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Friday  
December 11, 1998

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**Part VI**

**Department of  
Agriculture**

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**Rural Utilities Service**

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**7 CFR Part 1780 and 1794  
Environmental Policies and Procedures;  
Final Rule**

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Parts 1780 and 1794**

RIN 0572-AB33

**Environmental Policies and Procedures**

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby revises its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS implementation of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on new Congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The implementation of this rule has required that certain changes be made to 7 CFR part 1780 regarding environmental compliance. The amendments published in this document consist of those necessary to make the provisions of Part 1780 subject to the environmental requirements of this rule.

EFFECTIVE DATE: December 11, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gary J. Morgan, Director, or Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250-1571. Telephone (202) 720-1784. E-mail address gmorgan@rus.usda.gov or lwolfe@rus.usda.gov.

This rule and the guidance bulletins described in this rule will be available on the Internet via the RUS home page at [www.usda.gov/rus/](http://www.usda.gov/rus/).

**SUPPLEMENTARY INFORMATION:****Classification**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable

standards provided in sec. 3 of the Executive Order.

In accordance with the Executive Order and the rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retro-active effect will be given to the rule; and (3) administrative proceedings are required to be exhausted prior to initial litigation against the Department (7 U.S.C. 6912).

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for financial assistance under the RUS Electric and Telecommunications programs and the application for loans and grants under the RUS Water and Waste program are discretionary; regulatory requirements will, therefore, apply only to those entities which choose to apply for financial assistance or funding.

**Information Collection and Recordkeeping Requirements**

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35,) under control number 0572-0117.

**National Performance Review**

This regulatory action is being taken as part of the National Performance Review to eliminate unnecessary regulations and improve those that remain in force.

**Environmental Justice**

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

**National Environmental Policy Act Certification**

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of

1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

**Catalog of Federal Domestic Assistance**

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities, 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402.

**Intergovernmental Review**

This rule excludes the Electric and Telecommunications Programs from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, "Department Program and Activities Excluded from Executive Order 12372," (50 FR 47034) determined that RUS loans and loan guarantees, and RTB bank loans, were not covered by Executive Order 12372. The Water and Waste Program is subject to the provisions of Executive Order 12372. Consultation will be completed at the time of actions performed hereunder.

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

**Background**

On March 13, 1984, the Rural Electrification Administration (predecessor of RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (49 FR 9544) covering the actions of the Electric and Telecommunications programs. Based on new congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to implement the requirements of NEPA and the CEQ regulations for RUS Electric and Telecommunications programs. As a result of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), the programs of the Rural Electrification Administration, were combined with the Water and Waste program from the former Farmers Home Administration (FmHA) into RUS. Most changes proposed to 7 CFR part 1794 result from the addition of the Water and Waste program to RUS.

For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of guidance bulletins. Three program specific bulletins are available which provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). Further information on these bulletins is provided in § 1794.7.

This final rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor (§ 1794.4, Trivial Violations was deleted) or are merely intended to clarify existing RUS policies and procedures (§ 1794.6, Definitions, was added). Other revisions reflect changes in RUS implementation of the CEQ regulations as outlined below.

The relationship between RUS and its Electric and Telecommunications applicants has changed substantially since RUS issued the final rule in March of 1984. Changes that have occurred in the last 4 years have been particularly dramatic. Historically, RUS provided substantially all of its applicants' capital needs and established a lending relationship reflecting that dominant lending role. However, because of limited annual loan authorization levels, RUS no longer serves such a role. Moreover, in a 1993 amendment to section 306E of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 936e), Congress required RUS to abandon its close hands-on control of its applicants and instead follow the practices of private market lenders. RUS has done so through the development of new forms of loan agreements and security instruments and the publication of 7 CFR Part 1717, subpart M, Operational Controls, which reduce or eliminate much of the oversight and control historically exercised by RUS over its Electric applicants.

Reflecting these changes and reforms, RUS has revised § 1794.3 of the rule. Environmental reviews will continue to be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. However, no reviews will be required in connection with approvals provided by RUS pursuant to its loan contracts and security instruments with applicants such as approvals of lien accommodations or the use of general funds by applicants. These approvals are not major Federal actions significantly affecting the quality of the human environment.

Within subpart C of this rule, a classification system defines the level of environmental review required for RUS and applicant proposed actions. In Section 1794.20 RUS has clarified its position for determining circumstances under which an applicant's participation in a project results in a Federal action. Sections 1794.21 through 1794.25 of this subpart are further subdivided when appropriate to differentiate between actions being proposed by RUS and actions proposed by Electric, Telecommunications, and Water and Waste program applicants.

A number of classification changes have been made within subpart C of this rule. These reclassifications involve minor actions proposed by applicants which rarely, if ever, result in significant environmental impact or public interest. RUS believes this rule includes adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

RUS has modified the thresholds for acreage (facility sites), and capacity (generation facilities) within § 1794.22(a). In addition to modifying the thresholds for acreage and capacity, RUS has imposed different thresholds for construction of electric generating capacity at new sites versus existing sites within § 1794.23(c). Acreage and capacity threshold changes within § 1794.24, and a capacity threshold change within § 1794.25 reflect changes that have been made in §§ 1794.22(a), and 1794.23(c). No changes were made to the existing thresholds for transmission line length. Capacity thresholds have been eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS will normally adopt the NEPA document prepared by the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste program are classified in §§ 1794.21(c) and 1794.22(b). Based on historical

experience and a survey of the thresholds established by the Environmental Protection Agency which administers similar programs, RUS has eliminated the two tiered classification for EAs that is contained in 7 CFR Part 1940, Subpart G, the environmental regulation of the former FmHA, and adopted the more traditional classification scheme as outlined in 40 CFR 1508.9. Because RUS co-funds a significant portion of its projects with other Federal and state agencies, a more traditional classification and documentation scheme is thought to be more conducive to minimizing duplicative environmental review efforts.

RUS has modified its procedures in subparts D through G of this part. The EA will be the subject document of the notice of availability requirements in § 1794.42, where previously, the applicant's ER was the subject document. By this change, the notice requirements for all three programs will be consistent for both EA proposals and EA with scoping proposals. This change will encourage more public involvement by allowing public review of EA proposals prior to the issuance of a Finding of No Significant Impact (FONSI).

RUS has also changed its notice requirements for Electric program projects requiring scoping. The timing of RUS **Federal Register** notice for public scoping meetings in § 1794.52(b) has been reduced from 30 days to 14 days prior to the meeting. No appreciable benefit resulted from an earlier notice requirement. The existing regulation allows RUS to adopt the applicant's ER as its EA but requires RUS to prepare its own EA from the applicant's Environmental Analysis (EVAL) where a proposed action requires scoping. RUS has changed this requirement by allowing the EVAL to serve as its EA (see § 1794.53) consistent with 40 CFR § 1506.5(b).

RUS has modified its policy regarding the use of contractor prepared EISs. Under the existing regulation, RUS was required to use agency funds when an independent contractor was chosen by RUS to prepare the EIS. In accordance with the provisions of 7 CFR Part 1789, "Use of Consultants Funded by Applicants" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996, the draft and final EIS may be prepared by a consultant selected by RUS and funded by the applicant. A new requirement, publication of a notice of availability by RUS and the applicant for a Record of Decision is established in § 1794.63.

### Preparation of the Rulemaking

The proposed rule (7 CFR part 1794) was published in the **Federal Register** on November 24, 1997 (62 FR 62527). Public comment was invited for a 60-day period, ending on January 23, 1998.

Eighty-nine written comments were received representing 32 specific organizations and individuals. These included two Federal agencies, eight Federal agency state offices, one regional commission, two electric cooperative associations, and seventeen rural electric cooperatives. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Every effort has been made to respond in detail in the preamble to every question raised or suggestion offered. Where commenters pointed out errors in spelling, syntax, and minor technical errors these errors were corrected and not mentioned further in the preamble. In addition, many commenters made similar suggestions or raised similar issues. In the interest of clarity, comments that were similar in nature were grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble as appropriate. The discussion under General Comments responds to general comments and clarification of misunderstandings as to RUS's intent. The statements under Comments on Specific Sections address the more significant comments received on particular provisions and how RUS responded to them.

### General Comments

Several comments focused on the background discussion of the preamble to the proposed rule regarding the proposed renumbered § 1794.3, entitled "Actions requiring environmental review." The background discussion explained that, because of changes in law and reforms in the Electric and Telecommunications industry, RUS proposed to revise that section to reflect that RUS would no longer treat as Federal actions subject to environmental reviews, approvals provided by RUS pursuant to its loan contracts and security instruments. The preamble explained that these approvals are "ministerial" and not major Federal actions for the purposes of NEPA. The commenters, who uniformly supported the proposed revision, asked that RUS identify all approvals that would no longer be subject to environmental review or clarify that only the approval

of loans and loan guarantees will require an environmental review.

