

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572-AB33

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed 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) 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 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 smooth, efficient, and effective manner.

DATES: Public comments must be received by RUS or bear a postmark or equivalent, no later than January 23, 1998.

ADDRESSES: Written comments should be sent to Gary J. Morgan, Director, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, Room 2242, 1400 Independence Ave., SW., Washington, DC 20250-1571. This proposed rule and the guidance bulletins in this rule will be available on the Internet via the RUS home page at www.usda.gov/rus/.

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).

SUPPLEMENTARY INFORMATION:

Classification

This proposed 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 proposed 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.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this proposed 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by January 23, 1998.

Comments are invited in: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For further information contact Lawrence R. Wolfe, Senior Environmental Protection Specialist; Engineering and Environment Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW, Washington, DC 20250-1571. Telephone: (202) 720-1784. E-mail: (lwolfe@rus.usda.gov).

Title: 7 CFR Part 1794, Environmental Policies and Procedures.

OMB Number: 0572-NEW.

Type of Request: New collection.

Abstract: The information collection contained in this rule are requirements prescribed by 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 1500-1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders.

The major events which influenced the promulgation of the proposed revisions to this rule were the 1994 reorganization of the U.S. Department of Agriculture, which transferred the water and waste program from the former Farmers Home Administration to RUS, reforms within the electric and telecommunications programs, and fundamental changes in RUS' implementation of the CEQ regulations.

The proposed rule will combine all three programs (electric, telecommunications, and water and waste) under a single environmental regulation and will eliminate unnecessary and burdensome requirements previously imposed on applicants seeking financial assistance under the three programs. The streamlining of the regulation will allow RUS headquarters and field staff to more expeditiously evaluate the environmental implications of implementing RUS programs and thus speed up the delivery of these programs to qualified applicants.

RUS applicants would provide environmental documentation, as prescribed by the rule, to assure that policy contained in NEPA is followed.

The burden will vary depending on the type, size, and location of each project, which would then prescribe the type of information collection involved. The collection of information is only that information which is essential for RUS to provide environmental safeguards and to comply with NEPA as implemented by the CEQ regulations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 229 hours per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondents: 3.

Estimated Total Annual Burden on Respondents: 415,000 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720-0812.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Room 4034, Washington, DC 20250-1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

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.

National Environmental Policy Act Certification

RUS has determined that this proposed 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 proposed rule is 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 program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments of the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandate 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 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 smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to process proposals from RUS' electric and telecommunications programs in addition to the agency's internal administrative actions. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), under which RUS became the successor to the Rural Electrification Administration, transferred the water and waste program from the former Farmers Home Administration (FmHA) to RUS. Most changes proposed to 7 CFR part 1794 are the result of the addition of the water and waste program to RUS. The environmental review requirements of the water and waste program were previously contained in 7 CFR part 1940, subpart G. While the environmental review of electric and

telecommunications proposals is entirely managed from the national office, the environmental review of all but major or highly controversial water and waste proposals is managed by USDA Rural Development staff in state, county, or district offices. To avoid confusion, some sections and subsections are further subdivided to differentiate among the responsibilities of the three program areas. Examples of differences in program responsibilities and requirements can be found in § 1794.5, Responsible Officials and § 1794.13, Public Involvement.

Due to the requirements of the existing regulation, RUS has sometimes gone through a lengthy environmental review with no commensurate benefit to the quality of the human environment. Consequently, significant time and resources have been expended by RUS and its applicants when early indications strongly suggest that an easier and more expeditious procedure would be more prudent. Experience has shown that several types of minor RUS applicant proposals involve negligible environmental impact. In a number of instances, such projects have been delayed as a result of outdated procedures without any benefit to the quality of the human environment.

To foster clarity, readability, and brevity, this proposed rule includes changes to the format of the current rule. A list of definitions has been added to subpart A. Existing subparts B and C have been combined. The order in which proposals are classified in subpart C has been arranged from minor to major actions. The arrangement of subparts D through G mirrors the order of classification in subpart C. Information originally included in subpart J on Supplemental Environmental Impact Statements (EIS) has been incorporated into proposed subpart G.

Appendix A, which displays a flow chart of RUS' EIS process would be deleted. RUS believes that displaying a flow chart of its EIS process as part of this regulation had limited value and there is no benefit to include it in the proposed revision.

