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An Agricultural Law Research Article

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Abide by the Rural Development Act**

by

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The poorest areas of the United States are almost entirely among its rural counties.³ Despite some recovery of its economy in some sectors, many aspects of rural life in the United States continue to decline. The number of farmers has fallen.⁴ Even though some population has returned to rural areas after fifty years of decline, the number of children in rural areas continues to fall,⁵ leaving rural areas with a disproportionately high population of the aged.⁶

Moreover, the dominant form of federal assistance to rural areas, \$15 billion in annual farm supports and agricultural subsidies, is under pressure from the federal budget as well as under attack in the World Trade Organization.⁷ It is apparent that a need for federal support of rural areas persists, and yet the expensive habit of direct payments to farmers is both increasingly difficult and, as it has perhaps always been, less efficient as a means of rural development than other approaches.⁸

There is an obvious need for a means for the federal government to encourage rural development, if possible, in a manner that both provides long-term stability for rural communities while at the same time requiring less from the federal budget. A tool to do exactly this has languished in the United States Code for thirty-five years.

¹ Associate Professor, University of Arkansas. This paper and its research was supported by the National Agricultural Law Center, www.nationalaglawcenter.org. This paper is an elaboration of Steve Sheppard, *First Priority? The Neglect of Rural Development by Federal Agencies and How Arkansas Should Respond*, 2004 ARK. L. NOTES 103(2004). The opinions in it are solely those of the authors and do not reflect opinion or policy of the National Agricultural Law Center, the University of Arkansas, the Department of Agriculture, or any division of those entities. The author may be contacted at sheppard@uark.edu.

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³ Allison Tarmann, *Fifty Years of Demographic Change in Rural America*, Population Reference Bureau, Jan. 2003, at <http://www.prb.org/rfdcenter/50yearsofchange.htm> (See figure 2).

⁴ See, e.g., *Rural Texas in Transition*, Texas Comptroller of Public Accounts, at <http://www.window.state.tx.us/specialrpt/rural/summary.html>. See also, e.g., *Initiative 300 and Beginning Farmers*, Friends of the Constitution, at <http://www.i300.org/factsheets.htm>.

⁵ Kelvin Pollard and Mark Mather, *A 50-Year Decline in the Child Population in Rural Areas*, Population Reference Bureau, July 2003, at <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=11443>.

⁶ Economic Research Service, United States Department of Agriculture, *Rural Population and Migration: Rural Elderly*, May 28, 2002, at <http://www.ers.usda.gov/Briefing/Population/elderly/>.

⁷ The World Trade Organization ruled against the United States in a dispute brought by Brazil, challenging U.S. cotton subsidies. See WTO DS267, reported at http://www.wto.org/english/news_e/news05_e/dsb_21march05_e.htm.

⁸ See, e.g., Government Accountability Office, *Farm Program Payments: USDA Needs to Strengthen Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations* (April 2004), available at <http://www.gao.gov/new.items/d04407.pdf>.

Every agency of the United States is required to encourage the location of its activities in rural areas. In 1970, Congress found that a balance between rural and urban development is “essential to the peace, prosperity, and welfare of all our citizens.”⁹ Given the hardships then felt by populations in rural communities already affected by changes in agribusiness and in other economic bases of rural life, “the highest priority must be given to the revitalization and development of rural areas.”¹⁰ Accordingly, Congress directed “the heads of all executive departments and agencies of the Government to establish and maintain departmental policies and procedures giving *first priority* to the location of new offices and other facilities in rural areas.”¹¹

All federal agencies are therefore required by statute to craft a policy that gives first priority to the location and relocation of its operations in rural areas. Further, every agency is required by this law to maintain this policy, which must mean at least abiding by it when evaluating and selecting sites for the location or relocation of facilities or offices.

Federal agencies violate this law frequently and massively. As the General Accounting Office has found recurrently, few agencies have ever created such policies, and fewer still have conformed to them. Thus, the development of rural communities that Congress demanded has not occurred. Rural sites and populations that should benefit, according to the law, from federal development remain fallow, and states with considerable rural areas, including states with populations largely dispossessed from agricultural work by changes in the industry, receive less federal support than Congress intended.

This article will consider, first, the structure of the Rural Development Act (RDA) and the scope of its application to “rural areas.” It will then consider agency attempts and failures to conform to it, as reported by the General Services Administration. Lastly, it will consider means for states and others whose interests are harmed by agencies that fail to conform to the RDA to enforce the Act under the Administrative Procedures Act.

The article suggests four observations. First, Congress has mandated the distribution of federal facilities to promote a balance between rural and urban development, and there is considerable evidence that agencies have failed to pursue, much less achieve, such a balance. Second, it seems likely that certain parties and states in rural areas have standing to challenge certain agency decisions that fail to consider or give priority to rural sites. Third, litigation by those with such standing may well be the only means to ensure that agency administrators in fact carry out the will of the Congress in this matter. Fourth, it is in the interest of the corporations in rural areas as well as the governments and agencies of rural states, to participate in the internal competitions for agency operations to locate to rural areas to which Congress has given first priority. Not only ought this participation highlight the statutory duty for agencies to give first priority to locations, but it ensures the possibility of standing to bring actions for enforcement in the courts when they do not.

I. The Rural Development Act

The RDA currently provides

(a) Congressional commitment. The Congress commits itself to a sound balance between rural and urban America. The Congress considers this balance so essential to the peace, prosperity, and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas.

(b) Location of Federal facilities. Congress hereby directs the heads of all executive departments and agencies of the Government to establish and maintain departmental policies and procedures giving first priority to the location of new offices and other facilities in rural areas as defined in the private business enterprise exception in

⁹ Pub. L. No. 91-524, Tit. IX, § 901, 84 Stat. 1383 (1970) (codified at 7 U.S.C. § 2204b-1).

¹⁰ *Id.* (codified at 7 U.S.C. § 2204b-1(a)).

