

# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1703

RIN 0572-AB31

#### Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations for its Distance Learning and Telemedicine (DLT) Loan and Grant Program. These amendments will clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expanding the purposes for which loan funds can be used; and award grants on a competitive basis.

**DATES:** This rule will become effective on May 10, 1999, unless we receive written adverse comments or notice of intent to submit adverse comments on or before April 26, 1999. Written comments must be received by RUS not later than April 26, 1999. If we receive such comment or notice, we will publish a document in the **Federal Register** prior to the effective date withdrawing the direct final rule.

**ADDRESSES:** Submit any written comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250-1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7

CFR part 1.27(b)). Telephone number (202) 720-9554.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250-1590. Telephone number (202) 720-9556.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and administrative appeal procedures, if any, are required to be exhausted prior to initiating litigation against the Department (7 U.S.C. 6912(e)).

#### Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). The RUS DLT Loan and Grant Program provides recipients with grants and with loans at interest rates and terms that are more favorable than those generally available from the private sector. Recipients, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

#### Information Collection and Recordkeeping Requirements

The reporting and recordkeeping burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572-0096.

Send questions or comments regarding this burden or any other

aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034—South Building, Washington D.C. 20250-1522.

#### National Environmental Policy Act Certification

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.

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.855, Distance Learning and Telemedicine Loan and Grant Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Executive Order 12372

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### Background

RUS is amending its regulations for the Distance Learning and Telemedicine Loan and Grant Program (DLT program). These amendments will (1) clarify the requirements for the different types of financial assistance offered; (2) streamline policies and procedures for obtaining loans and expanding purposes for which loans can be used; (3) award grants on a competitive basis; and (4) provide applicants with additional

offices to submit applications.

Currently, the regulations covering the administration of the DLT program are contained in one subpart. This amendment will revise subpart D to address all criteria related to the overall program and add three subparts that address specifically the different types of financing options offered by the DLT program. Subpart E addresses applications for grants. Subpart F addresses applications for a combination loan and grant. Subpart G addresses applications for loans.

The current regulations implemented the provisions of the Federal Agriculture Improvement Act of 1996 (1996 Act, 7 U.S.C. 950aaa *et seq.*) which added a loan program component to the grant program. During its first two years, the loan program has struggled to effectively utilize its available loan funds, in part because applicants seeking financial assistance were either unable to enter into loan agreements or could not pay back a loan. The amendments to the regulations will seek to retarget available loan funds to entities that are capable of supporting debt service payments for the purpose of providing distance learning and telemedicine services in rural areas.

This rule establishes three application processes to finance necessary equipment and telecommunications facilities that will enable schools and libraries and rural medical clinics to offer the best services possible: (1) grants, contained in subpart E; (2) combination loan and grant, contained in subpart F; and (3) loans, contained in subpart G. The three application processes by which applicants can request consideration for financial assistance will enable the government to more effectively and efficiently utilize the limited financial assistance available. By segregating the three different application processes, RUS will be able to target entities that qualify for the different types of financial assistance. The rule seeks to assure repayment to the government of any loan.

Grants will be awarded to the neediest applicants on a competitive basis subject to the availability of funds. Instead of "categorizing" applicants based on the percentage of students eligible to participate in the National School Lunch Program (NSLP), RUS will instead use the NSLP eligibility levels as an indicator of poverty and award points based on the percentage of the students eligible to participate located in the proposed end user sites of the project (higher eligibility percentages will receive more points). In addition, applicants will be able to

submit for consideration additional indicators which address the economic disparity of the community the project will serve. All eligible applications for grants will be scored and ranked in accordance with the provisions of subpart E. Grants will be awarded on a competitive basis to applications receiving the highest number of points.

Loans and combination loans and grants will be made to applicants able to enter into a loan agreement, execute a note for more than one year, demonstrate loan feasibility, and otherwise qualify under subparts F and G. RUS will determine the specific amounts to be made available for a combination loan and grant, generally at a ratio of 10 to 1, loans to grants, respectively (e.g., \$100,000 of grant funds for every \$1,000,000 of loan funds). Loans and combination loan and grant applications will generally be processed on a first-in, first-out basis, based on the amount of funding available for the fiscal year and the number of applications received. RUS believes that sufficient funding is generally available to fund all eligible combination loan and grant and loan applications received during the fiscal year, and therefore will process and approve each application as it is received. However, if RUS determines that the amount of combination loan and grant and loan funds available for funding is insufficient to process all eligible applications, RUS may prioritize such applications using evaluation criteria similar to that set forth for processing grants. The purposes for which loans can be used will be expanded to allow for the financing of purposes and facilities that are restricted under approved grant purposes in this rule and under any financing purpose in the current rule. For example, in some instances, loans may be used to cover initial operating start-up costs or for the construction of buildings and purchase of land necessary for the delivery of educational and health care services to rural areas. Loans afford applicants the most flexibility in terms of the types of approved purposes for financial assistance and provide the highest amount of financial assistance available per applicant.

In addition to establishing three distinct financial assistance application processes, this rule will amend several of the scoring criteria used to rank grant applications.

#### List of Subjects in 7 CFR Part 1703

Community development, Grant programs-education, Grant programs-health care, Grant programs-housing

and community development, Loan programs-education, Loan programs-health care, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 7 CFR Chapter XVII is amended as follows:

#### PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 is revised to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

2. In part 1703, subpart E is redesignated as subpart H, subpart D is revised, and new subparts E, F, and G are added to read as follows:

##### Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

Sec.

- 1703.100 Purpose.
- 1703.101 Policy.
- 1703.102 Definitions.
- 1703.103 Applicant eligibility and allocation of funds.
- 1703.104 [Reserved]
- 1703.105 Processing of selected applications.
- 1703.106 Disbursement of loans and grants.
- 1703.107 Reporting and oversight requirements.
- 1703.108 Audit requirements.
- 1703.109 Grant and loan administration.
- 1703.110 Changes in project objectives or scope.
- 1703.111 Grant and loan termination.
- 1703.112 Expedited telecommunications loans.
- 1703.113–1703.119 [Reserved]

##### Subpart E—Distance Learning and Telemedicine Grant Program

- 1703.120 Use of grants.
- 1703.121 Approved purposes for grants.
- 1703.122 Matching contributions.
- 1703.123 Nonapproved purposes for grants.
- 1703.124 Maximum and minimum grant amounts.
- 1703.125 Completed application.
- 1703.126 Criteria for scoring grant applications.
- 1703.127 Application selection provisions.
- 1703.128 Submission of applications.
- 1703.129 Appeals.

##### Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program

- 1703.130 Use of combination loan and grant.
- 1703.131 Approved purposes for a combination loan and grant.
- 1703.132 Nonapproved purposes for a combination loan and grant.

- 1703.133 Maximum and minimum amounts.
- 1703.134 Completed application.
- 1703.135 Application selection provisions.
- 1703.136 Submission of applications.
- 1703.137 Appeals.
- 1703.138–1703.139 [Reserved]

#### **Subpart G—Distance Learning and Telemedicine Loan Program**

- 1703.140 Use of loan funds.
- 1703.141 Approved purposes for loans.
- 1703.142 Nonapproved purposes for loans.
- 1703.143 Maximum and minimum amounts.
- 1703.144 Completed application.
- 1703.145 Application selection provisions.
- 1703.146 Submission of applications.
- 1703.147 Appeals.

#### **Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General**

##### **§ 1703.100 Purpose.**

The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant Program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents. This subpart describes the general policies for administering the DLT program. Subpart E contains the policies and procedures related to grants; subpart F contains the policies and procedures related to a combination loan and grant; and subpart G contains the policies and procedures related to loans.

##### **§ 1703.101 Policy.**

(a) The transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will provide financial assistance to distance learning and telemedicine projects that will improve the access of people residing in rural areas to educational, learning, training, and health care services.

(b) In providing financial assistance, RUS will give priority to rural areas that it believes have the greatest need for distance learning and telemedicine services. RUS believes that generally the need is greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. RUS will take into consideration the community's involvement in the proposed project

and the applicant's ability to leverage grant funds.

(c) In administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) Rural institutions are encouraged to cooperate with each other, with applicants, and with end-users to promote the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the programs being implemented under this subpart.

(f) The Administrator will provide only loans under this subpart to any entity that has received a telecommunications or electric loan under the Rural Electrification Act of 1936. Telecommunications and Electric borrowers are encouraged to seek a loan under this subpart to bolster educational and health care opportunities in the rural communities they serve. A borrower receiving a loan shall:

(1) Make the loan available to entities that qualify as distance learning or telemedicine projects satisfying the requirements of this subpart, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance.

(2) Use the loan to acquire, install, improve, or extend a distance learning or telemedicine system referred to in this subpart.

(g) The Administrator will allocate funds that are appropriated each fiscal year for the subparts E, F, and G, of this part respectively. Not more than 30 days before the end of the fiscal year, the Administrator may transfer any funds not committed to grants in the combination loan and grant program to the grant program.

(h) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

(i) The Administrator will publish, at the end of each fiscal year, a notice in the **Federal Register** of all applications receiving financial assistance under this subpart. Subject to the provisions of the Freedom of Information Act, (5 U.S.C. 552), applications will be available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C., 20250.

##### **§ 1703.102 Definitions.**

*1996 Act* means the Federal Agriculture Improvement Act of 1996.

*Act* means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

*Administrator* means the Administrator of the Rural Utilities Service, or designee or successor.

*Applicant* means an eligible organization that applies for financial assistance under this subpart.

*Approved purposes* means project purposes for which grant, loan, or combination loan and grant financial assistance may be expended.

*Champion community* means any community that submitted a valid application to become a USDA Empowerment Zone/Enterprise Community (EZ/EC) area, that met the requirements to be designated an EZ/EC area, but not chosen because their score was not high enough to be selected.

*Combination loan and grant* means a grant in combination with a loan made under the DLT program.

*Completed application* means an application that includes all those items specified in §§ 1703.125, 1703.134, and 1703.144 in form and substance satisfactory to the Administrator.

*Computer networks* mean computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

*Consortium* means a combination or group of eligible entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. Each consortium shall be composed of a minimum of one eligible organization that meets the requirements of § 1703.103.

*Construct* means to acquire, construct, extend, improve, or install a facility or system.

*Data terminal equipment* means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

*Distance learning* means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating

in one area, whether rural or not, to students and teachers who are located in rural areas; or

(2) Connect teachers and students, located in one rural area with teachers and students that are located in a different rural area.

*DLT borrower* means an entity that has an outstanding loan under the provisions of the DLT program.

*DLT program* means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS.

*Economic useful life* as applied to equipment and facilities financed under the DLT program means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

*Eligible equipment* means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services.

*Eligible facilities* means land, buildings, or building construction needed to carry out an eligible distance learning or telemedicine project for loan financial assistance only.

*Eligible organization* means an entity that meets the requirements of § 1703.103.

*Empowerment Zone and Enterprise Community (EZ/EC)* means any community whose designation as such by USDA pursuant to 26 U.S.C. 1391 *et seq.*, is in effect at the time RUS agrees to provide financial assistance.

*End user* is one or more of the following:

(1) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart; and

(3) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

*End user site* means a facility that is part of a network or telecommunications system that is utilized by end users.

*Financial assistance* means a grant, combination loan and grant, or loan.

*GFR* means RUS telecommunications program General Field Representative.

*Grant documents* means the grant agreement, including any amendments and supplements thereto, between RUS and the grantee.

*Grantee* means a recipient of a grant from RUS to carry out the purposes of the DLT program.

*Guarantee* means a guarantee for a loan provided by a RUS borrower or other qualified third party.

*Hub* means a facility that is part of a network or telecommunications system that provides educational or medical services to end user sites.

*Instructional programming* means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

*Interactive equipment* means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

*Loan* means a loan made under the DLT program bearing interest at a rate equal to the then current cost-of-money to the government.

*Loan documents* mean the loan agreement, note, and security instrument, including any amendments and supplements thereto, between RUS and the DLT borrower.

*Local exchange carrier* means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

*Matching contribution* means the applicant's contribution for approved purposes.

*National school lunch program (NSLP)* means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

*Project* means approved purposes for which financial assistance has been provided.

*Project service area* means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

*Recipient* means a grantee, borrower, or both of a DLT program grant, loan or combination loan and grant.

*Rural community facilities* mean facilities such as schools, libraries, learning centers, training facilities, hospitals, medical centers, and similar facilities, primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational or health care benefits primarily to residents of rural areas.

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

*Secretary* means the Secretary of Agriculture.

*Technical assistance* means:

(1) Assistance in learning to manage, operate, or use equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

*Telecommunications carrier* means any provider of telecommunications services.

*Telecommunications or electric borrower* means an entity that has outstanding RUS or Rural Telephone Bank electric or telecommunications loans or loan guarantees under the provisions of the Act.