For further guidance in the preparation of public notices and environmental documents, RUS is preparing a series of guidance bulletins. Three program specific bulletins that will be issued concurrently with the final rule provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). A fourth bulletin provides applicants with guidance in

the preparation of public notices and public involvement activities. Further information on these bulletins is provided in § 1794.8.

This proposed rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor or merely intended to clarify existing RUS policy and procedure, such as § 1794.4 (Trivial Violations) which was deleted and § 1794.7 which defines some of the terminology specific to the agency. Other revisions reflect fundamental changes in RUS' implementation of the CEQ regulations and are 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, 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.

Reflecting these changes and reforms, RUS proposes to revise that section of the regulations identifying actions requiring environmental review. Environmental reviews will be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. 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 ministerial and are not federal actions subject to environmental reviews.

The existing regulation states that all RUS prepared environmental documents will use metric units with non-metric equivalents in parentheses and that environmental documents prepared by or for the applicant should follow the same format. RUS proposes to reverse that format. All RUS prepared

environmental documents will use 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. RUS environmental guide bulletins will recommend that applicants follow the same format.

Within subpart C, a classification system defines the level of environmental review required for agency and applicant proposed actions. Sections 1794.21 through 1794.25 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. The purpose of these additional subsections is to aid program applicants in determining the category in which their proposed action is classified.

A number of classification changes are being proposed within subpart C. These proposed 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 proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within §§ 1794.21(a) and 1794.22(a), RUS proposes to modify the thresholds for acreage (facility sites), and capacity (generation facilities). Three categories of proposals that previously required RUS approval of applicant actions would be deleted, five categories of proposals would be downgraded to no longer require an Environmental Report (ER), and six new categories of proposals would be added to § 1794.21(a). One proposal that previously required an Environmental Assessment (EA) and two new categories of proposals would be added to § 1794.22(a).

In addition to modifying the thresholds for acreage and capacity, RUS proposes to impose different thresholds for construction of electric generating capacity at new sites versus existing sites and to add three new categories of proposals within § 1794.23. Proposed acreage and capacity threshold changes within § 1794.24, and a proposed capacity threshold change within § 1794.25 reflect changes that would be made in §§ 1794.21(a), 1794.22(a), and 1794.23. No change is proposed for the existing thresholds for transmission line length, however, the

existing thresholds for multiple substations associated with transmission lines would be eliminated. Capacity thresholds would also be eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS proposed instead to, in most cases, adopt the NEPA document prepared by the Federal Energy Regulatory Commission, the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste Program as defined in 7 CFR part 1940, subpart G, were reclassified in §§ 1794.21(b) and 1794.22(b). In 7 CFR part 1940, subpart G, EAs are classified into two categories, Class I and II; each category establishing a level of documentation commensurate with the extent of potential environmental impacts. Class I EAs were classified as routine minor actions which typically do not justify more extensive documentation as are necessary for Class II EAs. The Class I EA includes a checklist to document environmental impacts similar to that of a categorical exclusion.

Based on historical experience and a survey of the thresholds established by other agencies who administer similar types of water and waste programs, RUS is proposing to eliminate the two tiered classification for EAs and adopt the more traditional classification scheme as outlined in the CEQ regulations. 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.

All current thresholds in 7 CFR part 1940, subpart G were re-evaluated and would be reclassified based on the following parameters. The primary parameter determining thresholds between categorically excluded actions and those actions which require the preparation of EAs would be the volume of water or wastewater, as defined in terms of equivalent residential dwelling units. The proposed regulation would require applicants to design categorically excluded proposals to meet current needs with a modest growth potential and to serve predominantly residential uses either within the existing service area of a system or confined to within a one-mile extension beyond current community boundaries. The proposed regulation would require that proposed actions not meeting the above conditions warrant a more detailed analysis as outlined for EAs.

In addition, specialized criteria would be established for not classifying a proposed action as a categorical exclusion. These criteria are consistent conceptually with the U. S. Environmental Protection Agency's environmental review requirements in 40 CFR 6.505 for Title II of the Clean Water Act, Grants for Construction of Treatment Works.

Reviewers that disagree with RUS' proposed classifications and or thresholds are encouraged to cite specific experiences that support their position on this proposed action.