*Agency Response:* The proposed revision to § 1794.3 deletes reference to "lien accommodations, and approvals provided pursuant to loan contracts and security instruments (e.g., approvals of the use of general funds)." In pertinent part, the revised section identifies as actions requiring environmental review, "the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs." In response to the comments, RUS has added a clarifying sentence to § 1794.3 stating that, "Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purpose of this part and the provisions of this part shall not apply to the exercise of such approvals." RUS believes that, while it is principally the approvals of loans and loan guarantees to which environmental reviews attach, it is possible that other types of discretionary financial assistance could be available under the RUS program, which would trigger environmental reviews. Examples include lien subordinations under § 306 of the RE Act (7 U.S.C. 936). The regulatory text should not limit those actions requiring environmental review to the approval of loans and loan guarantees. Consequently, no other change has been made in response to the comments.

Ten commenters expressed concern about the two-tier classification that was created for "categorically excluded" proposals in §§ 1794.21 and 1794.22, which they believe is overly burdensome and confusing. They further believe that many of the size, voltage, distance, and acreage thresholds have been arbitrarily determined and need to be reevaluated.

*Agency Response:* RUS established the two-tier classification system for categorically excluded proposals specifically to reduce the burden on applicants without compromising the requirements of NEPA and the CEQ regulations. Categorically excluded proposals listed in § 1794.21 normally do not significantly impact the quality of the human environment. Therefore the submittal of an ER is not required. An ER is required for categorically excluded proposals listed in § 1794.22 to provide for circumstances in which a normally excluded action may have a significant impact (see 40 CFR 1508.4). Prior to issuing the proposed rule, RUS reevaluated the thresholds established in the existing regulation and determined that the revised thresholds included in the proposed rule represent

a reasonable delineation consistent with 40 CFR 1508.4.

The commenters also questioned why an environmental report should be required for a proposal that is normally categorically excluded and recommend that where appropriate, proposals listed in § 1794.22 be incorporated into § 1794.21.

*Agency Response:* The changes proposed by these comments are not consistent with the definition of categorical exclusion in 40 CFR 1508.4. In order to ensure that a proposed action does not significantly affect the quality of the human environment, RUS must conduct an environmental review. The two-tiered classification system for Categorical Exclusions establishes the level of information that must be provided by the applicant for proposals listed in each tier. This information is necessary so RUS can identify extraordinary circumstances in which a normally excluded action may have significant environmental effects.

One commenter recommended incorporating language into § 1794.21 by which RUS could increase the level of environmental review for any categorically excluded project, which had a significant environmental effect. Other commenters point out that proposals in these two categories already must meet the requirements of § 1794.31. Therefore a safeguard already exists whereby RUS can evaluate each project and determine if further environmental review is appropriate.

*Agency Response:* This rule includes a requirement in § 1794.22(a) by which RUS reserves the right to request environmental documentation for proposals listed in § 1794.21(b) and (c) if significant environmental effects result from the implementation of the proposal. RUS believes that determining whether an ER should be prepared for all categorically excluded proposals on a case-by-case basis would be inconsistent with the CEQ regulations (40 CFR 1508.4) and would extend the RUS environmental review process.

Three commenters assert that the thresholds established to differentiate between projects that require an environmental assessment (EA) with and without scoping (§§ 1794.23 and 1794.24) were also arbitrarily determined and point out that a 1 MW increase in capacity can increase the level of review. The commenters recommend that all § 1794.24 proposals which normally require scoping be incorporated into § 1794.23 and that RUS adopt language allowing the agency to require scoping for projects which are expected to have significant impacts.

*Agency Response:* RUS has reevaluated the thresholds that were established in the existing regulation for proposed actions listed in §§ 1794.23 and 1794.24. The thresholds accurately delineate the difference between proposed actions which can be adequately reviewed with an EA and those actions which have a higher potential for needing an EIS. The latter required the preparation of an EVAL by the applicant. The EVAL will serve as the RUS EA, (40 CFR 1506.5(b)). Instead of establishing a single classification system for actions normally requiring an EA and determining the need for scoping on an individual basis, RUS agrees some flexibility is needed and has included a provision to modify or waive scoping requirements in § 1794.52 for actions that normally require an EA with scoping.

Two commenters expressed concern with the provisions of the proposed rule that allow the applicant or its consultant to prepare the environmental report (ER) which normally serves as RUS' EA for Water and Waste proposals. These commenters assert that there may be an appearance of a conflict of interest.

*Agency Response:* Agency responsibility is addressed in 40 CFR 1506.5. The CEQ regulations allow an agency to require an applicant to submit environmental information for possible use by that agency (40 CFR 1506.5(a)). The agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information provided by the applicant and accept responsibility for its accuracy. RUS has developed guidance Bulletin 1794A-602 for that purpose. An agency can permit an applicant to prepare an EA provided the agency makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA (40 CFR 1506.5(b)).

One commenter recommends that the procedures defined in 7 CFR 1940-G under which RUS reviews information submitted by the applicant and completes the assessment should be used for Water and Waste proposals.

*Agency Response:* This rule provides for an agency-prepared EA. Section 1794.41 states that the ER will normally serve as the RUS EA. The decision of whether RUS uses the applicant's ER as its EA or prepares the EA from information provided in the ER will be made by the State Environmental Coordinator (SEC).

Another commenter noted that by not allowing RUS employees to complete EAs, the agency is limiting the ability of

its employees to provide technical assistance to rural areas.

*Agency Response:* RUS does not agree with this statement. By improving the efficiency of document preparation, Rural Development staff will have more time to provide meaningful guidance and technical assistance to applicants.

#### Comments on Specific Sections

*Background:* One commenter requested clarification of paragraph 9 of the proposed rules Background section that discusses exempting from review approvals provided by RUS pursuant to its loan contracts and security instruments.

*Agency Response:* This comment is addressed in the response to the first general comment.

*Section 1794.2:* One commenter questioned whether the item (d) in this section correctly characterized the roles RUS and the applicant play under NEPA and the CEQ regulations. He asserts that the applicant should be responsible for the accuracy of the information contained in environmental documents and the agency should be responsible for compliance with appropriate regulations.

*Agency Response:* RUS agrees. The text of item (d) has been changed to clarify the role of the applicant. RUS is responsible for compliance with NEPA, including verifying the accuracy of the information it uses in its environmental review (40 CFR 1506.5). The applicant is responsible for compliance with all applicable RUS requirements.

*Section 1794.3:* Six commenters recommended that this section clearly state that the rule applies only to direct loans and loan guarantee approvals.

*Agency Response:* This comment is addressed in the response to the first general comment.

*Section 1794.5 (now § 1794.4):* Two commenters support the proposed format of placing metric units in parentheses following the non-metric equivalents which is the reverse of the current format. Another commenter questioned whether the change in metric system format would be contrary to the national effort to convert to the metric system and not in compliance with Executive Order 12770.

*Agency Response:* It has been RUS experience that the current format in which metric units are followed by the non-metric equivalents in parentheses has been impractical and has confused readers. This rule's provisions for the use of metric units comply with Executive Order 12770.

*Section 1794.7 (now § 1794.6):* One commenter suggested adding "the environment" to the definition of

Emergency Situation to account for threats to the environment and including a definition of "multiplexing sites."

*Agency Response:* The words "or to the human environment" have been added to the end of the definition of Emergency Situation and a definition has been included in this section for multiplexing sites.

Another commenter suggested deleting the words "document and" from the definition of ER.

*Agency Response:* RUS recognizes that the amount of documentation that can be included in an ER can vary for the types of proposals listed in §§ 1794.22 and 1794.23 from a few pages to 100 pages or more. Since the word "document" does not add any significance to the definition of ER, the word has been deleted.

A third commenter thought that the terms ER, EA and Environmental Impact Assessment were confusing and needed further explanation.

*Agency Response:* RUS agrees and has reverted to the terminology used in the existing rule. RUS has in the past and proposes to continue to differentiate between the documentation submitted by the applicant for proposals that normally require an EA (§ 1794.23) and proposals that normally require an EA with scoping (§ 1794.24) by titling the former an ER and the later an EVAL. The agency prepared document for proposals listed in §§ 1794.23 and 1794.24 is still titled an EA (40 CFR 1508.9).

One commenter requested that this section be modified so the ER and EA can be stand-alone documents and not a mandatory part of the Preliminary Engineering Report (PER) for Water and Waste proposals. This commenter asserts that such a restriction precludes the use of other resources to complete the preparation of the environmental documentation.

*Agency Response:* Although RUS intends for the ER to be submitted with the PER for Water and Waste proposals, there is no requirement that the ER be prepared exclusively by the engineering consultant that prepares the PER. The key issue is that environmental concerns be considered at the earliest planning stage of a proposal to ensure that environmental values are given appropriate consideration. The earliest planning stage of a proposal is the PER.