*Telecommunications systems plan* means the plan submitted by an applicant in accordance with § 1703.125 for grants, § 1703.134 for a combination loan and grant, or § 1703.144 for loans.

*Telecommunications terminal equipment* means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

*Telecommunications transmission facilities* means facilities that transmit, receive, or carry voice, video, or data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers,

other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

*Telemedicine* means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

**§ 1703.103 Applicant eligibility and allocation of funds.**

(a) To be eligible to receive financial assistance under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic, or any rural community facility. A political subdivision of a State government, other than a political subdivision of a State government that operates a rural community facility, is not considered an eligible applicant; or

(2) A consortium, as defined in § 1703.102. A consortium which includes a political subdivision of a State government is only eligible if the political subdivision of the State government operates a rural community facility; or

(3) An incorporated organization, partnership, Indian tribe, and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities in a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS and to obtain the applicable financial assistance. If a

partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

(c) Electric or telecommunications borrowers are eligible for loans only.

**§ 1703.104 [Reserved]**

**§ 1703.105 Processing of selected applications.**

(a) During the period between the submission of an application and the execution of documents, the applicant must inform RUS if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so informs RUS, the selection will be rescinded or the application withdrawn and written notice to that effect sent to the applicant.

(b) If an application has been selected and the scope of the project changes substantially, the applicant may be required to submit a new application to RUS for review and consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The financial assistance may not be transferred by the applicant for use for another project.

(c) If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Administrator's selection of the application, the Administrator will rescind the selection and written notice to that effect will be sent to the applicant. The Administrator, in his sole discretion may extend the 90 day period if it appears resolution is eminent.

(d) RUS may request additional information to complete the appropriate documents covering financial assistance.

(e) Financial assistance documents.

(1) The documents will include a grant agreement for grants; loan documents, including third party guarantees, notes and security instruments for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The grant agreement and the loan documents will include, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the financial assistance, supplemental funds required for the project, and certain agreements or commitments the applicant may have proposed in its application. In addition,

the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide additional assurance that loans will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to RUS and must, before receiving any advance of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all facilities and equipment financed by the loan. RUS may require additional security as it deems necessary.

(4) Adequate security may also be provided by third-party guarantees, letters of credit, pledges of revenue, or other forms of security satisfactory to RUS.

(5) The security instrument and other loan documents required by RUS in connection with a loan under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be required to secure repayment of the loan.

(6) If the project does not constitute a complete operating system, the DLT borrower shall provide evidence, in form and substance satisfactory to RUS, demonstrating that the borrower has sufficient contractual, financing, or other arrangements to assure that the project will provide adequate and efficient service.

(f) Prior to the execution of a grant and loan document, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the DLT program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date of RUS' selection of an application, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application.

**§ 1703.106 Disbursement of loans and grants.**

(a) For financial assistance of \$100,000 or greater, prior to the disbursement of a grant and a loan, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR part 3019.

(b) Grants and loans will be disbursed to recipients on a reimbursement basis,

or with unpaid invoices for the eligible purposes contained in this subpart, by the following process:

(1) An SF 270, "Request for Advance or Reimbursement," will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) RUS will review the SF 270 for accuracy when received and will schedule payment if the form is satisfactory. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1999, funds will be advanced in accordance with 7 CFR 1744.69.

(c) The recipient's share in the cost of the project must be disbursed in advance of the loan and grant, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipients will not be permitted to provide their contributions at the end of the project.

(d) A combination loan and grant will be disbursed on a pro rata basis based on the respective amounts of financial assistance provided.

#### **§ 1703.107 Reporting and oversight requirements.**

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are expended by the applicant.

(b) A final project performance report must be provided by the recipient. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients, as it determines necessary, to assure that projects are completed in accordance with the approved scope of work and that the financial assistance is expended for approved purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit an original and one copy of all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular

project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

#### **§ 1703.108 Audit requirements.**

A recipient of financial assistance shall provide RUS with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, a Telecommunications or Electric borrower, or any other entity not covered by the preceding paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, "Policy on Audits of RUS Borrowers."

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

#### **§ 1703.109 Grant and loan administration.**

RUS will conduct reviews as necessary to determine whether the financial assistance was expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the grants and loans are expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to RUS, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the Office of Inspector General, U. S. Department of Agriculture, the General Accounting Office, and any other official conducting an audit of the recipient's financial statements or records, and program performance for the grants and loans made under this subpart. The recipient shall permit RUS to inspect and copy any records and documents that pertain to the project.

#### **§ 1703.110 Changes in project objectives or scope.**

The recipient shall obtain prior written approval by RUS for any material change to the scope or objectives of the project, including any

changes to the scope of work or the budget submitted to RUS. Any material change shall be contained in a revised scope of work plan to be prepared by the recipient, submitted to, and approved by RUS in writing.

#### **§ 1703.111 Grant and loan termination.**

(a) The financial assistance may be terminated when RUS and the recipient agree upon the conditions of the termination, the effective date of the termination, and, in the case of a partial termination of the financial assistance, any unadvanced portion of the financial assistance to be terminated and any advanced portion of the financial assistance to be returned.

(b) The recipient may terminate the financial assistance by written notification to RUS, providing the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of the financial assistance to be terminated. In the case of a partial termination, if RUS believes that the remaining portion of the financial assistance will not accomplish the approved purposes, then, RUS may terminate the financial assistance in its entirety, pursuant to the provisions of paragraph (a) of this section.

#### **§ 1703.112 Expedited telecommunications loans**

RUS will expedite consideration and determination of an application submitted by an RUS telecommunications borrower for a loan under the Act or an advance of such loan funds to be used in conjunction with financial assistance under subparts E, F, or G of this part. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

#### **§§ 1703.113—1703.119 [Reserved]**

#### **Subpart E—Distance Learning and Telemedicine Grant Program**

#### **§ 1703.120 Use of grants**

(a) Grants may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the amount designated for approved purposes; at least 30 percent of the project must be funded by matching contributions. For purposes of determining the applicant's ability to leverage resources in § 1703.126(b)(4), the minimum matching contribution of 30 percent of the amount designated for approved purposes equals 42.85 percent of the grant requested.

(b) Only projected costs for approved grant purposes will be considered in determining the amount of DLT grant

eligibility in accordance with paragraph (a) of this section.

(c) Funding from Federal sources other than RUS cannot be considered as matching contributions under this subpart.

#### **§ 1703.121 Approved purposes for grants.**

Grants shall be expended only for the costs associated with the initial capital assets associated with the project. The following are approved grant purposes:

- (a) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;
- (b) Acquiring instructional programming; and
- (c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the grant (this purpose shall not exceed 10 percent of the grant).

