

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1710, 1714, 1717, 1724, and 1730

[Docket No. RUS-22-ELECTRIC-0031]

RIN 0572-AC57

#### Electric Program Streamlining and Improvement

**AGENCY:** Rural Utilities Service, U.S. Department of Agriculture (USDA).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Rural Utilities Service (RUS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing a final rule with comment. The intent of this rule is to revise several regulations to streamline procedures for Electric Program borrowers, including its loan application requirements, approval of work plans and load forecasts, use of approved contracts and system design procedures and reporting requirements.

**DATES:** This final rule with comment is effective February 28, 2023. Comments are due on or before January 30, 2023.

**ADDRESSES:** You may submit comments, identified by docket number RUS-22-ELECTRIC-0031 and Regulatory Information Number (RIN) number 0572-AC57 through <https://www.regulations.gov>.

**Instructions:** All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Robert Coates, Branch Chief, Policy and Outreach Branch, Office of Customer

Service and Technical Assistance, Rural Utilities Service, U.S. Department of Agriculture, STOP 1569, 1400 Independence Ave. SW, Washington, DC 20250-0787, telephone: (202) 720-1900. Email: [RUSElectric@usda.gov](mailto:RUSElectric@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Rural Development is a mission area within the U.S. Department of Agriculture (USDA) comprising the Rural Utilities Service, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America. The Rural Utilities Service (RUS) loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and culture and historic preservation.

RUS Electric Program loans, loan guarantees and grants finance the construction and improvement of rural electric infrastructure. In an effort by the RUS Electric Program to administer its program in an efficient and effective manner while improving its customer service and experience, and in response to requests from the RUS Electric Program borrowers, the Electric Program undertook a systematic review of regulations and procedures in place to administer its program. The Electric Program has completed two streamlining efforts to date:

(a) On July 9, 2019, Streamlining Electric Program Procedures (84 FR 32607) was published in the **Federal Register**. That regulation streamlined some pre- and post-loan procedures to adopt efficiencies and to reduce regulatory burden on Electric Program borrowers while still ensuring RUS loans remained adequately secured and ensuring that loan funds would be repaid in the time agreed upon.

(b) On July 9, 2021, Streamlining Electric Program Procedures (86 FR 24857) was published in the **Federal Register**. That regulation streamlined its procedures for borrowers, including its loan application requirements, approval of construction work plans, contract bidding procedures, contract approval procedures, system operation and maintenance reviews, long-range engineering plans and system design procedures. It also removed unnecessary sections from the regulations.

This rulemaking is part of the Electric Program's continuing effort to improve customer service for its borrowers and to create a more efficient work process for its staff. This rulemaking will continue to streamline Electric Program procedures and revise regulations, including removing unnecessary and outdated regulations and simplifying other policies and procedures that impose burdensome requirements on borrowers and applicants.

To implement this change, the Agency will publish this as a final rule with comment. The Administrative Procedure Act exempts from prior notice rules, any actions, "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" (5 U.S.C. 553(b)(A)).

##### II. Summary of Changes to Rule

###### *Part 1710—General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees*

(a) Section 1710.1 was modified to remove outdated references and bulletins.

(b) Section 1710.2 was modified to delete the definitions for approved load forecast workplan, load forecast workplan, and PRS workplan. The requirement for borrowers to maintain a load forecast workplan has been eliminated. This reduces the number of documents that must be submitted by the applicants/borrowers and reviewed by Agency employees. In addition, §§ 1710.200; 1710.202(a) and (b); 1710.203(a), (b), and (e); 1710.205; and 1710.209 have been revised to remove the references to load forecast workplans.

(c) Section 1710.101(a) and (b) were updated to include Tribes as eligible entities to receive RUS funding and added Tribes to the list of entities that receive preference from RUS in making loans. These changes were made for

clarification and to codify current practices.

(d) Section 1710.105 was updated to include Tribal areas as places where borrowers may need to obtain Tribal approval prior to loans being approved or funds advanced. It was also updated to include reaffirmation of the project and its financing from Tribal authorities prior to additional loan funds being advanced when the borrower has failed to proceed with the project in a timely manner. These changes will help ensure that projects are feasible, as without the commitment of support from the Tribal entity, the viability of those projects could be in question. These changes are also aligned with the Administration's priorities.

(e) Section 1710.106(a)(3) was modified to include headquarters office and other headquarters facilities which reflects RUS's current acceptance of financing headquarters office and other headquarters facilities. This update codifies the Agency's current practice of funding headquarters buildings as a typical project instead of only in cases of financial hardship. Thus, the provisions of § 1710.106(b)(1) was moved to a new § 1710.106(a)(3). Paragraphs (c)(2) and (3) were updated to correct punctuation.

(f) Sections 1710.202(a) and 1710.203(a) through (e) were modified to define a current load forecast as having been prepared within the last 2 years. The 2 years is being added to provide clarity and consistency. A load forecast is a primary support document for developing construction workplans and should be current.

(g) Section 1710.205 was modified to include information that is required to be included in the load forecast. It is being included in this section due to §§ 1710.206 and 1710.209 being deleted as the requirement for borrowers to maintain a load forecast workplan has been eliminated. These deleted sections will be reserved.

(h) Sections 1710.400(b)(2), 1710.404, 1710.408(h) and 1710.500(a) were modified to address spelling, punctuation errors, and formatting and to correct an email address.

(i) Section 1710.501(a)(1)(v) was updated to replace DUNS number with Unique Entity Identifier. Paragraphs (a)(1)(viii), (x), (xiii), and (xvi), and (a)(2) and (8) were updated to require that borrowers indicate if Tribal approval is needed and to provide Tribal resolutions when needed. These changes help ensure compliance with Tribal law when doing business on Tribal land and help develop strong working partnerships with Tribes. These changes are also in line with the

Administration's priorities. Paragraph (a)(4) was deleted due to being outdated and no longer relevant. The RUS Form 740g is no longer being required because it duplicates information provided in the Construction Workplan (CWP) or CWP Amendment and on the RUS Form 740c. This change reduces the number of forms submitted by applicants/borrowers and reviewed by Agency staff. The references to Form 740g are being removed from 7 CFR 1717.855(g) and 1724.54(f)(2).