¹¹ *Id.* (codified at 7 U.S.C. § 2204b-1(b) (emphasis added)).

section 306(a)(7) of the Consolidated Farmers Home Administration Act of 1961, as amended.¹²

This act was initially passed as the Rural Development Act of 1970.¹³ That act originally required in paragraph (b)

Congress hereby directs the heads of all executive departments and agencies of the Government to establish and maintain, insofar as practicable, departmental policies and procedures with respect to the location of new offices and other facilities in areas or communities of lower population density in preference to areas or communities of high population densities.¹⁴

Two years later, the statute was effectively re-enacted in the Rural Development Act of 1972, with a significant change. The earlier language requiring a preference for “areas or communities of lower population density” over “areas or communities of high population densities” was removed from paragraph (b), and the current language requiring agency heads to give “first priority” to “rural areas” was substituted.¹⁵

The RDA of 1972 did not merely adopt the broad administrative language “rural areas” but designated which of several legal definitions of a rural area should be applied by agencies. Under the act, a “rural area” was that to be that found in “section 306(a)(7) of the Consolidated Farmers Home Administration Act of 1961, as amended.”¹⁶

The definition of the 1961 FHA Act was deleted by amendments to the FHA Act passed in 1996 and in 2002.¹⁷ The newest definition to the successor to the 1961 FHA Act was created in the 2002 Act.¹⁸ As shown in the part A, although the RDA was not itself amended to reflect these changes, the later definition appears clearly to apply.

A. The Definition of “Rural Area” in the FHA

An error in codification dating from the Federal Agricultural Improvement and Reform Act of 1996, commonly referred to as the 1996 Farm Bill, might appear to have repealed the definition of “rural area” in section 306(a)(7) of the FHA Act. Despite this error, it is clear that Congress has intended the definition of “rural area” now within section 343(a) of the Consolidated Farm and Rural Development Act to substitute for the definition repealed from section 306(a)(7). Congress’s intent becomes clear only through consideration of non-codified text in references to the 2002 Act. Further, agencies charged under the Rural Development Act with its implementation have applied this definition in rules promulgated in 2003.

An important qualification must be considered regarding any source of this definition. There are several very different Congressional mandates dealing with “rural areas.” Definitions arising from other statutes have different purposes, different histories, and different applications. A definition of “rural area” created either for unspecified purposes or for any purpose other than defining the Rural Development Act or the required portions of the FHA does not apply to this Act.

¹² 7 U.S.C. § 2204b-1 (2003).

¹³ See Pub. L. No. 91-524, Title IX, § 901, 84 Stat. 1383 (1970).

¹⁴ *Id.*

¹⁵ Pub. L. No. 92-419, Title VI, § 601, 86 Stat. 674 (1972).

¹⁶ See 7 U.S.C. § 1926(a)(7).

¹⁷ Pub. L. No. 107-171, Title VI, Subtitle A, §§ 6001-6007(a), 6008, 6020(b)(1); 116 Stat. 352, 355, 363 (“2002 act”).

¹⁸ 7 U.S.C. § 1991(a).

1. Definition of “Rural Area” in the FHA

The RDA requires application of the FHA Act definition of “rural area” for the purposes of the private business enterprise exception 7 U.S.C. § 1926(a)(7). That definition was deleted by the Farm Security and Rural Investment Act of 2002.¹⁹ Instead, Section 6020 of the 2002 Act specifies:

Sec. 6020. Definition of Rural and Rural Area.

(a) In General.--Section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) is amended by adding at the end the following:

(13) Rural and rural area.--

(A) In general.--Except as otherwise provided in this paragraph, the terms “rural” and “rural area” mean any area other than--

(i) a city or town that has a population of greater than 50,000 inhabitants; and

(ii) the urbanized area contiguous and adjacent to such a city or town.²⁰

There is nothing to suggest that it is not the intent of Congress that this amendment of section 343(a) serves also to amend section 306(a)(7), which is the basis for the RDA. Indeed, it is clearly meant to have been an amendment and substitution. Subpart (b) of Section 6020 specifies:

(b) Conforming Amendments.--

(1) Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) is amended by striking paragraph (7).²¹

Thus, the definition of “rural area” that Congress enacted in the 2002 Act was intended to substitute for the original definition to which the RDA was related. That relationship, at the time it was created in the RDA, appears intended to alter with future evolution of the FHA (or, necessarily, its successor statutes), being based on “the private business enterprise exception in section 306(a)(7) of the Consolidated Farmers Home Administration Act of 1961, as amended.” If the definition in the RDA were not intended to alter according to changes in the FHA Act, the RDA could simply have repeated the language then operative from the act, freezing its definition into the statute at that time. Thus, the best available interpretation of the RDA implies the definition of a rural area from the 2002 Act.

2. Agency Interpretations of the RDA

In the wake of 1996 Act’s apparent repeal of the defining language for “rural area” under the RDA, agency interpretations of “rural” became diverse. As late as 2001, the General Services Agency (GSA) studied agency actions under the Act using a definition of rural areas being communities of

¹⁹ Pub. L. No. 107-171, Title VI, Subtitle A, §§ 6001-6007(a), 6008, 6020(b)(1), 116 Stat. 352, 355, 363 (2002).

²⁰ 116 Stat. 362-63 (codified at 7 U.S.C. § 1991(a)(13)).

²¹ 116 Stat. 363.

25,000 or less.²² In doing so, it surveyed not only two different definitions then in use within the General Services Administration but a host of other agency definitions. GSA Interim Rule D-1, defined a rural area as

any area ‘that (i) is within a city or town if the city or town has a population of less than 10,000 or (ii) is not within the outer boundaries of a city or town if the city or town has a population of 50,000 or more and if the adjacent urbanized and urbanizing areas have a population density of more than 100 per square mile.’²³

Other agency definitions included various definitions of the rural, consolidated from a variety of distinct legislative programs, reflected in this table.