#### **§ 1703.122 Matching contributions.**

(a) The grant applicant's minimum matching contribution (as specified in § 1703.120) for approved purposes, generally must be in the form of cash. However, in-kind contributions for the purposes listed in § 1703.121 may be substituted for cash.

(b) In-kind items listed in § 1703.121 must be non-depreciated or new assets with established monetary values. Manufacturers' or service providers' discounts are not considered in-kind matching.

(c) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible in-kind matching contribution.

(d) Costs incurred for non-approved purposes for grant outlined in § 1703.123 shall not be used as an in-kind matching contribution.

#### **§ 1703.123 Nonapproved purposes for grants.**

(a) A grant made under this subpart will not be provided or used:

- (1) To cover the costs of installing or constructing telecommunications transmission facilities, other than those facilities not available and necessary for the completion of the proposed project and not otherwise available;
- (2) To pay for medical equipment not having telemedicine as its essential function;
- (3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose sole objective is to provide links between teachers and students or between medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved;

(13) Except for leases provided for in § 1703.105, to pay the cost of recurring or operating expenses for the project; or

(14) For any other purposes not specifically contained in § 1703.105.

(b) Except as otherwise provided in § 1703.112, grants shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other financial assistance that is not assured.

#### **§ 1703.124 Maximum and minimum grant amounts.**

Applications for grants under this subpart will be subject to limitations on the proposed amount of grant funds. The Administrator will establish the maximum amount of a grant to be made available to an individual recipient for each fiscal year under this subpart by publishing notice of the maximum amount in the **Federal Register** not sooner than 45 days before the period for accepting applications begins. The minimum amount of a grant is \$50,000.

#### **§ 1703.125 Completed application.**

The following items are required to be submitted to RUS in support of an application for grant funds:

(a) *An application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the project.* The applicant must provide

RUS with a general project overview that addresses the following 8 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the grant required and the source of matching contribution and other financial assistance for the remainder of the project;

(5) A statement specifying whether the project is either a distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site; and

(8) A certification by the applicant that facilities constructed with grants do not duplicate adequate established telemedicine or distance learning services.

#### **(c) Scoring criteria documentation.**

Each grant applicant must address and provide documentation on how it meets each of the scoring criteria contained in § 1703.126.

(d) *A scope of work.* The scope of work must include, at a minimum:

- (1) The specific activities to be performed under the project;
- (2) Who will carry out the activities;
- (3) The time-frames for accomplishing the project objectives and activities; and
- (4) A budget for all capital expenditures reflecting the line item costs for approved purposes for both the grant funds and other sources of funds for the project. Separately, the budget must specify any line item costs that are nonapproved purposes for grants as contained in § 1703.123.

(e) *Financial information.* The applicant must provide financial information to support the need for the financial assistance requested for the project and the applicant's ability and financial capacity to carry out the proposed project. It must show its



financial and other ability to carry out the proposed work. All institutions participating in a project application (including all members of a consortium), must include an income statement (or equivalent revenue and expense reports) and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation, or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data to demonstrate feasibility of the project and the financial capability of the project participants to continue a sustainable project for a minimum of 10 years after completion of the project. This documentation should include non-contingent sources of income or revenues that are sufficient to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, and provide for replacement of depreciable items.

(2) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(3) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to those receiving telemedicine or distance learning services.

(f) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(g) *Funding commitment from other sources.* The applicant must provide evidence, in form and substance satisfactory to RUS, that funding

agreements have been obtained to ensure completion of the project. These agreements shall be sufficient to ensure:

(1) Payment of all proposed expenditures for the project;

(2) All required matching contribution in 1703.120;

(3) any additional matching funding provided in accordance with § 1703.126(b)(4); and

(4) Any other funds necessary to complete the project.

(h) *A telecommunications system plan.* A telecommunications system plan consisting of the following:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(i) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Anti-Kickback Act (18 U.S.C. 874);

(3) Davis Bacon Act (40 U.S.C. 276a-a-7);

(4) Contract Work and Safety Standards Act (40 U.S.C. 327-333);

(5) Clean Air Act (42 U.S.C. 7401, *et seq.*);

(6) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);

(7) E.O.s 12549 and 12689, Debarment and Suspension;

(8) Resource Conservation and Recovery Act (42 U.S.C. 6962);

(9) Drug-Free Workplace Act of 1988 (41 U.S.C. 701);

(10) Assistance and Real Property Acquisition Policies Act of 1970; and

(11) Office of Management and Budget Circulars A-110 and A-102.

(j) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Grants made under this part are subject to part 1794 of this chapter which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant may use the "Environmental Questionnaire," available from RUS, to assist in complying with the requirements of this section.

(k) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(l) *Federal debt certification.* The applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(m) *Consultation with USDA State Director, Rural Development.* The applicant must provide evidence that it has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the State or local level.

(n) *State strategic plan conformity.* The applicant must provide evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). The applicant should indicate if such a plan does not exist.



(o) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of the 1996 Act.

(p) *Additional information required by RUS.* The applicant must provide any additional information RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS may request modifications or changes, including changes in the amount of financial assistance requested, in any proposal described in an application submitted under this subpart.

**§ 1703.126 Criteria for scoring grant applications.**

(a) *Criteria.* The criteria in this section will be used by RUS to score applications that have been determined to be in compliance with the requirements of this subpart. Applications for grants must meet the rurality requirements in paragraph (a)(2) of this section and address each of the following scoring criteria:

- (1) The need for services and benefits derived from services (up to 55 points);
- (2) The comparative rurality of the project service area (up to 45 points);
- (3) The economic need of the applicant's service area as estimated by the NSLP or other supplemental objective criteria (up to 35 points);
- (4) The ability of the applicant to leverage resources (up to 35 points);
- (5) Innovativeness of the project (up to 15 points);
- (6) The cost effectiveness of the system (up to 35 points);
- (7) Project participation in EZ/ECs (Empowerment Zone and Enterprise Communities) and Champion Communities (up to 15 points).

(b) Scoring criteria:

(1) *The need for services and benefits derived from services—Up to 55 Points.*

(i) This criterion will be used by RUS to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and local community involvement in planning, implementing, and financial assistance of the project. Applicants may receive up to 45 points for documenting the need for services and benefits derived from service as explained in this section. Applicants with an average NSLP percentage less than 50 percent as determined in paragraph (b)(3) of this section may receive up to an additional 10 points based on information submitted that evidences the economic need of the

project's service area. This determination will be made by RUS based on information submitted by the applicant under paragraph (b)(1) of this section.

