

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1710, 1714, 1717, and 1786

RIN 0572-AB24

#### RUS Policies on Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to streamline its regulations through amendments that are intended to encourage electric borrowers to merge, consolidate, or enter into similar arrangements that benefit borrowers and rural communities and are consistent with the interests of the Government as a secured lender. These amendments are part of an ongoing RUS project to modernize agency policies and procedures in order to provide borrowers with the flexibility they need to continue providing reliable electric service at reasonable cost in rural areas, while maintaining the integrity of Government loans.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent by September 6, 1996.

**ADDRESSES:** Written comments should be addressed to Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 14th Street and Independence Ave, SW., AgBox 1522, Washington, DC 20250-1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 2230-S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522. Telephone: 202-720-0736. FAX: 202-

720-4120. E-mail: sarnold@rus.usda.gov.

**SUPPLEMENTARY INFORMATION:** The Rural Utilities Service (RUS) is taking this regulatory action as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this proposed rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Information Collection and Recordkeeping Requirements

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

collection incorporated in this proposed rule.

Comment on this information collection must be received by October 7, 1996.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For further information contact Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Room 2230-S, 1400 Independence Avenue, SW., Washington, DC 20250-1522. Telephone: 202-720-0736. FAX: 202-720-4120. E-mail: sarnold@rus.usda.gov.

**Title:** 7 CFR 1717 subpart D, Mergers and Consolidations of Electric Borrowers.

**Type of request:** New information collection.

**Abstract:** In response to the rapid changes in the electric industry, an increasing number of RUS electric distribution borrowers are exploring the possibilities of mergers, consolidations, and similar actions. (This rule uses the term "merger" to refer to mergers, consolidations, and similar actions.) Since short-term financial stresses often follow mergers that offer long-term benefits, RUS is proposing measures that can provide some relief from these transitional stresses. These measures are intended to maintain the credit quality of the RUS loan portfolio while providing borrowers with the flexibility to react quickly to business opportunities and challenges. Secondly, RUS is proposing a streamlined application process for mergers that require RUS approval. The application will rely, as far as possible, on documents and analyses that are either required by state law, or that any prudent business would prepare for its own use in evaluating the costs and

benefits of a possible merger. Finally, RUS, as a secured lender, needs certain documentation in order to legally conduct business with a newly merged entity. This documentation, for the most part, consists of copies of documents filed with state and local governments and documentation that would be needed by any secured lender.

Requests to enter into mergers are initiated by borrowers; RUS may not require borrowers to enter into mergers.

Since mergers reduce the number of borrowers, and reducing the number of borrowers reduces costs to both borrowers and RUS of preparing and processing multiple applications and servicing multiple loans, the proposed rules will result in a net decrease in burden hours to borrowers and to RUS. This net decrease will be reflected in requests to renew existing information collections.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Businesses, including not for profit cooperatives and others.

*Estimated number of respondents each year:* 25.

*Estimated number of responses per respondent:* 8.

*Estimated total annual burden on respondents:* 249 hours.

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

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102 New Executive Office Building, Washington, DC 20503, and to Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250-1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the Federal Register.

All comments will become a matter of public record.

#### Background

The electric industry is becoming increasingly competitive. Recent legislation, including the Energy Policy Act of 1992 and actions by the Federal Energy Regulatory Commission (FERC), such as its rules on Promoting Wholesale Competition Through Open Access Non-discriminatory

Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, published May 10, 1996, at 61 FR 21539, are drastically altering the regulatory and business environment of all electric systems, including systems financed by RUS. At the same time, changes in overall business trends and in technology continue to place pressure on RUS financed systems to operate more efficiently and hedge risks.

It is clear that the success of the RUS program in supporting rural infrastructure and economic development is directly tied to the ability of RUS electric borrowers to meet these new challenges. In order to maintain and improve the electric infrastructure that is vital to rural communities, borrowers must have the flexibility to respond quickly and aggressively to business opportunities and challenges. At the same time, RUS as a secured lender has a fiduciary responsibility to protect the security of Government loans and avoid defaults.

One frequent response to the challenge of a volatile industry in transition is a merger or consolidation. (This rule uses the term "merger" to refer to mergers, consolidations, and similar actions.) RUS has historically encouraged mergers that benefit borrowers and rural communities, when these arrangements are consistent with the interests of the Government as a secured lender. RUS continues to urge borrowers to explore any and all opportunities for operating efficiencies and other economies.

