

Rules and Regulations

Federal Register

Vol. 68, No. 148

Friday, August 1, 2003

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572-AB73

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on a greater use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT:

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: lwolfe@rus.usda.gov.

This rule and the guidance bulletin described in this rule are available on the Internet via the RUS home page at <http://www.usda.gov/rus/>.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive

Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which requires consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule, if adopted, would not have significant impact on a substantial number of small entities. The rule serves to clarify the existing regulation and to change the existing classification of selected minor actions to generally streamline the environmental review process for such actions. Most of the changes in the rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0117 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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 of the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

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.

Program Affected

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

Background

On December 11, 1998, the Rural Utilities Service (RUS) published 7 CFR part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (63 FR 68648) covering the actions of the electric, telecommunications, and water and waste programs. Based on a greater emphasis within the electric industry on the use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS determined that several changes were necessary for its environmental review process to operate in a more effective and efficient manner.

This rule contains a variety of changes from the provisions of the current rule. Most of these revisions are minor or merely intended to clarify existing RUS policy and procedure and to ensure that procedures are consistent among the three RUS programs. Other revisions expand upon the existing types of actions that are subject to environmental review or reclassify actions within

categories. The more significant changes are discussed below.

Within subpart A, the term "distributed generation" has been added to the list of definitions and the term "Environmental Analysis (EVAL)" has been deleted from the list of definitions in § 1794.6. A bulletin was issued in early 2002 that provides guidance in preparing for and carrying out scoping for electric generation and transmission projects that require either an environmental assessment with scoping or an environmental impact statement. Further information on the RUS guidance bulletins is provided in § 1794.7.

Within subpart B, language clarifying RUS policy regarding the completion of RUS environmental review process for certain categories of actions has been added to § 1794.15(a).

Within subpart C, a number of additional listings to the existing classification and changes to selected listings within the existing classification have been made. These reclassifications involve minor actions proposed by applicants, which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the changes and existing procedures will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within § 1794.21(b), RUS added separate categories for generating facilities of less than 100 kilowatts and the co-firing of bio-fuels and refuse derived fuels at existing fossil-fueled generating stations. Within § 1794.22(a), RUS modified the capacity thresholds for distributed generation facilities at existing sites. A new category involving adding combined cycle facilities at existing combustion turbine sites was added to § 1794.22(a).

In addition to including fuel cell and combined cycle generation in the same listings as combustion turbines, RUS added two new categories of proposals within § 1794.23. One new category covers the construction of a natural gas pipeline to serve an existing gas-fueled generating facility. The other new category involves a higher capacity threshold for adding combined cycle facilities at existing combustion turbine sites. Other capacity threshold changes within § 1794.23 reflect changes that were made in § 1794.22(a). Within §§ 1794.24 and 1794.25 the only change adds fuel cell and combined cycle generation in the same listing as combustion turbines.

RUS has modified its procedures in subpart E of this part. In §§ 1794.43 and 1794.44, RUS eliminated the requirement to publish in the **Federal Register**, a notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) availability for electric and telecommunications proposed actions described in § 1794.23. RUS has determined that no appreciable benefit has resulted from publishing a separate **Federal Register** notice for proposals in that category. By this change, the notice requirements for all three RUS programs would be consistent for all EA proposals described in § 1794.23. Electric proposals described in § 1794.24 would still be subject to this requirement.

In subpart G of this part, RUS has modified its policy regarding the use of a contractor prepared Environmental Impact Statement (EIS). Under the existing regulation, the EIS would either be developed by RUS from an applicant prepared Environmental Analysis (EVAL) or prepared with the assistance of a consultant selected by RUS. Based on its experience in recent years, RUS expects to utilize the services of a consultant selected by and working for RUS for all actions requiring the preparation of an EIS. RUS does not contemplate preparing a draft or final EIS relying on an applicant prepared EVAL, as currently stated in § 1794.61(b). Therefore, RUS has deleted § 1794.61(b). Also, the applicant submitted document for all proposals will be titled an Environmental Report (ER). Previously, the applicant supplied document for a § 1794.24 proposal was an EVAL. These changes affect §§ 1794.50, 1794.52 through 1794.54, and 1794.61.