*Section 1794.8 (now § 1794.7):* Two commenters noted that RUS Bulletin 1780-26 already has been designated for guidance for another purpose.

*Agency Response:* The designations for the guidance documents referenced in this section have been corrected.

One commenter recommended that a standard format be developed for applicants to follow in the preparation of an ER or EA.

*Agency Response:* The appropriate bulletins referenced in this section will contain a standard format for preparing an ER; the applicant does not prepare an EA.

The same commenter further recommended that State Directors be able to issue supplements with less than approval by the Administrator.

*Agency Response:* State Directors have the ability to issue supplements. However, to ensure compliance with environmental laws and regulations and maintain uniformity with neighboring states and within a region, requires Administrator review and approval of supplements.

Six commenters urged RUS to consult with interested parties regarding the referenced electric and telecommunications guidance documents prior to taking final action on this rule.

*Agency Response:* RUS has considered all comments received on the current versions of Bulletins 1794A-600 and 1794A-601 in preparing the revisions to these two Bulletins. Both Bulletins will be made available to applicants via the Internet prior to the effective date of this final rule.

Two commenters believe that the referenced Water and Waste bulletin (RUS Bulletin 1794A-602) should be published for comment and one commenter requested a 60-day extension to the comment period on the proposed rule following the release of that draft bulletin.

*Agency Response:* RUS Bulletin 1794A-602 was reviewed by Rural Development staff prior to the effective date of this final rule. RUS does not agree that the comment period on the proposed rule should be extended subject to the release of the draft bulletin.

*Section 1794.10:* One commenter recommended replacing "under RUS direct guidance and supervision" with "with advise from RUS" instead.

*Agency Response:* The referenced language has been revised. RUS will assist applicants by outlining the types of information required and provide guidance and oversight in the development of the documentation (40 CFR 1506.5).

This commenter also recommended that the language in §§ 1794.10 and 1794.31(b) be consistent and refer to the SEC or neither.

*Agency Response:* The language in § 1794.10 applies to all three RUS programs. Therefore, a specific agency

official is only identified in § 1794.31(b), which is specific to the Water and Waste program.

*Section 1794.13:* One commenter recommended that in (a)(3) all comments on Water and Waste proposals be sent directly to the RUS State Office instead of through the applicant.

*Agency Response:* Applicant notices must state that comments should be sent to the RUS appropriate office for Water and Waste proposals and to the Washington, DC, office for Electric and Telecommunications proposals.

However, RUS recognizes that both verbal and written comments on a proposal are sometimes directed to the applicant. This subsection accounts for this possibility by requiring the applicant to submit comments to RUS.

Seven commenters were concerned that the requirement in § 1794.13(a)(4) making all environmental documents and documentation related to the proposed action available in specific locations was too broad and created an overly burdensome and onerous responsibility for the applicant. They recommended that RUS narrow the scope of information that the applicant is required to make available in a public setting and require the applicant to designate a contact person to respond to requests for additional and supporting information.

*Agency Response:* RUS agrees that the requirement making all environmental documents and documentation available in specific locations creates an overly burdensome and onerous responsibility for the applicant and does not enhance public participation in the environmental process. The language in § 1794.13(a)(4) has been revised. RUS will determine which project related environmental documents will be made available for review at locations convenient for the public. To ensure full public disclosure, a list of all documents not provided for public review will be included. Documents not provided will be available for inspection through a designated RUS or applicant contact person.

Two commenters requested that § 1794.13(a)(5) be expanded to note that public hearings are to be confined to the environmental aspects of a proposed action.

*Agency Response:* RUS believes that the purpose of the public hearings or meetings has been adequately identified in this section.

One commenter requested that RUS coordinate its meetings with meetings, hearings, and environmental reviews, which may be held and/or required by others.

*Agency Response:* RUS agrees with this comment and has revised § 1794.13(a)(5) to include coordination of its meetings with the requirements of other interested agencies and groups.

Six commenters questioned why RUS has established differing thresholds for publication of notices in the **Federal Register** with respect to the Electric and Telecommunications programs in § 1794.13(b) and the Water and Waste program in § 1794.13(c). They recommended that the language in § 1794.13(c) be consistent for all three programs.

*Agency Response:* RUS agrees and has decided to revise the language in §§ 1794.13(b) and 1794.42(b) thereby making the thresholds for publication of notices consistent for all three programs. RUS will provide interested agencies with notification of its FONSI determinations through direct mailings or, at its option, the **Federal Register**, when appropriate.

*Section 1794.14:* One commenter endorsed the flexibility provided in this section and recommended that this flexibility be more clearly stated. The commenter also suggested that the duties of a cooperating agency are unclear and a brief list should be included.

*Agency Response:* The duties of a cooperating agency are described in 40 CFR 1501.6 and are incorporated by reference.

*Section 1794.17:* One commenter questioned whether the mitigative measures would be discussed in the FONSI memo to the file in addition to the FONSI public notice. Two commenters noted that the provisions of (b)(3) appear to expand the responsibilities of field staff beyond that of development specialists. One commenter suggested that a better role for the agency would be to notify the appropriate regulatory agency to enforce the mitigative measures.

*Agency Response:* Mitigation measures shall be discussed in both the FONSI memo and public notice. The responsibilities of field staff have not been expanded. In the routine process of checking on-site conditions for compliance with relevant loan or grant provisions, it is appropriate for staff to document the applicant's compliance status with regard to mitigation measures that were agreed upon as part of the conditions for the loan/grant. If discrepancies are noted, the agency may need to notify the appropriate regulatory agency for action.

*Section 1794.21(a):* Six commenters recommended that in addition to defining "emergency situation" this

section be expanded to account for such situations.

*Agency Response:* RUS has added action (4) to account for emergency situations.

*Section 1794.21(b):* One commenter questioned why a "detailed description" was required for 12 actions in this category when all actions in this category had to be sufficiently described. That commenter recommended this requirement be deleted.

*Agency Response:* RUS has determined through experience that the types of proposals contained in this section normally do not significantly affect the quality of the human environment. Thus the submission of an ER is not normally required. However, in order to waive the ER requirement for the 12 actions in this category so designated, the RUS reviewer must have a complete description of what is being proposed, how it will be constructed, and the setting in which the proposed project will be located. Evaluating these 12 actions on a case-by-case basis is more effective than uniformly requiring the mandatory submittal of an ER.

Another commenter was concerned that the submittal of an environmental document was not required for proposed actions described in § 1794.21(b) (4), (8), (14), (15) and (16), which could under certain circumstances provide a hazard to birds.

*Agency Response:* RUS agrees that under certain circumstances actions described in § 1794.21(b) (4), (8), (14), (15), and (16) could result in significant effects to the human environment, such as presenting a hazard to birds. The description of the facilities to be constructed that must be provided for these actions and others so noted in § 1794.21(b) is used by RUS to determine whether the current level of review is adequate or a higher level of review is warranted.

One commenter expressed concern over the provision in action § 1794.21(b)(18) which require the applicant obtain certification from the utility owner that the facilities to be purchased are in compliance with applicable environmental laws and regulations. This commenter believes that the normal environmental review process should be sufficient to identify and resolve issues that may be encountered.

*Agency Response:* RUS agrees that obtaining a certification of compliance for the purchase of existing facilities is not the appropriate form of documentation. Upon further review, RUS has determined that establishing two separate levels of review for the

purchase of existing facilities, specifically action (18) in § 1794.21(b) and action (7) in § 1794.23(b), is not warranted. Both references to these actions have been deleted from the final rule and replaced by new action (11) in § 1794.22(a). Under the new requirement applicants will have the option of submitting an ER or the results of a facility environmental audit. A higher level of review may be required before RUS approves an applicant's purchase of facilities that are determined to be in violation of Federal, state, or local environmental laws or regulations.

One commenter recommended that the threshold for action described in § 1794.21(b)(21), standby diesel generators, be increased from 1 megawatt (MW) to 2 MW and also be utilized for load management purposes in addition to emergency power.

*Agency Response:* RUS does not agree. The purpose of this category is to exclude standby diesel generators that would be subject to limited use (i.e. emergency outages). Utilizing such facilities for load management purposes increases the hours of usage and thus increase potential effects to the quality of the human environment.

A commenter asserts that the action described in § 1794.21(b)(24) could create a major change in local air quality.

*Agency Response:* RUS agrees that wording describing action (24) could be misinterpreted and has added the following statement: "Repowering or uprating that results in an increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification." Because this action does not include an increase in fuel consumption, no change in local air quality is anticipated.

This commenter further recommended that the type of customer facilities covered in § 1794.21(b)(24) include commercial and agricultural.