The amendments proposed today are intended to encourage beneficial mergers involving RUS borrowers and, as far as possible, to remove any unnecessary impediments to such mergers. Examples of possible tangible benefits to borrowers and the rural communities they serve and to RUS as a secured lender include: Contributing to greater operating efficiency and financial soundness by combining resources, diversifying loads or other means; assisting rural economic development by diversifying the local economic base or alleviating unemployment; and other benefits consistent with the purposes of the Rural Electrification Act (RE Act).

#### Transitional Assistance

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates during this period, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before long-term

efficiencies and economies can be realized, RUS is proposing new policies for transitional assistance following mergers.

RUS will consider requests for transitional assistance after each merger. For example, if three borrowers form a single successor through two consecutive mergers, transitional assistance may be available, subject to RUS regulations, following each of the mergers. For transitional assistance available for a closed-ended period after a merger, the availability period will begin tolling on the effective date of the most recent merger even if that date is prior to the effective date of this rule.

Transitional assistance addresses (1) Loan processing priority; (2) Supplemental financing requirements; (3) Reimbursement of general funds and interim financing; (4) Deferments of interest and principal; (5) Coverage ratios; and (6) Advance of funds.

#### 1. Loan Processing Priority

Current policy on mergers (7 CFR 1710.108 and .119) offers some transitional assistance in the form of priority consideration to processing loans to newly merged and consolidated systems for a period of up to five years after RUS approval of a merger, provided that the merger has been determined to enhance the repayment or security of RUS loans. Virtually all mergers place stress on short-term cash flows. Therefore, today's rule proposes in § 1717.154(a)(1) to offer loan processing priority upon the borrower's request, for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For subsequent loans approved during those 5 years, RUS may agree to priority processing if the borrower demonstrates the need, and loan funds are available.

Pursuant to RUS regulations published December 29, 1995, at, 60 FR 67395, many mergers are exempt from RUS approval. Therefore, to avoid confusion, today's rule further proposes a minor amendment that will allow loan processing priority for up to 5 years from the effective date of the merger, instead of from the date of RUS approval.

#### 2. Supplemental Financing Requirements

RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. The method for calculating the supplemental financing proportion is set out in 7 CFR 1710.110, as amended January 19, 1995, at 60 FR

3730. Today's rule proposes in § 1717.154(a)(2) a waiver of supplemental financing, at the borrower's request, for the first RUS loan approved after the effective date of a merger if all parties are active distribution borrowers and if that first loan is a municipal rate loan, the loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger.

For any subsequent loans approved during those 5 years, or if the borrower requests a loan period longer than 2 years, RUS may agree to waive or reduce the required amount of supplemental financing. RUS would consider such reduction or waiver if the higher interest rate usually charged by a supplemental lender would materially inhibit the borrower's ability to integrate the systems or create a significant hardship that could require an increase in electric rates.

### 3. Reimbursement of General Funds and Interim Financing

Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. Pursuant to existing rules at 7 CFR 1710.109, this period is limited to 24 months for loan applications received after February 10, 1993. Today's rule proposes in § 1717.154(a)(3) to increase this period to up to 48 months for the first RUS loan following a merger where all parties are active distribution borrowers, if that first loan is approved by RUS not later than 5 years after the effective date of the merger. The longer reimbursement period will assist borrowers in managing their cash flows during the transition. The requirement that equipment and facilities be included in a RUS approved construction work plan in order to be eligible for reimbursement by RUS is not affected by this change.

### 4. Deferrals of Interest and Principal

Section 12 of the RE Act allows RUS to extend the time for repayment of loans by up to 5 years. Under a Section 12 deferment plan, notes retain their original maturity dates—the final maturity is not extended. Although deferment of debt service payments today, results in higher payments in the future, deferments may be useful to mitigate rate increases during a transition period after a merger or consolidation. Today's rule proposes in § 1717.154(b)(1) to codify this long-

standing policy of granting a Section 12 deferment to a successor.

### 5. Coverage Ratios

RUS, as a secured lender, requires that borrowers maintain adequate levels of coverage ratios, including times interest earned ratio (TIER); operating times interest earned ratio (OTIER); debt service coverage (DSC); and operating debt service coverage (ODSC). The specific level for each ratio is set forth in the RUS loan documents and in 7 CFR 1710.114. New forms of loan documents were issued in final rules published on July 18, 1995, at 60 FR 36882, and on December 29, 1995, at 60 FR 67396. Section 1710.114 was last amended in the December 29, 1995, final rule.

The rule proposed today will, in § 1717.154(b)(2), allow RUS to approve a plan for a phase-in period of up to 5 years following a merger if all parties are active distribution borrowers. Under this rule, borrowers may project and achieve lower levels for these ratios for up to 5 years following a merger, provided that RUS has approved a phase-in plan, and that a minimum TIER level of 1.00 is maintained. This phase-in period will allow borrowers the flexibility to devote resources to integrating the systems and may avoid substantial rate increases.