(ii) RUS will consider the extent of the applicant's documentation explaining the economic, education, or health care challenges facing the community; the applicant's proposed plan to address these challenges; how the grant can help; and why the applicant cannot complete the project without a grant. RUS will also consider the extent to which the applicant provides evidence that economic, education, or health care challenges could not be addressed without employing advanced technology. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services which are needed and will provide direct benefits to rural residents.

(A) Some examples of benefits to be provided by the project include, but are not limited to:

- (1) Improved educational opportunities for a specified number of students;
- (2) Travel time and money saved by telemedicine diagnoses;
- (3) Number of doctors retained in rural areas;
- (4) Number of additional students electing to attend higher education institutions;
- (5) Lives saved due to prompt medical diagnoses and treatment;
- (6) New education courses offered, including college level courses;
- (7) Expanded use of educational facilities such as night training;
- (8) Number of patients receiving telemedicine diagnoses;
- (9) Provision of training, information resources, library assets, adult education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(B) Other matters that will be considered by RUS under this criterion include:

(1) That rural residents, and other beneficiaries, desire the educational or medical services to be provided by the project. A strong indication of need is the willingness of local end users or institutions, to the extent possible, to contribute to the capital costs of establishing the project. This could include letters of financial commitment toward the project from local institutions.

(2) The extent of the project's planning, development, and support by local residents and institutions. This may include evidence of community involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the project planning and development.

(3) The extent to which the application addresses the problems of population out-migration and how the project seeks to slow, halt, or prevent population loss.

(4) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(2) *The comparative rurality of the project service area—Up to 45 Points.* This criterion will be used to evaluate the relative rurality of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the project service area are identified and given a score according to the population of the area where the end user sites are located.

(i) The following definitions are used in the evaluation of rurality:

(A) Exceptionally Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) Mid-Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 10,000 and not in excess of 20,000 inhabitants.

(D) Urban Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

(ii) There are a total of 45 possible points for this criterion. Each end user site will receive points based on its location in accordance with paragraph (b)(2)(i) of this section. If a hub is utilized as an end user site, the hub will be considered as an end user site. The applicant will receive points as follows:

(A) If the end user site is located in an Exceptionally Rural Area, it will receive 45 points.

(B) If the end user site is located in a Rural Area, it will receive 30 points.

(C) If the end user site is located in a Mid-Rural Area, it will receive 15 points.

(D) If the end user site is located in an Urban Area, it will receive 0 points.

(iii) The total score for this criterion will be based on the average score for all the end user sites included in the project.

(iv) An application must receive a minimum of 20 points as an average score for all the end user sites under this criterion to be eligible for a grant.

(3) *The economic need of the applicant's service area as estimated by NSLP—Up to 35 points.* This criterion will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the NSLP for each area to be served by the end user site. The appropriate State or local organization administering the program must certify the percentages as being correct. The applicant must provide RUS with a listing of the location of each end user site (city, town, village, borough or rural area plus the State) discussing how the appropriate NSLP percentage was determined in accordance with this section. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct. For purposes of this subpart, the NSLP percentage will reflect the percentage of eligibility rather than the percentage of actual participation.

(i) The following guidelines will be used to determine the applicable NSLP percent for a particular application:

(A) Public schools or non-profit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(B) Schools and institutions of higher learning ineligible to participate in the NSLP and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(C) Percentage ratios will be rounded up to the next highest or rounded down to the next lowest whole number for fraction of percentages at or greater than .5 or less than .5, respectively.

(D) The project NSLP percentage will be determined by the average of the NSLP percentages of the end user sites. If end user sites fall within different percentile categories, the eligibility percentages associated with each end user site will be averaged to determine

the percentile category. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(ii) The applicant will receive points as follows:

(A) NSLP percentage greater than or equal to 75 percent—35 points

(B) NSLP percentage greater than or equal to 50 percent but less than 75 percent—25 points

(C) NSLP percentage greater than or equal to 25 percent but less than 50 percent—15 points

(D) NSLP percentage less than 25 percent—0 points

(4) *The ability of the applicant to leverage resources—Up to 35 points.*

This criterion will be used to evaluate the ability of the applicant to provide a matching contribution for the project using other non-Federal financial assistance. Documentation submitted in support of the application should reflect any additional financial support for the project from non-Federal sources above the applicant's matching contribution as required by § 1703.120. Based on the maximum RUS financial assistance percentage of 70 percent of eligible project costs, the minimum matching as a percentage of the grant requested is 42.85 percent. The applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the project. The applicant will receive points as follows:

(i) Matching contribution for a grant for approved purposes greater than 42.85 percent, but less than or equal to 70 percent of the grant—0 points.

(ii) Matching contribution for a grant for approved purposes greater than 70 percent, but less than or equal to 100 percent of the grant—15 points.

(iii) Matching contribution for a grant for approved purposes greater than 100 percent, but less than or equal to 150 percent of the grant—25 points.

(iv) Matching contribution for a grant for approved purposes greater than 150 percent, but less than or equal to 200 percent of the grant—30 points.

(v) Matching contribution for a grant for approved purposes greater than 200 percent of the grant—35 points.

(5) *Innovativeness of the project—Up to 15 points.* This criterion will be used to evaluate the innovativeness of application based on documentation that shows how the project utilizes advanced telecommunications in a unique way to address the needs of the community. Innovativeness should be addressed in the context of how the project will deliver distance learning or telemedicine services more effectively or at a lower cost. The following issues

may be addressed to show how the project differs from a typical distance learning and telemedicine network as follows:

(i) The extent to which the project differs from a technical standpoint;

(ii) The extent to which the project differs from an educational or medical programmatic standpoint;

(iii) The extent to which the project reflects a unique adaptation of technology based on the special needs or circumstances of the proposed area to be served by the project; and

(iv) The potential of the project to influence or lead changes in how telecommunications services can be delivered in other areas.

(6) *The cost-effectiveness of the project—Up to 35 points.* This criterion will be used to evaluate the cost effectiveness of the application based on the extent that cost-efficiency is considered in delivering the services in the project. The following issues should be addressed under this criterion:

(i) The extent to which the applicant has considered various technological options for delivering the services. The applicant must provide sufficient documentation reflecting accepted analytical and financial methodologies to substantiate its choice of technology as the most cost-effective option. RUS will consider the applicant's documentation and analysis comparing various systems and technologies.

(ii) Whether buying or leasing specific equipment is more cost effective.