*Agency Response:* RUS agrees to add commercial and agriculture facilities to item (24).

*Section 1794.22:* Three commenters noted that proposals identified in § 1794.22(a)(11) and § 1794.21(b)(20) which discuss facilities that will reduce the amount of pollutants released into the environment are redundant and the reference in § 1794.22 should be deleted.

*Agency Response:* RUS agrees that the requirements of § 1794.22(a)(11) and § 1794.21(b)(20) are redundant. Accordingly, action #11 in § 1794.22(a) of the proposed rule has been deleted.

One commenter asserted that proposals listed in § 1794.22(b)(3) and (4) have the potential to impact important resources but will be excluded from environmental review.

*Agency Response:* Applicants are required to prepare and submit an ER for all proposed actions listed in § 1794.22(b). RUS will review the ER to determine whether a normally categorically excluded action may have a significant environmental effect (40 CFR 1508.4).

One commenter suggested that § 1794.22(c) belongs in § 1794.23 which describes EA proposals.

*Agency Response:* Proposals listed in § 1794.22(c) were so designated to parallel the level of documentation required by the EPA in 40 CFR 6.505(c) for similar proposals. Agencies with similar programs are encouraged by CEQ to consult with each other to coordinate their procedures, especially for programs requesting similar information from applicants (40 CFR 1507.3(a)). RUS believes that these actions are correctly described in § 1794.22(c).

One commenter noted that § 1794.22(c)(1) and (2) only apply to discharges and need to be expanded to include water withdrawals.

*Agency Response:* RUS agrees and has expanded the discussion in § 1794.22(c) to clarify this issue.

Two commenters requested that "substantial increases" in § 1794.22(c)(2) be defined and one commenter also questioned how this term applied to a new facility.

*Agency Response:* The term "substantial increases" has not been defined because its interpretation depends on local conditions and regulatory requirements. RUS agrees that this action should not include new facilities and has revised the language accordingly.

One commenter noted that § 1794.22(c)(3) stipulates no greater than a 30 percent growth factor whereas § 1794.22(b)(3) stipulates a modest growth potential and requests consistency within the rule.

*Agency Response:* The 30 percent growth factor is an established threshold, whereas the term "modest growth" applies to local conditions and regulatory requirements.

Another commenter asserts that the thresholds in § 1794.22(c)(3) need to be changed because it appears that a small system (20-30 EDU's) could be expanded up to 500 EDU's and still be a categorically excluded proposal.

*Agency Response:* RUS believes the capacity criteria as stated is sufficient for the purposes of classifying an action

as a categorical exclusion. Two other provisions may be applicable to the commenter's point. First, the ER would provide sufficient information to determine if there are any extraordinary circumstances in which a normally categorically excluded action may have a significant environmental effect (see 40 CFR 1508.4). Second, under § 1794.22(b)(2), RUS could determine that the facility improvements are not modest in use, size, capacity, purpose, or location and would require an EA.

*Section 1794.23:* One commenter recommended that for consistency, this section be titled "Proposals normally requiring an EA without scoping."

*Agency Response:* RUS disagrees. Early public involvement may be appropriate for any level of environmental review and should not be explicitly dismissed by excluding scoping for certain thresholds.

*Section 1794.31:* One commenter stated that RUS should not be supervising or giving direct guidance to the applicant. He suggested modifying the wording in (b) to "with advice from RUS."

*Agency Response:* This issue is addressed in the response to the comment on § 1794.10.

Another commenter noted that the SEC would be unable to devote the time necessary to supervise all applicants.

*Agency Response:* High volume states have been provided additional environmental specialist positions in anticipation of the increased workload.

*Section 1794.32:* One commenter wanted clarification in (b) on the criteria used to determine when public notice would be required if important land resources are affected. Another commenter suggested that in (b) reference should be made to § 1794.7 or the RUS Bulletin 1794A-602.

*Agency Response:* RUS agrees with this suggestion and has referenced the two bulletins that provide guidance in preparing an ER.

*Section 1794.33:* One commenter noted that this section allows RUS to act on an application without any environmental review.

*Agency Response:* The commenter's interpretation of § 1794.33 is incorrect. RUS shall conduct an environmental review for all proposed actions covered by this section. Proposals listed in § 1794.21(b) and (c) normally require the submittal of a project description. Whereas, proposals listed in § 1794.22(a) and (b) normally require the submittal of an ER. RUS reserves the right to require additional environmental information on any proposal the agency believes may have

significant effects on the quality of the human environment (§ 1794.30).

*Section 1794.41:* One commenter noted that the typical applicant would need assistance from their consulting engineer in preparing the ER, resulting in a fee increase to the applicant. If the SEC retains approval authority for the ER, another layer of review is added before the ER is accepted.

*Agency Response:* RUS anticipates that the applicant's engineer will prepare the ER at the same time that project planning is done. RUS further anticipates that any increase in the engineering fee should be modest since the engineer in most projects has been preparing the applicant's environmental information for the agency. The SEC should be the only agency approval official for the ER.

*Section 1794.44:* Two commenters noted that it appears RUS will take final action on proposals covered by this section without waiting for public input.

*Agency Response:* Actions listed in § 1794.23 are subject to public input when the EA is made available for review through applicant notice. Normally there is no provision for additional public input when RUS makes a FONSI determination for actions listed in § 1794.23.

These commenters also noted that draft RUS Bulletin 1794A-602 calls for a 15-day review period if significant comments are received on the draft EA.

*Agency Response:* The reference to the 15-day review period was inadvertently omitted from the proposed rule. Section 1794.44 has been modified to include an opportunity for the public to review the RUS FONSI determination if substantive comments are received on the EA.

*Section 1794.51:* One commenter noted that no mention is made in (a) where the applicant's notice will be published.

*Agency Response:* The commenter is correct that § 1794.51 does not state where the applicant's notice will be published. That information is provided in § 1794.13(a)(1) and (2).

*Section 1794.61:* Two commenters asserted that the cost of an EIS would be prohibitive for nearly all Water and Waste applicants which could result in even high priority projects being canceled due to the inability of the applicant to fund the EIS.

*Agency Response:* RUS agrees that an EIS can be an expensive document to prepare and has identified certain methods of funding an EIS in § 1794.61(a).

*Section 1794.70:* One commenter recommends that this section be

expanded to allow the adoption of environmental documents prepared by state or local agencies or other parties in accordance with the provisions of § 1794.84 of the existing regulation.

*Agency Response:* The CEQ regulations in 40 CFR 1506.3 only permit a Federal agency to adopt documents prepared by or for another Federal Agency. In 40 CFR 1506.2, Federal agencies are required to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements by jointly preparing EAs and EISs. RUS acknowledges that its policy on the incorporation of environmental documents prepared by others was omitted from the proposed rule. This omission has been corrected with the addition of § 1794.74.

One commenter suggested that RUS be more flexible in its adoption procedures and not duplicate another agency's public notice and comment period.

*Agency Response:* RUS believes that its decisions must be subject to public notification regardless of who prepares the environmental documentation. The preferred strategy to avoid duplication of effort would be for RUS to participate with other agencies in the preparation of the initial environmental documents as stated in § 1794.14.

This commenter also recommended that RUS accept environmental documents prepared by states under the State Revolving Fund (SRF) programs as its own documents or at a minimum adopt the subject documents.

*Agency Response:* RUS may adopt environmental documents prepared by state agencies administering SRF programs under the Clean Water Act (32 U.S.C. 1251) and the Safe Drinking Water Act (42 U.S.C. 300). Where appropriate, the State Director will enter into an agreement with appropriate state agencies to establish the necessary procedures.

Any environmental document accepted or prepared by RUS prior to the effective date of these regulations may be developed in accordance with RUS environmental requirements in effect at the time the document was accepted or prepared by RUS.

#### **List of Subjects in 7 CFR Part 1780**

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.



**List of Subjects in 7 CFR Part 1794**

Environmental impact statements, Reporting and recordkeeping requirements.

Therefore RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

**PART 1780—WATER AND WASTE LOANS AND GRANTS****Subpart B—Loan and Grant Application Processing**

1. Section 1780.31 is amended by revising paragraph (e) to read as follows:

**§ 1780.31 General.**

\* \* \* \* \*

(e) Starting with the earliest discussion with prospective applicants, the State Environmental Coordinator shall discuss with prospective applicants and be available for consultation during the application process the environmental review requirements for evaluating the potential environmental consequences of the project. Pursuant to 7 CFR part 1794 and guidance in RUS Bulletin 1794A-602, the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate identified adverse environmental effects. Mitigation measures necessary to avoid or minimize any adverse environmental effects must be integrated into project design.

2. Section 1780.33 is amended by revising paragraphs (c)(3), and (f) to read as follows:

**§ 1780.33 Application requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) The State staff engineer will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER. Written comments will be provided by the State staff engineer to the processing office to meet eligibility determination time lines.