### 6. Advance of Funds From Insured Loans

RUS is further proposing to automatically lengthen the fund advance period for insured loans preexisting on the effective date of a merger. The fund advance period, which is the period during which funds from an insured loan may be advanced to the borrower, generally terminates automatically after 4 or 5 years unless the borrower requests, and RUS approves, an extension. See 7 CFR 1714.56, as amended January 19, 1995, at 60 FR 3726. However, the execution and filing of legal documents following a merger often takes some time, and RUS cannot advance funds to a successor until these documents are properly executed and filed. In order to ensure that approved loan funds are available to borrowers without unnecessary procedural delays, RUS proposes in § 1717.154(c) to generically extend the fund advance period by 2 years for any loans with unadvanced funds on the effective date of the merger, if the fund advance period has not already terminated.

For example, under current rules, the fund advance period for a loan approved in March 1995 with a 4-year loan period terminates automatically 5

years from the date of the loan note. Under the proposed rule, after a merger the fund advance period would be extended by 2 years and would terminate automatically 7 years from the date of the loan note.

### Borrowers Who Prepaid RUS Loans Pursuant to 7 CFR Part 1786

Pursuant to 7 CFR part 1786, subparts C, E and F, borrowers may use private financing or internally generated funds to prepay RUS direct or insured loans at a discounted present value. Borrowers who prepay under this rule may not apply for or receive any new direct or insured loans from RUS for a period after the prepayment, except at the Administrator's discretion.

In order to remove unnecessary impediments to beneficial mergers between systems that have prepaid their RUS debt and active distribution systems that still have outstanding loans, RUS is amending rules setting out the Administrator's discretionary authority. Under the proposed rules (§§ 1717.156 and 1786.167), the Administrator will exercise this discretionary authority to make direct or insured loans for facilities to serve consumers who, before the merger, were served by the system that did not prepay. In other words, eligibility for RUS loans for that portion of the successor's system that was owned by the active borrower prior to the merger, will be grandfathered as if the merger had not occurred.

### RUS Procedures

The requirement that RUS, as a secured lender, generally approve mergers is in the loan documents and RUS regulations. Under certain conditions, set out in 7 CFR 1717.615 and 1710.7(c), as published December 29, 1995, at 60 FR 67395, borrowers may enter into such mergers without RUS approval.

To clarify RUS requirements for approval of mergers, and to expedite handling of borrower requests, today's rule proposes in §§ 1717.157–1717.159, a procedure for RUS approvals, where the approvals are needed, including a list of the documents required, and the factors that RUS will consider in acting on such requests. With the exception of a formal transmittal letter and board resolution from each of the companies involved, RUS believes that the documents and analyses required are either (1) Prepared by any prudent business attempting to enter into a merger; (2) Required by state law; or (3) Required by any secured lender.

In evaluating an application, RUS will consider the likely impacts of the

merger on the borrower's ability to provide reliable service at reasonable rates to RE Act beneficiaries. RUS will not approve the action if, in the sole judgment of the Administrator, the action is likely to have an adverse effect on the security of outstanding loans made or guaranteed by the Government. It is the borrower's responsibility to resolve internal issues such as management and director succession, employee benefits, and headquarters location. Borrowers are further responsible for obtaining any necessary approvals from state commissions, supplemental lenders, and others.

Regardless of whether the merger requires RUS approval, RUS, as a secured lender, needs certain documentation in order to advance funds, send bills, and otherwise conduct business with a successor. Today's proposed rule in § 1717.152, lists the documents required. Generally, these are copies of documents that borrowers are required to file with state or local governments or documentation needed by any secured lender.

In all cases, borrowers are encouraged to consult RUS early in the process. RUS headquarters and field staff are prepared to advise borrowers and offer technical assistance to facilitate the processing of borrower requests. In particular, early consultation with RUS can avoid unnecessary delays in processing requests for advance of loan funds.

#### Rescission of Obsolete Directive

On the effective date of the final regulation, REA Bulletin 115-2, Merger and Consolidation of Electric Borrowers will be rescinded. RUS has determined that this bulletin, issued November 9, 1972, is obsolete.

