, the Board determines that an EIS is necessary, it and other related documentation will be prepared by the Board in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Board may seek additional information from the Applicant in preparing the EIS. Once the document is prepared, the Board will transmit the document to the Environmental Protection Agency.

(ii) *EIS.* (A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(1) The format and contents of the draft and final EIS shall be as discussed in 40 CFR part 1502.

(2) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(3) The Board, consulting at its discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(4) NEPA requires that the decision making "utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental

Local Television Loan Guarantee Board

§ 2201.18

design arts.” 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(3) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking “major Federal actions.” A Guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal will be prepared. This record of decision will be prepared at the time the decision is made.

§ 2201.17 Submission of applications.

(a) Applications should be submitted as follows:

(1) Applications for Guarantees shall be submitted to the LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., Stop 1575, Room 2919-S, Washington, DC 20250-1575. Applications should be marked Attention: Secretary, LOCAL Television Loan Guarantee Board.

(2) Applications must be submitted postmarked not later than the application filing deadline established by the Board if the applications are to be considered during the period for which the application was submitted.

(3) All Applicants must submit an original and two copies of a completed application.

(b) *Application deadline.* One or more application windows will be announced. The duration of each application window for submission of applications will be approximately 120 days. Notice of an

application window will be published in the FEDERAL REGISTER.

§ 2201.18 Application selection.

(a) *Application Priority.* When evaluating applications to determine which Project or combinations of Projects will best facilitate access to Local Television Broadcast Signals, the Board shall give priority in the approval of Guarantees to the following categories:

(1) First, to applications for Projects that will serve households in Non-served Areas.

(2) Second, to applications for Projects that will serve households in Underserved Areas.

(3) Within each category, the Board shall balance applications for Projects that will serve the largest number of households with applications for Projects that will serve remote, isolated communities (including non-contiguous States) in areas that are unlikely to be served through market mechanisms. The Board shall consider the Project’s estimated cost per household and shall give priority to those applications for Projects that provide the highest quality service at the lowest cost per household.

(b) *Additional Considerations.* (1) The Board shall give additional consideration to applications for Projects that, in addition to providing Local Television Broadcast Signals, also provide High-speed Internet service.

(2) The Board shall consider other factors, which shall include applications for Projects that:

(i) Offer a separate tier of Local Television Broadcast Signals at a lower cost to consumers, except where prohibited by applicable Federal, State, or local laws or regulations; and

(ii) Enable the delivery of Local Television Broadcast Signals consistent with the purpose of the Act by means reasonably compatible with existing systems or devices predominantly in use.

(c) *Other Considerations.* All other evaluation factors and priority considerations being equal, the Board will give a preference in approving Guarantees to those applications for Projects that provide greater amounts and higher quality Collateral.