(iii) The extent to which the project will utilize other existing networks at the regional, statewide, national or international levels. To the extent possible, educational and health care networks should be designed to utilize the widest practicable number of other networks that expand the capabilities of the project, thereby affording rural residents opportunities that may not be available at the local level. The ability to connect to the Internet alone cannot be used as the sole basis to fulfill this criteria.

(iv) The extent to which the facilities being constructed with financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the project.

(v) The extent to which the project utilizes existing telecommunications transmission facilities that could provide the transmission path for the needed services. For projects that do not utilize existing transmission facilities, RUS will consider documentation explaining the necessity of this option. RUS will also consider any agreements

between the applicant and other entities for sharing transmission facilities to lower the fixed costs of such facilities.

(7) *Project participation in EZ/ECs and champion communities*—(Up to 15 Points). This criterion will be used by RUS to score applications based on the number of end user sites within an EZ/EC and Champion Community. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC. Five (5) points will be assigned if at least one end user site is located in a Champion Community.

#### **§ 1703.127 Application selection provisions.**

(a) Applications will be selected for approval based on scores assigned, availability of funds, and the provisions of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; costs; location; and other characteristics of the application and the project to determine the number of points assigned to a grant application for all selection criteria.

(b) Regardless of the number of points an application receives in accordance with § 1703.126, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one State during a fiscal year;

(2) Limit the number of selected applications for a particular project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application. In this case, however, the Administrator will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount in accordance with § 1703.125(e)(1). An applicant or multiple applicants affected under this paragraph will have the opportunity to be considered for loan financing in accordance with subparts F and G of this part.

(c) RUS will not approve a grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.115(e)(1);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, operation, or sustainability of the project;

(3) Other applications would provide more benefit to rural America based on a review of the financial and technical information submitted in accordance of § 1703.125(e).

(4) Any other aspect of the applicant's proposal fails to adequately address any requirement of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT Program contained in § 1703.101.

(d) Grant applications will be ranked by the type of application (health care or educational) and total points scored. Grants available for medical and educational applicants may be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received for that fiscal year. Based on the number and type of applications received, applications may be ranked only in one category based on the predominant use of the project.

(e) RUS may reduce the amount of the applicant's grant based on insufficient program funding for the fiscal year in which the project is reviewed. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (f) of this section.

(f) RUS will provide the applicant with an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(4) of this section prior to making final project selections for the year. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.129.

(g) Grantees shall comply with all applicable provisions of 7 CFR parts 3015, 3016, and 3019.

#### **§ 1703.128 Submission of applications.**

(a) Applications for grants shall be submitted to the RUS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250-1590. Applications should be marked "Attention: Assistant Administrator, Telecommunications Program".

(b) Applications must be submitted to RUS postmarked not later than the application filing deadline established by the Administrator if the applications are to be considered during the period for which the application was submitted. The deadline for submission of applications each fiscal year will be published, and provided through other notices, by RUS in the **Federal Register**, at least 30 days before the deadline occurs. It is suggested that applications be submitted prior to the respective deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.125, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information that is incomplete. To be considered for a grant, the applicant must submit the information to complete the application within 15 working days of the date of RUS' written response. If the applicant has submitted an application prior to the application filing deadline, the applicant will have 15 working days from RUS' response or until the application filing deadline to submit information, whichever provides the applicant more time. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next established application period.

(c) All applicants must submit an original and two copies of a completed application. Applicants must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to RUS. All applications must include the information required by § 1703.125.

#### **§ 1703.129 Appeals.**

All qualifying applications under this subpart will be scored based on the criteria contained in § 1703.126. Awards will be made by RUS based on the highest ranking applications and the amount of financial assistance available for grants. All applicants will be notified in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score

received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, that applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made, in writing, within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse, or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

#### **Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program**

##### **§ 1703.130 Use of combination loan and grant.**

(a) A combination loan and grant may be used by eligible organizations as defined in § 1703.103 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1703.131 provided that no financial assistance may exceed the maximum amount for the year in which the combination loan and grant is made.

(b) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as determined in § 1703.126(b)(2) (the applicant must receive at least 20 points to be eligible to receive financial assistance under this subpart).

##### **§ 1703.131 Approved purposes for a combination loan and grant.**

The approved purposes for a combination loan and grant are:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1703.102;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental

studies relating to the establishment or expansion of the phase of the project that is being financed with a combination loan and grant (this purpose shall not exceed 10 percent of the total requested financial assistance);

(d) Paying for medical or educational equipment and facilities that are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction determined by RUS to be necessary and incidental to the project. The applicant must demonstrate that financial assistance funding from other sources is not available at a cost that does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested; and

(h) Acquiring telecommunications transmission facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator.

##### **§ 1703.132 Nonapproved purposes for a combination loan and grant.**

(a) Without limitation, a combination loan and grant made under this subpart shall not be expended:

(1) To pay salaries, wages, or employee benefits to medical or educational personnel;

(2) To pay for the salaries or administrative expenses of the applicant or the project;

(3) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(4) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(5) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(6) For any purpose that the Administrator has not specifically approved;

(7) Except for leases (see § 1703.131), to pay the cost of recurring or operating expenses for the project; or,

(8) For any other purposes not specifically outlined in § 1703.131.

(b) Except as otherwise provided in § 1703.112, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other funding that is not assured.

##### **§ 1703.133 Maximum and minimum amounts.**

Applications for a combination loan and grant under this subpart will be subject to limitations on the proposed amount of loans and grants. The Administrator will establish the maximum amount of loans and grants and the portion of grant funds as a percentage of total assistance for each project to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the **Federal Register** before the beginning of the fiscal year to carry out this subpart. The minimum amount of a combination loan and grant is \$50,000.

##### **§ 1703.134 Completed application.**

The following items are required to be submitted to RUS in support of an application for a combination loan and grant:

(a) *An application for federal assistance:* A completed Standard Form 424.

(b) *An executive summary of the project:* The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the combination loan and grant required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site;

(8) A certification by the applicant that facilities constructed with a combination loan and grant do not duplicate adequately established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the combination loan and grant and any other sources of funds for the project.

(d) *Financial information.* The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan with a maturity period greater than one year. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a

consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data that adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the loan portion of the combination loan and grant. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan portion of the combination loan and grant.

(2) A list of property which will be used as collateral to secure repayment of the loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a security interest in the collateral that secures the loan. RUS considers as adequate security for a loan, a guarantee by a RUS telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit,

including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor similar to the project. Experience in a similar project is desirable but not required.