(j) In 7 CFR 1714, subpart B was removed in its entirety and incorporated into 7 CFR 1710 as subpart J. The word "Insured" was removed from the titles of the Subpart and of 7 CFR 1714.55 (now § 1710.601). Outdated language from 7 CFR 1714.58 (now § 1710.604) was removed and the rules on principal deferment were revised. The outdated language that was removed referred to loans approved before and after February 21, 1995. Principal deferment was revised to include a written request from the borrower to the Administrator to defer amortization of the principal. Additionally, 7 CFR 1714.59(a) (now § 1710.605(a)) was revised to allow the borrower to request a rescission of a loan without the additional requirement of a formal Board Resolution. 7 CFR part 1714, subpart B referred only to insured loans but these processes are related to all loans and were added to 7 CFR part 1710, subpart J. These changes will help to eliminate possible confusion and conflicts in the regulations. Removing the requirement for a formal Board Resolution permits the General Manager, Board President or other individual authorized by the Board of Directors to request such rescission without having to have a formal resolution prepared.

(k) Section 1717.616 was revised to include language from Bulletin 1717 M-2, Sale or Transfer of Capital Assets by Electric Borrowers. This language was removed from the bulletin because the purpose of bulletins is to provide additional guidance, not requirements. Therefore, the Agency made these changes to codify the requirements in the regulation.

(l) Section 1717.855(g) was updated to remove reference to the Form 740g as referenced in (i) above.

(m) Section 1724.9 was updated to add "or any successor regulations that implement the provisions of the National Environmental Policy Act". This update was made to provide flexibility should 7 CFR part 1970 change.

(n) Section 1724.40 was updated to include a web page for copies of the

bulletins in lieu of a physical mailing address.

(o) Section 1724.51(f)(1) was updated to clarify that the provision does not apply to cybersecurity projects.

(p) Section 1724.54(d)(1)(ii) was updated to provide an additional option for the required notification. Paragraphs (e)(2) and (g)(2) were updated to provide clarification that this provision may have been waived for those borrowers who have indentures or other specialized loan security documents. Paragraph (f)(2) was updated to remove the reference to RUS Form 740g which will no longer be used. Paragraph (g)(1) was updated to clarify that the provision does not apply to cybersecurity projects.

(q) Section 1724.70(b) was updated to incorporate the program's streamlining measures that a borrower may deviate from the standard RUS contract without RUS approval provided that essential terms remain in the contract.

(r) Section 1724.71(a), (b), and (c) was updated to clarify that a borrower that is subject to an indenture is not subject to the provisions in the standard RUS loan contract. These changes are related to those made in § 1724.70(b).

(s) Sections 1730.27 and 1730.28 were updated to remove obsolete dates and outdated language. These changes were made to help alleviate confusion for borrowers.

(t) Section 1730.63(a)(5) was modified to change the update period of Interconnection of Distributed Resources (IDR) policy compliance from five years to as needed. The IDR policy generally does not change once implemented. This change will provide the borrower with more flexibility. Paragraph (b)(2) was deleted in order to remove outdated IDR language.

(u) Section 1730.65 was modified to eliminate obsolete compliance dates. This change will help alleviate confusion for applicants and borrowers as it will now be clear that the letter of certification is required for everyone.

### III. Executive Orders and Acts

#### *Executive Order 12866*

This final rule has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

*Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)*

The Assistance Listing Number assigned to the Rural Electrification Loans and Loan Guarantees Program is 10.850. The Assistance Listings are available on the internet at <https://sam.gov/>.

*Executive Order 12372, Intergovernmental Review of Federal Programs*

This rule is excluded from the scope of E.O. 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from E.O. 12372” (50 FR 47034) advising that RUS loans and loan guarantees were not covered by E.O. 12372.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

The Agency has determined that this final rule has a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this final rule is subject to the requirements of E.O. 13175. Tribal specific amendments in §§ 1710.101(a) and (b), 1710.105(a) and (b), and 1710.501 were based on feedback from Tribal Leaders heard during virtual Tribal Consultation events hosted by USDA in March of 2021 and April of 2022. For additional information Tribes can contact USDA’s Office of Tribal Relations or USDA Rural Development’s Tribal Coordinator at (720) 544-2911 or [AIAN@usda.gov](mailto:AIAN@usda.gov). If Tribes request consultation on provisions not required by law, Rural Development will collaborate with the Office of Tribal Relations to ensure that meaningful consultation occurs.

*Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this final rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

*National Environmental Policy Act*

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, RUS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RUS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This final rule; however, is not subject to the APA under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(3)(A) nor any other statute.

*Executive Order 13132, Federalism*

It has been determined, under E.O. 13132, Federalism, that the policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

*E-Government Act Compliance*

The Agency is committed to complying with the E-Government Act of 2002, Public Law 107–347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

*Information Collection and Recordkeeping Requirements*

The information collection and record-keeping requirements contained in this rule are approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0572–0032, 0572–0089, 0572–0100, 0572–0118, 0572–0140, and 0572–0141.

*Civil Rights Impact Analysis*

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule is not likely to negatively impact very low, low and moderate-income populations, minority populations, women, Indian Tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

*USDA Non-Discrimination Statement*

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its

Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, <https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf>, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: [program.intake@usda.gov](mailto:program.intake@usda.gov).

#### List of Subjects

##### 7 CFR Part 1710

Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1714

Electric power, Loan programs-energy, Rural areas.

##### 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1724 and 1730

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR parts 1710, 1714, 1717, 1724, and 1730 as follows:

#### PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

##### Subpart A—General

■ 2. Revise § 1710.1 to read as follows:

##### § 1710.1 General statement.

This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

##### § 1710.2 [Amended]

■ 3. Amend § 1710.2 by removing the definitions for “Approved load forecast work plan”, “Load forecast work plan”, and “PRS work plan”.