Definitions of Rural Used by Federal Agencies and Selected Private Organizations in 2001

Agency/organization	Population thresholds and definitions for rural area
Census Bureau	Under 2,500 or open country
Department of Agriculture’s Economic Research Service	Under 2,500 (Metro or nonmetro area)
Department of Agriculture’s Rural Business Opportunity Grant Program	Under 10,000 (Open country not associated with urban area) USDA defines open country as open space separated from any adjacent densely populated urban area.
Department of Agriculture’s Rural Housing Programs	10,000 or under
Department of Housing and Urban Development’s Rural Housing and Economic Development Program	One of five ways: (1) Under 2,500 population (metro or nonmetro area). (2) Counties with no urban population of 20,000 or more. (3) Rural portions of “extended cities,” as defined by the Census Bureau. (4) Open country that is not part of or associated with an urban area. (5) Not over 20,000 and not in MSA.
Department of Agriculture’s Intermediary Relending Program	25,000 or under
General Services Administration (Rural Development Act implementation)	Under 10,000 or under 50,000
Department of Agriculture’s Rural Business Enterprise Grants	Under 50,000
Department of Agriculture’s Rural Business Cooperative Service	Under 50,000
Office of Management and Budget	Nonmetropolitan areas (areas other than “core counties” containing one or more central cities with at least 50,000 residents or an urbanized area and a total population of at least 100,000 (75,000 in New England) and adjacent

²² U.S. Gen. Accounting Office, *Facilities Location: Agencies Should Pay More Attention to Costs and Rural Development Act* (Pub. No. GAO-01-805, July 2001), available at <http://www.gao.gov/new.items/d01805.pdf> [hereinafter, “GAO, RDA Study (2001)”].

²³ *Id.* at 5.

communities that have a high degree of social and economic integration with the core counties)

National Middle School Association (NGO) 25,000 or under

Housing Assistance Council (NGO) 25,000 or under

Plants, Sites and Parks Magazine (NGO) 20,000 or under, or 50 miles or more from major city or MSA²⁴

Following the issuance of that report, the GSA has altered its interpretation of the Act, issuing a Federal Management Regulation (FMR) that defines a rural area under the RDA to conform with the definition in the FHA and FHAA, described above. The GSA's FMR, *Locating Federal Facilities in Rural Areas*, is "intended to assist Federal agencies, having their own statutory authority to acquire real property, in complying with the Rural Development Act of 1972."²⁵ The bulletin became effective January 21, 2003, and is to remain in effect indefinitely. Paragraph 5 of that bulletin states:

5. What "rural area" definition does GSA recommend for Federal agencies having their own statutory authority to acquire real property?

GSA recommends that Federal agencies, having their own statutory authority to acquire real property, use the following "rural area" definition:

"Rural area means a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants, as specified in 7 U.S.C. 2009."²⁶

Although the reference in this FMR is to the provision then at 7 U.S.C. 2009, and this provision was also deleted by amendment by the 2002 Act, the GSA has not amended its bulletin.

The Internal Revenue Service (IRS), among other agencies, has adopted the GSA definition for intra-agency compliance with the RDA.²⁷ The IRS did so following a report that quotes and adopts the GSA standard of a rural area defined by 50,000 inhabitants as the appropriate agency definition.²⁸

There remain, of course, other definitions of what constitutes a rural area in the law. Particularly, agency development of Rural Area Small Business Development requires utilization of contractors who are not located in metropolitan areas.²⁹ Indeed, the nature of the rural, and discourse

²⁴ Drawn from *Id.*, Table 6, page 25.

²⁵ Federal Management Regulation; *Locating Federal Facilities in Rural Areas*, 68 Fed. Reg. 2776 (Jan. 21, 2003).

²⁶ *Id.* at 2777.

²⁷ See U.S. Treasury Department, *General Management: Treasury Needs To Approve and Reissue Its Policy On The Rural Development Act of 1972*, OIG-CA-03-023 (Aug. 19, 2003), available at <http://www.treas.gov/inspector-general/evaluation-reports/ca03023.pdf>.

²⁸ U.S. Treasury Department, *Procedures Established to Ensure Compliance With the Rural Development Act of 1972 Were Not Consistently Followed*, Ref. No. 2003-10-177 (Aug. 20, 2003), available at <http://www.treas.gov/tigta/auditreports/2003reports/200310177fr.html>.

²⁹ Pub. L. No. 100-590. See, e.g., NASA implementation plans at 48 C.F.R. § 1819.7101 (55 Fed. Reg. 47479 (Nov. 14, 1990); 62 Fed. Reg. § 36704, 36710 (July 9, 1997).

about the rural, has a breadth of nuance in federal law, the significance of which is currently subject to a wide-ranging examination in the scholarship of Lisa Pruitt.³⁰

B. The Definition of “Rural Area” in the Rural Development Act.

In the light of the legislative history and agency interpretations, the current definition of a “rural area” in the Rural Development Act is any area that fails to meet either of two criteria. Under the 2002 Act, “rural and rural area” includes any area other than—

- (i) a city or town that has a population of greater than 50,000 inhabitants; and
- (ii) the urbanized area contiguous and adjacent to such a city or town.

Thus, a rural area is not a city or town that has a population of greater than 50,000 inhabitants. A rural area is not the urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants. All other areas are rural areas.

C. Policy Underlying the Rural Development Act

Congress enunciated its primary rationale for the RDA to be the promotion of balance between urban and rural life in America. This purpose is more than a romantic notion of an American landscape; it is also a credible role for allocating demands on resources to distribute the benefits and burdens of government activities throughout different arenas of the national infrastructure.

By locating federal operations in rural areas, the government takes advantage of lower land and labor prices, although this advantage may be somewhat offset by higher transportation prices for certain activities. Still, the balance as seen by private industry has often favored the economics of rural location, as witnessed by the success of Wal-Mart, Tyson Foods, and other major businesses whose headquarters remain in the small towns of Arkansas.

Further, the benefits to the citizenry in rural areas are considerable. Not only do federal relocations provide direct employment and retraining potential to agricultural workers and small town inhabitants dispossessed by changes in agribusiness to become federal workers, but they also provide stimuli for the development of related activities by private-sector contractors and suppliers.

II. Agency Conformity to the Rural Development Act

A. Opportunity

There are many governmental functions that are easily located or relocated to rural areas with minimal effects upon operation and with costs at or below those associated with the location of such operations to urban areas. The GAO has recommended the following activities, in particular, as appropriate for rural re-location:³¹

- Accounting
- Account representative
- Appraisal/market research
- Clerical/secretarial
- Data processing
- Distribution/warehousing
- Education/training
- Enforcement and quality control
- Field service operations
- Human resources and social services

³⁰ See Lisa R. Pruitt, *The Rhetoric Around the Rural in Law* (draft on file with the author).