\* \* \* \* \*

(f) Environmental Report. For those actions listed in §§ 1794.22(b) and 1794.23(b), the applicant shall submit, in accordance with RUS Bulletin 1794A-602, two copies of the completed Environmental Report.

(1) Upon receipt of the Environmental Report, the processing office shall forward one copy of the report with comments and recommendation to the

State Environmental Coordinator for review.

(2) The State Environmental Coordinator will consult with the applicant as appropriate to resolve any environmental concerns. Written comments will be provided by the State Environmental Coordinator to the processing office to meet eligibility determination time lines.

\* \* \* \* \*

3. Section 1780.39 is amended by revising paragraph (b) introductory text and removing and revising paragraph (h).

**§ 1780.39 Application processing.**

\* \* \* \* \*

(b) Professional services and contracts related to the facility. Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, environmental review and documentation requirements, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to RUS concurrence.

\* \* \* \* \*

4. Section 1780.41 is amended by revising paragraph (a)(8) to read as follows:

**§ 1780.41 Loan or grant approval.**

(a) \* \* \*

(8) Completed environmental review documents including copies of public notices and appropriate proof of publication, if applicable; and

\* \* \* \* \*

**SUBPART C—PLANNING, DESIGN, BIDDING, CONTRACTING, CONSTRUCTING AND INSPECTIONS**

5. Section 1780.55 is revised to read as follows:

**§ 1780.55 Preliminary engineering reports.**

Preliminary engineering reports and Environmental Reports. Preliminary

engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental Reports must meet the policies and intent of the National Environmental Policy Act and RUS procedures. Guidelines for preparing Environmental Reports are available in RUS Bulletin 1794A-602.

6. Section 1780.57 is amended by revising paragraph (a) to read as follows:

**§ 1780.57 Design policies.**

\* \* \* \* \*

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with the National Environmental Policy Act and RUS procedures. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

\* \* \* \* \*

7. Part 1794 is revised to read as follows:

**PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES****Subpart A—General**

Sec.

1794.1 Purpose.

1794.2 Authority.

1794.3 Actions requiring environmental review.

1794.4 Metric units.

1794.5 Responsible officials.

1794.6 Definitions.

1794.7 Guidance.

1794.8-1794.9 [Reserved]

**Subpart B—Implementation of the National Environmental Policy Act**

1794.10 Applicant responsibilities.

1794.11 Apply NEPA early in the planning process.

1794.12 Consideration of alternatives.

1794.13 Public involvement.

1794.14 Interagency involvement and coordination.

1794.15 Limitations on actions during the NEPA process.

1794.16 Tiering.

1794.17 Mitigation.  
1794.18–1794.19 [Reserved]

#### Subpart C—Classification of Proposals

1794.20 Control.  
1794.21 Categorically excluded proposals without an ER.  
1794.22 Categorically excluded proposals requiring an ER.  
1794.23 Proposals normally requiring an EA.  
1794.24 Proposals normally requiring an EA with scoping.  
1794.25 Proposals normally requiring an EIS.  
1794.26–1794.29 [Reserved]

#### Subpart D—Procedure for Categorical Exclusions

1794.30 General.  
1794.31 Classification.  
1794.32 Environmental report.  
1794.33 Agency action.  
1794.34–1794.39 [Reserved]

#### Subpart E—Procedure for Environmental Assessments

1794.40 General.  
1794.41 Document requirements.  
1794.42 Notice of availability.  
1794.43 Agency finding.  
1794.44 Timing of agency action.  
1794.45–1794.49 [Reserved]

#### Subpart F—Procedure for Environmental Assessments With Scoping

1794.50 Normal sequence.  
1794.51 Preparation for scoping.  
1794.52 Scoping meetings.  
1794.53 Environmental analysis.  
1794.54 Agency determination.  
1794.55–1794.59 [Reserved]

#### Subpart G—Procedure for Environmental Impact Statements

1794.60 Normal sequence.  
1794.61 Environmental impact statement.  
1794.62 Supplemental EIS.  
1794.63 Record of decision.  
1794.64 Timing of agency action.  
1794.65–1794.69 [Reserved]

#### Subpart H—Adoption of Environmental Documents

1794.70 General.  
1794.71 Adoption of an EA.  
1794.72 Adoption of an EIS.  
1794.73 Timing of agency action.  
1794.74 Incorporation of environmental materials.  
1794.75–1794.79 [Reserved]

**Authority:** 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

#### Subpart A—General

##### § 1794.1 Purpose.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions

of NEPA (40 CFR parts 1500 through 1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs and administrative actions.

(b) The policies and procedures contained in this part are intended to help RUS officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. In assessing the potential environmental impacts of its actions, RUS will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with information on the issues that are truly significant to the action in question.

##### § 1794.2 Authority.

(a) This part derives its authority from and is intended to be compliant with NEPA, CEQ Regulations for Implementing the Procedural Provisions of NEPA, and other RUS regulations.

(b) Where practicable, RUS will use NEPA analysis and documents and review procedures to integrate the requirements of related environmental statutes, regulations, and orders.

(c) This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

- (1) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);
- (2) The National Historic Preservation Act (16 U.S.C. 470 *et seq.*);
- (3) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);
- (4) E.O. 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 Comp., p. 154);
- (5) E.O. 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1970 Comp., p. 104);
- (6) E.O. 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117);
- (7) E.O. 11990, Protection of Wetlands (3 CFR, 1977 Comp., p. 121); and
- (8) E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (3 CFR, 1994 Comp., p. 859).

(d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Environmental documents submitted by the applicant shall be prepared under the oversight and guidance of RUS. RUS will evaluate and be responsible for the accuracy of all information contained therein.

##### § 1794.3 Actions requiring environmental review.

The provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs, the disposal of property held by RUS pursuant to such programs, and the issuance of new or revised rules, regulations, and bulletins. Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of this part and the provisions of this part shall not apply to the exercise of such approvals.

##### § 1794.4 Metric units.

RUS normally will prepare environmental documents using non-metric equivalents with one of the following two options; metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. Environmental documents prepared by or for a RUS applicant should follow the same format.

##### § 1794.5 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and EOs that apply to RUS programs and administrative actions. Responsibility for ensuring environmental compliance for actions taken by RUS has been delegated as follows:

(a) *Electric and Telecommunications Programs.* The appropriate Assistant Administrator is responsible for ensuring compliance with this part for the respective programs.

(b) *Water and Waste Program.* The Assistant Administrator for this program is responsible for ensuring compliance with this part at the national level. The State Director is the responsible official for ensuring compliance with this part for actions taken at the State Office level.

##### § 1794.6 Definitions.

The following definitions, as well as the definitions contained in 40 CFR part 1508 of the CEQ regulations, apply to the implementation of this part:

*Applicant.* The organization applying for financial assistance or other approval from either the Electric or Telecommunications programs or the organization applying for a loan or grant from the Water and Waste program.

*Construction Work Plan (CWP).* The document required by 7 CFR part 1710.

*Emergency Situation.* A natural disaster or system failure that may

involve an immediate or imminent threat to public health, safety, or the human environment.

**Environmental Analysis (EVAL).** The document submitted by the applicant for proposed actions subject to compliance with § 1794.24 and under special circumstances § 1794.25.

**Environmental Report (ER).** The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 and 1794.23. An ER for the Water and Waste Program refers to the environmental review documentation normally included as part of the Preliminary Engineering Report.

**Environmental review.** Any one or all of the levels of environmental analysis described under subpart C of this part.

**Equivalent Dwelling Unit (EDU).** Level of water or waste service provided to a typical rural residential dwelling.

**Important Land Resources.** Defined pursuant to the U.S. Department of Agriculture's Departmental Regulation 9500-3, Land Use Policy, as important farmland, prime forestland, prime rangeland, wetlands, and floodplains. Copies of this Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

**Loan Design.** Document required by 7 CFR part 1737.

**Multiplexing Center.** A field site where a telecommunications provider houses a device that combines individual subscriber circuits onto a single system for economical connection with a switching center. The combiner, or "multiplexer," may be mounted on a pole, on a concrete pad, or in a partial or full enclosure such as a shelter, or small building.

**Natural Resource Management Guide.** Inventory of natural resources, land uses, and environmental factors specified by Federal, State, and local authorities as deserving some degree of protection or special consideration. The guide describes the standards or types of protection that apply.

**Preliminary Engineering Report (PER).** Document required by 7 CFR part 1780 for Water and Waste Programs. A PER is prepared by an applicant's engineering consultant documenting a proposed action's preliminary engineering plan and design and the applicable environmental review activities as required in this part. Upon approval by RUS, the PER, or a portion thereof, shall serve as the RUS environmental document.