(f) *A telecommunications system plan.* A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (f)(5) of this section are required only when the applicant is requesting a combination loan and grant for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a combination loan and grant.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1703.131(h).

(5) The capabilities of the telecommunications transmission

facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations including, but not limited to the following:

- (1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, and as supplemented by regulations contained in 41 CFR part 60;
- (2) Anti-Kickback Act (18 U.S.C. 874);
- (3) Davis Bacon Act (40 U.S.C. 276a-a-7);
- (4) Contract Work and Safety Standards Act (40 U.S.C. 327-333);
- (5) Clean Air Act (42 U.S.C. 7401, *et seq.*);
- (6) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
- (7) E.Os 12549 and 12689, Debarment and Suspension;
- (8) Resource Conservation and Recovery Act (42 U.S.C. 6962);
- (9) Drug-Free Workplace Act of 1988 (41 U.S.C. 701);
- (10) Assistance and Real Property Acquisition Policies Act of 1970; and
- (11) Office of Management and Budget Circulars A-110 and A-102.

(h) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Loans and grants made under this part are subject to 7 CFR part 1794 which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant may use the "Environmental Questionnaire," available from RUS, to assist in complying with the requirements of this section.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant and incur debt with RUS.

(j) *Federal debt certification.* The applicant must provide evidence that it is not delinquent on any obligation owed to the government.

(k) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) *Additional information required by RUS.* The applicant must provide any additional RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

#### **§ 1703.135 Application selection provisions.**

(a) A combination loan and grant will be approved based on availability of funds, the financial feasibility of the project in accordance with § 1703.134(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a combination loan and grant, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a combination loan and grant from funds available for the fiscal year. If such priority is achieved, RUS will process the combination loan and grant application on a first-in, first-out basis, provided that the total amount of applications on-hand for combination loans and grants does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for combination loans and grants, if such applications were approved, exceeds 90 percent of amount of combination loan and grant funding available, RUS will process the remaining applications using the evaluation criteria set forth in § 1703.126.

(c) RUS will not approve a combination loan and grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility, or will not be adequately secured in accordance with the requirements contained in § 1703.134(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1703.101.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding, an appeal may be filed in accordance with § 1703.137.

#### **§ 1703.136 Submission of applications.**

(a) RUS will accept applications for a combination loan and grant submitted by RUS telecommunications General Field representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for a combination loan and grant under this subpart may be filed at any time and will be evaluated as received.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1703.134, and notify the applicant, within 15 working days of receiving the application, of the results of this review,

acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.135, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1703.135 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A combination loan and grant recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of sections § 1703.134 and § 1703.135 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and one copy of the application with a financial assistance recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a review of the application and the financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the State Director will be notified and the State Director will notify the applicant. A combination loan and grant will be processed, approved, and serviced in accordance with §§ 1703.105 through 1703.112 of subpart D.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination. The applicant may

appeal this determination pursuant to section § 1703.137 of this subpart.

(c) Applications submitted by RUS telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to RUS. RUS will:

(1) Review each application for completeness in accordance with § 1703.134, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant assistance, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.135, and other requirements of this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the applicant will be notified. A combination loan and grant will be processed, approved, and serviced in accordance with §§ 1703.105 through 1703.112 of subpart D.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be able to appeal in accordance with § 1703.137 of this subpart.

#### **§ 1703.137 Appeals.**

Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

#### **§§ 1703.138—1703.139 [Reserved]**

### **Subpart G—Distance Learning and Telemedicine Loan Program**

#### **§ 1703.140 Use of loan funds.**

Loans may be used to finance 100 percent of the costs of a project. Entities seeking a loan must be able to provide security and execute a note with a maturity period greater than one year. The following entities are eligible for loans under this subpart:

(a) Organizations as defined in § 1703.103. If a RUS telecommunications borrower is seeking a loan, the borrower does not need to submit all of the financial security information required by § 1703.144(d). The borrower's latest financial report (Form 479) filed with RUS and any additional information relevant to the project, as determined by RUS, will suffice;

(b) Any non-profit or for-profit entity, public or private entity, urban or rural institution, or rural educational broadcaster, which proposes to provide and receive distance learning and telemedicine services to carry out the purposes of this subpart; or

(c) Any entity that contracts with an eligible organization in paragraphs (a) or (b) of this section for constructing distance learning or telemedicine facilities for the purposes contained in § 1703.141, except for those purposes in § 1703.141(h).

(d) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as contained in § 1703.126(b)(2) (the applicant must receive at least 20 points to be eligible to receive financial assistance under this subpart).

#### **§ 1703.141 Approved purposes for loans.**

The following are approved purposes for loans:



(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1703.102;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the loan (financial assistance for this purpose shall not exceed 10 percent of the requested financial assistance);

(d) Paying for medical or educational equipment and facilities which are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Loans for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction, where such costs are demonstrated necessary to construct distance learning and telemedicine facilities. The applicant must demonstrate that funding from other sources is not available at a cost which does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(h) Acquiring of telecommunications transmission facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator;

(i) Any project costs, not included in paragraphs (a) through (h) of this

section, incurred during the first two years of operation after the financial assistance has been approved. The applicant must show that financing such costs are necessary for the establishment or continued operation of the project and that financing is not available for such costs elsewhere, including from the applicant's financial resources. The Administrator will determine whether such costs will be financed based on information submitted by the applicant. Loans shall not be made exclusively to finance such costs, and financing for such costs will not exceed 20 percent of the loan provided to a project under this section; and

(j) All of the costs needed to provide distance learning broadcasting to rural areas. Loans may be used to cover the costs of facilities and end-user equipment dedicated to providing educational broadcasting to rural areas for distance learning purposes. If the facilities are not 100 percent dedicated to broadcasting, a portion of the financing may be used to fund such facilities based on a percentage of use factor that approximates the distance learning broadcasting portion of use.

#### **§ 1703.142 Nonapproved purposes for loan.**

(a) Loans made under this subpart will not be provided for any of the following costs incurred after two years from approval:

(1) To pay salaries, wages, or employee benefits to medical or educational personnel;

(2) To pay for the salaries or administrative expenses of the applicant or the project after two years; or

(3) To pay the cost of recurring or operating expenses for the project (see § 1703.141).

(b) Loans made under this subpart will not be provided for any of the following costs:

(1) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(2) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(3) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(4) For any purpose that the Administrator has not specifically approved.

(c) Except as otherwise provided in § 1703.112, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart G or is dependent upon the receipt of other funding that is not assured.