³¹ GAO, RDA Study (2001), *supra* note 21, at 31.

- Information technologies services
- Legal support
- Logistical support
- Manufacturing and assembly offices
- Operations centers
- Printing and publishing
- Records archiving
- Repairs and servicing
- Scientific studies, and research and development
- Technical functions and support
- Telemarketing, order processing, and communications.

Congress, however, has mandated that every agency develop a comprehensive plan for review of *all* of its activities to give first priority for every activity to an rural area.

Certainly, Congress's mandate under the RDA must be balanced against other statutory requirements, such the Competition in Contracting Act of 1984.³² There are also executive mandates, such as Executive Order 12072, requiring central business areas (CBAs) be given first preference for the location of federal facilities that need to be in urban areas, and another requiring the agencies to use historic properties, although any conflict between the RDA and these orders must be resolved by the agencies in favor of compliance with the RDA.

Within the structure of the act, even in the light of these competing federal mandates, there remains an arena of government operations that is even broader than the list above, encompassing nearly every governmental service that is not inherently tied to an urban clientele, such as the provision of urban social or educational relief.

B. Opposition

Bureaucrats who prefer to live in urban areas with urban amenities are well skilled in arguing that the availability of technically skilled labor, and the costs of relocation, of transportation of specialized materials, and of the transportation of personnel to the offices of other agency operations and client operations outweigh the benefits of rural relocation. Indeed, these "mission-related" objections are the most common reasons offered for the widespread failure of agencies to comply with the law.³³

It is therefore no great surprise to find that there is widespread failure by federal agencies to comply with the law. As of the GSA study in 2001, of the thirteen cabinet-level departments, only the Departments of Agriculture, Commerce, Labor, Transportation, and Treasury had promulgated the policies required under the RDA.³⁴ Moreover, in the GSA survey, agencies chose urban areas for

³² 41 U.S.C. § 253 (1984).

³³ GAO, RDA Study (2001), *supra* note 21, at 16. See also John D. Dorchester Jr., of The Dorchester Group, L.L.C., Scottsdale, AZ, *Office Location Considerations of Large U.S. Corporations: U.S. Government Potentials* (Mar. 31, 2001) (private study commissioned by the GSA) and U.S. Gen. Accounting Office, *Facilities Location Policy: GSA Should Propose a More Consistent and Businesslike Approach* (Pub. No. GAO/GGD-90-109, Sept. 28, 1990). Each of these sources are cited in GAO, RDA Study (2001), *supra* note 21, at 4.

For a wonderful parody of this phenomenon, see Humphrey's dialogue with Hacker on the subject of moving civil service jobs from London to the north of England, in Jonathan Lynn and Antony Jay, *Yes, Prime Minister* (London: BBC Publishing, 1989).

³⁴ GAO, RDA Study (2001), *supra* note 21, at 22.

nearly three-quarters of all relocations of operations.³⁵ Of course, the GSA survey did not account for every agency in 2001, only those that were cabinet-level.

C. Conforming Regulations as a First Step: The Illustration of NASA

Since the GSA report in 2001, other agencies have adopted RDA policies. There have been attempts by other agencies to ensure their policies reflect the current definitions of the RDA, as they have been modified by the FHA amendments discussed above.

One example of agency regulations that appear on their face not only to give effect to the letter of the Rural Development Act but also to reflect Congress's purposes in it are the program management rules for the National Aeronautics and Space Administration (NASA). Program Management Regulation NPR 8800.15A, the NASA Real Estate Management Program Implementation Manual, includes Procedural Requirement 2.5, "Consideration of Rural Areas for New Offices and Other Facilities," as part of chapter 2, governing the acquisition of real property generally.³⁶

Rule 2.5 initially restates the act and its purpose. It then defines a "rural area" for the purpose of the Act, combining several approaches from different law. "Rural areas are defined as any areas outside the outer boundary of a city having a population of 50,000 or more and outside that city's immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile."³⁷

NASA's definition of population and adjacency conform to the statute. The additional requirement of density is not unreasonable in the light of the difficulties of definition in the RDA as described in section I above. Still, adopting an additional requirement of density makes this definition potentially more restrictive than the GSA and GAO definitions, and those agencies are likely to be the agencies to which a court would defer in defining the statute. Presently, the NASA regulation's definition is more restrictive than the definition of rural in the FSRIA (described above in I.B.1.), and so it is likely that part of the definition is beyond the scope of the statute in some applications. In those applications, that part of the definition would simply be disregarded, and the population and adjacency tests would govern. The problems of defining a rural area are, however, distinct from the regulations of property acquisition in or out of a rural area, and NASA's regulations otherwise are a model of agency interpretation of the statute.

After asserting the acts purposes, the rule provides that the Rural Development Act applies to "to NASA offices, buildings, other structures and facilities, and locations assigned to NASA by the General Services Administration where NASA personnel will be housed or perform their official duties on a full-time basis."³⁸ Having established the requirement that new NASA facilities are to be built in rural areas, the rule requires that any location of a new facility in non-rural areas must be justified according to an "a basis for exclusion or an adequate justification for an exception to the

³⁵ In the study on which GSA bases its report, "[a]gencies chose urban areas for the majority (72 percent) of the 115 recently acquired federal sites in . . . [the] survey." GAO, RDA Study (2001), *supra* note 21, at 8, 51-64. This study, of course, applied a narrower definition of rural, basing it on communities of 25,000 rather than 50,000. Yet a consideration by the author of the examples given suggests that similar results would have been reached had the more generous definition of a rural area been applied.

³⁶ Real Estate Management Program Implementation Manual, Chapter 2, at http://nodis3.gsfc.nasa.gov/displayDir.cfm?Internal_ID=N_PR_8800_015A_&page_name=Chapter2. The effective date for the regulation is from September 1, 1998, and the expiration date is September 1, 2008.

³⁷ *Id.* at Rule 2.5.1.