**Supervisory Control and Data Acquisition System (SCADA).** Electronic monitoring and control equipment installed at electric substations and switching stations.

**Third party Consultant.** A party selected by RUS to prepare the EIS for proposed actions described in § 1794.25 where the applicant initiating the proposal agrees to fund preparation of the document in accordance with the provisions of 7 CFR Part 1789, "Use of Consultants Funded by Borrowers" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2204b(b)).

#### § 1794.7 Guidance.

(a) **Electric and Telecommunications Programs.** For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A-600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)) and RUS Bulletin 1794A-601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) Telecommunications only and (c)). Copies of these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PDRA, Stop 1522; 1400 Independence Avenue, SW; Washington, DC 20250-1522.

(b) **Water and Waste Program.** RUS Bulletin 1794A-602 provides guidance in preparing the ER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(b)). A copy of this bulletin is available upon request by contacting the appropriate State Director. State Directors may provide supplemental guidance to meet state and local laws and regulations and to provide for orderly application procedures and efficient service to applicants. State Directors shall obtain the Administrator's approval for all supplements to RUS Bulletin 1794A-602. Each State Office shall maintain an updated Natural Resource Management Guide and provide applicants with pertinent sections or a copy of the current edition thereof.

#### §§ 1794.8-1794.9 [Reserved]

### Subpart B—Implementation of the National Environmental Policy Act

#### § 1794.10 Applicant responsibilities.

As described in subpart C of this part, applicants shall prepare the applicable environmental documentation concurrent with a proposed action's engineering, planning, and design activities. RUS shall assist applicants by outlining the types of information required and shall provide guidance and oversight in the development of the documentation. Documentation shall not be considered complete until all

public review periods, as applicable, have expired and RUS concurrence, as set forth in the appropriate decision document and associated public notice, has been issued.

#### § 1794.11 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Applicants should consult with RUS at the earliest stages of planning for any proposal that may require RUS action. For proposed actions that normally require an EIS, applicants shall consult with RUS prior to obtaining the services of an environmental consultant.

#### § 1794.12 Consideration of alternatives.

In determining what are reasonable alternatives, RUS considers a number of factors. These factors may include, but are not limited to, the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled.

#### § 1794.13 Public involvement.

(a) In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through public notices and public hearings and meetings.

(1) All public notices required by this part shall describe the nature, location, and extent of the proposed action and indicate the availability and location of additional information. They shall be published in newspaper(s) of general circulation within the proposed action's area of environmental impact and the county(s) in which the proposed action will take place or such other places as RUS determines.

(2) The number of editions in which the notices should be published will be specified in the Bulletins referenced in § 1794.7 or established on a project-by-project basis. Alternative forms of notice may also be necessary to ensure that residents located in the area affected by the proposed action are notified. The applicant should not publish notices for compliance with this part until so notified by RUS.

(3) A copy of all comments received by the applicant concerning environmental aspects of the proposed action shall be provided to RUS in a timely manner. RUS and applicants shall assess and consider public comments both individually and collectively. Responses to public comments will be appended to the applicable environmental document.

(4) RUS and applicants shall make available to the public those project related environmental documents that RUS determines will enhance public participation in the environmental process. These materials shall be placed in locations convenient for the public as determined by RUS in consultation with applicants. Included with the documentation shall be a list of other project-related information that shall be available for inspection through a designated RUS or applicant contact person.

(5) Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in the opinion of RUS, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. Public hearings or meetings conducted by RUS will be coordinated to the extent practicable with other meetings, hearings, and environmental reviews which may be held or required by other Federal, state and local agencies. Applicants shall, as necessary, participate in all RUS conducted public hearings or meeting.

(6) Scoping procedures, in accordance with 40 CFR 1501.7, are required for proposed actions normally requiring an EA with scoping (§ 1794.24) or an EIS (§ 1794.25). RUS may require scoping procedures to be followed for other proposed actions where appropriate to achieve the purposes of NEPA.

(b) The applicant shall have public notices described in this section published in a newspaper(s). Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document. Where the proposed action requires an EIS RUS shall, in addition to applicant published notices, publish notice in the **Federal Register**. In all cases, RUS may publish notices in the **Federal Register** as appropriate.

**§ 1794.14 Interagency involvement and coordination.**

In an attempt to reduce or eliminate duplication of effort with state or local procedures, RUS will, to the extent possible and in accordance with 40 CFR 1506.2, actively participate with any governmental agency to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws. Where RUS has agreed to participate as a cooperating agency, in accordance with 40 CFR 1501.6, RUS may rely upon the lead agency's procedures for implementing NEPA procedures. In addition, RUS shall request that:

(a) The lead agency indicates that RUS is a cooperating agency in all NEPA-related notices published for the proposed action;

(b) The scope and content of the EA or EIS satisfies the statutory and regulatory requirements applicable to RUS; and

(c) The applicant shall inform RUS in a timely manner of its involvement in a proposed action where another Federal agency is preparing an environmental document so as to permit RUS to adequately fulfill its duties as a cooperating agency.

**§ 1794.15 Limitations on actions during the NEPA process.**

(a) *General.* Until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process (40 CFR 1506.1).

(b) *Electric Program.* In determining which applicant activities related to a proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (e.g. rail spur) or development of a related facility (e.g. opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS environmental review. Notwithstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS objectivity. Expenditures for the purpose of producing documentation required for RUS environmental review are excluded from this limitation.

**§ 1794.16 Tiering.**

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where:

- (a) It is practicable, and
- (b) There will be a reduction of delay and paperwork, or where better decision making will be fostered (40 CFR 1502.20).

**§ 1794.17 Mitigation.**

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and Waste Program.* (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

**§§ 1794.18–1794.19 [Reserved]**

**Subpart C—Classification of Proposals**

**§ 1794.20 Control.**

*Electric and Telecommunications Programs.* For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the

ownership of a proposed project and all applicants cumulatively own:

(a) Five percent or less of a project is not considered a Federal action subject to this part;

(b) Thirty-three and one-third percent or more of a project shall be treated in its usual category;

(c) More than five percent but less than 33 $\frac{1}{3}$  percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that RUS's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

(1) Whether construction would be completed regardless of RUS financial assistance or approval;

(2) The stage of planning and construction;

(3) Total participation of the applicant;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

**§ 1794.21 Categorically excluded proposals without an ER.**

(a) *General.* Certain types of actions taken by RUS do not normally require an ER. Proposed actions within this classification are:

(1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;

(2) Procurement activities related to the operation of RUS;

(3) Personnel and administrative actions; and

(4) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's system.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed in this paragraph (b) normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. RUS normally requires additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;

(2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from RUS, provided the scope of the proposal and environmental considerations have not changed;

(3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites. A description of the rehabilitation or reconstruction shall be provided to RUS;

(4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;

(5) Internal modifications or equipment additions (e.g., computer facilities, relocating interior walls) to structures or buildings;

(6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;

(7) Ordinary maintenance or replacement of equipment or small structures (e.g., line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);

(8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;

(9) SCADA and energy management systems involving no new external construction;

(10) Testing or monitoring work (e.g., soil or rock core sampling, monitoring wells, air monitoring);

(11) Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed;

(12) Construction of electric power lines within the fenced area of an existing substation, switching station, or within the boundaries of an electric generating facility site;

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an

EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in § 1794.15(b)(2);

(14) Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. A description of the facilities to be constructed shall be provided to RUS;

(15) Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. A description of the facilities to be constructed shall be provided to RUS;

(16) Construction of new power lines, substations, or telecommunications facilities on industrial or commercial sites, where the applicant has no control over the location of the new facilities. Related off-site facilities would be treated in their normal category. A description of the facilities to be constructed shall be provided to RUS;

(17) Participation by an applicant(s) in any proposed action where total applicant financial participation will be five percent or less;

(18) Construction of a battery energy storage system at an existing generating station or substation site. A description of the facilities to be constructed shall be provided to RUS.

(19) Additional bulk commodity storage (e.g., coal, fuel oil, limestone) within existing generating station boundaries. A certification attesting to the current state of compliance of the existing facilities and a description of the facilities to be added shall be provided to RUS;

(20) Proposals designed to reduce the amount of pollutants released into the environment (e.g., precipitators, baghouse or scrubber installations, and coal washing equipment) which will have no other environmental impact outside the existing facility site. A description of the facilities to be constructed shall be provided to RUS;

(21) Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant. A description of the facilities to be constructed shall be provided to RUS;

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-

fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A description of the facilities to be constructed shall be provided to RUS;

(23) Changes or additions to an existing water well system, including new water supply wells and associated pipelines within the boundaries of an existing well field or generating station site. A description of the changes or additions shall be provided; and

(24) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station in order to improve the efficiency or the energy output of the facility. Repowering or uprating that results in increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification.