#### Eligibility for and Hardship Rate and Municipal Rate Loans

RUS makes hardship rate loans and municipal rate loans subject to an interest rate cap, if the applicant meets certain criteria. See §§ 305(c)(1)(A) and (c)(1)(B)(ii) of the RE Act, and 7 CFR part 1714. As required by the law, RUS will consider the eligibility of the successor at the time of loan approval in determining the applicable interest rate category. In other words, to qualify for a hardship rate loan or a municipal rate loan subject to the interest rate cap, the successor as a whole must, at the time of loan approval, meet the criteria in 7 CFR 1714.8 or 1714.7, respectively.

#### Comment Period

It is vital that RUS, borrowers, supplemental lenders, and others continue the public-private partnership

that has served rural America well in the past. RUS and the Department of Agriculture's Office of the General Counsel recognize that business opportunities often have short deadlines, and every effort will be made to expedite action on borrower requests and to respond in a timely fashion.

There is an urgent need for flexible responses to the increasing business stress on rural electric systems. This rule, by encouraging and expediting mergers that offer economies and efficiencies not available otherwise, will result in tangible benefits, such as lower electric rates, to the rural communities served by electric distribution borrowers. Furthermore, reducing the number of RUS borrowers through mergers and consolidations will ultimately reduce the costs to the Federal Government of processing multiple applications and servicing multiple loans. To expedite these benefits, the comment period on this proposed rule is limited to 30 days. RUS encourages all interested parties to comment. New information collection requirements in this rule will not be effective until approved by OMB.

#### List of Subjects

##### 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

##### 7 CFR Part 1714

Electric Power, Loan programs—energy, Rural areas.

##### 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordinations, Loan programs—energy, Reporting and recordkeeping requirements, Rural development.

##### 7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS proposes to amend 7 CFR Chapter XVII as follows:

#### **PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

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

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.109 is amended by redesignating paragraphs (c)

introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(1)(iii), respectively, and by adding a new paragraph (c)(2) to read as follows:

##### **§ 1710.109 Reimbursement of general funds and interim financing.**

\* \* \* \* \*

(c) \* \* \*

(2) Policies for reimbursement of general funds and interim financing following certain mergers, consolidations, and transfers of a systems substantially in their entirety are set forth in 7 CFR 1717.154.

\* \* \* \* \*

3. Section 1710.110 is amended by revising the first sentence of paragraph (a) to read as follows:

##### **§ 1710.110 Supplemental financing.**

(a) Except in the case of financial hardship as determined by the Administrator, and following certain mergers, consolidations, and transfers of systems substantially in their entirety as set forth in 7 CFR 1717.154, applicants for a municipal rate loan will be required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee, in the amounts set forth in paragraph (c) of this section. \* \* \*

\* \* \* \* \*

4. Section 1710.114 is amended by adding a sentence at the end of paragraph (b)(3) to read as follows:

##### **§ 1710.114 TIER, DSC, OTIER and ODSC requirements.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* Policies for coverage ratios following certain mergers, consolidations, and transfers of systems substantially in their entirety are in 7 CFR 1717.154.

\* \* \* \* \*

5. Section 1710.119 is amended by revising paragraph (b)(3) to read as follows:

##### **§ 1710.119 Loan processing priorities.**

\* \* \* \* \*

(b) \* \* \*

(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154); or

\* \* \* \* \*

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

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

Authority: 7 U.S.C. 901–950(b); Pub.L. 99–591, 100 Stat. 3341; Pub.L. 103–353, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

7. Section 1714.56 is amended by revising the introductory text of paragraph (c) to read as follows:

### § 1714.56 Fund advance period.

\* \* \* \* \*

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.154.

\* \* \* \* \*

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

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

Authority: 7 U.S.C. 901–950(b); Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

9. Subpart D is added to part 1717 to read as follows:

### Subpart D—Mergers and Consolidations of Electric Borrowers

Sec.

1717.150 General.

1717.151 Definitions.

1717.152 Required documentation for all mergers.

1717.153 Transitional assistance.

1717.154 Types of transitional assistance.

1717.155 Requests for transitional assistance.

1717.156 Mergers with borrowers who prepaid RUS loans

1717.157 Applications for RUS approval of mergers.

1717.158 Application contents.

1717.159 Application process.

### Subpart D—Mergers and Consolidations of Electric Borrowers

#### § 1717.150 General.

(a) This subpart establishes RUS policies and procedures for mergers of electric borrowers. These policies and procedures are intended to provide borrowers with the flexibility to

negotiate and enter into mergers that offer advantages to the borrowers and to rural communities, and adequately protect the integrity and credit quality of RUS loans and loan guarantees.

(b) Consistent with prudent lending practices, the maintenance of adequate security for RUS loans and loan guarantees, and the objectives of the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act), RUS encourages electric borrowers to consider mergers when such action is likely to contribute, in the long-term, to greater operating efficiency and financial soundness. Borrowers are specifically encouraged to explore mergers that are likely to enhance the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries.