³⁸ *Id.* at Rule 2.5.1.2.

requirement.”³⁹ There are only four bases for exclusions,⁴⁰ and all requests for justifications must be documented in a request that specifically discloses “reasons why office or other facility must be located at chosen site. If the chosen site is to be approved, these reasons must be strong enough to override the requirement that first priority be given to locating in rural areas.” As well as this justification, the request must describe efforts made to locate in a rural area, effects on the proposed project or program if the location is changed to a rural area, the number of employees involved, and the time frame for commencing the project.⁴¹ A site-specific decision for each exception must then be made by the NASA Director of Facilities Engineering and Real Property Division in the Office of Institutional and Corporate Management.⁴²

Every agency should have regulations that so clearly determine how to give “first priority” to location in rural areas. Of course, promulgating the regulation is only the first half of the task. Agency decisions must then be made in accordance with such regulations. If an agency fails to adopt regulations under the RDA, or if an agency fails to make decisions reasonably in accord with its RDA regulations once they are adopted, the possibility of enforcement arises.

III. Extra-Agency Enforcement: The Potential for Litigation Under the APA

All attempts to enforce the Rural Development Act to date have been among and within agencies. The studies done by the GSA, the GAO and the Inspectors General have clearly been conducted with the intent to determine the levels of compliance and non-compliance with the statute and to encourage compliance. That these are the only forms of enforcement to date, though, does not suggest that this is the extent of possible enforcement.

A. Judicial Review Under the APA and RDA

A review of the legal literature does not disclose a single judicial action to enforce the Rural Development Act’s rural re-location policy. This does not mean that the Act is beyond judicial enforcement.

Section 706 of the Administrative Procedures Act (APA) lays out the scope and procedure for judicial review of agency actions.⁴³ Most courts acknowledge that judicial review plays an important

³⁹ *Id.* at Rule 2.5.1.3.

⁴⁰ *See id.* at Rule 2.5.2 (listing the four bases as: 1. Vacant site acquisitions for which no construction contracts are contemplated; 2. Additions to or changes in presently occupied offices or other facilities if program is unchanged; 3. Offices or other facilities acquired for temporary occupancy of less than 1 year; and 4. Lease renewals).

⁴¹ *See id.* at Rule 2.5.3.

⁴² *See id.* at Rule 2.5.4.

⁴³ The judicial review provisions of the Administrative Procedures Act require: To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be:
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

role in the prevention and correction of disparate treatment of persons subject to regulation when Congress delegates its authority broadly to an administrative agency for some purpose. It is for the courts to determine whether the agency is acting within the purview of Congressional purpose.⁴⁴ The courts review the challenge brought against an agency decision, seeking a balance between two competing factors, the agency's goal in making efficient and effective decisions and Congressional policy that those decisions exude a sense of rationality and fairness.⁴⁵

All agency regulations must be adopted and enforced according to the procedural requirements of the APA and any further rules imposed by the agency itself.⁴⁶ If the agency fails to follow these procedures, its final decision may be annulled by a reviewing court. When reviewing an agency's decision under section 706, a challenger must show that the agency did not act within the scope of its Congressionally delegated authority, that the agency's final decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or that the agency failed to follow necessary procedural requirements.⁴⁷

There are limits inherent in judicial review under the APA. The reviewing court under section 706 is limited to reviewing only the administrative record, and the court must give deference to the agency's determination, not merely substituting its own judgment for that of the agency's. Therefore, courts will not engage in a *de novo* review of the final decision to ensure its correctness.⁴⁸ Instead, the reviewing court will only inquire of whether that decision was based on the factors set out in the APA and other statutes.⁴⁹

The application of the Administrative Procedures Act to other statutes, such as the RDA, is essential in understanding not only the purpose of the APA but also the significance of the other statutes to an agency. An agency with an administrative obligation under another statute is subject to judicial review under the APA, regardless of whether the second statute expressly permits actions in court to enforce it. The power of judicial review, and the jurisdiction over citizens' actions under such statutes, is presumed through the APA unless there is clear and convincing language in the statute precluding such review.⁵⁰ Because the Rural Development Act does not preclude such judicial review, judicial review of agency actions that are alleged to violate the RDA will be allowed under the APA.

B. Standing

The first hurdle a challenger must clear is to show sufficient standing to bring the action. Congress has the Constitutional power to designate which person may challenge agency action. In 5 U.S.C. § 702 Congress exercised this power by providing a right of review for any "person suffering

(F) unwarranted by the facts to the extent that the facts are subject to trial
de novo by the reviewing court.

5 U.S.C. § 706 (2004). This article is necessarily a primer on possible RDA enforcement actions under the APA. A more nuanced understanding of the APA, the heart of current administrative law in the United States, can be found in PETER L. STRAUSS, TODD D. RAKOFF & CYNTHIA R. FARINA, GELLHORN AND BYSE'S ADMINISTRATIVE LAW: CASES AND COMMENTS (10th ed. 2003). Far-sighted criticism of the APA, and possibly its future, are detailed in Edward Rubin, *It's Time to Make the Administrative Procedure Act Administrative*, 89 CORNELL L. REV. 95 (2003).

⁴⁴ Frank Irey Jr. Inc. v. Occupational Safety & Health Review Com., 519 F.2d 1200 (3d Cir. 1974).

⁴⁵ Natural Resource Defense Council, Inc. v. SEC, 606 F.2d 1031 (D.C. Cir. 1979).

⁴⁶ National Welfare Rights Organization v. Mathews, 533 F.2d 637 (D.C. Cir. 1976).

⁴⁷ S.A. Healy Co. v. Metropolitan Sanitary Dist., 581 F. Supp. 654, 656 (N.D. Ill. 1984).

⁴⁸ *Id.* at 656.

⁴⁹ Carcieri v. Norton, 290 F.Supp. 2d 167 (D.R.I. 2003).

⁵⁰ Legal Aid Soc. v. Brennan, 608 F.2d 1319 (9th Cir. 1979).

legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.”⁵¹

“Person” in this context may include states and municipalities, as well as corporations.⁵² In general, section 10 of the APA confers standing for judicial review for agency actions upon those challengers who can satisfy two prerequisites: the requirements of Constitutional standing and of prudential standing.

