



Information Collection and Recordkeeping Requirements

As described in the ANTHC's comments on the substance of this proposed rule (see comments re: Subpart C – Application Processing), it is our view that several of the forms require ANTHC to certify that it agrees to comply with numerous statutes, regulations, and at least one executive order that are inapplicable to our organization. This could dramatically complicate ANTHC's compliance procedures and result in substantial resources of time and money being diverted away from programmatic endeavors in favor of unnecessary administrative work.

ANTHC is authorized by and operates largely under the auspices of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended. In this capacity, ANTHC carries out federal trust responsibilities (healthcare) for Alaska Natives and American Indians with federal funding. Under the ISDEAA, ANTHC essentially "steps into the shoes" of the Indian Health Service (IHS), which formerly provided these services, and in doing so, ANTHC enjoys certain federal protections and certain exemptions from federal contracting and grant laws and regulations. Among the express exemptions is 25 USC 450j(a)(C)(ii)(XI), which makes tribal organizations exempt from Executive Order 11246 when undertaking construction. Nevertheless, the proposed rule states that ANTHC must execute Form FR 400-4, "Assurance Agreement" by which ANTHC assures it is complying with Executive Order 11246.

If ANTHC is required to execute this form, the time spent will be more than a fraction of the 2.05 hours RUS anticipates for each applicant because for ANTHC, it is more than simply executing a form.¹ It is rather the creation of an entire compliance process to address the voluminous regulations that flow from Executive Order 11246 – an executive order ANTHC is not accustomed to complying with because of our ISDEAA identity.

¹ For those documents that ANTHC has submitted, the two and a half hour estimate for completion is inaccurate. We estimate that, in routine cases, it takes 32 hands-on hours (and 4-6 weeks real time) to complete the documents, taking into account the time it takes to work with rural communities to complete and execute documents that require information or a signature from them. It can take much longer if there is an unanticipated complication. As explained in our comments on the proposed regulation, we believe many of the forms are redundant and include requirements that are inapplicable to Tribes and tribal organizations. We would like to work with RUS to consolidate and streamline this process.

Similarly, as a tribal organization, ANTHC is exempt from several of the federal nondiscrimination statutes which RUS would require compliance with under this rule. Please see the description of this problem within the substantive portion of ANTHC's comments addressing "Subpart C – Application Processing," *infra*. Several standard forms required under this proposed rule are based on the presumption that nondiscrimination statutes apply to the applicant. In the case of ANTHC and other tribes and tribal organizations, that is a faulty presumption. The time and resources necessary to bring an entity into compliance is not small and nowhere near as modest as the 2.05 hours that RUS estimates.

Based on the analysis above and within the substance of these comments, ANTHC should not be required to execute many of the forms at all including RD 400-1, "Equal Opportunity Agreement"; Forms SF-242C and SF-242D; and RD 400-4, "Assurance Agreement." For a tribal organization like ANTHC, the time and resources required in the execution of these documents is far beyond the benefits for ANTHC's constituency or RUS.

Please note that it is not the entirety of these forms ANTHC objects to, rather it is only those portions of the forms that implicate nondiscrimination statutes, regulations or executive orders from which ANTHC is exempt as a matter of law. As suggested within the ANTHC comments, we suggest that RUS could convene with ANTHC and IHS to explore development of a form that recognizes ANTHC's exemption position but which provides RUS with legally required assurances.

In addition, the proposed regulations would require ANTHC and DEC to impose these same burdens on Tribes and tribal organizations that are participating on a community level. While ANTHC has found it burdensome and frustrating to use scarce resources to try to comply with these requirements, we are frankly at a loss as to how to assist Tribes and tribal organizations in very small communities try to meet these burdens. Although we have made a significant effort to find ways to make the requirements both workable and meaningful, our efforts seem to us to be woefully inadequate.

Please be aware that the estimated burden is easily too low by a factor of hundreds for ANTHC and much more so for small Tribes and tribal organizations.