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Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, et al.

Energy Efficiency and Conservation Loan Program; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Parts 1710, 1717, 1721, 1724, and 1730**

**RIN 0572-AC19**

**Energy Efficiency and Conservation Loan Program**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS or Agency) is publishing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This final rule amends RUS regulations on General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees, which were codified on December 20, 1993. The final rule also includes conforming amendments to additional RUS regulations. Under Section 2 of the Rural Electrification Act (RE Act), RUS is authorized to assist electric borrowers in implementing Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. The scope of this regulation falls within the authority of the Act.

**DATES:** This final rule is effective February 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Gerard Moore, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250-1569, telephone (202) 205-9692 or email to [gerard.moore@wdc.usda.gov](mailto:gerard.moore@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

The Rural Utilities Service (RUS or Agency) is publishing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons

in their service territory. This final rule is designed to supplement the policies contained in 7 CFR part 1710, GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES, which were finalized in December 1993. Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly “authorized and empowered to make loans in the several States and Territories of the United States . . . for the purpose of assisting electric borrowers to implement Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.” Section 6101 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) inserted the words “and energy efficiency” into this provision. In order to implement this new focus of the program, RUS amends 7 CFR part 1710 by adding a new Subpart H entitled “Energy Efficiency and Conservation Loan Program.” (EECLP).

In fiscal year 2014 the Rural Utilities Service will make \$250 million available to support energy efficiency as indicated in the President’s climate change action plan. In future years, the amount of funding made available will be based on the performance of the program.

The goals of an eligible Energy Efficiency project eligible for funding under this program and Subpart H include: (1) Increasing energy efficiency at the end user level; (2) modifying electric load such that there is a reduction in overall system demand; (3) effecting a more efficient use of existing electric distribution, transmission and generation facilities; (4) attracting new businesses and creating jobs in rural communities by investing in energy efficiency; and (5) encouraging the use of renewable energy fuels for either Demand side management or the reduction of conventional fossil fuel use within the service territory. Although not a goal, RUS recognizes that there will be a reduction of green house gases with energy efficiency improvements.

The Energy Efficiency and Conservation Loan Program may include loans supporting energy efficiency activities undertaken by the utility itself, the finance of energy efficiency projects undertaken by others, and investments made by the utility to accomplish their obligations under utility energy services contracts. It is important to distinguish that there are potentially two different types of loans associated with this regulation. RUS will loan funds to a utility for an energy efficiency program. The utility, in turn, may choose to relend these funds to their consumers (ultimate recipient) for energy efficiency improvements in industrial, commercial, or residential applications. The utility may also use the funds to complete energy efficiency activities on their own property. The anticipated transfers during the first year of the program will be the funding availability of \$250 million. RUS expects this to increase over the life of the program.

**Impacts**

The new Subpart H for the Energy Efficiency and Conservation Loan Program can have several economic impacts. The benefits include: (1) The value of purchased energy saved; (2) the value of corresponding avoided generation, transmission and/or distribution; and (3) savings in energy bills.

The final loan program is estimated to have administrative costs to the applicant and federal government, at about \$740,000 total for applicants, and about \$1.7 million for the Federal government.

The Energy Efficiency and Conservation Loan Program will impose administrative costs on applicants and the Federal government. Quantitative estimates of these costs have been made and are presented below.

**Applicants and Awardees**

Estimates of costs for applicants: the twenty expected applications are broken down into two sections—applications and reporting. Table 2 summarizes the estimated costs.

**TABLE 2—ESTIMATE BURDEN TO APPLICANTS**

Energy Efficiency and Conservation Loan Program	Applications	Reporting	Totals
Existing Electric Program Borrowers .....	\$593,356	\$148,339	\$741,695

**Applications**

All entities seeking financial assistance under this program must submit certain information to the

Agency in order to apply for a loan. The total estimated cost for applying is approximately \$593,356, calculated by multiplying the number of applicants

(20) by the labor hours associated with the additional burden (823.20) by an estimated \$45 per hour for labor. See OPM’s Web site at <http://www.opm.gov/>

*policy-data-oversight/pay-leave/salaries-wages/*

**Reporting**

All applicants that are awarded funds must submit reports to the Agency to provide information on their performance. The total estimated cost

for reporting is approximately \$148,338, calculated by the number of applicants (20) by labor cost (\$45) by hours per year (164.82).

**Federal Government**

Estimates of costs to the Federal government were made based on the

activities that the Federal government would incur to implement the rule and the length of time each activity required. A cost of \$48.35 per hour was used in making these cost estimates.

TABLE 3—ENERGY EFFICIENCY AND CONSERVATION LOAN PROGRAM BURDEN COST TO THE FEDERAL GOVERNMENT

Activity	Energy efficiency and conservation loan program
Review of loan Application .....	\$1,585,880
Yearly review of financial and statistical information .....	125,710
Additional costs associated with the collection of information .....	5,000
<b>Total *</b> .....	<b>1,716,590</b>

\* Data created from OPM salary and wage table at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

The following paragraphs summarize the activities and costs to be incurred by the Federal government for this program.

**Applications**

RUS is responsible for reviewing and approving applications. As part of this process, RUS will acknowledge receipt of applications and inform the applicants whether their application was selected for funding. The estimated cost for these application activities is approximately \$1,585,880.

**Review of Reports**

RUS is responsible for reviewing various reports, including, but not limited to, project management plan, energy efficiency work plan, quality control plan, etc. The estimated cost for reviewing these reports annually is approximately \$125,710.

**Executive Order 12866 and 13563**

This final rule has been reviewed under Executive Order (EO) 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), and has been determined to be "economically significant" by the Office of Management and Budget. The EO defines an economically significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. As required by OMB circular A-4 the regulatory impact analysis will be published along with this rule on regulations.gov.

The agency has also reviewed this regulation pursuant to EO 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Agency conducted a cost-benefit analysis to fulfill the requirements of EO 12866 and 13563. In this analysis, the Agency identifies potential benefits and costs of the Energy Efficiency and Conservation Loan Program to borrowers, and RUS. The analysis contains quantitative estimates of the burden to the public and the Federal

government and qualitative descriptions of the expected economic, environmental, and energy impacts associated with the Energy Efficiency and Conservation Loan Program. This analysis will be made publicly available in the docket

RUS will only make loans for these purposes to electric utility systems. RUS anticipates that borrowers under this subpart will be generation and transmission (G&T) borrowers or their distribution members or unaffiliated distribution borrowers who are current on their loan payments and in compliance with their loan documents. This program is held to the same high standards and regulatory requirements as the existing RUS electric loan program. RUS also anticipates that the energy efficiency improvements installation work may be contracted by either the utility or the Ultimate Recipient, or performed directly by employees of the borrower, at the discretion of the utility designing the energy efficiency program. In all cases, the eligible borrower is expected to hold title to the receivables funded by the RUS loan.

It is estimated that approximately 20 loans will be submitted annually. Considering applicants are existing RUS borrowers, it is anticipated that all 20 loans would be awarded. The administrative cost to the Applicant and the Federal government to apply, award and maintain these loans is \$2.458 million.

**Catalog of Federal Domestic Assistance**

The program described by this rule is an eligible purpose/subsidiary program of the Electrification Loans and Loan Guarantee program as listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural

Electrification Loans and Loan Guarantees. The Catalog is available on the Internet at <http://www.cfda.gov>.

#### **Executive Order 12372**

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

#### **Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection for this program has been approved by the Office of Management and Budget under OMB Control Number 0572-0032.

#### **E-Government Act Compliance**

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### **National Environmental Policy Act Review**

In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Agency has prepared and published a Programmatic Environmental Assessment (PEA) for this loan program activity as part of this rulemaking process. The PEA was published on February 6, 2013 in the **Federal Register** at 78 FR 8444, and prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500-1508), and RUS' NEPA implementing regulations, Environmental Policies and Procedures (7 CFR part 1794). A Notice of Finding of No Significant Impact was published on Friday August 16, 2013 in the **Federal Register** at VOL. 78, NO. 159.

#### **Regulatory Flexibility Act Certification**

It has been determined the Regulatory Flexibility Act is not applicable to this rule since the RUS is not required by 5 U.S.C. 551 et seq. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### **Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for state,

local, and tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### **Executive Order 12988**

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

#### **Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial direct effect on state and local governments, on the relationship between the national government and the state and local governments, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

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

This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. Between October 2010 and January 2011, the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule (and other 2008 Farm Bill changes) on Tribal governments, communities, and individuals. No comments specific to this rule were received through that process. If a Tribe determines that this rule has implications of which Rural Development is not aware or would like further information regarding the consultation process, please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

#### **Background**

This rulemaking amends 7 CFR part 1710 by adding a new Subpart H

entitled "Energy Efficiency and Conservation Loan Program." Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly "authorized and empowered to make loans in the several States and Territories of the United States . . . for the purpose of assisting electric borrowers to implement Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems." As noted, Section 6101 of the 2008 Farm Bill inserted the words "energy efficiency" into this provision, which was originally added as an amendment to the RE Act by the Rural Electrification Loan Restructuring Act of 1993 ("RELRA") (Pub. L. 103-129 sec. 2(c)(1)(B)).<sup>1</sup>

RUS has experience with implementing programs that promote energy conservation, and RELRA explicitly recognized that energy conservation is part of the Agency's mission. Starting in 1980, for example, RUS developed an Energy Resources Conservation Program by issuing RUS Bulletin 20-23, Section 12, "Extensions for Energy Resources Conservation Loans", dated December 8, 1980.<sup>2</sup> This Bulletin interpreted the Administrator of RUS's discretion under the RE Act to extend the time for payments, and this became the foundation for the "ERC Loan Program." At that time, RUS did not make ERC Loan Program loans directly. It operated the ERC Loan Program by entering into agreements with its borrowers to defer amortization of their loans in order for the borrowers to fund energy conservation improvements. The borrowers, generally electric cooperatives, made loans to their members out of the cash flow resulting from the deferments they received from RUS on their own loans. Even though RUS did not make the ERC loans itself, the Agency provided financial assistance to rural Consumers by using the electric cooperatives as intermediaries.

Congress subsequently amended Section 12 of the RE Act in 1990 and

<sup>1</sup> Senator Patrick Leahy as the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry explained this provision in a letter dated June 18, 1993 to Senator Jim Sasser the Chairman of the Senate Committee on the Budget as follows: "These amendments also permit REA [now RUS] to make loans for demand side management and energy conservation program[s] which are required by some state agencies. They are also often the most cost effective methods of meeting the energy needs of rural areas."

<sup>2</sup> This Bulletin was rescinded in 2002 when RUS updated and codified the ERC Loan Program as 7 CFR Part 1721, subpart B. (See 67 FR 484, January 4, 2002).

again in 2008. In 1990, Congress expanded Section 12 to enable deferments such that borrowers could provide financing to local businesses, with the intent of stimulating rural economic development. In 2008, Congress expanded Section 12 of the RE Act to authorize energy efficiency and use audits and to install energy efficiency measures or devices to reduce demand on electric systems.

The recent grant of additional authority in Section 2(a) of the RE Act to make loans and guarantees for energy efficiency, as contrasted with the Section 12 authority to merely defer payments on direct loans, has become increasingly significant as the percentage of the RUS portfolio represented by direct loans continues to amortize. In recent times the Agency delivers nearly all of its electric program assistance in the form of loan guarantees. As a guarantor, RUS does not have the same discretion to defer payments that it does when it is the lender. Consequently, RUS has determined that it is now necessary and appropriate to finalize a loan program for this RE Act purpose.

“The RE Act, 7 U.S.C. 904, commits to the discretion of the Administrator the making of loans for rural electrification. . . .” *Alabama Power Co. v. Ala. Elec. Coop.*, 394 F.2d 672 at 675 (CA 5) cert. denied 393 U.S. 1000 (1968). “REA is the administrative agency charged by Congress with responsibility for facilitating rural electrification. REA was intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose.” *Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc.*, 618 F.2d 601 at 603 (CA 9 1980). By broadly adding “energy efficiency” in the 2008 Farm Bill as a legislative purpose for the RE Act loans, Congress left it to the Administrator’s discretion to fashion the appropriate method to accomplish this purpose. Drawing on more than three decades of experience in using electric cooperatives as local intermediaries to accomplish RE Act objectives at the Consumer level, RUS will deliver this energy efficiency program by drawing upon its favorable past successes and using its electric borrowers as intermediaries.

RUS will only make loans for eligible purposes to electric utility systems. An eligible borrower means a utility system that has direct or indirect responsibility for providing retail electric service to persons in a rural area. This definition includes existing borrowers and utilities who meet current RUS borrower requirements. RUS anticipates that

borrowers under the Energy Efficiency and Conservation Loan Program will be generation and transmission (G&T) borrowers, their distribution members, or unaffiliated distribution borrowers who are current on their RUS loan payments and in compliance with those loan documents. RUS anticipates that the Energy Efficiency (EE) improvements installation work may be contracted by either the utility, the Ultimate Recipient, or performed directly by employees of the borrower. In all cases, the Eligible Borrower will hold title to the receivables funded by the RUS loan.

RUS is authorized by the RE Act to make loans to implement Demand side management (DSM), EE Programs and conservation programs, and on-grid and off-grid renewable energy systems. Energy efficiency in this regulation is defined as the degree a system or component performs its designated function with minimum consumption of resources. Renewable energy systems have a specific role in this regulation. Renewable generation can be used as load modifiers, which can increase the efficiency of energy consumption from the utilities perspective and are effective at decreasing energy used by decreasing load. Renewable energy and conservation savings associated with this regulation are from the utilities perspective, though the energy savings could be realized by both the Consumer and utility, depending on the type of project, as the utility is the RUS borrower and is culpable for repayment of the loan. Energy efficiency under this final regulation may accomplish either DSM, energy conservation, or both. The goals of an eligible EE Program under Subpart H may include one or more of the following: (1) Increase energy efficiency at the end user level; (2) modify electric load such that there is a reduction in overall system demand; (3) effect a more efficient use of existing electric distribution, transmission and generation facilities; (4) attract new businesses and create jobs in rural communities; and (5) encourage the use of renewable energy fuels.

There are three primary differences between the existing energy resource conservation program codified in 7 CFR part 1721 subpart B (ERC program) and the EECLP final regulation in 7 CFR part 1710, subpart H. First, the existing ERC program is limited to direct loan principal deferments and is not available for RUS guaranteed loans. Second, the list of eligible loan purposes for this program is more expansive than the ERC program and, where applicable, emphasizes that the assets in question must be characterized as an integral part

of the Consumer’s real property that would typically transfer with the title under applicable state law. Lastly, the term of financing available under Subpart H is longer than the term allowed for principal deferments under the ERC loan program.

Rural electric cooperatives are proponents of energy efficiency measures. According to the National Rural Electric Cooperative Association: 73 percent of these co-ops plan on significantly expanding existing efficiency programs in the next two years: 70 percent of co-ops offer financial incentives to promote greater energy efficiency: 96 percent of co-ops have some form of energy efficiency program in place, co-ops are responsible for nearly 25 percent of residential peak load management capacity, and cooperatives have 10 percent of retail electricity sales but are responsible for 20 percent of actual peak demand reduction. Representatives from rural electric cooperatives have commented that access to low interest funds can be the difference between success and failure for an energy efficiency program.

Eligible EE Programs can be comprised of a variety of activities, performed by either the utility or third parties. This final rule sets forth the policies and procedures related to eligible EE Programs where the RUS will finance: (1) Energy efficiency activities undertaken by the utility itself; (2) loans made by the utility to finance energy efficiency projects undertaken by others; and (3) investments made by the utility to accomplish their obligations under utility energy services contracts. The types of activities that are eligible for RUS financing under Subpart H include but are not limited to: (1) Energy audits; (2) community awareness and outreach programs; (3) services, materials and equipment provided by a qualified local contractor to improve energy efficiency at the Consumer level; and (4) energy efficiency loans made by the utility to its customers. RUS is allowing fuel switching as an eligible activity under this regulation. A description of EE Programs that qualify for RUS financing can be found in § 1710.405. Eligible investments are listed in § 1710.406. Finally, eligible borrowers are defined in § 1710.404.

Some programs designed by utilities may have the utility initially owning an asset even though it is located on a Consumer’s premise and the asset is later conveyed to the Consumer after it is paid for or a predetermined time period has elapsed. Where this is the case, RUS is proposing that the application include an additional or

revised Schedule C to the RUS mortgage listing these assets as Excepted Property under the RUS mortgage, so as to preclude the assets being captured under the after acquired clause that is standard in the RUS mortgage codified in 7 CFR part 1718. It is the intent of RUS that a release of lien need not be executed by the Agency for the utility to convey to the Consumer clear title to these assets when this Schedule C is recorded.

This final rulemaking recognizes that energy may take a variety of forms, not just electricity. The criteria to be met by eligible programs include energy efficiency as measured by British Thermal Unit (Btu) input relative to Btu output, in order to facilitate the widest and greatest contribution by the rural utility in optimizing the energy consumption profile of its service territory. This rulemaking also provides that an eligible program must demonstrate that the financial strength of the electric utility is not harmed by EE Program activities funded under Subpart H.

An important distinction between eligible energy efficiency assets to be financed under this new Subpart H and other energy efficiency activities is that the assets located at a Consumer's premises, whether or not title is to be held by the utility must, for the most part, be considered an integral part of the real property that would typically transfer with the title under applicable State law in order to be financed pursuant to an eligible program under Subpart H.

Eligible programs shall provide that the utility will recoup all or part of the costs from specific ratepayers on whose behalf an investment has been made. Recoupment may take the form of Consumer loan repayment or a dedicated tariff. An eligible program reviewed under Subpart H must show that the payment terms and loan term offered to the Consumer are generally correlated with the expected life of the applicable assets. An eligible program must also offer an undertaking that funds, collected from ratepayers, in excess of the current amortization requirements for the RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan. These prepayments are in addition to scheduled principal and interest debt service payments.

Applications for program financings under Subpart H must fully describe a Business Plan that meets the requirements of § 1710.407.

The Agency recognizes that energy efficiency investments that reduce energy consumption at the Consumer

premises (for instance those that affect the power factor) may prompt a need for investments at the system level to sustain the reliability and stability of the grid. The business plan called for in Subpart H must identify the related system investment to be identified as part of the EE Program, but these system level investments would be reflected in the utility's construction work plan and financed as part of a traditional loan application.

It is not required that an eligible program fund energy audits performed at Consumer premises. However, if the utility proposes to provide audits; Subpart H requires that the program must also include a provision for assisting Consumers in implementing changes suggested in aggregate to be cost effective by the audit. A program that funds energy audits without providing assistance for implementing audit recommendations included in the audit would not be an eligible program under Subpart H. Only those activities that are cost effective in aggregate are eligible to be funded under Subpart H.

The list of eligible investments and activities that a qualified plan may incorporate is not intended to be exhaustive. The intent is to facilitate flexibility for the utility's EE Program consistent with the resources and Consumer profiles in its service territory.

This lending program is designed for utility-designed and directed EE Programs. As such it anticipates that eligible loan purposes will include program administrative and other soft costs, such as marketing expenses, where not more than five percent of the loan budget may be used for these purposes. A utility's program may include acting as an intermediary lender, where the utility uses RUS financing to make Consumer loans to finance these investments on the Consumers' premises. Where this is the case, Subpart H requires the borrower to have a maximum interest rate to the ultimate consumer at 1.5 percent above the RUS loan cost to the borrower unless an exception is granted by the Administrator. Exceptions will be made on a case-by-case basis to ensure repayment of the government's loan. We will not accept an exception if the loan is feasible at 1.5 percent. This rate must be discussed in the applicant's business plan.

The process for applying for EECLP loans is intended to largely conform to the Agency's existing process for loans relating to other eligible purposes. Accordingly, the requirements discussed throughout 7 CFR part 1710 apply equally to EECLP loans unless

otherwise stated after giving effect to the conforming amendments incorporated in this rulemaking. Expenditures by the utility will be reimbursed by the Agency after the fact pursuant to an inventory of work orders system as is typical for our existing loan process. The analytical material needed to support an EECLP loan is different from what is needed to analyze a generation or transmission loan. Accordingly, Subpart H elaborates on what is needed for RUS to approve an EE Program and loans to execute the program. EE Program activity will be captured under a separate energy efficiency work plan. Energy efficiency investments will not be listed on the traditional construction work plan that applies to utility assets financed by RUS.

As with other loans made pursuant to 7 CFR part 1710, a borrower's Environmental Report (ER) is expected to accompany the energy efficiency work plan associated with the loan request. The ER is in accordance with 7 CFR part 1794. Part 1794 contains the policies and procedures of the Rural Utilities Service for implementing the requirements of the National Environmental Policy Act. In the case of an EECLP loan, this ER will be expected to reference the PEA completed by the Agency for EECLP loans, and identify any investments and their potential environmental impacts proposed in the work plan that were not analyzed in the PEA.

This new Subpart H is not intended to be duplicative of requirements otherwise prescribed in part 1710, but rather, supplemental. It identifies requirements that are unique to loans made under the proposed Subpart H to finance EE Programs. It prescribes requirements for our direct borrowers. Our direct borrowers will then act as intermediary lenders to accomplish the investments outlined in an approved EE program. Where there is an express conflict with requirements elsewhere in part 1710, the provisions of Subpart H would apply, but otherwise Subpart H is not intended to supplant the applicability of the rest of part 1710 or other applicable parts in the Code of Federal Regulations.

In implementing Subpart H, as required for all of part 1710, RUS will work with Department of Energy (DOE), following the requirements set out by the Rural Electrification Act of 1936, Section 16 that states: "the Secretary in making or guaranteeing loans for the construction, operations, or enlargement of generating plants or electric transmission lines or systems shall consider such general criteria consistent with the provisions of this Act as may

be published by the Secretary of Energy.”

### Summary of Major Changes in Response to Comments on the Rule

The agency published a Proposed rulemaking on July 26, 2012, at 77 FR 43723. RUS received 63 comments on the proposed Energy Efficiency and Conservation Loan Program. The sixty three commenters consisted of industry representatives that included: Electric cooperatives, such as South Carolina Electric and Gas company; nonprofit energy efficiency supporters, such as the E3 coalition and the Sierra Club; and envelope organizations that represent RUS borrowers, such as the National Rural Electric Cooperative Association. Sixty two of the sixty three letters were extremely supportive of the regulation, and applauded RUS for proposing the program. The opposing letter stated that it was against all Federal programs.

Major changes in response to these comments, include the following items:

1. Removed restrictions on the size of load modifiers.

2. Adjusted soft cost limitations from 4 percent to 5 percent.

3. Limit Consumer interest rate to 1.5 percent above the cost of the loan to the borrower.

4. Decreased the complexity of the loan program by eliminating performance thresholds.

5. Defined certified energy auditor.

6. Added fuel switching as an eligible purpose.

7. Clarified the definition of eligible borrowers to include former and new RUS borrowers that meet RUS standards specified in regulation and statute.

8. Changed the cost effectiveness requirements, extending requirements to 10 years or equipment useful life on an aggregate basis.

9. Removed the Net Utility Plant language.

10. Allowed some pre-retrofitting as an eligible activity.

### Summary of Comments

A summary of the comments and RUS's response are as follows:

#### Small Scale Renewable Energy Projects

*Comment:* There were 17 comments addressing the small scale renewable energy limitation of “nameplate generation capacity that is less than the 50 percent of the average anticipated electrical load associated with the end user.” Of the 17 comments, only 4 wanted to decrease or eliminate small scale renewables, on the basis that small scale renewables tend to not be cost effective.

*Response:* The Energy Efficiency and Conservation Loan program regulation

has been edited, and will no longer have any restrictions on small scale renewable energy projects. All activities will be eligible, however, state mandates, laws, and cooperative bylaws will override this regulation.

#### Soft Costs Associated With a Borrower's Loan

*Comment:* Seven comments requested that RUS not limit the “administrative” costs associated with the loan. The current regulation limits administrative costs to 4 percent.

*Response:* RUS acknowledges that there is a cost to our borrowers to start-up and maintain an energy efficiency program, and has agreed to increase the “administrative” cost limitation to 5 percent in the final regulation. However, RUS must protect the Electric Program loan portfolio, and increasing the rate any higher may impair the productivity of the program, and subsequently the subsidy rate. Also, cooperatives may have the opportunity to rate-base certain energy efficiency costs.

#### The Rate Borrowers Can Charge to the Ultimate Consumer Above the Treasury Based Interest Rate

*Comment:* RUS requested comments on the appropriate markup borrowers could charge above the Treasury-based interest rate. Twenty-one comments were received. The majority of comments stated that markups must be between 5 and 10 percent, with numerous comments stating that RUS should not specify a cap to make the program economical to the borrower.

*Response:* Borrowers are limited to interest rates 1.5 percent above the cost of their RUS loan. Exceptions will be given on a case-by-case basis that must be clearly articulated in the business plan such as unavoidable program level costs. We will not accept an exception if the loan is feasible at 1.5 percent. This information, combined with all the other additional information, will allow RUS to determine the feasibility of the loan.

#### Decrease the Complexity of the Loan Program

*Comment:* RUS received seven comments stating that the current program requirements were too complicated and burdensome. Requiring an environmental plan, business plan, quality assurance plan, performance thresholds, return on investment demonstrations, additional supporting documents, and load forecasting before and after improvements was too extensive, and would limit borrower's interest in the program.

*Response:* RUS has simplified the regulation to decrease the Energy Efficiency and Conservation Loan Program's complexity and burden. Performance thresholds have been removed, the cost effectiveness definition has been modified, and procedures edited to keep the program simple and straight forward.

#### Define Certified Energy Auditor

*Comment:* Six comments were submitted, asking RUS to clarify the definition of certified energy auditor.

*Response:* RUS has clarified the definition, allowing a borrower to use an auditor certified under state, local, or federal standards.

#### Identifying the Appropriate Performance Thresholds

*Comment:* Twenty comments were received on what were the appropriate performance thresholds for the Energy Efficiency and Conservation Loan Program. Seven comments supported the language in the proposed rule, stating “existing energy efficiency standards or criteria such as those from Energy Star, Federal Energy Management Program (FEMP), American National Standards Institute (ANSI), or other voluntary consensus standards,” 2 comments recommended limiting the thresholds to Energy Star or Energy Efficiency Ratio, and the remaining 9 comments recommended that RUS fund all market proven energy products that reduce the Consumer's annual Btu.

*Response:* RUS clarified that borrowers are encouraged to use existing energy efficiency standards or criteria such as those from ENERGY STAR, FEMP, ANSI, or other voluntary consensus standards rather than performance thresholds to give Borrowers greater latitude.

#### Fuel Switching

*Comment:* Twelve comments strongly supported fuel switching. Fuel switching is essential for some borrowers to handle peak demand.

*Response:* RUS has modified the regulation to allow fuel switching. Many of the 12 comments in support of fuel switching were associations that represent over 1,000 electric cooperatives and millions of households, including NW Energy Coalition, Midwest Energy Efficiency Alliance, Utility Geothermal Working Group, Iowa Environmental Council, The Mountain Association for Community Economic Development, and the National Rural Electric Cooperative Association.

*The \$250 Million Funding Limitation*

*Comment:* Sixteen comments were received, all in strong support of removing the \$250 million limitation.

*Response:* The \$250 million was an estimate of what the Agency believed would be the demand for the program. Public comment indicates more interest in the program than the proposed rule's \$250 million per year limitation. In fiscal year 2014, the Rural Utilities Service will make \$250 million available to support energy efficiency as indicated in the President's climate change action plan. In future years, the amount of funding made available will be based on the performance of the program. Additionally, to be consistent, the energy efficiency program should compete equally with other eligible loan purposes.

*A Preferred Lender Program*

*Comment:* One comment was submitted proposing a preferred lender program that borrowers could qualify for if they had a loan total of less than \$2 million. Standards would be set for basic, preapproved weatherization practices and be made available to any eligible borrower. Standard benefit levels would be assigned to those practices and applied when determining benefits. There would not be a requirement for energy audits or post tests. This would cut the cost of program delivery while maintaining well established and known benefits for the members. The cooperatives that wish to participate at a higher loan level would have to comply with the standards established in the proposed regulations.

*Response:* RUS believes that preferred lending criteria is not needed in the regulation. RUS will use current authorities to streamline the application process.

*Former RUS Borrowers and Their Eligibility for the Loan Program*

*Comment:* Four comments were submitted supporting allowance of former RUS borrowers to return to the program.

*Response:* The regulation has been modified to clarify that past borrowers are eligible for the Energy Efficiency and Conservation Loan program, in accordance with the statute and any other regulation relating to new or returning borrowers.

*The Cost Effective Requirement in Section 1710.405*

*Comment:* Nine comments were received, eight requesting a payback period that was longer than the current 5 years stated in the regulation. One

comment requested that the payback period be less than the life of the product.

*Response:* The regulation has been modified to more precisely define cost effectiveness and increase the payback to 10 years, except in cases where the useful life of the technology on an aggregate basis can be demonstrated to be longer than the 10 year period. RUS will evaluate the useful life assumption on a case-by-case basis.

*Financial Institutions and Cooperative Relending*

*Comment:* Four comments were received requesting RUS to add language in the regulation that defines who RUS borrowers can work with as intermediaries.

*Response:* RUS will not add any additional language. Business cases will be reviewed to determine the viability of the loan. Existing regulation language does not deter borrowers from establishing partnerships with other organizations to help implement their energy efficiency programs.

*Net Utility Plant*

*Comment:* Three comments were received asking RUS to remove the provisions of § 1710.409(d (1)). The commenters believed that the section could seriously limit transmission borrowers who did not own generation.

*Response:* RUS has removed the section. Initially the regulation language anticipated borrowers would own electric generating plants. Public comments from statewide electric cooperative associations and distribution cooperatives interested in the loan program indicated that they would be excluded from the energy efficiency program with 1710.409(d(1)). These current borrowers are not generation and transmission organizations and therefore do not own electric generation plants. The language has been removed to allow them to participate.

*Bulletin and Guidance Documents*

*Comment:* Four comments asked RUS to remove §§ 1710.406(d), 1017.407(g), and 1710.408(i). Each of those sections state borrowers shall follow a bulletin or other publication to be identified later. They claim that the proposed provision violates the Administrative Procedures Act by purporting to establish as regulatory obligations purely administrative determinations to be made later without notice and comment rulemaking.

*Response:* The proposed rule required borrowers to follow requirements in yet to be developed bulletins. The final

regulation has been changed from "shall" to "are strongly encouraged to." Please see the following regulatory language "(g) The borrowers are strongly encouraged to follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency business plans. RUS will make this bulletin or publication publicly available and revise it from time to time or eliminate it as RUS deems it necessary."

*Requiring all Electric Borrowers To Participate in This Program*

*Comment:* Three comments asked if all current borrowers would be required to participate in the Energy Efficiency Loan Program. One of the two comments stated that RUS must require all borrowers to participate in this loan program and have active energy efficiency programs.

*Response:* The Energy Efficiency and Conservation Loan program allows for energy efficiency improvements as an eligible purpose and will be reviewed and approved as other eligible purposes within the statute and the regulation. RUS does not believe it to be appropriate to require Borrowers to participate in this program.

*Requiring all Load Forecasting*

*Comment:* Two comments questioned the need for load forecasting, one comment stated that their current energy efficiency and conservation loan program is made up of only 30–40 members, not affecting the forecast at all.

*Response:* Load Forecasting is an important accountability component of the Energy Efficiency and Conservation Loan program. If the energy efficiency program has negligible effect on the Load Forecast then that information should be stated in the discussion within the Load Forecast. No changes were made to the regulation.

*Quality Assurance plan*

*Comment:* One comment stated that there were very few qualified energy managers and professional engineers in rural areas that are available to conduct the requirements of a program evaluation, and questioned who would have to bear the cost of the evaluation.

*Response:* RUS recognizes that there will be additional expenses associated with the Energy Efficiency and Conservation Loan program. The borrowers may pass along those costs to the Ultimate Recipient, but it needs to be explained in the submitted work plan.



### *Loan Advances on a Reimbursement Basis*

*Comment:* Two comments questioned how funds would be distributed. They were not supportive of funding projects on a reimbursable basis.

*Response:* All of RUS's programs are run on a reimbursable basis, though the regulation currently states that startup capital of up to 5 percent may be made available for an energy efficiency plan. No changes will be made to our current funding model.

### *Making Post-Installment Evaluations Publically Available*

*Comment:* Two comments requested that all post-installment evaluation and verification requirements be made available to the public.

*Response:* RUS acknowledges the importance of transparency, but also must weigh the privacy of our borrowers. We will provide information to the public in conformity with the Freedom of Information Act.

### *Using Qualified Contractors*

*Comment:* One comment reiterated the importance of using qualified contractors to install energy efficiency and conservation activities.

*Response:* RUS is a strong supporter of using qualified contractors and will require borrowers to state the types of contractors that will be used, if any, in a borrower's quality assurance plan.

### *Program Aggregation*

*Comment:* One comment stated that borrowers should be able to aggregate their various energy efficiency programs to bring them up to scale, decreasing the total workload.

*Response:* The Energy Efficiency and Conservation Loan program will hold each borrower accountable. Though borrowers can work with each other to decrease costs, each borrower will be individually held responsible for providing the required level of information and oversight.

### *Ground Source Heat Pumps*

*Comment:* One comment stated that the regulation should not specifically call out ground source heat pumps, as the technology is advancing quickly.

*Response:* Ground source heat pumps are just one eligible activity under the Energy Efficiency and Conservation Loan program. Though mentioned in the regulation as an example, we are neither promoting nor discouraging their use.

### *Offer Technical Assistance to Utilities*

*Comment:* One comment requested RUS provide technical assistance to utilities to design, administer, and

evaluate their energy efficiency loan program.

*Response:* RUS will work closely with the borrower, answering any questions they may have on their business plan, quality assurance plan, etc.

### *Encourage Peer-to-Peer Networking Through Webinars*

*Comment:* Six comments requested RUS set up regular webinars, phone conferences and an on-line peer-exchange Web site for participating borrowers.

*Response:* RUS supports the exchange of ideas and will facilitate cross communication when possible, but RUS does not have the resources to commit to this on a large scale. RUS will partner with other federal agencies to support broader peer-to-peer exchange.

### *The Definition of Energy Efficiency and Conservation measures*

*Comment:* One comment requested that we add the following language to the energy efficiency and conservation measures definition, "which may also include the onsite generation of electricity from waste heat resources."

*Response:* RUS believes the definition is inclusive, and the additional language is unnecessary.

### *Promote On-Bill Repayment*

*Comment:* Eight comments stated that RUS stress the importance of using on-bill repayment as an effective financing method for energy efficiencies.

*Response:* RUS recognizes that on-bill financing is one way for a borrower to be repaid for their activities, however the borrower will have the ultimate decision on how they will recover their expenses. Their method of choice will be articulated in their business plan.

### *Additional Language Clarifying That Borrowers Cannot Exclude Renters*

*Comment:* Five comments requested that RUS add language to the regulation requiring utilities to identify approaches that would ensure the equitable treatment by all types of consumers, and explicitly include low-income in both single-family and multi-family buildings.

*Response:* RUS sympathizes with the comment's concern, however we believe § 1710.122 on Equal opportunity and nondiscrimination located in the overarching Electric Program regulation, fulfills the needs specified by the comments.

### *Pre-Retrofits Should Be Allowed as Program Costs*

*Comment:* Four comments stated that pre-retrofit activities that need to take

place to make a house structurally sound before weatherization activities can take place, be an eligible activity under the Energy Efficiency and Conservation loan program

*Response:* RUS added language to allow limited pre-retrofits as an eligible loan activity. The Department of Energy has established that many opportunities for energy efficiency upgrades exist in low income housing. Often the residential building envelope needs infrastructure improvements to be able to accept energy efficiency upgrades. For example, the floor of a residential building may need structural repairs before efficient insulation can be installed. This would reduce the overall energy requirement for the structure.

### *Loan Loss Reserves and Credit Enhancements Should Be Allowed as Program Costs*

*Comment:* Four comments stated that RUS allow borrowers to create loan loss reserve funds to allow utilities to attract investors and leverage private capital, as an eligible activity under the Energy Efficiency and Conservation loan program

*Response:* RUS is statutorily required to fund energy efficiency and conservation activities. Additional activities are outside the agency's authority and would require amendments.

### *Additional Language Supporting a Diverse Workforce*

*Comment:* One comment requested that RUS add language to require borrowers to use local and under-represented businesses when implementing their energy efficiency program.

*Response:* A borrower must prove that their energy efficiency program is cost effective; specifying who a borrower must work with is beyond the scope of Subpart H.

### *Consumer Eligibility*

*Comment:* Seven comments requested that RUS clarify "due diligence" to confirm that ability to repay a loan or participate in a program does not have to include a credit check, but rather rely on utility bill payment history.

*Response:* The borrower is held accountable for paying off the loan, and needs to determine eligible Consumers. Their method of choice will be articulated in their business plan.

### *Clarifying § 1710.255(b)*

*Comment:* One comment requested clarification on § 1710.255(b), which requires that all facilities being improved be included in the energy

efficiency work plan, to state that this section only applies to utility-owned properties.

*Response:* RUS believes the Energy Efficiency Work Plan (EEWP) must also itemize Consumer upgrades in aggregate.

#### *Clarifying Demand Side Management*

*Comment:* Three comments requested that RUS specifically state that switches for water heaters and air conditioning units be eligible under Demand side management, or at a minimum clearly state energy efficiency in the definition.

*Response:* RUS believes the definition is inclusive, and the additional language is unnecessary.

#### *Redefine Energy Efficiency and Conservation Measures*

*Comment:* Two comments requested that RUS change the sentence “ultimate goal is the reduction of utility energy needs” to “ultimate goal is the reduction of all forms of consumer energy needs (based on annual Btu consumption).”

*Response:* RUS believes the current definition fits the ultimate goal, to reduce utility energy needs, Consumer energy needs is too limiting as utilities are also eligible to finance energy efficiency activities in their facilities.

#### *Clarifying § 1710.406(b)(7)*

*Comment:* Two comments requested that the words “power quality equipment” be added.

*Response:* RUS believes the definition is inclusive, and the additional language is unnecessary.

#### *Fuel Cells*

*Comment:* Two comments requested that RUS remove fuel cells as an eligible activity and investment.

*Response:* Fuel cells can be used in energy efficiency and conservation activities and will keep the activity in the regulation. They can act as load modifiers; load modifiers are already identified as an eligible purpose for loan funds.

#### *Clarifying § 1710.406(a)(1)*

*Comment:* Two comments requested that RUS make changes to § 1710.406 (a)(1). The proposed rule states that eligible program activities and investments “shall be designed to improve energy efficiency or MANAGED demand on the customer side of the meter. While demand improvements are a primary goal of the rule, demand improvement can be accomplished through managed or passive improvements on the customer side of the meter. Consequently the

word ‘managed’ should be removed from the text and replaced with the word “reduce” and the word “peak” should be added before “demand.” The new text should state “shall be designed to improve energy efficiency or reduce peak demand on the customer side of the meter.

*Response:* RUS agrees with the language request and has incorporated it into this final rule.

#### *Clarifying § 1710.405(b)(1)(vii)*

*Comment:* One comment requests additional clarification in the background section on what the rate will be for borrowers.

*Response:* This section has been revised for other reasons, the issue is moot.

#### *§ 1721.1(a)*

*Comment:* One comment requests the section be modified to remove insured, and revise the language to be “a) Purpose and amount. With the exception of minor projects, loan funds will be advanced only for projects which are included in a RUS approved borrower’s construction work plan (CWP), EE Program work plan (EEWP), or approved amendment, that have also received written Environmental Clearance and/or Approval from RUS prior to the start of construction, and follow RUS’ contract and bidding procedures as set forth in 7 CFR part 1726 if applicable. Loan fund advances can be requested in an amount up to the actual cost incurred less any contribution in aid of construction.

*Response:* RUS accepts the following language change: “a) Purpose and amount. With the exception of minor projects, loan funds will be advanced only for projects which are included in a RUS approved borrower’s EE Program work plan (EEWP), or approved amendment, that have also received written Environmental Clearance and/or Approval from RUS prior to the start of construction, and follow RUS’ contract and bidding procedures as set forth in 7 CFR part 1726 if applicable. Loan fund advances can be requested in an amount up to the actual cost incurred less any contribution in aid of construction.

#### *State and Federal Interactions*

*Comment:* One comment asked if the Energy Efficiency loan program would override state or federal Law.

*Response:* The Energy Efficiency and Conservation Loan program does not override any statutory state or federal laws.

#### *Loan Directly to Consumers*

*Comment:* One comment requested that RUS change the loan program, and loan directly to consumers, bypassing the electric companies.

*Response:* The Energy Efficiency and Conservation Loan program does not statutorily allow us this discretion.

#### *Natural Gas Expansion and Explicit Support of Water Heaters*

*Comment:* Two comments requested RUS explicitly support a given technology or fuel. One comment requested that RUS create a broader regulation that clearly articulates the importance of natural gas. One comment requested that RUS explicitly include installation of solar thermal, gas, and electric-resistance water heaters as an eligible use of program funds.

*Response:* RUS does not support one technology or fuel source. No changes will be made to the regulation.

#### *Appropriate Performance Thresholds for Water Heaters*

*Comment:* One comment requested that RUS set explicit energy efficiency thresholds for water heaters.

*Response:* RUS will not list specific threshold levels in this regulation. Rather, we have clarified that borrowers are encouraged to use existing energy efficiency standards or criteria such as those from: Energy Star, FEMP, ANSI, or other voluntary consensus standards.

#### *Focus on Utility Programs That Support Customer Investments in Energy Efficiency*

*Comment:* One comment asked RUS to establish requirements and guidelines that will ensure program funds are substantially devoted to support utility programs designed to support efficiency investments in customer homes, buildings, and facilities.

*Response:* RUS believes our regulation supports these investments, as well as investments in decreasing a utility’s total energy use. No additional language was added.

#### *Leverage Other Federal Programs With the Energy Efficiency Program*

*Comment:* One comment asked RUS to explore leveraging options with USDA’s Rural Housing Service, Federal Housing Administration, Department of Veterans Affairs, and the Federal Housing Finance Authority.

*Response:* RUS supports program collaboration, and will continue to work with our Federal partners, but no additional language will be included in the regulation.

*Consider Combined Heat and Power Projects as Eligible Measures*

*Comment:* One comment asked RUS to explicitly state combined heat and power projects are an eligible energy conservation activity under the regulation.

*Response:* RUS believes our regulation provides enough flexibility to allow these forms of activities, without specifying every eligible activity in the regulation.

*Fuel Switching Definition*

*Comment:* One comment requested RUS change the definition of fuel switching to “the temporary use of non-electric energy sources as a method to limit electric peak loads during limited time periods. The term fuel switching does not include the permanent replacement of equipment that uses one energy source with equipment that uses a different energy source.”

*Response:* RUS clarified the definition of “fuel switching.”

*Loan Monitoring*

*Comment:* One comment asked RUS to adopt data collection procedures to track program financials and measure performance.

*Response:* RUS has and will continue to collect data on loan activities, monitoring and tracking performance measures. No additional language needs to be added to the regulation.

*Existing EE Programs*

*Comment:* One comment requested RUS target supplementing existing and planned energy efficiency programs and budgets, not replacing the programs.

*Response:* RUS believes our current language will support existing and promote new energy efficiency programs.

**List of Subjects**

*7 CFR Part 1710*

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, 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 1721*

Electric power, Loan programs-energy, Rural areas.

*7 CFR Part 1724*

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

*7 CFR Part 1730*

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

For reasons set forth in the preamble, the Agency amends 7 CFR chapter XVII 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. In § 1710.2(a) revise the definition of “Demand side management” and add a definition of “Eligible Energy Efficiency Programs” in alphabetical order to read as follows:

**§ 1710.2 Definitions and rules of construction.**

(a) \* \* \*

*Demand side management (DSM)* means the deliberate planning and/or implementation of activities to influence Consumer use of electricity provided by a distribution borrower to produce beneficial modifications to the system load profile. Beneficial modifications to the system load profile ordinarily improve load factor or otherwise help in utilizing electric system resources to best advantage consistent with acceptable standards of service and lowest system cost. Load profile modifications are characterized as peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load profile. (See, for example, publications of the Electric Power Research Institute (EPRI), 3412 Hillview Avenue, Palo Alto, CA 94304, especially “Demand-Side Management Glossary” EPRI TR–101158, Project 1940–25, Final Report, October 1992.) DSM includes energy conservation programs.

\* \* \* \* \*

*Eligible Energy Efficiency and Conservation Programs (Eligible EE Program)* means an energy efficiency and conservation program that meets the requirements of Subpart H of this part.

\* \* \* \* \*

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

**§ 1710.100 [Amended]**

■ 3. In § 1710.100, amend the first sentence by adding the words “efficiency and” before “energy conservation”.

**§ 1710.101 [Amended]**

■ 4. In § 1710.101, amend the second sentence of paragraph (b) by adding the word “direct” before “loans to individual consumers”.

**§ 1710.102 [Amended]**

■ 5. Amend § 1710.102 as follows:

■ a. Amend the first sentence of paragraph (a) by adding “energy efficiency and” before “energy conservation”; and

■ b. Amend the first sentence of paragraph (b) by adding “energy efficiency and” before “energy conservation”.

■ 6. Amend § 1710.106 by adding paragraph (a)(6) and revising paragraphs (c)(1) and (d) to read as follows:

**§ 1710.106 Uses of loan funds.**

(a) \* \* \*

(6) Eligible Energy Efficiency and Conservation Programs pursuant to Subpart H of this part.

\* \* \* \* \*

(c) \* \* \*

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the Consumer, except for assets financed pursuant to an Eligible EE Program, and qualifying items included in a loan for Demand side management or energy resource conservation programs, or renewable energy systems.

\* \* \* \* \*

(d) A distribution borrower may request a loan period of up to 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation facilities and improvements or replacements of generation facilities. The loan period for new generating facilities and DSM activities will be determined on a case-by-case basis. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator’s sole discretion, a loan made for the longer period would fail to meet RUS requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

\* \* \* \* \*

**§ 1710.109 [Amended]**

- 7. In § 1710.109 amend the first sentence of paragraph (a) by adding the words “energy efficiency and conservation program work plan,” after “construction work plan”.
- 8. Amend § 1710.115 by adding paragraph (c) to read as follows:

**§ 1710.115 Final maturity.**

\* \* \* \* \*

(c) The term for loans made to finance Eligible EE Programs will be determined in accordance with § 1710.408 of this part.

\* \* \* \* \*

**§ 1710.120 [Amended]**

- 9. In § 1710.120 add the words “energy efficiency and conservation program work plans,” after “construction work plans,”.

**Subpart D—Basic Requirements for Loan Approval**

- 10. Amend § 1710.152 by adding paragraph (e) to read as follows:

**§ 1710.152 Primary support documents.**

\* \* \* \* \*

(e) *EE Program work plan (EEWP)*. In the case of a loan application to finance an Eligible Energy Efficient Program, an EE Program work plan shall be prepared in lieu of a traditional CWP required pursuant to paragraph (b) of this section. The requirements for an EEWP are set forth in § 1710.255 and in subpart H of this part.

**Subpart E—Load Forecasts**

- 11. Amend § 1710.202 by adding paragraph (d) to read as follows:

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

\* \* \* \* \*

(d) Notwithstanding paragraphs (a) through (c) of this section, a power supply borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

- 12. Amend § 1710.203 by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) Notwithstanding paragraphs (a) through (e) of this section, a distribution borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

**§ 1710.205 [Amended]**

- 13. In § 1710.205 amend paragraph (b)(5) by adding the words “and energy efficiency and conservation program” after “demand side management”.

**Subpart F—Construction Work Plans and Related Studies**

- 14. Add § 1710.255 to subpart F to read as follows:

**§ 1710.255 Energy efficiency work plans—energy efficiency borrowers.**

(a) All energy efficiency borrowers must maintain a current EEWP approved by their board of directors covering in aggregate all new construction, improvements, replacements, and retirements of energy efficiency related equipment and activities;

(b) An energy efficiency borrower’s EEWP shall cover a period of between 2 and 4 years, and include all facilities to be constructed or improved which are eligible for RUS financing, whether or not RUS financial assistance will be sought or be available for certain facilities. The construction period covered by an EEWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities;

(c) The borrower’s EEWP may only include facilities, equipment and other activities that have been approved by RUS as a part of an Eligible Energy Efficiency and Conservation Program pursuant to subpart H of this part;

(d) The borrower’s EEWP must be consistent with the documentation provided as part of the current RUS approved EE Program as outlined in § 1710.410(c); and

(e) The borrower’s EEWP must include an estimated schedule for the implementation of included projects.

**Subpart G—Long Range Financial Forecasts**

- 15. Amend § 1710.300 by redesignating paragraphs (d)(3) through (5) as paragraphs (d)(4) through (6) respectively; and adding a new paragraph (d)(3) to read as follows:

**§ 1710.300 General.**

\* \* \* \* \*

(d) \* \* \*

(3) RUS-approved EE Program work plan;

\* \* \* \* \*

**§ 1710.302 [Amended]**

- 16. In § 1710.302 amend paragraph (d)(5) by removing the reference “§ 1710.300(d)(5)” and adding in its place “§ 1710.300(d)(6)”.

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

**§§ 1710.400 through 1710.407 [Redesignated as §§ 1710.500 through 1710.507]**

- 17a. In subpart I, redesignate §§ 1710.400 through 1710.407 as §§ 1710.500 through 1710.507, respectively.
- 17b. Add Subpart H consisting of §§ 1710.400 through 1710.499, to read as follows:

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

Sec.

1710.400	Purpose.
1710.401	RUS policy.
1710.402	Scope.
1710.403	General.
1710.404	Definitions.
1710.405	Eligible energy efficiency and conservation programs.
1710.406	Eligible activities and investments.
1710.407	Business plan.
1710.408	Quality assurance plan.
1710.409	Loan provisions.
1710.410	Application documents.
1710.411	Analytical support documentation.
1710.412	Borrower accounting methods, management reporting, and audits.
1710.413	Compliance with other laws and regulations.
1710.414–1710.499	[Reserved]

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

**§ 1710.400 Purpose.**

(a) This subpart establishes policies and requirements that apply to loans and loan guarantees to finance Energy Efficiency and Conservation programs (EE Programs) undertaken by an eligible utility system to finance Demand side management, energy efficiency and conservation, or on-grid and off-grid renewable energy system programs that will result in the better management of their system load growth, a more beneficial load profile, or greater optimization of the use of alternative energy resources in their service territory. These programs may be considered an essential utility service.

(b)(1) The goals of an eligible Energy Efficiency project eligible for funding under this program and Subpart H include:

(i) Increasing energy efficiency at the end user level;

(ii) Modifying electric load such that there is a reduction in overall system demand;

(iii) Effecting a more efficient use of existing electric distribution, transmission and generation facilities;

(iv) Attracting new businesses and creating jobs in rural communities by investing in energy efficiency; and

(v) Encouraging the use of renewable energy fuels for either Demand side management or the reduction of conventional fossil fuel use within the service territory.

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

#### **§ 1710.401 RUS policy.**

EE Programs under this subpart may be financed at the distribution level or by an electric generation and transmission provider. RUS encourages borrowers to coordinate with the relevant member systems regarding their intention to implement a program financed under this subpart. RUS also encourages borrowers to leverage funds available under this subpart with State, local, or other funding sources that may be available to implement such programs.

#### **§ 1710.402 Scope.**

This subpart adapts and modifies, but does not supplant, the requirements for all borrowers set forth elsewhere where the purpose of the loan is to finance an approved EE program. In the event there is overlap or conflict between this subpart and the provisions of this part 1710 or other parts of the Code of Federal Regulations, the provisions of this subpart will apply for loans made or guaranteed pursuant to this subpart.

#### **§ 1710.403 General.**

EE Programs financed under this subpart may be directed at all forms of energy consumed within a utility's service territory, not just electricity, where the electric utility is in a position to facilitate the optimization of the energy consumption profile within its service territory and do so in a way that enhances the financial or physical performance of the rural electric system and enables the repayment of the energy efficiency loan.

#### **§ 1710.404 Definitions.**

For the purpose of this subpart, the following terms shall have the following meanings. In the event there is overlap or conflict between the definitions contained in § 1710.2, the definitions set forth below will apply for loans made or guaranteed pursuant to this subpart.

*British thermal unit (Btu)* means the quantity of heat required to raise one pound of water one degree Fahrenheit.

Certified energy auditor for commercial and industrial energy efficiency improvements. (1) An energy

auditor shall meet 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) For residential energy efficiency improvements, an energy auditor shall meet one of the following criteria: 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 an individual possessing a current residential energy auditor or building analyst certification from a national, industry-recognized organization.

*Cost effective* means the aggregate cost of an EE Program is less than the financial benefit of the program over time. The cost of a program for this purpose shall include the costs of incentives, measurement and verification activity and administrative costs, and the benefits shall include, without limitation, the value of energy saved, the value of corresponding avoided generation, transmission or distribution and reserve investments as may be displaced or deferred by program activities, and the value of corresponding avoided greenhouse gas emissions and other pollutants.

*Demand* means the electrical load averaged over a specified interval of time. Demand is expressed in kilowatts, kilovolt amperes, kilovars, amperes, or other suitable units. The interval of time is generally 15 minutes, 30 minutes, or 60 minutes.

*Demand savings* means the quantifiable reduction in the load requirement for electric power, usually expressed in kilowatts (kW) or megawatts (MW) such that it reduces the cost to serve the load.

*Eligible borrower* means a utility system that has direct or indirect responsibility for providing retail electric service to persons in a rural area. This definition includes existing borrowers and utilities who meet current RUS borrower requirements.

*Energy audit* means an inspection and analysis of energy flows in a building, process, or system with the goal of identifying opportunities to enhance energy efficiency. The activity should result in an objective standard-based technical report containing recommendations for improving the energy efficiency. The report should also include an analysis of the estimated benefits and costs of pursuing each recommendation and the simple payback period.

*Energy efficiency and conservation measures* means equipment, materials and practices that when installed and used at a Consumer's premises result in a verifiable reduction in energy consumption, measured in Btus, or demand as measured in Btu-hours, or both, at the point of purchase relative to a base level of output. The ultimate goal is the reduction of utility or consumer energy needs.

*Energy efficiency and conservation program (EE Program)* means a program of activities undertaken or financed by a utility within its service territory to reduce the amount or rate of energy used by Consumers relative to a base level of output.

*HVAC* means heating, ventilation, and air conditioning.

*Load* means the Power delivered to power utilization equipment performing its normal function.

*Load factor* means the ratio of the average load over a designated period of time to the peak load occurring in the same period.

*Peak demand (or maximum demand)* means the highest demand measured over a selected period of time, e.g., one month.

*Peak demand reduction* means a decrease in electrical demand on an electric utility system during the system's peak period, calculated as the reduction in maximum average demand achieved over a specified interval of time.

*Power* means the rate of generating, transferring, or using energy. The basic unit is the watt, where one Watt is approximately 3.41213 Btu/hr.

*Re-lamping* means the initial conversion of bulbs or light fixtures to more efficient lighting technology but not the replacement of like kind bulbs or fixtures after the initial conversion.

*SI* means the International System of Units: the modern metric system.

*Smart Grid Investments* means capital expenditures for devices or systems that are capable of providing real time, two way (utility and Consumer) information and control protocols for individual Consumer owned or operated appliances and equipment, usually

through a Consumer interface or smart meter.

*Ultimate recipient* means a Consumer that receives a loan from a borrower under this subpart.

*Utility Energy Services Contract (UESC)* means a contract whereby a utility provides a Consumer with comprehensive energy efficiency improvement services or demand reduction services.

*Utility system* means an entity in the business of providing retail electric service to Consumers (distribution entity) or an entity in the business of providing wholesale electric supply to distribution entities (generation entity) or an entity in the business of providing transmission service to distribution or generation entities (transmission entity), where, in each case, the entities provide the applicable service using self-owned or controlled assets under a published tariff that the entity and any associated regulatory agency may adjust.

*Watt* means the SI unit of power equal to a rate of energy transfer (or the rate at which work is done), of one joule per second.

**§ 1710.405 Eligible energy efficiency and conservation programs.**

(a) *General.* Eligible EE Programs shall:

(1) Be developed and implemented by an Eligible borrower and applied within its service territory;

(2) Consist of eligible activities and investments as provided in § 1710.406

(3) Provide for the use of State and local funds where available to supplement RUS loan funds;

(4) Incorporate the applicant's policy applicable to the interconnection of distributed resources;

(5) Incorporate a business plan that meets the requirements of § 1710.407;

(6) Incorporate a quality assurance plan that meets the requirements of § 1710.408;

(7) Demonstrate that the program can be expected to be Cost effective;

(8) Demonstrate that the program will have a net positive or neutral cumulative impact on the borrower's financial condition over the time period contemplated in the analytical support documents demonstrating that the net present value of program costs incurred by the borrower are positive, pursuant to § 1710.411;

(9) Demonstrate energy savings or peak demand reduction for the service territory overall; and

(10) Be approved in writing by RUS prior to the investment of funds for which reimbursement will be requested.

(b) *Financial Structures.* Eligible EE Programs may provide for direct

recoupment of expenditures for eligible activities and investment from Ultimate Recipients as follows:

(1) Loans made to Ultimate Recipients located in a rural area where —

(i) The Ultimate Recipients may be wholesale or retail;

(ii) The loans may be secured or unsecured;

(iii) The loan receivables are owned by the Eligible Borrower;

(iv) The loans are made or serviced directly by the Eligible Borrower or by a financial institution pursuant to a contractual relationship between the Eligible Borrower and the financial institution;

(v) Due diligence is performed to confirm the repayment ability of the Ultimate Recipient;

(vi) Loans are funded only upon completion of the project financed or to reimburse startup costs that have been incurred;

(vii) The rate charged the Ultimate Recipient is less than or equal to the direct Treasury rate established daily by the United States Treasury pursuant to § 1710.51(a)(1) or § 1710.52, as applicable, plus the borrower's interest rate from RUS and 1.5 percent .

Exceptions will be made on a case-by-case basis to ensure repayment of the government's loan and must be clearly articulated in the business plan RUS will not accept an exception request if the loan is feasible at 1.5 percent; and

(viii) Loans are not used to refinance a preexisting loan.

(2) A tariff that is specific to an identified rural Consumer, premise or class of ratepayer; or

(3) On bill repayment and other financial recoupment mechanisms as may be approved by RUS.

(c) *Period of performance—(1) Performance standards.* (i) Eligible EE Programs activities that are listed under § 1710.406(b) should be designed to achieve the applicable operating performance standards within one year of the date of installation of the facilities.

(ii) All activities other than those included in paragraph (c)(1)(i) of this section should be designed to achieve the applicable operating performance targets within the time period contemplated by the analytic support documents for the overall EE Program as approved by RUS.

(2) *Cost effectiveness.* Eligible EE Programs must demonstrate that Cost effectiveness as measured for the program overall will be achieved within ten years of initial funding, except in cases where the useful life of the technology on an aggregate basis can be demonstrated to be longer than the ten

year period. RUS will evaluate the useful life assumption on a case-by-case basis.

**§ 1710.406 Eligible activities and investments.**

(a) *General.* Eligible program activities and investments:

(1) Shall be designed to improve energy efficiency and/or reduce peak demand on the customer side of the meter;

(2) Shall be Cost effective in the aggregate after giving effect to all activities and investments contemplated in the approved EE Program; and

(3) May apply to all Consumer classes.

(b) *Eligible activities and investments.* Eligible program activities and investments may include, but are not limited to, the following:

(1) Energy efficiency and conservation measures where assets financed at an Ultimate Recipient premises can be characterized as an integral part of the real property that would typically transfer with the title under applicable state law. Where applicable, it is anticipated that the loan obligation would also be expected to transfer with ownership of the metered account serving that property.

(2) Renewable Energy Systems, including —

(i) On or Off Grid Renewable energy systems;

(ii) Fuel cells;

(3) Demand side management (DSM) investments including Smart Grid Investments;

(4) Energy audits;

(5) Utility Energy Services Contracts;

(6) Consumer education and outreach programs;

(7) Power factor correction equipment on the Ultimate Recipient side of the meter;

(8) Re-lamping to more energy efficient lighting; and

(9) Fuel Switching as in:

(i) The replacement of existing fuel consuming equipment using a particular fuel with more efficient fuel consuming equipment that uses another fuel but which does not increase direct greenhouse gas emissions; or

(ii) The installation of non-electric fuel consuming equipment to facilitate management of electric system peak loads. Fuel switching to fossil or biomass fueled electric generating equipment is expressly excluded.

(10) Other activities and investments as approved by RUS as part of the EE Program such as, but not limited to, pre-retrofit improvements.

(c) *Intermediary lending.* EE Program loan funds may be used for direct lending to Ultimate Recipients where

the requirements of § 1710.405(b) are met.

(d) *Performance standards.* Borrowers are required to use Energy Star qualified equipment where applicable or meet or exceed efficiency requirements designated by the Federal Energy Management Program.

**§ 1710.407 Business plan.**

An Eligible EE Program must have a business plan for implementing the program. The business plan is expected to have a global perspective on the borrower's energy efficiency plan. Therefore, energy efficiency upgrades should be identified in aggregate. The business plan must have the following elements:

(a) *Executive summary.* The executive summary shall capture the overall objectives to be met by the Eligible EE Program and the timeframe in which they are expected to be achieved.

(b) *Organizational background.* The background section shall include descriptions of the management team responsible for implementing the Eligible EE Program.

(c) *Marketing plan.* The marketing section should identify the target Consumers, promotional activities to be pursued and target penetration rates by Consumer category and investment activity.

(d) *Operations plan.* The operations plan shall include but is not limited to:

(1) A list of the activities and investments to be implemented under the EE Program and the Btu savings goal targeted for each category;

(2) An estimate of the dollar amount of investment by the utility for each category of activities and investments listed under paragraph (d)(1) of this section;

(3) A staffing plan that identifies whether and how outsourced contractors or subcontractors will be used to deliver the program;

(4) A description of the process for documenting and perfecting collateral arrangements for Ultimate Recipient loans, if applicable; and

(5) The overall Btu savings to be accomplished over the life of the EE Program.

(e) *Financial plan.* The financial plan shall include but is not limited to:

(1) A schedule showing sources and uses of funds for the program;

(2) An itemized budget for each activity and investment category listed in the operations plan;

(3) An aggregate Cost effectiveness forecast;

(4) Where applicable, provision for Ultimate Recipient loan loss reserves. These loan loss reserves will not be

funded by RUS. Loan loss reserves are not required when a utility will not be re-lending RUS funds.

(5) Identify expected Ultimate Recipient loan delinquency and default rates and report annually on deviations from the expected rates.

(f) *Risk analysis.* The business plan shall include an evaluation of the financial and operational risk associated with the program, including an estimate of prospective Consumer loan losses consistent with the loan loss reserve to be established pursuant to paragraph (e)(4) of this section.

(g) The borrowers are strongly encouraged to follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency business plans. RUS will make this bulletin or publication publicly available and revise it from time-to-time as RUS deems it necessary.

**§ 1710.408 Quality assurance plan.**

An eligible EE program must have a quality assurance plan as part of the program. The quality assurance plan is expected to have a global perspective on the borrower's energy efficiency plan. Therefore, energy efficiency upgrades should be identified in aggregate. Every effort is made to fund only EE programs that are administered in accordance with quality assurance plans meeting standards designed to achieve the purposes of this subpart. However, RUS and its employees assume no legal liability for the accuracy, completeness or usefulness of any information, product, service, or process funded directly or indirectly with financial assistance provided under this subpart. Nothing in the loan documents between RUS and the energy efficiency borrower shall confer upon any other person any right, benefit or remedy of any nature whatsoever. Neither RUS nor its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, with respect to any information, product, service, or process available from an energy efficiency borrower. The approval by RUS and its employees of an energy efficiency borrower's quality assurance plan is solely for the benefit of RUS. Approval of the quality assurance plan does not constitute an RUS endorsement. The quality assurance plan must have the following elements:

(a) Quality assurance assessments shall include the use of qualified energy managers or professional engineers to evaluate program activities and investments;

(b) Where applicable, program evaluation activities should use the protocols for determining energy savings as developed by the U.S. Department of Energy in the Uniform Methods Project.

(c) Energy audits shall be performed for energy efficiency investments involving the building envelope at an Ultimate Recipient premises;

(d) Energy audits must be performed by certified energy auditors; and

(e) Follow up audits shall be performed within one year after installation on a sample of investments made to confirm whether efficiency improvement expectations are being met.

(f) In cases involving energy efficiency upgrades to a single system (such as a ground source heat pump) the new system must be designed and installed by certified and insured professionals acceptable to the utility.

(g) Industry or manufacturer standard performance tests, as applicable, shall be required on any system upgraded as a result of an EE Program. This testing shall indicate the installed system is meeting its designed performance parameters.

(h) In some programs the utility may elect to recommend independent contractors who can perform energy efficiency related work for their customers. In these cases utilities shall monitor the work done by the contractors and confirm that the contractors are performing quality work. Utilities should remove substandard contractors from their recommended lists if the subcontractors fail to perform at a satisfactory level. RUS does not endorse or recommend any particular independent contractors.

(i) Contractors not hired by the utility may not act as agents of the utility in performing work financed under this subpart.

(j) The borrowers are strongly encouraged to follow a bulletin or other publication that RUS deems appropriate and contains and describes best practices for energy efficiency quality assurance plans. RUS will make this bulletin or publication publicly available and revise it from time-to-time as RUS deems it necessary.

**§ 1710.409 Loan provisions.**

(a) *Loan term.* The maximum term for loans under this subpart shall be 15 years unless the loans relate to ground source loop investments or technology on an aggregate basis that has a useful life greater than 15 years. Ground source loop investments as the term is used in this paragraph do not include ancillary

equipment related to ground source heat pump systems.

(b) *Loan feasibility.* Loan feasibility must be demonstrated for all loans made under this subpart. Loans made under this subpart shall be secured.

(c) *Reimbursement for completed projects.* (1) A borrower may request an initial advance not to exceed five percent of the total loan amount for working capital purposes to implement an eligible EE Program;

(2) Except for the initial advance provided for in paragraph (c)(1) of this section, all advances under this subpart shall be used for reimbursement of expenditures relating to a completed activity or investment; and

(3) Advances shall be in accordance with RUS procedures.

(d) *Loan amounts.* (1) Cumulative loan amounts outstanding under this subpart will be determined by the Assistant Administrator of the Electric Program and based an applicant's business plan; and

(2) Financing for administrative costs may not exceed 5 percent of the total loan amount.

(3) The Rural Utilities Service reserves the right to place a cap on both the total amount of funds an eligible entity can apply for, as well as a cap on the total amount of funds the Energy Efficiency and Conservation Program can utilize in the appropriations.

**§ 1710.410 Application documents.**

The required application documentation listed in this section is not all inclusive but is specific to Eligible borrowers requesting a loan under this subpart and in most cases is supplemental to the general requirements for loan applications provided for in this part 1710:

(a) A letter from the Borrower's General Manager requesting a loan under this subpart.

(b) A copy of the board resolution establishing the EE Program that reflects an undertaking that funds collected in excess of then current amortization requirements for the related RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan.

(c) Current RUS-approved EE Program documentation that includes:

(1) A Business Plan that meets the requirements of § 1710.407;

(2) A Quality Assurance Plan that meets the requirements of § 1710.408;

(3) Analytical support documentation that meets the requirements of § 1710.411;

(4) A copy of RUS' written approval of the EE Program.

(d) An EE program work plan that meets the requirements of § 1710.255;

(e) A statement of whether an initial working capital advance pursuant to § 1710.409(c)(1) is included in the loan budget together with a schedule of how these funds will be used.

(f) A proposed draft Schedule C pursuant to 7 CFR part 1718 that lists assets to be financed under this subpart as excepted property under the RUS mortgage, as applicable.

**§ 1710.411 Analytical support documentation.**

Applications for loans under this subpart may only be made for eligible activities and investments included in an RUS-approved EE Program. In addition to a business plan and operations plan, a request for EE program approval must include analytical support documentation that demonstrates the program meets the requirements of § 1710.303 and assures RUS of the operational and financial integrity of the EE Program. This documentation must include, but is not necessarily limited to, the following:

(a) A comparison of the utility's projected annual growth in demand after incorporating the EE Program together with an updated baseline forecast on file with RUS, where each includes an estimate of energy consuming devices used by customers in the service territory and a specific time horizon as determined by the utility for meeting the performance objectives established by them for the EE Program;

(b) Demonstration that the required periods of performance under § 1710.405(c) can reasonably be expected to be met;

(c) A report of discussions and coordination conducted with the power supplier, where applicable, issues identified as a result, and the outcome of this effort.

(d) An estimate of the amount of direct investment in utility-owned generation that will be deferred as a result of the EE Program;

(e) A description of efforts to identify state and local sources of funding and, if available, how they are to be integrated in the financing of the EE Program; and

(f) Copies of sample documentation used by the utility in administering its EE Program.

(g) Such other documents and reports as the Administrator may require.

**§ 1710.412 Borrower accounting methods, management reporting, and audits.**

Nothing in this subpart changes a Borrower's obligation to comply with RUS's accounting, monitoring and reporting requirements. In addition

thereto, the Administrator may also require additional management reports that provide the agency with a means of evaluating the extent to which the goals and objectives identified in the EE Plan are being accomplished.

**§ 1710.413 Compliance with other laws and regulations.**

Nothing in this subpart changes a Borrower's obligation to comply with all laws and regulations to which it is subject.

**§§ 1710.414–1710.499 [Reserved]**

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

■ 18. 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 R—Lien Accommodations and Subordinations for 100 Percent Private Financing**

■ 19. Amend § 1717.852 by revising paragraph (b)(2)(ii) to read as follows:

**§ 1717.852 Financing purposes.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Renewable energy systems and RUS-approved programs of Demand side management, energy efficiency and energy conservation; and

\* \* \* \* \*

**PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED AND GUARANTEED ELECTRIC LOANS**

■ 20. The authority citation for part 1721 continues to read as follows:

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

**Subpart A—Advance of Funds**

■ 21. Amend § 1721.1 by revising paragraph (a) to read as follows:

**§ 1721.1 Advances.**

(a) *Purpose and amount.* With the exception of minor projects, loan funds will be advanced only for projects which are included in an RUS approved construction work plan (CWP), EE Program work plan (EEWP), or approved amendment, and in an approved loan as amended. Loan fund advances can be requested in an amount representing actual costs incurred.

\* \* \* \* \*



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

■ 22. 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 C—Engineering Services**

■ 23. Amend § 1724.30 by revising paragraph (a) to read as follows:

**§ 1724.30 Borrowers' requirements—engineering services.**

\* \* \* \* \*

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the

planning (including the development of an EE Program eligible for financing pursuant to subpart H of part 1710 of this chapter, design, and construction management of the system.

\* \* \* \* \*

**PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE**

■ 24. 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**

■ 25. Amend Appendix A to subpart B of Part 1730 by adding paragraph 13.f. to read as follows:

**Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300**

\* \* \* \* \*

13. \* \* \*

f. Energy Efficiency and Conservation Program quality assurance compliance—  
Rating: \_\_\_\_\_

\* \* \* \* \*

**John Charles Padalino,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2013–29158 Filed 12–4–13; 8:45 am]

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