##### Subpart C—Loan Purposes and Basic Policies

■ 4. Amend § 1710.101 by revising paragraphs (a) introductory text and (b) to read as follows:

##### § 1710.101 Types of eligible borrowers.

(a) RUS makes loans to corporations, States, Tribes, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

\* \* \* \* \*

(b) In making loans, RUS gives preference to States, Tribes, territories,

and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. RUS does not make direct loans to individual consumers.

\* \* \* \* \*

■ 5. Revise § 1710.105 to read as follows:

##### § 1710.105 State and Tribal regulatory approvals.

(a) In States or in Tribal areas where a borrower is required to obtain approval of a project or its financing from a State or Tribal regulatory authority, RUS requires that such approvals be obtained before the following types of loans are approved by RUS:

(1) Loans requiring an Environmental Impact Statement;

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is \$25 million or more; and

(3) Loans for the purpose of assisting borrowers to implement demand side management and energy conservation programs and on and off grid renewable energy systems.

(b) In Tribal areas all borrowers are required to obtain approval of the project from the Tribal government or relevant Tribal regulatory body, before any loan is approved by RUS.

(c) At minimum, in the case of all loans in States or Tribal areas where State regulatory approval is required of the project or its financing, such State or Tribal approvals will be required before loan funds are advanced.

(d) In cases where State regulatory authority or Tribal government or relevant Tribal regulatory body approval has been obtained, but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, RUS may require the borrower to obtain a reaffirmation of the project and its financing from the State or Tribal authority before any additional loan funds are advanced.

■ 6. Amend § 1710.106 by:

■ a. Revising paragraph (a)(3);

■ b. Removing paragraph (b)(1);

■ c. Redesignating paragraphs (b)(2) and (3) as paragraphs (b)(1) and (2); and

■ d. Revising paragraphs (c)(2) and (3).

The revisions read as follows:

##### § 1710.106 Uses of loan funds.

(a) \* \* \*

(3) *Headquarters Offices, Warehouse, and garage facilities.* The purchase,

remodeling, or construction of headquarters office, other headquarters facilities, warehouse, and garage facilities required for the operation of a borrower's system. *See* paragraph (b) of this section.

\* \* \* \* \*

(c) \* \* \*

(2) Facilities to serve consumers who are not RE Act beneficiaries unless those facilities are necessary and incidental to providing or improving electric service in rural areas (*See* § 1710.104).

(3) Any facilities or other purposes that a State regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities or other purposes.

\* \* \* \* \*

### Subpart E—Load Forecasts

■ 7. Amend § 1710.200 by revising the first sentence to read as follows:

#### § 1710.200 Purpose

This subpart contains RUS policies for the preparation, review, approval and use of load forecasts. \* \* \*

■ 8. Amend § 1710.202 by revising paragraphs (a) and (b) to read as follows:

#### § 1710.202 Requirement to prepare a load forecast—power supply borrowers.

(a) A power supply borrower with a total utility plant of \$500 million or more must maintain and provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance.

(b) A power supply borrower that is a member of another power supply borrower that has a total utility plant of \$500 million or more must provide an approved load forecast in support of any request for RUS financial assistance. The member power supply borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

\* \* \* \* \*

■ 9. Revise § 1710.203 to read as follows:

#### § 1710.203 Requirement to prepare a load forecast—distribution borrowers.

(a) A distribution borrower that is a member of a power supply borrower, with a total utility plant of \$500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting

information in the approved load forecast of its power supply borrower.

(b) A distribution borrower that is a member of a power supply borrower which is itself a member of another power supply borrower that has a total utility plant of \$500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

(c) A distribution borrower that is a member of a power supply borrower with a total utility plant of less than \$500 million must provide a current (prepared within the last 2 years) load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee that exceeds \$3 million or 5 percent of total utility plant, whichever is greater. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

(d) A distribution borrower with a total utility plant of less than \$500 million and that is unaffiliated with a power supply borrower must provide a current (prepared within the last 2 years) load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds \$3 million or 5 percent of total utility plant, whichever is greater.

(e) A distribution borrower with a total utility plant of \$500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financing assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

■ 10. Amend § 1710.205 by revising paragraphs (a) and (c) to read as follows:

#### § 1710.205 Minimum requirements for all load forecasts.

(a) *Contents of load forecast.* All load forecasts submitted by borrowers for approval must include:

(1) Scope of the load forecast. The narrative shall address the overall approach, time periods, and expected internal and external uses of the forecast. Examples of internal uses include providing information for developing or monitoring demand side management programs, supply resource planning, load flow studies, wholesale

power marketing, retail marketing, cost of service studies, rate policy and development, financial planning, and evaluating the potential effects on electric revenues caused by competition from alternative energy sources or other electric suppliers. Examples of external uses include meeting State and Federal regulatory requirements, obtaining financial ratings, and participation in reliability council, power pool, regional transmission group, power supplier or member system forecasting and planning activities.

(2) Resources used to develop the load forecast. The discussion shall identify and discuss the borrower personnel, consultants, data processing, methods, and other resources used in the preparation of the load forecast. The borrower shall identify the borrower's members and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the current and future load forecasts.

(3) A comprehensive description of the database used in the study. The narrative shall describe the procedures used to collect, develop, verify, validate, update, and maintain the data. A data dictionary thoroughly defining the database shall be included. The borrower shall make all or parts of the database available or otherwise accessible to RUS in electronic format if requested.

(4) A narrative for each new load forecast or update of a load forecast. The narrative shall discuss the methods and procedures used in the analysis and modeling of the borrower's electric system loads. The narrative shall also describe the borrower's system, service territory, and consumers.

(5) A narrative discussing the borrower's past, existing, and forecast of future electric system loads. The narrative must identify and explain substantive assumptions and other pertinent information used to support the estimates presented in the load forecast.