(c) Pursuant to the loan documents and RUS regulations, certain mergers are subject to RUS approval. See § 1717.615.

(d) Since RUS must take action in order to legally advance funds and otherwise conduct business with a successor, RUS encourages borrowers to consult RUS early in the process regardless of whether RUS approval of the merger is required. RUS will provide technical assistance and guidance to borrowers to help expedite the processing of their requests and to help resolve potential problems early in the process.

#### § 1717.151 Definitions.

The definitions set forth in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated. In addition, for the purpose of this subpart, the following terms shall have the following meanings:

*Active borrower* means an electric borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

*Active distribution borrower* means an electric distribution borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

*Consolidation* see *merger*.

*Coverage ratios* means collectively TIER, OTIER, DSC and ODSC, as these terms are defined in 7 CFR 1710.2.

*Effective date* means the date a merger is effective pursuant to applicable state law.

*Loan documents* means the mortgage (or other security instrument acceptable

to RUS), the loan contract, and the promissory note(s) entered into between the borrower and RUS.

*Merger* means: (1) A consolidation where two or more companies are extinguished and a new successor is created, acquiring the assets, liabilities, franchises and powers of those passing out of existence;

(2) A merger where one company is absorbed by another, the former ceasing to exist as a separate business entity, and the latter retaining its own identity and acquiring the assets, liabilities, franchises and powers of the former; or

(3) A transfer of mortgaged property by one company to another where the transferee acquires substantially as an entirety the assets, liabilities, franchises, and powers of the transferor.

*New loan* means a loan to a successor approved by RUS on or after the effective date.

*Preexisting loan* means a loan to a borrower approved by RUS prior to the effective date of a merger.

*Successor* means the entity that continues as the surviving business entity as of the effective date of the merger, and acquires all the assets, liabilities, franchises, and powers of the entity or entities ceasing to exist as of the effective date.

*Transitional assistance* means financial relief provided to borrowers by RUS during a limited period of time following a merger.

#### § 1717.152 Required documentation for all mergers.

In order for RUS to legally advance funds, send bills, and otherwise conduct business with a successor, the documents listed in this section must be submitted to RUS regardless of the need for RUS approval of the merger. Borrowers are responsible for ensuring that these documents are received by RUS in timely fashion. In cases of mergers that require RUS approval, or cases where borrowers must submit requests for transitional assistance, the documents listed in this section may be combined with the documents required by §§ 1717.155 and/or 1717.158 where appropriate.

(a) Prior to the effective date, borrowers must submit:

(1) A transmittal letter on corporate letterhead signed by the manager of each active borrower that is a party to the proposed merger indicating the borrower's intention to merge and tentative timeframes, including the proposed effective date;

(2) An original certified board resolution from each party to the proposed merger affirming the board's support of the merger;

(3) All documents necessary to evidence the merger pursuant to applicable law. Examples include plan of merger, articles of merger, amended articles of incorporation, bylaws, and notices and filings required by law. These documents may be copies of documents filed elsewhere, unless otherwise specified by RUS; and

(4) A letter addressed to the Administrator from the counsel of at least one of the active borrowers briefly describing the merger and indicating the relevant statutes under which the merger will be consummated.

(b) On or after the effective date, borrowers must submit:

(1) An opinion of counsel from the successor addressing, among other things, any pending litigation, proper authorization and consummation of the merger, proper filing and perfection of RUS' security interest, and all approvals required by law. RUS will provide the form of the opinion of counsel to the successor;

(2) A letter signed by the manager of the successor advising RUS of the effective date of the merger; the corporate name, address, and phone number; the names of the officers of the successor; and the taxpayer identification number; and

(3) Evidence of proper filing and perfection of RUS' security interest, as instructed by RUS, and an executed loan contract.

#### **§ 1717.153 Transitional assistance.**

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before the long-term efficiencies and economies of a merger can be realized, RUS may approve one or more types of transitional assistance to a successor under the conditions set forth in this part.

#### **§ 1717.154 Types of transitional assistance.**

(a) *Transitional assistance in connection with new loans.* Requests for transitional assistance in connection with new loans may be submitted to RUS no later than the loan application.