Preparation of the Rulemaking

The proposed rule amending 7 CFR part 1794 was published in the **Federal Register** on January 15, 2003 (68 FR 1988). Public comment was invited for a 30-day period ending on February 14, 2003. The only public comments received were from a rural electric cooperative. Those comments supported the changes being proposed. Comments received from the President's Council on Environmental Quality (CEQ) have resulted in changes to two listings. Item § 1794.22(a) (13) "Construction of a natural gas pipeline (ten miles or less in length) to serve an existing gas-fueled generating station," has been deleted. Listing § 1794.23(c) (13) has been modified by deleting the (more than 10 miles in length) threshold. As recommended by CEQ, § 1794.54 was expanded to better clarify the RUS policy of publishing notices in the

Federal Register for proposals listed in § 1794.24.

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 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 1794 continues to read as follows:

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

■ 2. Section 1794.6 is amended by:

■ A. Removing the definition for "Environmental Analysis (EVAL)";

■ B. Adding the definition for "Distributed Generation", and

■ C. Amending the definition for "Environmental Report (ER) by revising the first sentence.

These amendments read as follows:

§ 1794.6 Definitions.

* * * * *

Distributed Generation. The generation of electricity by a sufficiently small electric generating system as to allow interconnection of the system near the point of service at distribution voltages or customer voltages. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources.

* * * * *

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 through 1794.24. * * *

* * * * *

■ 3. Section 1794.7(a) is revised to read as follows:

§ 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)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) and (c)); and RUS Bulletin 1794A–603 provides guidance in conducting scoping for proposed actions classified as requiring an EA with scoping or an EIS. Copies of these bulletins are available upon request by

contacting the Rural Utilities Service, Publications Office, Program Development and Regulatory Analysis, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250-1522.

* * * * *

- 4. Section 1794.15 is amended by:
 - A. Adding a new sentence to the end of paragraph (a), and
 - B. Adding new paragraphs (a)(1), (a)(2), and (a)(3).

These amendments read as follows:

§ 1794.15 Limitations on actions during the NEPA process.

(a) * * * The RUS environmental review process is concluded when:

(1) A categorical exclusion determination has been made for proposals listed under §§ 1794.21 and 1794.22.

(2) Applicant notices announcing the RUS FONSI determination have been published for proposals listed under §§ 1794.23 and 1794.24.

(3) Applicant notices announcing the RUS Record of Decision have been published for proposals listed under § 1794.25.

* * * * *

- 5. Section 1794.21 is amended by adding new paragraphs (b)(25) and (26) to read as follows:

§ 1794.21 Categorically excluded proposals without an ER.

* * * * *

(b) * * *

(25) Electric generating facilities of less than 100 kilowatts at any one site for the purpose of providing service to customers or facilities such as stock tanks and irrigation pumps.

(26) New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels. A description of the facilities to be constructed shall be provided to RUS.

* * * * *

- 6. Section 1794.22 is amended by revising paragraphs (a)(8) and (9) and by adding new paragraph (a)(12) to read as follows:

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) * * *

(8) Construction of distributed generation totaling 10 MW or less at an existing utility, industrial, commercial or educational facility site. There is no capacity limit for a generating facility located at or adjacent to an existing landfill site that is powered by refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Installation of new generating units 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;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of 200 MW or less on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the ER.

* * * * *

- 7. Section 1794.23 is amended by:
 - A. Revising paragraph (c)(1), (c)(2), and (c)(3), and
 - B. Adding new paragraphs (c)(12) and (c)(13).

The revision and additions read as follows:

§ 1794.23 Proposals normally requiring an EA.

* * * * *

(c) * * *

(1) Construction of fuel cell, combustion turbine, combined cycle, 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 fuel cell, combustion turbine, combined cycle, 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 facility of 20 MW (nameplate rating) or less, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of more than 200 MW on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the EA.

(13) Construction of a natural gas pipeline to serve an existing gas-fueled generating facility.

- 8. Section 1794.24(b)(2) is revised to read as follows:

§ 1794.24 Proposals normally requiring an EA with scoping.