(c) *Water and Waste Program.*

Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. These types of actions are subject to the requirements of § 1794.31. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, award of contracts, and the actual physical commencement of construction activities;

(2) Proposed actions that primarily involve the purchase and installation of office equipment or motorized vehicles;

(3) The award of financial assistance for technical assistance, planning purposes, environmental analysis, management studies, or feasibility studies; and

(4) Loan closing and servicing activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, amendments and revisions to approved actions, and the provision of additional financial assistance for cost overruns.

**§ 1794.22 Categorically excluded proposals requiring an ER.**

(a) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed in this section normally require the submission of an ER and are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Construction of electric power lines and associated facilities designed

for or capable of operation at a nominal voltage of either:

(i) Less than 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or

(iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

(2) Construction of buried and aerial telecommunications lines, cables, and related facilities;

(3) Construction of microwave facilities, SCADA, and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site;

(4) Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property;

(5) Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same ROW. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction;

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(7) Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(8) Construction of diesel electric generating facilities of five megawatts (MW) (nameplate rating) or less either at an existing generation or substation sites. This category also applies to a diesel electric generating facility of five MW or less that is located at or adjacent to an existing landfill site and supplied with refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Additions to or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

(10) Construction of new water supply wells and associated pipelines not

located within the boundaries of an existing well field or generating station site; and

(11) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged. The results of a facility environmental audit can be substituted for the ER.

(b) *Water and Waste Program.* For certain proposed actions, applications for financial assistance normally require the submission of an ER as part of the PER. These types of actions are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Rehabilitation of existing facilities, functional replacement or rehabilitation of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities, including but not limited to, replacement of utilities such as water or sewer lines and appurtenances for existing users with modest or moderate growth potential, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements;

(2) Facility improvements to meet current needs with a modest change in use, size, capacity, purpose or location from the original facility. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts;

(3) Construction of new facilities that are designed to serve not more than 500 EDUs and with modest growth potential. The proposed action must be designed for predominantly residential use with other users being small-scale, commercial enterprises having limited secondary impacts;

(4) The extension, enlargement or construction of interceptors, collection, transmission or distribution lines within a one-mile (1.6-kilometer) limit from existing service areas estimated from any boundary listed as follows:

(i) The corporate limits of the community being served;

(ii) If there are developed areas immediately contiguous to the corporate limits of a community, the limits of these developed areas; or

(iii) If an unincorporated area is to be served, the limits of the developed areas;

(5) Installation of new water supply wells or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection;

(6) Actions described in § 1794.21(c)(4) which alter the purpose,

operation, location, or design of the proposed action as originally approved, and such alteration is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5) of this section; and

(7) The lease or disposal of real property by RUS, which may result in a change in use of the real property in the reasonably foreseeable future and such change, is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5).

(c) *Specialized criteria for not granting a CE for Water and Waste Projects.* An EA must be prepared if a proposed action normally classified as a CE meets any of the following:

(1) Will either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters;

(2) Will result in substantial increases in the volume or the loading of pollutants from an existing discharge to receiving waters;

(3) Will cause a substantial increase in the volume of withdrawal from surface or ground waters at an existing site; or

(4) Would provide capacity to serve more than 500 EDUs or a 30 percent increase in the existing population whichever is larger.

**§ 1794.23 Proposals normally requiring an EA.**

RUS will normally prepare an EA for all proposed actions which are neither categorical exclusions (§§ 1794.21 and 1794.22) nor normally requiring an EIS (§ 1794.25). For certain actions within this class, scoping and document procedures contained in §§ 1794.50 through 1794.54 shall be followed (see § 1794.24). The following are proposed actions which normally require an EA and shall be subject to the requirements of §§ 1794.40 through 1794.44.

(a) *General.* Issuance or modification of RUS regulations concerning environmental matters.

(b) *Telecommunications and Water and Waste Programs.* An EA shall be prepared for applications for financial assistance for all proposed actions not specifically defined as a CE or otherwise specifically categorized by the Administrator on a case-by-case basis.

(c) *Electric Program.* Applications for financial assistance for certain proposed actions normally require the preparation of an EA. Proposed actions falling within this classification are:

(1) Construction of combustion turbine or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated

facilities and related electric power lines shall be covered in the EA;

(2) Construction of combustion turbine or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facilities of 10 MW (nameplate rating) or less. All new associated facilities and related electric power lines shall be covered in the EA;

(4) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station where the existing fuel combustion technology of the affected unit(s) is substituted for another (e.g. coal or oil-fired boiler is converted to a fluidized bed boiler or replaced with a combustion turbine unit);

(5) Installation of new generating units at an existing hydroelectric facility or dam, or the replacement of existing generating units at a hydroelectric facility or dam which will result in a change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the EA;

(6) A new drilling operation or the expansion of a mining or drilling operation;

(7) Construction of cooperative headquarters, maintenance, and equipment storage facilities involving more than 10 acres (4 hectares) of physical disturbance or fenced property;

(8) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more involving more than three miles (4.8 kilometers) but not more than 25 miles (40 kilometers) of line;

(9) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more but less than 230 kV where more than 25 miles (40 kilometers) of power line are involved;

(10) The construction of substations or switching stations requiring greater than five acres (2 hectares) of new physical disturbance at a single site; and

(11) Construction of facilities designed for the transfer and storage of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations that will be located beyond the existing facility site boundaries.

**§ 1794.24 Proposals normally requiring an EA with scoping.**

(a) *General.* Applications for financial assistance for certain proposed actions require the use of a scoping procedure in the development of the EA. These types of actions are subject to the requirements of §§ 1794.50 through 1794.54. RUS has the discretion to modify or waive the requirements listed in § 1794.52 for a proposed action in this category.

(b) *Electric Program.* Proposed actions falling within this classification are:

(1) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more where more than 25 miles (40 kilometers) of power line are involved;

(2) Construction of combustion turbines and diesel generators of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 10 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

(c) *Telecommunications and Water and Waste Programs.* There are no actions normally falling within this classification.

**§ 1794.25 Proposals normally requiring an EIS.**

Applications for financial assistance for certain proposed actions that may significantly affect the quality of the human environment shall require the preparation of an EIS.

(a) *Electric Program.* An EIS will normally be required in connection with proposed actions involving the following types of facilities:

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and related electric power lines shall be covered in the EIS; and

(2) A new mining operation when the applicants have effective control (e.g., dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals listed above are subject to the requirements of §§ 1794.60, 1794.61, 1794.63, and 1794.64. Preparation of a supplemental draft or final EIS in accordance with 40 CFR 1502.9 shall be subject to the requirements of §§ 1794.62 and 1794.64.

(c) *Telecommunications and Water and Waste Programs.* No groups or sets of proposed actions normally require the preparation of an EIS. The

environmental review process, as described in this part, shall be used to identify those proposed actions for which the preparation of an EIS is necessary. If an EIS is required, RUS shall proceed directly to its preparation. Prior completion of an EA is not mandatory.

**§§ 1794.26–1794.29 [Reserved]**

**Subpart D—Procedure for Categorical Exclusions**

**§ 1794.30 General.**

The procedures of this subpart which apply to proposed actions classified as CEs in §§ 1794.21 and 1794.22 provide RUS with information necessary to determine if the proposed action meets the criteria for a CE. Where, because of extraordinary circumstances, a normally categorically excluded action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

**§ 1794.31 Classification.**

(a) *Electric and Telecommunications Programs.* RUS will normally determine the proper environmental classification of projects based on its evaluation of the project description set forth in the construction work plan or loan design which the applicant is required to submit with its application for financial assistance. Each project must be sufficiently described to ensure its proper classification. RUS may require the applicant to provide additional information on a project where appropriate.

(b) *Water and Waste Program.* RUS will normally determine the proper environmental classification for projects based on its evaluation of the preliminary planning and design information.

**§ 1794.32 Environmental report.**

(a) For proposed actions listed in § 1794.21(b) and (c), the applicant is normally not required to submit an ER.

(b) For proposed actions listed in § 1794.22(a) and (b), the applicant shall normally submit an ER. Guidance in preparing the ER for Electric and Telecommunication proposals is contained in RUS Bulletin 1794A–600. Guidance in preparing the ER for Water and Waste proposals is contained in RUS Bulletin 1794A–602. The applicant may be required to publish public notices and provide evidence of such if the proposed action is located in, impacts, or converts important land resources.

**§ 1794.33 Agency action.**

RUS may act on an application for financial assistance upon determining, based on the review of documents as set forth in § 1794.32 and such additional information as RUS deems necessary, that the project is categorically excluded.

**§§ 1794.34–1794.39 [Reserved]**

**Subpart E—Procedure for Environmental Assessments**

**§ 1794.40 General.**

This subpart applies to proposed actions described in § 1794.23. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant effect on the quality of the human environment, the preparation of an EIS shall be required and the procedures in subpart G of this part shall be followed.