(1) *Loan processing priority.* RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS will offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years

after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority, subject to the availability of loan funds. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigating effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

(2) *Supplemental financing.* RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. See 7 CFR 1710.110. If all parties to the merger are active distribution borrowers, RUS will, at the borrower's request, waive the requirement to obtain supplemental financing for the first RUS loan approved after the effective date if that first loan is a municipal rate loan whose loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during these 5 years, or if the borrower requests a loan period longer than 2 years, RUS may, subject to the availability of loan funds, waive or reduce the amount of supplemental financing required. In reviewing requests to reduce or waive supplemental financing on subsequent loans or on loans with a loan period longer than 2 years, RUS will consider the differences in interest rates between RUS and supplemental loans and the impacts of this difference on the borrower's projected cash flows and its electric rates and rate disparity. If significant differences result, the waiver will be granted.

(3) *Reimbursement of general funds and interim financing.* Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. This reimbursement period is generally limited to 24 months. See 7 CFR 1710.109. If all parties to the merger are active distribution borrowers, RUS may, in connection with the first RUS loan approved after the effective date, approve a reimbursement period of up to 48 months prior to the current loan period if the loan is approved not later than 5 years after the effective date. In reviewing requests for a longer reimbursement period, RUS will consider the stresses that the transaction

and other costs of entering into the merger places on the borrower's rates and cash flows, and the mitigating effects of more generous reimbursement.

(b) *Transitional assistance affecting new and preexisting loans.* Requests for transitional assistance affecting new and preexisting loans must be received by RUS no later than 2 years after the effective date of the merger.

(1) *Section 12 deferments.* Section 12 of the RE Act (7 U.S.C. 912) allows RUS to extend the time of payment of interest or principal of RUS loans. Section 12 deferments do not extend the final maturity of the loan; lower payments during the deferment period result in higher payments later. Therefore, RUS may approve a Section 12 deferment of loan payments of up to 5 years only if such deferments will help to avoid substantial increases in retail electric rates during the transition period, without placing borrowers in financial stress after the deferment period.

(2) *Coverage ratios.* Required levels for coverage ratios are set forth in 7 CFR 1710.114 and in the loan documents. If all parties to the merger are active distribution borrowers, RUS may approve a plan, on a case by case basis, that provides for a phase-in period for these coverage ratios of up to 5 years from the effective date. Under such a plan the successor would be permitted to project and achieve lower levels for one or more of these coverage ratios during the phase-in period.

(i) A phase-in plan for coverage ratios must provide a pro forma level for each ratio during each year of the phase-in period and be supported by a financial forecast covering a period of not less than 10 years from the effective date of the merger. The plan must demonstrate that a minimum TIER level of 1.00 will be achieved in each year, that trends will be generally favorable, and that the borrower will achieve the levels required in its loan documents and RUS regulations by the end of the phase-in period, and that these levels will be maintained in subsequent years.

(ii) In reviewing phase-in plans for coverage ratios, RUS will review rates, rate disparity, and likely mitigating effects of the proposed phase-in plan.

(iii) The borrower is responsible for obtaining approvals of supplemental lenders.

(iv) Upon RUS approval of a phase-in plan, the levels in that plan will be substituted for the levels required in the borrower's preexisting loan documents and will be incorporated in any new loan or security documents.

(c) *Transitional assistance affecting preexisting loans.* The fund advance period for an insured loan, which is the

period during which RUS may advance loan funds to a borrower, terminates automatically after a specific period of time. See 7 CFR 1714.56. If, on the effective date of a merger the fund advance period on any preexisting loan to any of the active borrowers involved in a merger has not terminated, such fund advance period shall be automatically lengthened by 2 years. Such documents will be prepared upon the request of a borrower to RUS for the advance of loan funds, RUS will prepare documents for the borrower's execution that will reflect this extension and will provide the legal authority for RUS to advance funds to the successor.

**§ 1717.155 Requests for transitional assistance.**

(a) If the merger requires RUS approval, the borrower should, where possible, indicate that it desires transitional assistance at the time it requests approval of the merger. The formal request for transitional assistance must be received by RUS as specified in §§ 1717.154(a) and (b). Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.158 where appropriate. If the request for transitional assistance is submitted at the same time as a loan application, documents listed in this section may be combined with the loan application documents where appropriate. See 7 CFR part 1710, subpart I. A request for transitional assistance must include:

(1) Transmittal letter(s) formally listing the types of transitional assistance requested. If the request is submitted before the effective date, a transmittal letter must be signed by the manager of each party to the transaction. If the request is submitted on or after the effective date, a transmittal letter must be signed by the manager of the successor. Transmittal letter(s) must be signed originals on corporate letterhead stationery;

(2) Board resolution(s). If the request is submitted before the effective date, a separate board resolution must be submitted from each entity involved in the merger. If the request is submitted on or after the effective date, a board resolution from the successor must be submitted. Each board resolution must be a certified original;

(3) A merger plan, financial forecasts, and any available studies such as net present value analyses showing the anticipated costs and benefits of the merger and likely timeframes for the merger. The merger plan must clearly identify those benefits that cannot be achieved without a merger, and those

benefits that can be achieved through other means;

(4) If the transitional assistance requires RUS approval, the type and extent of the mitigation that the transitional assistance is expected to provide; and

(5) Other information that may be relevant.

