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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.

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§§ 1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

§ 1794.20 Control.

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

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

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

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that RUS's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

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

(2) The stage of planning and construction;

(3) Total participation of the applicant;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

§ 1794.21 Categorically excluded proposals without an ER.

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

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

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

(3) Personnel and administrative actions; and

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

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

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

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

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

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

to be impacted by the expansion shall be provided to RUS;

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

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

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

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

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

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

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

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

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in §1794.15(b)(2);

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

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

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

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

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

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

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

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

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A

description of the facilities to be constructed shall be provided to RUS;

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

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

(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.

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

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

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

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

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

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

§ 1794.22 Categorically excluded proposals requiring an ER.

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

(1) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

- (i) Less than 69 kilovolts (kV);
- (ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or
- (iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

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

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

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

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

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to

buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

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

(8) Construction of 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;

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

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

(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.

(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: