

# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1700 and 1709

RIN 0572-AB91

#### Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is adopting regulations implementing its financial assistance programs for rural communities with extremely high energy costs. These programs are authorized under section 19 of the Rural Electrification Act of 1936, as amended. This direct final rule is intended to establish and clarify eligibility and application requirements, the review and approval process, and grant administration procedures for RUS grants to rural communities with extremely high energy costs and for grants to State entities for bulk fuel revolving loan funds. This publication of these rules will assure timely and effective distribution of grant funds to eligible rural communities and State entities.

**DATES:** This rule will become effective on March 21, 2005, unless RUS receives written adverse comments or a written notice of intent to submit adverse comments on or before March 4, 2005. If such comments or notice is received, RUS will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the propose rule published in this edition of the **Federal Register** in the proposed rule section. Written comments must be received by RUS or carry a postmark or equivalent no later than March 4, 2005.

**ADDRESSES:** Submit your adverse comments or notice of intent to submit

adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instruction for submitting comments.

- Agency Web site: <http://www.usda.gov/rus/index2.Comments.htm>. Follow the instructions for submitting comments.

- E-mail: [RUSComments@usda.gov](mailto:RUSComments@usda.gov). Include in the subject line of the message "7 CFR 1700 and 1709."

- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250-1522.

- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

Instructions: RUS requests a signed original and three copies of all written comments (7 CFR 1700.4). Comments may also be submitted by e-mail at [RUSComments@usda.gov](mailto:RUSComments@usda.gov) and must contain the phrase "High Cost Energy Grants" in the subject line. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without changes to <http://www.usda.gov/rus/index2.Comments.htm>, including any personal information provided. All comments will also be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Ave., SW., Stop 1560, Room 5165-S, Washington, DC 20250-1560. Telephone (202) 720-9545, fax (202) 690-0717, e-mail address: [Karen.Larsen@usda.gov](mailto:Karen.Larsen@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the

Office of Management and Budget (OMB).

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the High Energy Cost Grant and Loan program is 10.859. The State Bulk Fuel Revolving Fund grant program CFDA program number is 10.857. The Denali Commission High Energy Cost Grant and Loan Program CFDA program number is 10.858. The Catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

#### Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

#### Executive Order 12988

This direct final 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 the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will not be preempted, no retroactive effect will be given to this rule, and, in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

#### Executive Order 13132, Federalism

The policies contained in this direct final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government

that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

### Regulatory Flexibility Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because RUS is not required by 5 U.S.C. 553 (a)(2) or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this direct final rule.

### Unfunded Mandates

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

### Environmental Impact Statement

This direct final rule has been examined under RUS environmental regulations at 7 CFR part 1794. The RUS Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

### Information Collection and Recordkeeping Requirement

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection. Comments must be received by April 4, 2005. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Assistance to High Energy Cost Rural Communities.

*Type of Request:* Revision of a currently approved collection.

*OMB Control No.:* 0572-0136.

*Abstract:* This grant program will be administered by the Electric Program within the USDA Rural Utilities Service. Section 19 of the Rural Electrification Act of 1936, as amended (RE Act) authorizes the Secretary of Agriculture, acting through RUS, to make grants and loans to acquire, construct, extend, upgrade and otherwise improve energy facilities serving communities in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy.

Section 19 of the RE Act also authorizes the Secretary of Agriculture to make grants to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation (the State Bulk Fuel Revolving Fund grant program).

This rule sets forth the policies and procedures associated with the High Cost Energy Grant programs and the State Bulk Fuel Revolving Fund Grant Program, including the grant application and evaluation procedures and ongoing administration requirements for the programs. The currently approved collection of information covers the reporting burden associated with the High Energy Program. RUS intends to amend the collection of information to include hours associated with the State Bulk Fuel Program.

*Estimated Number of Respondents:* Respondent grant applicants and grantees include individuals, business or other for-profit entities, not-for-profit institutions, and State, local, or tribal governments is estimated to be a combined total of 46 respondents.

*Estimated Number of Responses per Respondent:* It is estimated that the total number of responses per respondent is a combined total of 7.89 responses.

*Estimated Number of Total Annual Responses:* It is estimated that the combined total number of responses is 187.

*Estimate of Hours Per Response:* Public reporting burden for this collection of information is estimated to total an average of 8.33 burden hours for both programs.

*Estimate of Total Annual Burden:* It is estimated that the combined total of total annual burden hours 931.

You may request copies of this information collection from Mary Pat Daskal, Program Development and Regulatory Analysis, at (202) 720-7853.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RUS, including whether the information will have practical utility; (b) the accuracy of RUS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information

technology. You may send your written comments to Mary Pat Daskal, Program Development and Regulatory Analysis, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. E-mail responses may be sent to [MaryPat.Daskal@usda.gov](mailto:MaryPat.Daskal@usda.gov). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

### Background

In 2000, the Rural Electrification Act of 1936, as amended (RE Act) was amended to create new financial assistance programs for high energy cost rural communities (Public Law 106-472, § 301, Nov. 9, 2000). The new section 19 of the RE Act (7 U.S.C. 918a) authorizes the Secretary of Agriculture through the RUS to:

- Provide grants and loans to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving extremely high energy cost communities;

- Provide grants and loans to the Denali Commission (a Federal-State agency) to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving extremely high energy cost communities in rural Alaska; and

- Provide grants to existing State government entities for bulk fuel revolving funds to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation.