(6) A narrative discussing load forecast uncertainty or alternative futures that may determine the borrower's actual loads. The narrative shall describe examples of uncertainties such as economic scenarios, weather conditions, and others that borrowers may decide to address in their analysis including:

- (i) Most-probable assumptions, with normal weather;
- (ii) Pessimistic assumptions, with normal weather;
- (iii) Optimistic assumptions, with normal weather;

(iv) Most-probable assumptions, with severe weather;

(v) Most-probable assumptions, with mild weather;

(vi) Impacts of wholesale or retail competition; or

(vii) New environmental requirements.

(7) A summary of the forecast's results on an annual basis. Include alternative futures, as applicable: This summary shall be designed to accommodate the transfer of load forecast information to a borrower's other planning or loan support documents. Computer-generated forms or electronic submissions of data are acceptable. Graphs, tables, spreadsheets or other exhibits shall be included throughout the forecast as appropriate.

(8) A narrative discussing the coordination activities conducted between a power supply borrower and its members, as applicable, and between the borrower and RUS.

(9) Borrowers with a residential demand of 50 percent or more of total kWh should include in the Load Forecast a Residential Consumer Survey that is performed at least every 5 years to obtain data on appliance and equipment saturation and electricity demand. Any such borrower that is experiencing or anticipates changes in usage patterns shall consider surveys on a more frequent schedule. Power supply borrowers shall coordinate such surveys with their members.

(10) Residential consumer surveys may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides relevant regional breakdowns as appropriate.

(11) A load forecast for a power supply borrower and its members must cover all member systems, including those that are not borrowers. Each borrower is individually responsible for forecasting all its RE Act beneficiary and non-RE Act beneficiary loads.

(12) A narrative description of the borrower's load forecast including future load projections, forecast assumptions, and the methods and procedures used to develop the forecast.

(13) Projections of usage by consumer class, number of consumers by class, annual system peak demand, and season of peak demand for the number of years agreed upon by RUS and the borrower.

(14) A summary of the year-by-year results of the load forecast in a format that allows efficient transfer of the information to other borrower planning or loan support documents.

(15) The load impacts of a borrower's demand side management and energy

efficiency and conservation program activities, if applicable.

(16) Graphic representations of the variables specifically identified by management as influencing a borrower's loads.

(17) A database that tracks all relevant variables that might influence a borrower's loads.

\* \* \* \* \*

(c) *Documentation retention.* The borrower must retain its latest load forecasts and supporting documentation.

\* \* \* \* \*

#### **§ 1710.206 [Removed and Reserved]**

■ 11. Remove and reserve § 1710.206.

#### **§ 1710.209 [Removed and Reserved]**

■ 12. Remove and Reserve § 1710.209.

### **Subpart H—Energy Efficiency and Conservation Loan Program**

■ 13. Amend § 1710.400 by revising paragraph (b)(2) to read as follows:

#### **§ 1710.400 Purpose.**

\* \* \* \* \*

(b) \* \* \*

(2) Although not a goal, RUS recognizes that there will be a reduction of greenhouse gases with energy efficiency improvements.

■ 14. Amend § 1710.404 by:

- a. Removing the definition for “Certified energy auditor for commercial and industrial energy efficiency improvements”; and
  - b. Adding a definition for “Certified energy auditor” in alphabetical order.
- The addition reads as follows:

#### **§ 1710.404 Definitions.**

\* \* \* \* \*

*Certified energy auditor* means:

(1) A certified energy auditor for commercial and industrial energy efficiency improvements shall mean an energy auditor who meets at least one of the following criteria:

(i) An individual possessing a current commercial or industrial energy auditor certification from a national, industry-recognized organization;

(ii) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy Audits;

(iii) An individual with a four-year engineering or architectural degree with at least 3 years experience and who has completed at least five similar type Energy Audits; or

(iv) Beginning in calendar year 2015, an energy auditor certification recognized by the Department of Energy

through its Better Buildings Workforce Guidelines project.

(2) A certified energy auditor for residential energy efficiency improvements shall mean an energy auditor that meets one of the following criteria:

(i) The workforce qualification requirements of the Home Performance with Energy Star Program, as outlined in Section 3 of the Home Performance with Energy Star Sponsor Guide; or

(ii) An individual possessing a current residential energy auditor or building analyst certification from a national, industry-recognized organization.

\* \* \* \* \*

■ 15. Amend § 1710.408 by revising the second sentence of paragraph (h) to read as follows:

#### **§ 1710.408 Quality assurance plan.**

\* \* \* \* \*

(h) \* \* \* In these cases, utilities shall monitor the work done by the contractors and confirm that the contractors are performing quality work.

\* \* \*

\* \* \* \* \*

### **Subpart I—Application Requirements and Procedures for Loans**

■ 16. Amend § 1710.500 by revising the first sentence of paragraph (a) to read as follows:

#### **§ 1710.500 Initial contact.**

(a) Loan applicants that do not have outstanding loans from RUS should contact the Rural Utilities Service via Email at *RUSElectric@usda.gov*, call RUS at (202) 720-9545 or write to the Rural Utilities Service Administrator, United States Department of Agriculture, 1400 Independence Ave. SW, STOP 1560, Room 4121, Washington, DC 20250-1560. \* \* \*

\* \* \* \* \*

■ 17. Amend § 1710.501 by:

■ a. Revising paragraphs (a)(1)(v), (viii), (x), (xiii), and (xvi) and (a)(2) and (8);

■ b. Removing paragraph (a)(4); and

■ c. Redesignating paragraphs (a)(5) through (17) as paragraphs (a)(4) through (16).

The revisions read as follows:

#### **§ 1710.501 Loan application documents.**

(a) \* \* \*

(1) \* \* \*

(v) The Borrower's Unique Entity Identifier;

\* \* \* \* \*

(viii) List of current counties and Tribal lands where real property is located;

\* \* \* \* \*

(x) Identify any new counties and Tribal lands with property since last loan;

\* \* \* \* \*

(xiii) Identify any State or Tribal regulatory approvals needed;

\* \* \* \* \*

(xvi) Breakdown of loan funds by State and Tribal lands;

\* \* \* \* \*

(2) *Special resolutions.* Included any special resolutions required by Federal, State, or Tribal Authorities and any others as identified and required by the RUS General Field Representative (for example, use of contractors, corrective action plans, etc.). Resolutions of support from Tribal government or Tribal regulatory authority are required by any non-Tribal applicant intending to serve Tribal areas before any loan is approved by RUS.

\* \* \* \* \*

(8) *Rate disparity and consumer income data.* If the borrower is applying under the rate disparity and consumer income tests for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a breakdown of residential consumers either by county, Tribal land, or by census tract. In addition, if the borrower serves in 2 or more States, the application must include a breakdown of all ultimate consumers by State. This breakdown may be a copy of Form EIA 861 submitted by the Borrower to the Department of Energy or in a similar form. See 7 CFR 1714.7(b) and 1714.8(a). To expedite the processing of loan applications, RUS strongly encourages distribution borrowers to provide this information to the GFR prior to submitting the application.

\* \* \* \* \*

■ 18. Add subpart J to read as follows:

**Subpart J—Terms of Loans Common to Electric Loans and Guarantees**

Sec.

- 1710.601 Advance of funds from loans.
- 1710.602 Fund advance period.
- 1710.603 Sequence of advances.
- 1710.604 Amortization of principal.
- 1710.605 Rescission of loans.

**Subpart J—Terms of Loans Common to Electric Loans and Guarantees**

**§ 1710.601 Advance of funds from loans.**

The borrower shall request advances of funds as needed. Advances are subject to RUS approval and must be requested in writing on RUS Form 595 or an RUS approved equivalent form. Funds will not be advanced until the Administrator has received satisfactory evidence that the borrower has met all applicable conditions precedent to the

advance of funds, including evidence that the supplemental financing required under this part concurrent loan guaranteed by RUS is available to the borrower under terms and conditions satisfactory to RUS.

**§ 1710.602 Fund advance period.**

(a) The fund advance period begins on the date of the loan note and will last no longer than five years, after September 30 of the fifth year after the fiscal year of obligation. The fiscal year of obligation is identified in loan documentation associated with each loan. The Administrator may extend the fund advance period on any loan if the borrower meets the requirements of paragraph (b) of this section. However, under no circumstances shall RUS ever make or approve an advance, regardless of the last day for an advance on the loan note or any extension by the Administrator, later than September 30 of the fifth year after the fiscal year of obligation if such date would result in the RUS obligating or permitting advance of funds contrary to the Anti-Deficiency Act.

(b) The Administrator may agree to an extension of the fund advance period for loans if the borrower demonstrates, to the satisfaction of the Administrator, that the loan funds continue to be needed for approved loan purposes (e.g., facilities included in a RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.156.

(1) To apply for an extension, the borrower must make a request to RUS prior to the last date for advance as noted in the borrower's loan documents and provide, the following:

(i) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(ii) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(iii) Notice of the estimated date for completion of construction.

(2) If the Administrator approves a request for an extension, RUS will notify the borrower in writing of the extension and the terms and conditions thereof. An extension will be effective only if it is requested in writing prior to the last date for advance as provided in the borrower's loan documents.

(3) Any request received after the last date for advance shall be rejected.

(c) RUS will rescind the balance of any loan funds not advanced to a

borrower as of the final date approved for advancing funds.

**§ 1710.603 Sequence of advances.**

(a) Except as set forth in paragraph (b) of this section, concurrent loan funds will be advanced in the following order:

(1) Fifty (50) percent of the RUS insured loan funds.

(2) One hundred (100) percent of the supplemental loan funds.

(3) The remaining amount of the RUS insured loan funds.

(b) At the borrower's request and with RUS approval, all or part of the supplemental loan funds may be advanced before funds in paragraph (a)(1) of this section.

**§ 1710.604 Amortization of principal.**

(a) Amortization of funds advanced during the first 2 years after the date of the note shall begin no later than 2 years from the date of the note. Except as set forth in paragraph (b) of this section, amortization of funds advanced 2 years or more after the date of the note shall begin with the scheduled loan payment billed in the month following the month of the advance.

(b) For advances made 2 years or more after the date of the note, the Administrator may, upon written request from the borrower, authorize deferral of amortization of principal for a period of up to 2 years from the date of the advance if the Administrator determines that failure to authorize such deferral would adversely affect either the Government's financial interest or the achievement of the purposes of the Rural Electrification Act. Such deferral shall not extend the loan maturity period.

**§ 1710.605 Rescission of loans.**

(a) A borrower may request rescission of a loan with respect to any funds unadvanced by submitting a letter signed by the General Manager, Board President or other individual authorized by the Board of Directors to request such rescission.

(b) RUS may rescind loans pursuant to § 1710.602(c).

(c) Borrowers who prepay RUS loans at a discounted present value pursuant to subpart F of 7 CFR part 1786 are required to rescind the unadvanced balance of all outstanding electric notes pursuant to 7 CFR 1786.158(j).

**PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS**

■ 19. The authority citation for part 1714 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*



**Subpart B [Removed and Reserved]**

■ 20. Remove and reserve subpart B, consisting of §§ 1714.50 through 1714.59.

**PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

■ 21. The authority citation for part 1717 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart M—Operational Controls**

■ 22. Revise § 1717.616 to read as follows:

**§ 1717.616 Sale, lease, or transfer of capital assets.**

(a) The term “disposition” in this part shall mean any sale, lease, or any other transaction in which the borrower transfers an interest in a capital asset to another entity or person.

(b) A borrower may, without the prior approval of RUS, sell, lease, transfer, or otherwise dispose of any capital asset if the following conditions are met:

(1) The borrower is not in default on any of its obligations to RUS;

(2) In the most recent year for which data is available, the borrower has met its coverage ratios as set forth in 7 CFR 1710.114(b) or other financial requirements as established by their mortgages, loan contracts, or other security agreements;

(3) The sale, lease, transfer, or disposition of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(4) Fair market value is obtained for the assets;

(5) No employee or board member of the organization has a direct personal financial interest in the disposition of the capital assets;

(6) The aggregate value of assets sold, leased, transferred, or disposed of in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the disposition, not to exceed \$10,000,000.00; and

(7) If the disposition of the capital asset:

(i) Results in the borrower not retaining an interest in the asset; or

(ii) Constitutes a “capital lease” under 7 CFR 1767.15(s)(1) and the borrower does not retain the right to utilize the asset during the term of the lease, and the borrower disposes of the proceeds,

less ordinary and reasonable expenses incident to such disposition, in a manner consistent with paragraph (e) of this section.

(c) The requirements for all dispositions include:

(1) The borrower shall receive fair market value for the disposition of capital assets;

(2) The sale shall be in the best interests of the creditors;

(3) All approvals required by law, by the articles of incorporation, by the bylaws of the seller, or by all the creditors, shall be obtained prior to delivery of the assets;

(4) In the case of dispositions involving exchanges or trades of a plant in place between an RUS borrower and a non-RUS borrower, the borrower must provide evidence, satisfactory to RUS, that the exchange or trade is equitable to the RUS borrower and that the plant acquired in the exchange or trade can be economically integrated into the borrower's system; and

(5) Unless the seller, as an existing RUS borrower is dissolved, its electric system after the disposition will constitute a satisfactory operating unit and the disposition of the asset will not jeopardize the repayment of the seller's RUS loan and other loans or impair the collateral serving as security for all RUS loans. If the purchaser is a RUS borrower, the same determinations shall also be made with respect to the purchaser's operations and loan repayment.

(d) The methods of handling disposition include:

(1) Dispositions of capital assets generally shall be for cash except as otherwise approved by RUS in writing.

(2) If the disposition of the assets is not subject to RUS approval as provided in paragraph (b) of this section but the purchaser requires the government to release its lien on the assets subject to the disposition, the following shall apply:

(i) The borrower shall prepare either:

(A) A transmittal letter to RUS requesting a partial release of the lien with respect to the assets to be disposed; or

(B) RUS Form 369, Request for Approval to Sell Capital Assets, or its successor.

(ii) The partial release of lien should be prepared by the attorney for the borrower or the purchaser. It is the borrower's responsibility to assure the accuracy and legal effectiveness of a proposed release. When a partial release of lien requires execution and acknowledgement by a creditor, such execution and acknowledgment by the

other creditor should be obtained by the borrower.

(iii) If the borrower elects to submit a transmittal letter to request the release of lien, the letter should contain the following information:

(A) Insert address of property or assets being sold;

(B) Name and address of purchaser;

(C) Approximate original cost or book value;

(D) The consideration the borrower is receiving in exchange for the disposition of the assets' prices;

(E) A statement that the borrower received fair market value for the property being disposed;

(F) A statement from the borrower that the net proceeds have been or will be deposited into the Construction Fund Trustee Account or will be applied as a prepayment on all debt secured under the mortgage or other security agreement applicable to the assets being disposed, equally and proportionally.

(iv) A statement from the borrower's manager stating that there was no distribution of funds to any employees and/or board members. If any amount of funds arising from the disposition have been distributed to employees and/or board members, specific identification of the employees and/or board members, and reasons why funds were provided to those persons (if applicable) must be stated in the transmittal letter. Include borrower contact information, including email address, for questions.

(v) A statement of how or if the disposition will affect the borrower's existing customers.

(3) If the disposition does not fall within the ambit of paragraph (b) of this section so that RUS Approval is required, the following then apply:

(i) If the Federal Government is the sole lien holder of the borrower's capital assets, approval of the disposition by the Federal Government will be indicated on RUS Form 369, when returned to the seller.

(ii) If the Federal Government holds a lien jointly with supplemental lenders, joint approval for the disposition will be necessary and the borrower will forward the following:

(A) Information should be forwarded directly to RUS and one copy to all supplemental lenders;

(B) When approved by RUS, the information will be forwarded by RUS to the supplemental lenders (and a notice letter advising that RUS has forwarded this information to supplemental lenders will be issued by RUS to the borrower); and

(C) The supplemental lenders will be instructed, in the RUS transmittal memorandum, to execute the



documents and return them to the seller. The supplemental lenders will also be instructed to notify RUS when the completed documents are returned to the seller.

(e) The disposition of proceeds will be handled as follows:

(1) The disposition of proceeds from the disposition of a capital asset shall be the same regardless of whether or not RUS approval of the sale is required.

(2) If the gross proceeds from the disposition of the assets total less than \$50,000 the borrower shall deposit the proceeds in its general fund account and are to be used for purposes related to the utility business as determined by the management of the borrower.

(3) Proceeds from individual dispositions of property where the gross proceeds total \$50,000 or more, should be distributed and accounted for as follows:

(i) Deposited into the Construction Fund Trustee Account. When funds are deposited into the Construction Fund Trustee Account, the borrower shall notify RUS in writing so that the budget records can be adjusted. The funds are to be used for the construction or acquisition of the borrower's utility system;

(ii) Paid to RUS and any secured supplemental lenders if the borrower has concurrent loans outstanding, by application of such funds as a prepayment on the notes of all lenders pro-rata according to the aggregate unpaid principal amount of the notes then outstanding, as designated by the noteholders, and in accordance with the borrower's loan documents;

(iii) If the borrower has no concurrent supplemental loans outstanding, applied to RUS as a payment to be applied to the note or notes issued with respect to loans made or guaranteed by RUS, or any portion of a note with respect to a loan made by RUS, and designated by the borrower or RUS; or

(iv) In the case of dispositions of SO<sub>2</sub> allowances, the funds from the sale of allowances should be deposited into the Construction Fund Trustee Account. If any entity prefers to deposit the funds into the General Fund Account, specific RUS approval will be given on a case-by-case basis. Accompanying any request for approval to deposit the funds into the General Fund Account should be a completed RUS Form 369 along with a summary of the anticipated disposition of funds from the General Fund Account;

(v) In the case of dispositions of equipment, materials, or scrap, all proceeds (regardless of the amount) from the sale should be deposited into the General Fund Account to be used for

the purchase of other property useful in the mortgagor's utility business, not necessarily of the same kind as the property disposed, which is subject to the lien of the mortgage;

(vi) The Administrator may allow a borrower to deposit the proceeds of the disposition of the asset directly into the General Funds Account instead of the Construction Fund Trustee Account if the borrower has no 'Balance in Reserve' on its most recent loan advances 605 report and does not anticipate submitting any new loan applications to RUS. The borrower must receive written approval from RUS before it deposits any proceeds into its General Funds Account.

(f) The borrower must provide the following to RUS for any disposition of a capital asset that does not fall within the scope of paragraph (b) of this section and requires RUS approval:

(1) RUS Form 369 with original signature;

(2) If the disposition involves a condemnation, the borrower must attach a copy of the petition or complaint in the condemnation suit to the RUS Form 369. Items 10, 11, and 12 of the RUS Form 369 may be completed by referring to the attachment. Item 14 need not be completed. The RUS Form 369 and a copy of the petition or complaint in condemnation cases should be submitted to RUS promptly after the petition or complaint has been received by the borrower;

(3) If the purchaser will require the disposition of the asset be free and clear of liens, the partial release of the lien should be prepared by the attorney for the seller or purchaser. It will be the responsibility of the borrower and the borrower's attorney to ensure the accuracy and legal effectiveness of a proposed partial release of the lien;

(4) If the disposition involves real estate or plant in place, in addition to the information required for all dispositions, the seller will provide a brief description of the property being disposed and a statement explaining why the asset is no longer needed for the borrower's system. The borrower shall also provide the following information to RUS for the disposition of real estate and plant in place:

(i) Except in condemnation cases, a statement of agreement between the seller and the purchaser on the proposed selling price. When applicable, include adjustments such as capital additions and retirements, depreciation, taxes, distribution of membership fees, deposits and contributions, prepaid and delinquent bills and accounts, insurance, assignment of easements, the proposed

closing date, and other pertinent information. Generally, the closing date selected should not be less than 90 days after the date the required information is forwarded to RUS;

(ii) A complete legal description or real property supported by key and detail maps showing the location of lines or other capital assets to be disposed;

(iii) A breakdown of consumers by classification showing number, mileage, average kWh usage, and revenues for the portion of lines being disposed;

(iv) An inventory of lines on a priced assembly or record unit basis, or, in the case of facilities other than lines, a detailed breakdown of separable units and their costs;

(v) Description and estimated costs of changes, if any, which must be made in the seller's system in order to maintain satisfactory operations after the sale has been completed;

(vi) Other pertinent data such as the physical condition of the property to be disposed, a copy of the lease if facilities to be disposed of are on leased land, and the approval of applicable regulatory bodies where required;

(vii) The retail rates to be applied to the consumers on the lines being disposed (comparative rate schedules); and

(viii) If the purchaser is another RUS borrower or a borrower from a supplemental lender, a description and the estimated costs of the changes, if any, necessary to integrate the properties being acquired with the purchaser's existing system for satisfactory operations.

(5) If the purchaser is to pay the seller in installments, such information should be noted on Item 9 of the RUS Form 369. A sales agreement between the seller and the purchaser, a note or other debt instrument in favor of the seller, and a security agreement in favor of the seller should be executed and collaterally assigned by the seller to the U.S. Government and the supplemental lenders, if applicable. The partial release of the lien will not be executed by RUS, if applicable, until the final installment payment has been received by the seller. The disposition of the proceeds from installment sales will be the same as from cash dispositions);

(6) Dispositions involving exchanges or trades of real estate or plant in place between a borrower and a non-RUS borrower will be considered on an individual case-by-case basis.

(g) Expenditures by the seller in conjunction with the dispositions of capital assets will be properly accounted for and all associated documents shall be retained for review

when RUS conducts its next Loan Fund and Accounting Review.

### Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

- 23. Amend § 1717.855 by revising paragraph (g) to read as follows:

**§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.**

\* \* \* \* \*

(g) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers;

\* \* \* \* \*

### PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

- 24. The authority citation for part 1724 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

#### Subpart A—General

- 25. Revise § 1724.9 to read as follows:

#### **§ 1724.9 Environmental review requirements.**

Borrowers must comply with the environmental review requirements in accordance with 7 CFR part 1970, or any successor regulations that implement the provisions of the National Environmental Policy Act.

#### Subpart D—Electric System Planning

- 26. Amend § 1724.40 by revising the last sentence to read as follows:

#### **§ 1724.40 General.**

\* \* \* These bulletins are available at <https://www.rd.usda.gov/resources/regulations/bulletins>.

#### Subpart E—Electric System Design

- 27. Amend § 1724.51 by revising paragraph (f)(1) to read as follows:

#### **§ 1724.51 Design requirements**

\* \* \* \* \*

(f) \* \* \*

(1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems but does not include cybersecurity measures.

\* \* \* \* \*

- 28. Amend § 1724.54 by revising paragraphs (d)(1)(ii), (e)(2), (f)(2), and (g)(1) and (2) to read as follows:

#### **§ 1724.54 Requirements for RUS approval of plans and specifications.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) The borrower shall notify RUS in writing, which may include the Construction Work Plan or amendment thereto that contains the proposed new substation, that a previously approved design will be used, including identification of the previously approved design.