RUS proposes to modify its procedures in subparts D through G of this part. In § 1794.32, public notice requirements are established for proposed actions that impact important land resources (floodplains, wetlands, and important farmland). Notice of availability requirements in § 1794.42 would be modified for all three program areas. As proposed, the EA would be the subject document of the notice, where previously, the applicant's ER was the subject document. By this change the notice requirements for all three programs would 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 would also change its notice requirements for electric program projects requiring scoping. The timing of RUS' **Federal Register** notice for public scoping meetings in § 1794.52 would be reduced from 30 days to 14 days prior to the meeting. RUS has determined that no appreciable benefit has 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 Impact Assessment (EIA) where a proposed action requires scoping. RUS proposes to change this requirement by allowing the EIA to serve as its EA provided RUS completes an independent evaluation which certifies the accuracy of the document (see § 1794.53) and thus be consistent with 40 CFR § 1506.5(a).

RUS would modify its policy regarding the use of contractor prepared EIS's. 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 would be established in § 1794.63. Information on Supplemental EIS's would be included in subpart G of this part.

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

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended by revising part 1794 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 [Reserved].
- 1794.5 Metric units
- 1794.6 Responsible officials.
- 1794.7 Definitions.
- 1794.8 Guidance.
- 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 impact analysis.
- 1794.54 Agency determination.
- 1794.55—1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statement

- 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—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 1500–1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (E.O.) 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 statutes, regulations, and E.O.s. Bulletins identified in § 1794.8 contain a list of certain statutes, regulations, and E.O.s that may be applicable to proposed actions for which RUS financial assistance is provided. Environmental documents submitted by the applicant shall be prepared under the supervision and guidance of RUS and 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.

§ 1794.4 [Reserved]

§ 1794.5 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.

§ 1794.6 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and E.O.s 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.

§ 1794.7 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. The repairs made to return the damaged facilities of an applicant's system back to service because of a natural disaster or system failure that may involve an immediate or imminent threat to public health or safety.

Environmental Impact Analysis (EIA). 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 document and 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 the Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

Loan Design. Document required by 7 CFR part 1737.

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 listed 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)).

§ 1794.8 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 RUS Bulletin 1794A-602 provides guidance in the preparation of public notices. Copies of

these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PSRA, Stop 1522; 1400 Independence Avenue, SW; Washington, D.C. 20250-1522.

(b) *Water and Waste Program.* RUS Bulletin 1780-26 provides guidance in preparing the PER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(c)). 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 1780-26.

§ 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, under RUS' direct guidance and supervision, prepare the applicable documentation concurrent with a proposed action's engineering, planning, and design activities. Documentation shall not be considered complete until all public review periods, as applicable, have expired and RUS' concurrence, as defined by the appropriate decision document and associated public notice, has been issued. This section does not in any way relieve RUS or the applicant of the responsibilities for the scope, objectivity, and content of the entire environmental document or compliance with any policy, regulation, EO, or statute.

§ 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 an 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) *General.* 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. Specific guidance is found in RUS bulletins. See § 1794.8.

(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 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 consult with RUS prior to the issuance of notices.

(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 all environmental documents, comments received, errata sheets and amendments thereto, public notices, interagency correspondence, and any applicable reference material. These materials shall be placed in locations convenient for the public as determined by RUS and the applicants.

(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 RUS' opinion, 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 will be coordinated to the extent practicable with other meetings which may be required by RUS. Applicants shall, as necessary, participate in all 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) *Electric and Telecommunication Programs.* RUS shall have public notices published in the **Federal Register** and the applicant shall concurrently have a similar notice published in a newspaper(s) as described in this section. Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document.

(c) *Water and Waste Programs.* 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. Only where the proposed actions requires an EIS shall RUS, in addition to applicant published notices, publish notice in the **Federal Register**.

§ 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 indicate that RUS is a cooperating agency in all NEPA related notices published for the proposed action;

(b) The scope and content 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) 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. See 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 it is practicable, and there will be a reduction of delay and paperwork, or where better decision making will be fostered. This policy is in compliance with the requirements of 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 proposal prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposal and all applicants cumulatively own:

(a) Five percent or less of a project, the proposed action will not be considered a Federal action subject to this part;

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

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal. 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 applicant participation;

(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 action 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; and

(3) Personnel and administrative actions.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed below, normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently describe all proposed actions so their proper classification can be determined. Detailed description shall be provided for those proposed actions so noted. 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 the 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 where there is no substantial increase in use. 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;

(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. A description of the facilities to be constructed shall be provided to RUS;

(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 § 1794.17 (e.g., long lead time items such as turbines, boilers, or substation transformers);

(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 previously disturbed industrial or commercial, 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) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged and which presently are in compliance with environmental laws and regulations. A description of the facilities to be purchased along with a certification from the utility owner that the facilities

are in compliance with applicable environmental laws and regulations 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, 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 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 an industrial 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 that does not include the substitution of one fuel combustion technology with another.