Over the years the Court has defined the Constitutionally-required bare minimum to establish standing. The landmark case of *Lujan v. Defenders of Wildlife* set forth the following three-part Constitutional floor. First, the challenger must suffer an “injury in fact,” which is both “concrete and particularized” and actual or imminent, not conjectural or hypothetical.⁵³ Second, there must be a causal connection between the challenger’s injury and the conduct of which the challenger complains.⁵⁴ Third, the injury complained of must be capable of redress by a favorable outcome by the court.⁵⁵

To pass the “injury in fact” test, the challenger must show that a personal or corporate adverse effect or grievance has been, or is likely to be, suffered from the agency action. The harm may be either economic or non-economic, such as harm to the plaintiff’s personal aesthetic or environment well-being.⁵⁶ The Supreme Court has found the first part of the “injury in fact” test satisfied even where the challenger cannot show the harm is particularized, accepting proof when the harm is concrete, even if it is widely shared.⁵⁷

Desert Citizens nicely illustrates Constitutional standing under the APA.⁵⁸ In it, the United States Court of Appeals for the Ninth Circuit reversed a district court’s holding that more than aesthetic or environmental injuries must be alleged when a challenger seeks redress for violation of an environmental statute or regulation. In that case, three environmental organizations challenged the Bureau of Land Management’s (BLM) decision to enter into a land exchange with a mining company under the Federal Land Policy and Management Act (FLPMA). The challengers claimed that the agency’s reliance on outdated and undervalued appraisals violated the FLPMA that required market value be paid for federal lands.⁵⁹ The court further stated that the challengers had proven injury in fact because even aesthetic or recreational enjoyment of federal lands is a legally protected interest whose deprivation suffices as actual and particularized harm.⁶⁰

Challengers under the RDA are very similar to the challengers in *Desert Citizens*. In *Desert Citizens* the challengers’ interest was aesthetic and recreational enjoyment of federal lands. Under

⁵¹ 5 U.S.C. § 702.

⁵² 5 U.S.C § 551(2) defines “person” to include “an individual, partnership, corporation, association, or public or private organization” other than a federal agency. A state may sue both for injuries in its corporate capacity and, in many circumstances, for injuries to its citizens. See Romualdo P. Eclavea, Annotation, *State’s Standing to Sue on Behalf of Its Citizens*, 42 A.L.R. FED. 23 (1979-2005).

⁵³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

⁵⁴ *Id.* at 560-61.

⁵⁵ *Id.*

⁵⁶ See Emily Longfellow, *Friends of the Earth v. Laidlaw Environmental Services: A New Look at Environmental Standing*, 24 ENVIRONS ENVTL. L. & POL’Y J. 3 (2000).

⁵⁷ *Federal Election Comm’n v. Adkins*, 524 U.S. 11, 24 (1998).

⁵⁸ *Desert Citizens Against Pollution v. Bisson*, 231 F. 3d 1172, 1177-78 (9th Cir. 2000).

⁵⁹ *Id.* at 1175.

⁶⁰ *Id.* at 1176-77.

the RDA, the challenger's interest are the entitlement of Congressionally mandated consideration for the relocation of federal lands. At their core, both interests rest on the benefit of federal lands. Therefore, "persons" challenging agency decisions under the RDA should still qualify as "adversely affected" or "aggrieved" persons within the meaning of section 10 of the APA, because an agency's failure to implement and carry out key sections of the RDA could, and likely has, cost rural states and their citizens millions, if not billions, of dollars through loss of gainful employment, construction contracts, and real estate purchases. It was, of course, the intent of Congress that the RDA lead to fairly proportioned benefits between the rural and urban areas of the United States.

If a claimant can meet the first step, the last two parts of the Constitutional standing test are relatively straightforward. There must be a causal connection between the injury suffered and the conduct of which the challenger complains, and it must be likely that a favorable ruling will redress the injury. Courts ascertaining the existence of a causal link look to whether the injury suffered by the challenger was fairly traceable to the defendant's action and not the result of some third party not before the court.

In addition to Constitutional standing, the APA requires that in the absence of contrary statutory provision an agency action must be final in order to be reviewable and must also pass "prudential standing," which is a judicially created requirement, sometimes referred to as the "zone of interest" test.⁶¹ These prudential principles include "the general prohibition on a litigant's raising another person's legal rights [and] the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches."⁶² The Supreme Court has commented that the "zone of interest" test has been applied primarily to claims under the APA and "most usefully understood as a gloss on the meaning of § 702 [of the APA]," and that it "is not a test of universal application."⁶³ The zone of interest test is most "used by federal courts to determine whether a litigant who claims that he or she has been injured by the operation of an administrative rule or regulation is or is not one of the persons or entities meant to be protected or regulated by the APA or a particular federal statute or constitutional guarantee under which the rule was promulgated."⁶⁴ Therefore, since challengers of agency action under the RDA will have to use the APA, this makes the "zone of interest" test an important consideration.

Just as the challengers in *Desert Citizens* had standing owing to their use and enjoyment of the local forests, rivers, and other resources, so too would a challenger under the RDA, if the agency's lack of implementation of preferential relocation provision had detrimentally affected the challenger, such as a state that would have received a facility had rural states been given first priority in a location selection process. An agency's failure to locate a facility, along with its contracts, payroll, and social and intellectual capital, surely hurts a state that would have enjoyed those benefits had the regulations been followed. Likewise, a corporation or entity that might be a vendor for a facility or location that is not selected for an agency operation owing either to a failure by an agency to have RDA procedures or by the failure of an agency to follow its RDA procedures, would likely have an injury in fact. Certainly a corporation or entity that would be a vendor of such an operation, that participate in project studies, site preparation, or other work in advance of a that operation's location there would have an injury in fact. At either level of involvement, the corporation or entity is within the "zone of interest" which the relocation provisions of the RDA are meant to protect, interest's such as fueling rural economies. Therefore, the standing requirements under the APA should not present a problem for challenging agency's final decisions under section 706.

C. Agency Violations of the RDA Enforceable under the APA

There are essentially three ways in which an agency can violate the RDA. First, the agency can ignore Congress's mandates in the RDA and not implement the proper procedures. Second, the

⁶¹ Committee to Save the Rio Hondo v. Lucero, 102 F.3d 445, 448 (10th Cir. 1996).