**§ 1794.41 Document requirements.**

Applicants will provide an ER in accordance with the appropriate guidance documents referenced in § 1794.7. After RUS has evaluated the ER and has determined the ER adequately addresses all applicable environmental issues, the ER will normally serve as RUS' EA. However, RUS reserves the right to prepare its own EA from the information provided in the ER. RUS will take responsibility for the scope and content of an EA.

**§ 1794.42 Notice of availability.**

Prior to RUS making a finding in accordance with § 1794.43 and upon RUS authorization and guidance, the applicant shall have a notice published which announces the availability of the EA and solicits public comments on the EA.

**§ 1794.43 Agency finding.**

(a) *General.* If RUS finds, based on an EA that the proposed action will not have a significant effect on the quality of the human environment, RUS will prepare a FONSI. Upon authorization of RUS, the applicant shall have a notice published which informs the public of the RUS finding and the availability of the EA and FONSI. The notice shall be prepared and published in accordance with RUS guidance.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

**§ 1794.44 Timing of agency action.**

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the RUS and applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

**§§ 1794.45–1794.49 [Reserved]**

**Subpart F—Procedure for Environmental Assessments With Scoping**

**§ 1794.50 Normal sequence.**

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at which the Environmental Analysis (EVAL) is submitted (see § 1794.54). After the EVAL has been submitted, RUS will make a judgment to utilize the EVAL as its EA and issue a FONSI or prepare an EIS.

**§ 1794.51 Preparation for scoping.**

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

(b) As part of the early planning, the applicant should consult with appropriate Federal, state, and local agencies to inform them of the proposed action, identify permits and approvals which must be obtained, and administrative procedures which must be followed.

(c) Before formal scoping is initiated, RUS will require the applicant to submit an Alternative Evaluation Study and either a Siting Study (generation) or a Macro-Corridor Study (transmission lines).

(d) The applicant is encouraged to hold public information meetings in the general location of the proposed action and any reasonable alternatives when such applicant meetings will make the scoping process more meaningful. A written summary of the comments made



at such meetings must be submitted to RUS as soon as practicable after the meetings.

**§ 1794.52 Scoping meetings.**

(a) Both RUS and the applicant shall have a notice published which announces a public scoping meeting is to be conducted, either in conjunction with the notice of intent or as a separate notice.

(b) The RUS notice shall be published in the **Federal Register** at least 14 days prior to the meeting(s). The applicant's notice shall be published in a newspaper at least 10 days prior to the meeting(s). Other forms of media may also be used by the applicant to notice the meetings.

(c) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least 10 days in advance of the meeting.

(d) The scoping meeting(s) will be held in the area of the proposed action at such place(s) as RUS determines will best afford an opportunity for public involvement. Any person or representative of an organization, or government body desiring to make a statement at the meeting may make such statement in writing or orally. The format of the meeting may be one of two styles. It can either be of the traditional style which features formal presentations followed by a comment period, or the open house style in which attendees are able to individually obtain information on topics or issues of interest within an established time period. A transcript will be made of the scoping meeting.

(e) As soon as practicable after the scoping meeting(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. RUS shall send a copy of this proposed scope to cooperating agencies and the applicant, and allow recipients 30 days to comment on the scope's adequacy and emphasis. After expiration of the 30-day period, RUS shall provide written guidance to the applicant concerning the scope of environmental study to be performed and information to be gathered.

**§ 1794.53 Environmental analysis.**

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an EVAL. The EVAL shall be prepared under the supervision and guidance of

RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The EVAL will normally serve as the RUS EA. The EVAL can also serve as the basis for an EIS, and under such circumstances will be made an appendix to the EIS. After RUS has reviewed and found the EVAL to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EVAL to satisfy the RUS distribution plan.

(c) The EVAL shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information, and shall be incorporated by summary or reference into the FONSI or ROD.

**§ 1794.54 Agency determination.**

Following the scoping process and the development of a satisfactory EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44.

**§ 1794.55–1794.59 [Reserved]**

**Subpart G—Procedure for Environmental Impact Statements**

**§ 1794.60 Normal sequence.**

For proposed actions requiring an EIS (see § 1794.25), the NEPA process shall proceed in the same manner as for proposed actions requiring an EA with scoping through the point at which the scoping process is completed (see § 1794.52).

**§ 1794.61 Environmental impact statement.**

(a) *General.* An EIS shall be prepared in accordance with 40 CFR part 1502. Funding, in whole or in part, for an EIS can be obtained from any lawful source (e.g., cooperative agreements developed in accordance with Section 759A, Federal Agricultural Improvement and Reform Act of 1996, Pub. L. 104–127 and 31 U.S.C. 6301). A third-party consultant selected by RUS and funded by the applicant (7 CFR part 1789) may prepare the EIS.

(1) After a draft or final EIS has been prepared, RUS and the applicant shall concurrently have a notice of availability for the document published. The time period allowed for review will

be a minimum of 45 days for a draft EIS and 30 days for a final EIS. This period is measured from the date that the U.S. Environmental Protection Agency (EPA) publishes a notice in the **Federal Register** in accordance with 40 CFR 1506.10.

(2) In addition to circulation required by 40 CFR 1502.19, the draft and final EIS (or summaries thereof, at RUS discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(3) Where a final EIS does not require substantial changes from the draft EIS, RUS may document required changes through errata sheets, insertion pages, and revised sections to be incorporated into the draft EIS. In such cases, RUS shall circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. RUS will not circulate the draft EIS again, although RUS will provide the draft EIS if requested within 30 days of publication of notice of availability of the final EIS.

(b) *Electric Program.* Where the applicant or its consultant has prepared an EVAL, RUS will develop its draft and final EIS from the EVAL. An EVAL will not be required if a third-party consultant prepares the draft and final EIS.

**§ 1794.62 Supplemental EIS.**

(a) A supplement to a draft or final EIS shall be prepared, circulated, and given notice by RUS and the applicant in the same manner (exclusive of scoping) as a draft and final EIS (see § 1794.61).

(b) Normally RUS and the applicant will have published notices of intent to prepare a supplement to a final EIS in those cases where a ROD has already been issued.

(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the applicant shall concurrently have a notice of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. RUS shall take no final action on any proposed modification discussed in the information supplement until 30 days after the RUS notice of availability or the applicant's notice is published, whichever occurs later.

**§ 1794.63 Record of decision.**

(a) Upon completion of the review period for a final EIS, RUS will have its ROD prepared in accordance with 40 CFR 1505.2.

(b) Separate RUS and applicant notices of availability shall be published concurrently. The notices shall summarize the RUS decision and announce the availability of the ROD. Copies of the ROD will be made available upon request from the point of contact identified in the notice.

**§ 1794.64 Timing of agency action.**

(a) RUS may take its final action or execute commitments on proposed actions requiring an EIS or Supplemental EIS at any time after the ROD has been published.

(b) For budgetary purposes some financial assistance may be approved conditionally with a stipulation that no funds shall be advanced until a ROD has been prepared.

**§§ 1794.65–1794.69 [Reserved]**

**Subpart H—Adoption of Environmental Documents**

**§ 1794.70 General.**

This subpart covers the adoption of environmental documents prepared by other Federal agencies. Where applicants participate in proposed

actions for which an EA or EIS has been prepared by or for another Federal agency, RUS may adopt the existing EA or EIS in accordance with 40 CFR 1506.3.

**§ 1794.71 Adoption of an EA.**

RUS may adopt a Federal EA or EIS or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

**§ 1794.72 Adoption of an EIS.**

(a) Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for RUS proposed action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation and notice provisions for a draft and final EIS (see § 1794.61) apply.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate, RUS shall adopt that agency's EIS as its final EIS. RUS and the applicant shall have separate notices published advising of RUS adoption of the EIS and independent determination of its adequacy.

(c) If the adopted EIS is generally available and meets RUS standards, RUS shall have a public notice published informing the public of its action and availability of the EIS to

interested parties upon request. If the adopted EIS is not generally available, RUS shall have a public notice published informing the public of its action and will circulate copies of the EIS in accordance with 40 CFR 1502.19 and 40 CFR 1506.3.

**§ 1794.73 Timing of agency action.**

Where RUS has adopted another agency's environmental documents, the timing of the action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

**§ 1794.74 Incorporation of environmental materials.**

RUS may incorporate into its environmental documents, environmental documents or portions thereof prepared by state, or local agencies or other parties for purposes other than compliance with the requirements of NEPA. RUS will circulate the incorporated documents as a part of its EA or draft and final EIS in the same manner as if prepared by RUS.

**§ 1794.75–1794.79 [Reserved]**

Dated: December 7, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 98-32882 Filed 12-10-98; 8:45 am]

BILLING CODE 3410-15-P