\* \* \* \* \*

(e) \* \* \*

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost \$5,000,000 or more, provided however that the terms of any indenture or other agreement between RUS and the borrower supersede the requirement of RUS approval contained herein. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) \* \* \*

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for headquarters buildings do not require RUS approval. The application must show floor area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities, and include a one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown. The information concerning the planned building may be included in the borrower's construction work plan in lieu of submitting it with the application. (See 7 CFR part 1710, subpart F.) Prior to issuing the plans and specifications for bid, the borrower shall also submit to RUS a statement, signed by the architect or engineer, that the building design meets the Uniform Federal Accessibility Standards (See § 1724.51(e)(1)(i)).

(g) \* \* \*

(1) This paragraph (g) covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems, but does not include cybersecurity systems.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost \$1,500,000 or more; provided however that the terms

of any indenture or other agreement between RUS and the borrower supersede the requirement of RUS approval contained herein. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

\* \* \* \* \*

### Subpart F—RUS Contract Forms

- 29. Amend § 1724.70 by revising paragraph (b) to read as follows:

#### **§ 1724.70 Standard forms of contracts for borrowers.**

\* \* \* \* \*

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. A borrower may deviate from the Required Contract Form provided the borrower certifies to RUS that the non-standard form incorporates the provisions of the Required Contract Form that are contained in the RUS Certification Form found at <https://www.rd.usda.gov/resources/directives/electric-sample-documents>. Further, a borrower may utilize a contract other than a Required Contract Form if it is allowed to do so by an indenture or any other agreement between the borrower and RUS. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in § 1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

- 30. Amend § 1724.71 by revising paragraph (a), the first sentence of paragraph (b), and paragraph (c) to read as follows:

#### **§ 1724.71 Borrower contractual obligations.**

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the RE Act, distribution borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the standard distribution loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes

called “listed contract forms”) identified in the List of Required Standard Contract Forms contained in § 1724.74(c), except as provided in § 1724.70(b). Power Supply borrowers typically execute an indenture and loan contract as well. The terms and conditions of any indenture and loan contract executed by a Power Supply borrower shall govern its obligations with respect to the use of contract forms.

(b) \* \* \* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format, except as provided in § 1724.70(bc). \* \* \*

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS except as provided in § 1724.70(b).  
\* \* \*

## PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 31. The authority citation for part 1730 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

### Subpart B—Operations and Maintenance Requirements

- 32. Amend § 1730.27 by:
- a. Revising the first sentence of paragraph (a);
  - b. Removing paragraphs (b) and (c);
  - c. Redesignating paragraphs (d) and (e) as paragraphs (b) and (c)
  - d. Revising the first sentence of newly redesignated paragraph (b); and
  - e. Revising newly redesignated paragraph (c)(5); and

The revisions read as follows:

#### § 1730.27 Vulnerability and Risk Assessment (VRA).

(a) Each borrower with an approved RUS electric program loan shall perform an initial VRA of its electric system.  
\* \* \*

(b) Each applicant that submits an application for an RUS electric program loan or grant shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. \* \* \*

(c) \* \* \*

(5) Threats to facilities and assets identified in paragraphs (c)(1) through (4) of this section;

\* \* \*

- 33. Amend § 1730.28 by:
- a. Revising the first and last sentences of paragraph (a);
- b. Removing paragraphs (b) and (c);
- c. Redesignating paragraphs (d) through (j) as paragraphs (b) through (h);
- d. Revising newly redesignated paragraph (b);
- e. Removing the last sentence of newly redesignated paragraph (f); and
- f. Revising newly redesignated paragraph (g)(1).

The revisions read as follows:

#### § 1730.28 Emergency Restoration Plan (ERP).

(a) Each borrower shall have a written ERP. \* \* \* If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (c) through (e) of this section as it relates to its system.  
\* \* \*

(b) Each applicant that submits an application for an RUS electric program loan or grant shall include with its application package a letter certification that such applicant has a written ERP.  
\* \* \*

(g) \* \* \*

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (c) through (e) of this section; and  
\* \* \*

### Subpart C—Interconnection of Distributed Resources.

- 34. Amend § 1730.63 by:
- a. Revising paragraph (a)(5);
  - b. Removing paragraph (b)(2); and
  - c. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3).

The revision reads as follows:

#### § 1730.63 IDR policy criteria.

(a) \* \* \*

(5) IDR policies should be reconsidered and updated periodically in a manner that is consistent with prudent utility practice.  
\* \* \*

■ 35. Revise § 1730.65 to read as follows:

#### § 1730.65 Effective dates.

All electric program applicants shall provide a letter of certification executed by the General Manager stating that the borrower meets the requirements of this subpart before such loan may be approved.

**Andrew Berke,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2022–25554 Filed 11–29–22; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1738 and 1739

[Docket No. RUS–19–Telecom–0003]

RIN 0572–AC46

### Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees

**AGENCY:** Rural Utilities, USDA.

**ACTION:** Final rule; confirmation and response to comments.

**SUMMARY:** The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published an interim rule with comment in the **Federal Register** on March 12, 2020, to amend its regulation for the Rural Broadband Program, previously referred to as the Rural Broadband Access Loan and Loan Guarantee Program, to implement the Agricultural Act of 2018 (the 2018 Farm Bill). Through this action, RUS is adopting the interim rule as it was published and providing responses to the public comments received.

**DATES:** Effective November 30, 2022.

#### FOR FURTHER INFORMATION CONTACT:

Laurel Leverrier, Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue SW; Room 4121–S; Washington, DC 20250; telephone 202–720–3416, email [laurel.leverrier@usda.gov](mailto:laurel.leverrier@usda.gov). Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202–720–2600.

**SUPPLEMENTARY INFORMATION:** On December 20, 2018, under the Agricultural Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), Congress made significant improvements to the program, most notably by furnishing grant assistance to reach the most underserved rural areas lacking broadband access. The Agency published an interim rule with comment on March 12, 2020 (85 FR 14393), to implement those required statutory changes.

The 60-day comment period ended on May 11, 2020. Comments were received from 16 respondents. Respondents included a funding institution, telecommunications and satellite associations and providers, businesses, and a private citizen. Four of the 16 respondents did not offer comments that were responsive or conducive to improving the interim rulemaking. Below are the comments received from