⁶² Allen v. Wright, 468 U.S. 737, 750 (1984).

⁶³ Jonathan R. Siegel, *Zones of Interest*, 92 GEO. L.J. 317 (2004).

⁶⁴ See Donald T. Kramer, Annotation, "Zone of Interest" Tests in Determining Standing in Litigation Involving Federal Statutes—Supreme Court Cases, 153 A.L.R. FED. 375 (1999-2004).

agency could implement the procedures but fail to subsequently use or follow those mandated procedures. Or third, the agency could implement the required procedures, then at least give the appearance of compliance with the procedures, but then make a final decision that clearly establishes that the agency gave mere lip service to the procedures.

Once an agency has violated its Congressional mandates under other statutes, the APA allows injunction of acts in furtherance of that violation. Section 706 of the APA, sections (2)(A) and (2)(D), allow injunctions, though, only when a reviewing court finds clear violations of the statute either in the agency's decision or in its decision-making process.

Section 706 (2)(A), provides that a reviewing court shall set aside an agency conclusion that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."⁶⁵ Its application is most relevant in cases in which the agency relied on inaccurate data, failed to consider a statutorily mandated or other critical factor in making its decision, or merely gave the appearance of complying with required procedures. Subsection (2)(D) provides that a reviewing court will set aside an agency conclusion if it was done "without observance of procedure required by law."⁶⁶ Under this provision the reviewing court would have to determine that the agency failed to follow mandated procedures under the RDA, such as by failing to consider rural sites before relocating or failing to at least implement procedures mandated by the RDA.

As noted, there are no reported decisions enforcing the RDA's agency rural location requirement. Still, there are myriad precedents for APA enforcement of statutes similar to the RDA, the two most similar being litigation under other provisions of the RDA itself and litigation under the National Environmental Policy Act (NEPA).⁶⁷

Individuals, municipalities, and other entities have resorted not infrequently to the APA to enforce their rights under the water district legislation consolidated into the Rural Development Act. Although there is no right of action created under the RDA itself,⁶⁸ such actions can be brought under the APA.⁶⁹

The NEPA is similar to the RDA, and because cases under the NEPA have also relied on §706, there is a strong inference that courts would adhere to the same principles under the RDA. Litigation under NEPA is, of course, both more common and better known than RDA cases. Moreover, the parallels between the statutory structure of NEPA and the RDA make NEPA's record of enforcement under the APA a strong and useful comparison.

Both statutes establish policies for agencies in pursuing all of their obligations, and neither create a cause of action for citizen or state enforcement within their texts.⁷⁰ While the Supreme Court has recently emphasized that APA enforcement of Congressional mandates under NEPA will not give a right of action to force one or another discretionary result,⁷¹ this does not relieve an agency of complying with statutory requirements that utterly limit that discretion. Thus an agency that fails to give first priority to rural relocations of its operations will violate the APA and be subject to injunction,

⁶⁵ 5 U.S.C. § 706(2)(A).

⁶⁶ *Id.* at § 706(2)(D).

⁶⁷ 42 U.S.C. §§ 4331-4335.

⁶⁸ *Lundstrum v. Lyng*, 954 F.2d 1142 (6th Cir. 1991).

⁶⁹ *See, e.g., Wayne v. Village of Sebring*, 36 F.3d 517 (6th Cir. 1994).

⁷⁰ For an examination of cases discussing standing to enforce NEPA, see Jerald J. Director, Annotation, *Standing of Private Citizen, Association, or Organization to Maintain Action in Federal Court for Injunctive Relief Against Commercial Development or Activities, or Construction of Highways, or Other Governmental Projects, Alleged to Be Harmful to Environment in Public Parks, Other Similar Recreational Areas, or Wildlife Refuges*, 11 A.L.R. FED. 556 (1972-2004).

⁷¹ *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55 (2004).

even though an agency that does so and fails to relocate an operation into a rural area relying on other valid factors is not subject to injunction.

In the first instance, a federal agency might fail to conform to the RDA because the agency neglected completely to draft regulations that give priority to rural sites, as required by 7 U.S.C. § 2204b-1(b). A challenger to an agency relocation in such an instance would sue under the APA, using 5 U.S.C. §706(2) to set aside the agency relocation decision.⁷²

In *Johnson v. HUD*, the U.S. Court of Appeals for the Eight Circuit applied section 706(2)(D) to set aside a decision of the Department of Housing and Urban Development.⁷³ In that case, the plaintiffs were tenants of an low-income apartment complex who challenged HUD's decision to allow apartment owners who financed the apartment complex under section 221(D)(3) of National Housing Act⁷⁴ to terminate their obligations to provide low and moderate income housing. In an effort to prevent a decline in the availability of low income housing, Congress, in the Preservation Act of 1987, mandated that owners of low income housing could no longer voluntarily release themselves from section 221(D)(3) without HUD's consent.⁷⁵ Congress also mandated that in order to receive a release from section 221(D)(3), an owner of low income housing must submit to HUD a "plan of action" that identified the impact of the termination on the current tenants, including an analysis of the local availability of affordable housing. If releasing the owners would create unfavorable conditions for their tenants, then HUD was to give the owners additional financial incentives in lieu of a release.⁷⁶ The district court found for HUD, finding its actions had been within the agency's discretion.⁷⁷ On appeal, HUD admitted that it did not require the defendants to file a required plan of action and therefore did not comply with the Preservation Act.⁷⁸ The Eighth Circuit reversed the district court, and declared that "HUD's approval of [the defendant landlord's] request to terminate was without observance of procedure required by law."⁷⁹ This language of the court, of course, quoted the APA's section 706(2)(D) exactly.

⁷² Section 706 provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

⁷³ *Johnson v. U.S. Dept. of Housing and Urban Development*, 911 F.2d 1302, 1303 (8th Cir. 1990).

⁷⁴ 12 U.S.C. § 17151(d)(e).

⁷⁵ *Johnson*, 911 F.2d at 1304.

⁷⁶ *Id.* at 1305.