(b) Borrowers are responsible for ensuring that requests for transitional assistance are complete and sound in form and substance when they are submitted to RUS. After submitting a request, borrowers shall promptly notify RUS of any changes or events that materially affect the request or any information in the request.

(c) In considering whether to approve requests for transitional assistance, RUS will evaluate the costs and benefits of the merger; the type and extent of the likely transitional stress; whether the transitional assistance requested is likely to materially mitigate such stress; and the likely impacts on electric rates and on the security of RUS loans. Review factors applicable to each type of transitional assistance are set forth in § 1717.154.

**§ 1717.156 Mergers with borrowers who prepaid RUS loans**

In some cases, an active distribution borrower may merge with a borrower that has prepaid RUS debt at a discount pursuant to 7 CFR part 1786, and whose eligibility for future RUS financing is thereby restricted. During the period when the restrictions on future financing are in effect, the successor will be eligible for RUS loans to finance facilities to serve consumers that were served by the active distribution borrower immediately prior to the effective date of the merger, provided that other requirements for loan eligibility are met.

**§ 1717.157 Applications for RUS approvals of mergers.**

If a proposed merger requires RUS approval according to RUS regulations and/or the loan documents executed by any of the active borrowers involved, the application must be submitted to RUS not later than 90 days prior to the effective date of the proposed borrower action. A distribution borrower should consult with its assigned RUS general field representative, and a power supply borrower with the Director, Power Supply Division for general information prior to submitting the request.

**§ 1717.158 Application contents.**

An application for RUS approval must include the documents listed in this section. Documents listed in this section

may be combined with the documents required by §§ 1717.152 and/or 1717.155 where appropriate.

(a) *Transmittal letters* signed by the managers of all borrowers and non-borrowers who are parties to the proposed merger. These letters must include the actual corporate name, address, and taxpayer identification number of all parties to the proposed merger. The transmittal letters must be signed originals on corporate letterhead stationery.

(b) *Resolutions from the boards of directors* of all borrowers and non-borrowers who are parties to the proposed merger. This document is the formal request by each entity for RUS approval of the proposed merger. The board resolution must include a description of the proposed merger, including timeframes, and authorization for RUS to release appropriate information to supplemental or other lenders, and for these lenders to release appropriate information to RUS. Each board resolution must be a certified original.

(c) *Evidence* that the proposed merger will result in a viable entity, and that the security of outstanding RUS loans will not be compromised by the action. This evidence shall include financial forecasts, and any available studies such as net present value analyses covering a period of not less than 10 years from the effective date of the merger, as well as information about any threatened actions by other parties that could adversely affect the financial condition of any of the parties to the proposed merger, or of the successor. Such threatened actions may include annexations or other actions affecting service territory, loads, rates or other such matters.

(d) *Regulatory information* about pending federal or state proceedings pertaining to any of the parties that could have material effects on the successor.

(e) *Rate information.* Distribution and power supply borrowers shall submit schedules of proposed rates after the merger, including the effects of the proposed action on rates and the status of any pending rate cases before a state regulatory authority. The rates of power supply borrowers are subject to RUS approval.

(f) *Area coverage and line extension policies:* If any distribution systems are parties to the proposed merger, a statement of proposed area coverage and line extension policies for the successor.

**§ 1717.159 Application process.**

(a) Borrowers are responsible for ensuring that their applications for RUS



approval of a merger are complete and sound in form and substance when they are submitted to RUS. After submitting an application, borrowers shall promptly notify RUS of any changes or events that materially affect the application or any information in the application.

(b) In reviewing borrower requests for approval of mergers, RUS will consider the likely effects of the action on the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries and on the security of outstanding RUS loans. Among the factors RUS will consider are whether the proposed merger is likely to:

- (1) Contribute to greater operating efficiency and financial soundness;
- (2) Mitigate high electric rates and or rate disparity;
- (3) Help borrowers to diversify their loads or otherwise hedge risks;
- (4) Have beneficial effects on rural economic development in the community served by the borrower, such as diversifying the economic base or alleviating unemployment; and
- (5) Provide other benefits consistent with the purposes of the RE Act.

