

§ 1794.15

§ 1794.15 Limitations on actions during the NEPA process.

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

(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

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RUS environmental review are excluded from this limitation.

[63 FR 68655, Dec. 11, 1998, as amended at 68 FR 45159, Aug. 1, 2003]

§ 1794.16 Tiering.

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

(a) It is practicable, and

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

§ 1794.17 Mitigation.

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

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

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

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