⁷⁷ *Johnson v. Department of Housing & Urban Development*, 724 F. Supp. 1257 (E.D. Mo. 1989).

⁷⁸ *Johnson*, 911 F.2d at 1308.

⁷⁹ *Id.* at 1311.

In the second instance, the agency might draft regulations that fail to conform to the requirements of the statute. For instance, the agency might fail to properly define a rural area, or it might choose not to give “first priority” but merely “some weight” to a rural location. The procedures established by Congress for agencies must be followed by those agencies.⁸⁰

More likely instances of agency violation of the statute would occur if an agency has carried out its Congressional obligation by enacting regulations under the RDA but fails to apply those procedures when locating or relocating an operation or activity. In such cases, the reviewing court would act under either of two sections of the APA. Agencies from failing to follow their established procedure under 5 U.S.C. § 706(2)(D),⁸¹ as well as from making arbitrary decisions under those regulations by 5 U.S.C. § 706(2)(A).

Review in these cases would be limited to the administrative record,⁸² and, as with all APA actions, it would require the challenger to exhaust available administrative remedies prior to suit. Agency decisions in such cases will be invalidated if any of the following situations exist: the decision was made with reliance on factors not set out by Congress, if it entirely failed to consider an important aspect of the decision, if it offered an explanation that runs counter to the evidence before it, or if the decision was so implausible that reasonable minds could not differ that the incorrect decision was made.⁸³ In determining whether agency action is arbitrary and capricious, most courts look to see if the decision “lacks a reasonable foundation,” which is usually established in the administrative record developed prior to the final action of the agency.⁸⁴ If the record will not support a reasonable foundation, the court is likely to enjoin action on the agency’s decision and insist the agency follow the proper procedures in order to carry out Congressional intent.

Greers Ferry, a 2001 case in the Eighth Circuit, demonstrates the principles of section 706(2)(A)’s arbitrary and capricious standard in a typical NEPA action.⁸⁵ Challengers sought to enjoin the United States Army Corp of Engineers (Corps) from issuing permits for new boat docks on Greers Ferry Lake in the Ozark Mountains of Arkansas. The court held that under section 706(2)(A), the Corps acted arbitrarily and capriciously in issuing a finding that their shoreline management program (SMP) had no significant impact and therefore did not require an environmental impact statement (EIS).⁸⁶ The Eighth Circuit granted the challengers an injunction against those Corps permits that were issued pursuant to these findings.⁸⁷

Obvious similarities exist between the challengers in *Greers Ferry* and potential challengers under the RDA when an agency acts without performing Congressionally mandated predicates to the action. In *Greers Ferry* the Corps erred in failing to conform to the procedures set forth in NEPA, more specifically in neglecting to develop a EIS prior to implementing their SMP. Similarly, many federal agencies have acted arbitrarily, as least as the RDA is concerned, by locating offices and activities without considering Congressionally mandated rural alternatives.

⁸⁰ See, e.g., *Disabled Am. Veterans v. Sec’y of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003).

⁸¹ The reviewing court shall—
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
. . . .
(D) without observance of procedure required by law

⁸² *S & G Excavating, Inc. v. United States*, 15 Cl. Ct. 157 (1988).

⁸³ *Id.*

⁸⁴ *Grace Line v. Federal Maritime Bd.*, 263 F.2d 709, 711 (2d Cir.1959).

⁸⁵ *Save Greers Ferry Lake Inc. v. Dept. of Defense*, 255 F.3d 498 (8th Cir. 2001).

⁸⁶ *Id.*

⁸⁷ *Id.* at 501.

Thus, the APA presents an array of measures by which the RDA may be enforced. While there are restricted standing requirements, these requirements can be met, in some cases by quite a number of interested parties. Further, once an agency has made a final decision to locate an activity or office in a non-rural area, mistakenly making that decision without fully relying on regulations giving "first priority" to rural locations, the APA allows an action for nearly every mistake the agency made. The APA then requires federal courts to declare the agency action unlawful and to enjoin it if necessary.

IV. State, Municipal, and Corporate Options

The Rural Development Act presents an unusual opportunity for the governments of states and towns in rural areas, as well as corporations either based in or willing to base operations in rural areas. The United States has committed its bureaucracy to greater support of rural areas, and in an era in which farm support will likely be reduced, other forms of federal support for rural America are likely to be popular both with the Congress and with the American people. The benefits, both to the government and to the rural community, of the relocation of many government activities from urban to rural sites are obvious.

The means by which this opportunity for rural development can be exploited are not as obvious. In any given year, most agencies create new activities and operations or relocate those already in place. While some of these are necessarily site specific, such as border crossing offices, the many forms of activity identified in section II above can be located or relocated nearly anywhere, and it is for these forms of offices that the first priority of rural site location ought to be of great significance. State, corporate, and community officials must be more astute in working with congressional delegations and in observing the Congressional record and other administrative publications to determine when agencies are considering the creation or relocation of activities.

When an activity is identified for creation or relocation, the corporation may bid on services, and the community or state may offer land or buildings. Any forms of activity that demonstrate a commitment to the location or relocation of the agency's operation into a rural area is sufficient, both to put the agency on notice of its obligations under the RDA and, if need be, to establish standing in the event the agency fails to locate the facility in violation of the statute. Of course, those entities, particularly corporations that participate sufficiently in a location competition or bid in which they are unsuccessful and to which they have a right to lodge an appeal or protest, must do so before filing suit in order to exhaust administrative remedies prior to seeking judicial review.

As should be clear from the discussion in part III, an agency's decision not to locate an office in a rural area is not, in itself, a basis for injunction. However, an agency that creates an operation or relocates one that has no rules implementing the RDA or that fails to apply those rules in a reasonable fashion or for some reason departs from them in an arbitrary manner, may be enjoined under the RDA from carrying out its decision to locate the operation out of the rural area.

Of course, litigation is a last resort. It is hoped that the various agencies of the federal government will understand their Congressionally mandated lawful duties and carry them out in good faith. The country will be better for it. Yet, if agencies continue in their lackluster performance, the law does provide a remedy for those companies and governments whose people lose the opportunities Congress has decreed them.