(c) RUS will not approve a merger if, in the sole judgment of the Administrator, such action is likely to have an adverse effect on the credit quality of outstanding loans made or guaranteed by the Government. RUS will thoroughly review each request for approval of such action, including review of the feasibility and security of outstanding Government loans according to the standards in 7 CFR 1710.112 and 1710.113, respectively, and in other RUS regulations.

(d) RUS will keep the borrowers apprised of the progress of their applications.

## **PART 1786—PREPAYMENT OF RUS GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS**

### **Subpart F—Discounted Prepayments on RUS Electric Loans**

10. The authority citation for subpart F continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Pub.L. 103-534, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

11. Section 1786.167 is amended by adding a sentence at the end of paragraph (a) to read as follows:

#### **§ 1786.167 Restrictions to additional RUS financing.**

(a) \* \* \* Special provisions for mergers involving a borrower that has

prepaid pursuant to this subpart are in 7 CFR 1717.156.

\* \* \* \* \*

Dated: July 29, 1996.

Jill Long Thompson,

*Under Secretary, Rural Development.*

[FR Doc. 96-19711 Filed 8-6-96; 8:45 am]

BILLING CODE 3410-15-P

## **DEPARTMENT OF ENERGY**

### **Office of Energy Efficiency and Renewable Energy**

#### **10 CFR Part 490**

[Docket No. EE-RM-96-200]

### **Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets**

**AGENCY:** Department of Energy (DOE).

**ACTION:** Advance Notice of Proposed Rulemaking and Notice of Public Hearings.

**SUMMARY:** The Department of Energy (DOE) is today publishing an advance notice of proposed rulemaking, as required by the Energy Policy Act of 1992 (the Act), that begins a process to determine whether alternative fueled vehicle (AFV) acquisition requirements for certain private and local government automobile fleets should be promulgated. This advance notice also requests comments on progress toward the goals set forth in section 502(b)(2) of the Act, identifying the problems with achieving the goals, assessing the adequacy and practicability of and considering all actions necessary to meet the goals. This advance notice is intended to stimulate comments that will inform DOE decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles.

**DATES:** Written comments (8 copies) must be received by the Department by November 5, 1996.

Oral views, data, and arguments may be presented at the public hearings, which are scheduled as follows:

1. In Dallas, TX, beginning at 10:15 a.m. on September 17, 1996.
2. In Sacramento, CA, beginning at 9:30 a.m. on September 25, 1996.
3. In Washington, D.C., beginning at 9:30 a.m. on October 9, 1996.

Requests to speak at a hearing should be received no later than 4:00 p.m., September 13, 1996 for the Dallas, TX hearing, September 23, 1996 for the Sacramento, CA hearing, and October 7, 1996 for the Washington, D.C. hearing.

The length of each oral presentation is limited to 10 minutes.

**ADDRESSES:** The hearings will be held at the following addresses:

1. Dallas, TX—Wyndham Anatole Hotel, 2201 Stemmons Freeway (Market Center), Obelisk A Room (Mezzanine Level), Dallas, TX 75207.

2. Sacramento, CA—Secretary of State Archive/Complex, 1500 11th Street (11th & O Streets Entrance), Auditorium (Main Lobby), Sacramento, CA.

3. Washington, D.C.—U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Written comments (8 copies) and requests to speak at a hearing are to be submitted to U.S. Department of Energy, Office of Transportation Technologies, EE-33, Docket No. EE-RM-96-200, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone (202) 586-3012. Copies of the transcript of the public hearings, written comments, technical reference materials mentioned in the notice, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, 1000 Independence Ave. S.W., Washington, D.C. 20585, telephone (202) 586-6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under "EE-RM-96-200."

For more information concerning public participation in this rulemaking proceeding, see section V of this notice (Public Comment Procedures).

#### **FOR FURTHER INFORMATION CONTACT:**

David Rodgers, Office of Energy Efficiency and Renewable Energy, EE-34, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, afv-deployment@hq.doe.gov; or phone (202) 586-9171.

For information concerning the public hearings, submission of written comments; and to obtain copies of materials referenced in this notice, contact Andi Kasarsky, (202) 586-3012.

#### **SUPPLEMENTARY INFORMATION:**

- I. Introduction
  - A. Authority
  - B. Program Background and Goals
  - C. Required Rulemaking
- II. General Issues Relating to Replacement Fuel Goals
- III. Additional Issues Related to Required Fleet Mandate Determinations
- IV. Review and Analysis Requirements
- V. Public Comment Procedures
  - a. Participation in Rulemaking
  - b. Written Comment Procedures