(c) *Water and Waste Program.* Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. These types of actions are subject to the classification requirements of § 1794.31. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, contract award, 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 service activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, and 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 herein normally require the submission of an ER and are subject to the requirements of § 1794.32. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in § 1794.21(b). 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 right-of-way (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 site. 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 will 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 a battery energy storage system at an existing generating station or substation site;

(11) Proposals designed or associated with facilities that will reduce the amount of pollutants released into the environment which will not have significant environmental impacts outside of the existing facility site; and

(12) Construction of new water supply wells and associated pipelines not located within the boundaries of an existing well field or generating station site.

(b) *Water and Waste Program.* For certain proposed actions, applications for financial assistance normally require the submittal 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 populations less than 500 EDU in size with modest growth potential. 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 and must be located within the existing service area of the facility;

(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) Actions described in § 1794.21(c)(4) which alter the purpose, operation, location, or design of the proposed action as originally approved;

(6) 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; 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 above.

(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) The facilities to be provided will either create a new or relocate an existing discharge to surface or ground waters;

(2) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(3) The facilities would provide capacity to serve a population greater 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) Purchase of existing facilities or a portion thereof which are presently in violation of Federal, State, or local environmental laws or regulations;

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

(9) 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;

(10) 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;

(11) The construction of substations or switching stations requiring greater than five acres (2 hectares) but not more than 10 acres (4 hectares) of new physical disturbance at a single site; and

(12) 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) *Electric Program.* 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 §§ 1794.50–1794.54. 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) The construction of substations and switching stations require new physical disturbance or fencing of more than 10 acres (4 hectares) at any one site; and

(3) 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.

(b) *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 CE's 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 proposed 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 develop detailed descriptions 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. This information is developed by the applicant under the guidance and supervision of the State Environmental Coordinator.

§ 1794.32 Environmental report.

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

(b) For proposed actions listed in §§ 1794.22(a) and 1794.22(b), the applicant shall normally submit an ER or its equivalent. The applicant may be required to publish public notices and provide evidence of such with its ER if the proposed action is located in, impacts on, 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 above 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 impact on the 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 § 1794.8. 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. RUS will take responsibility for the scope and content of an EA.

§ 1794.42 Notice of availability.

(a) 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.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** which announces the availability of the EA and solicits public comments on the EA.

§ 1794.43 Agency finding.

(a) If RUS finds, based on an EA that the proposed action will not have a significant impact on 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.

§§ 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 Impact Assessment (EIA) is submitted (see § 1794.54). After the EIA has been submitted, RUS will make a judgment to utilize the EIA 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 will have its notice of intent to prepare an EA or EIS 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 places 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 will 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 impact analysis.

(a) After scoping procedures have been completed, RUS will require the applicant to develop and submit an EIA. The EIA shall be prepared under the supervision and guidance of the RUS staff and RUS will evaluate and be responsible for the accuracy of all information contained therein.

(b) The EIA will normally serve as the RUS EA. The EIA 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 EIA to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EIA to satisfy RUS' distribution plan.

(c) The EIA 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 make a judgment as to whether or not the proposed action is a major Federal action significantly affecting the quality of the human environment. If a significant effect is evident, RUS will continue with the procedures in subpart G of this part. If a significant effect is not evident, 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. The draft and final EIS may be prepared by a third-party consultant selected by RUS and funded by the applicant.

(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 the draft EIS will be provided if requested within 30 days of publication of notice of availability of the final EIS.

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

§ 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 published in accordance with 40 CFR 1505.2 and 1506.10.

(b) Separate RUS and applicant notices 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 the 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 the Agency's 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 as above and will circulate copies in accordance with 40 CFR 1502.19 and 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.

§§ 1794.74–1794.79 [Reserved]

Dated: November 12, 1997.

Inga Smulkstys,

Deputy Under Secretary, Rural Development.
[FR Doc. 97–30341 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103330–97]

RIN 1545–AV08

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 6109 relating to taxpayer identifying numbers. The temporary regulations provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to these children. The text of those temporary regulations also serves as the text of these proposed