#### **§ 1703.143 Maximum and minimum amounts.**

Applications for loans under this subpart will be subject to limitations on the proposed amount of loans. The Administrator will establish the maximum amount of a loan available to an applicant under this subpart, by publishing notice of the maximum amount in the **Federal Register** before the opening of the application window. The minimum amount of a loan is \$50,000.

#### **§ 1703.144 Completed application.**

The following items are required to be submitted in support of an application for a loan:

(a) *An application for federal assistance:* A completed standard form 424.

(b) *An executive summary of the project.* The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need (see paragraph (b)(1) of this section), why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1703.103;

(4) An explanation of the total project cost including a breakdown of the loan required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the project at each end user site;

(8) A certification by the applicant that facilities funded by a loan do not duplicate adequate established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the combination loan and grant and any other sources of funds for the project.

(d) *Financial information.* The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan for a maturity period greater than one year.

For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the requested loan. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and

show repayment of interest and principal for the loan.

(2) A list of property which will be used as collateral to secure repayment of the proposed loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a first lien in the collateral that secures the loan. RUS will consider as adequate security for a loan guarantee by a telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(f) *A telecommunications system plan.* A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (f)(5) of this section are required only when the applicant is requesting a loan for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment

and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a combination loan and grant.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1703.131(h).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375,

and as supplemented by regulations contained in 41 CFR part 60;

(2) Anti-Kickback Act (18 U.S.C. 874);

(3) Davis Bacon Act (40 U.S.C. 276a–a–7);

(4) Contract Work and Safety Standards Act (40 U.S.C. 327–333);

(5) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Resource Conservation and Recovery Act (42 U.S.C. 6962);

(8) Assistance and Real Property Acquisition Policies Act of 1970;

(9) National Historic Preservation Act of 1966; and

(10) Historic Sites Act of 1935.

(h) *Environmental impact and historic preservation.* (1) The applicant must provide details of the project's impact on the environment and historic preservation. Loans made under this part are subject to 7 CFR part 1794 which contains RUS' policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant may use the "Environmental Questionnaire," available from RUS, to assist in complying with the requirements of this section.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into debt with RUS and perform the activities proposed under the loan application.

(j) *Federal debt certification.* The applicants must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(k) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) *Additional information required by RUS.* The applicant must provide any additional information RUS determines is necessary to adequately evaluate the application. Modifications or changes, including changes in the loan amount requested, may be requested in any project described in an application submitted under this subpart.

#### **§ 1703.145 Application selection provisions.**

(a) Loans will be approved based on availability of funds, the financial

feasibility of the project in accordance with § 1703.144(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a loan, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a loan from funds available for the fiscal year. If such priority is achieved, RUS will process the loan application on a first-in, first-out basis, provided that the total amount of applications on-hand for loans does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for loans, if such applications were approved, exceeds 90 percent of amount of loan funding available, RUS will process the remaining applications using the evaluation criteria set forth in § 1703.126.

(c) A loan will not be approved if it is determined that:

(1) The applicant's proposal does not indicate financial feasibility, or is not adequately secured in accordance with the requirements of § 1703.144(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1703.101.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of the RUS letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the loan will not be approved, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.147.

#### **§ 1703.146 Submission of applications.**

(a) RUS will accept applications for loans submitted by RUS telecommunications General Field Representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for loans under this subpart may be filed at any time and will be evaluated as received on a non-competitive basis.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1703.144, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1703.145, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1703.145 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A loan recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of §§ 1703.144 and 1703.145 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by

RUS, forward an original and one copy of the application with a loan recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a cursory review of the application and the recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the State Director will be notified and the State Director will notify the applicant. Applications for loans will be processed, and approved loans serviced, in accordance with §§ 1703.105 through 1703.112.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with § 1703.147.

(c) Applications submitted by RUS telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and two copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the RUS. RUS will:

(1) Review each application for completeness in accordance with § 1703.144, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable

period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the applicant will be notified. Applications will be processed, and approved loans serviced, in accordance with §§ 1703.105 through 1703.112 of subpart D.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with § 1703.147 of this subpart.

#### **§ 1703.147 Appeals.**

Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

Dated: March 17, 1999.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 99-6995 Filed 3-24-99; 8:45 am]

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## **EXPORT-IMPORT BANK OF THE UNITED STATES**

### **12 CFR Parts 404 and 405**

#### **Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act, Privacy Act and other Information Disclosure Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Final rule.

**SUMMARY:** This document sets forth comprehensive revisions of the Export-Import Bank's information disclosure regulations. The regulations are

intended to supersede the Export-Import Bank's current Freedom of Information Act (FOIA) and Privacy Act regulations, found at 12 CFR parts 404 and 405, respectively. The Export-Import Bank (Ex-Im Bank) has implemented the following revisions in order to provide more "user-friendly" regulations that are consistent with current law, including the Electronic Freedom of Information Act Amendments of 1996. The regulations also include updated fee schedules.

**DATES:** Effective April 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Schweitzer, Counsel for Administration, (202) 565-3229.

**SUPPLEMENTARY INFORMATION:** This is a comprehensive revision of 12 CFR part 404 (Ex-Im Bank's current FOIA regulations) and 12 CFR part 405 (Ex-Im Bank's current Privacy Act regulations). Part 404 contains Ex-Im Bank's regulations for the FOIA, found in subpart A, and the Privacy Act, found in subpart B. Part 404 does not contain any regulations concerning "appearance and testimony by Ex-Im Bank officers and employees," currently found at 12 CFR 404.8. Ex-Im Bank has removed and is reserving part 405 for publication of new regulations entitled "production and disclosure in federal or state proceedings."

The FOIA and related disclosure regulations, in addition to setting forth Ex-Im Bank's basic FOIA policy and procedure, include provisions, found in § 404.7, to implement Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information." The regulations also set forth a revised "schedule of fees," found in § 404.8. The changes include increases in the hourly fees for clerical and professional time to \$16.00 and \$32.00, respectively, and a decrease in duplication charges, from \$.25 to \$.10 per photocopy. New provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231) can be found in § 404.3 (public reference facilities), § 404.5 (time for processing), and § 404.8(d) (material withheld). The regulations also establish, in § 404.11 (administrative appeal), the Ex-Im Bank Assistant General Counsel for Administration as the appellate authority for administrative appeals under the FOIA. This final rule does not include certain provisions that were published at 63 FR 48452, August 4, 1998, in an amendment to the proposed rule. Due to comments received from relevant sources, Ex-Im Bank has decided to withdraw the substantive