* * * * *

(b) * * *

(2) Construction of fuel cell, combustion turbine, combined cycle, and diesel generating facilities 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 20 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.

* * * * *

- 9. Section 1794.25(a)(1) is revised to read as follows:

§ 1794.25 Proposals normally requiring an EIS.

* * * * *

(a) * * *

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

* * * * *

§ 1794.43 [Amended]

- 10. Amend § 1794.43 by:
 - A. Removing paragraph (b), and
 - B. Amending paragraph (a) by removing the paragraph designation and the heading "General".
- 11. Section 1794.44 is revised to read as follows:

§ 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 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.

- 12. Section 1794.50 is revised to read as follows:

§ 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 where project scoping has been completed. Following project scoping, RUS will make a judgment to have an EA prepared or contract for the preparation of an EIS.

■ 13. Section 1794.51(a) is revised to read as follows:

§ 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 and schedule scoping meetings (§ 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.

* * * * *

■ 14. Section 1794.52(d) is amended by removing the last sentence and adding two new sentences at the end of the paragraph to read as follows:

§ 1794.52 Scoping meetings.

* * * * *

(d) * * * The applicant or its consultant shall prepare a record of the scoping meeting. The record shall consist of a transcript when a traditional meeting format is used or a summary report when an open house format is used.

* * * * *

■ 15. Section 1794.53 is revised to read as follows:

§ 1794.53 Environmental report.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an ER. The ER 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 applicant's ER will normally serve as the RUS EA. After RUS has reviewed and found the ER to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the ER to satisfy the RUS distribution plan.

(c) The ER 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.

■ 16. Section 1794.54 is revised to read as follows:

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory ER by the applicant or its consultant that will serve as the agency's 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. For proposals subject to the procedures of subpart F, RUS shall publish notices in the Federal Register that announce the availability of the EA and solicit public comments on the EA (refer to § 1794.42) and the RUS finding and the availability of the EA and FONSI (refer to § 1794.43).

§ 1794.61 [Amended]

■ 17. Section 1794.61 is amended by: ■ A. Removing paragraph (b). ■ B. Removing the heading General from paragraph (a); redesignating paragraph (a) as the introductory text; paragraph (a)(1) as (a); paragraph (a)(2) as (b); and paragraph (a)(3) as (c).

Dated: July 11, 2003. Hilda Gay Legg, Administrator, Rural Utilities Service. [FR Doc. 03-19619 Filed 7-31-03; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No.: 030220035-3035-01]

RIN 0648-AQ55

Policies and Procedures Concerning Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations setting forth policies and procedures regarding space-based data collection systems (DCS) to allow expanded use of the NOAA DCS for government interests and to permit greater flexibility in utilizing these vital U.S. data collection assets in support of homeland security, National security,

law enforcement, and humanitarian operations.

DATES: Effective September 2, 2003.

ADDRESSES: Copies of supporting documents may be obtained from Kay Metcalf, NOAA, NESDIS, Direct Services Division, E/SP3, Room 3320, FB-4, 5200 Auth Road, Suitland, Maryland 20746-4304.

FOR FURTHER INFORMATION CONTACT: Kay Metcalf at (301) 457-5681, e-mail: Kay.Metcalf@noaa.gov; or Glenn Tallia at 301-713-1337, e-mail: Glenn.E.Tallia@noaa.gov.

SUPPLEMENTARY INFORMATION: NOAA enacted 15 CFR part 911, effective June 5, 1998, to revise its policies and procedures for authorizing the use of the space-based DCS that operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and on its Polar-orbiting Operational Environmental Satellites (POES). For general background on NOAA DCS, refer to the notice of final rulemaking published in the Federal Register on May 6, 1998, at 63 FR 24917.

The background and rationale for the revisions to the DCS regulations were provided in the preamble to the proposed rule published in the Federal Register on April 8, 2003, at 68 FR 16993, and are not repeated here.

NOAA received no comments on the proposed rule and, therefore, is adopting the proposed rule as a final rule without change.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0157. Public reporting burden for these requirements is estimated to average 3 hours per GOES agreement and 1 hour per Argos agreement, including the time for reviewing instructions, searching