This rulemaking codifies Agency policies and procedures for the RUS Assistance to High Energy Cost Communities Programs, including eligibility, application, and grant administration requirements for the High Energy Cost Grant Program and the Bulk Fuel Revolving Fund Grant Program. RUS is deferring issuing regulations implementing the loan programs authorized under these programs because no loan funds have been appropriated. The Denali Commission High Energy Cost Grants and Loan Program is administered by means of a Memorandum of Understanding and grant agreements executed between the RUS and the Denali Commission. The Denali Commission, a Federal agency, is the sole entity that is eligible for grants and loans under section 19(a)(2) of the RE Act (7 U.S.C. 918a(a)(2)). Applications and awards for assistance from the Denali Commission using RUS grant funds are administered under rules and

procedures established by the Denali Commission.

During the first years of appropriations for these grant and loan programs, RUS administered the program under the USDA's general grant regulations, 7 CFR 3015, and requested competitive grant applications through publication of Notices of Funding Availability in the **Federal Register**. Because Congressional funding for the grant programs has continued, and given the high level of interest in the grant program, RUS is promulgating program-specific regulations that supplement the Department-wide grant regulation provisions.

#### Description of Rule

RUS is revising 7 CFR part 1700 to include amendments and additions to the Agency delegations of authority to include the Assistance to High Energy Cost Rural Communities Programs and to delegate responsibility for administering the programs to the Assistant Administrator, Electric Program subject to certain explicit reservations to the Administrator.

The rules add a new part 1709 to Chapter XVII of title 7 of the Code of Federal Regulations.

Subpart A sets forth general policies, definitions, and administrative requirements for the Assistance to High Energy Cost Rural Communities programs. These provisions supplement and do not supplant general USDA and government-wide grant requirements. Subpart A includes provisions for the Administrator to allocate available funds among programs, establish application periods, and to determine and revise energy cost benchmarks for eligibility purposes.

Subpart B sets forth the policies, procedures and requirements that are specific to the RUS High Energy Cost Grant program authorized under section 19(a)(2) of the RE Act. The rules describe eligibility requirements for applicants, communities, and projects. These provisions are similar to those used in the High Energy Cost Grant Notices of Funds Availability published December 9, 2002 (67 FR 72904) and January 23, 2004 (69 FR 3317). Subpart B also sets out the general application procedures that will be used and the evaluation and priority criteria that will be used by RUS to conduct solicitations for competitive grant applications. RUS proposes that detailed information on application requirements, application submissions, selection criteria weights and priorities and updated high energy cost eligibility benchmarks will be included in the grant announcement published for each application cycle.

Subpart C establishes policies and procedures specific to the State Bulk Fuel Revolving Fund Grant program established under section 19(a)(3) of the RE Act. These rules are substantially similar to the procedures, policies, and definitions used in the Notice of Funding Availability published in the **Federal Register** on July 6, 2002 (66 FR 35584). That notice resulted in a single grant application from the State of Alaska. Other States and Territories may, however, also be eligible to participate in this program. Accordingly, RUS is adopting regulations and procedures for any future grant offerings under this program.

Subpart G establishes RUS policy on recovery of financial assistance received under the loan and grant programs administered under this part by individuals or entities subsequently found to be ineligible or the use of grant funds for unauthorized purposes. Because of the limited amount of grant funds available to extremely high energy cost communities, the Agency believes it is appropriate to make clear that it will exercise whatever authority it has, including, but not limited to departmental regulations concerning the suspension or termination of grant agreements under 7 CFR part 3015, subpart N, to recover any grant or loan funds for which the applicant, community, or project is subsequently found to be ineligible or that were used for unauthorized purposes.

#### List of Subjects

##### 7 CFR Part 1700

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

##### 7 CFR Part 1709

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

■ For the reasons set forth in the preamble, RUS is amending chapter XVII, title 7, of the Code of Federal Regulations as follows:

#### PART 1700—GENERAL INFORMATION

■ 1. The authority citation for part 1700 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*, 7 CFR 2.7.

#### Subpart B—Agency Organization and Functions

■ 2. Subpart B is amended by adding § 1700.33 to read as follows:

#### § 1700.33 Assistance to High Energy Cost Rural Communities.

RUS, through the Electric Program, makes grants and loans to assist high energy cost rural communities. The Assistant Administrator, Electric Program, directs and coordinates the assistance to high energy cost rural communities program and serves as the primary point of contact for applicants, grantees, and borrowers.

#### Subpart C—Loan and Grant Approval Authorities

■ 3. Subpart C is amended by adding § 1700.58 to read as follows:

#### § 1700.58 Assistance to high energy cost rural communities.

(a) *Administrator:* The authority to approve the following is reserved to the Administrator:

(1) Allocation of appropriated funds among high energy cost community assistance programs;

(2) Awards of grants and loans to extremely high energy cost communities;

(3) Awards of grants and loans to the Denali Commission;

(4) Awards of grants to State entities for State bulk fuel revolving funds; and

(5) Grant agreements, loan contracts, security instruments and all other documents executed in connection with grants and loans agreements approved by the Administrator.

(b) *The Assistant Administrator, Electric Program* has the authority to make any required certifications and to approve all grant and loan servicing actions not specifically reserved to the Administrator.

■ 4. Part 1709 is added to read as follows:

#### PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

##### Subpart A—General Requirements

Sec.

1709.1 Purpose.

1709.2 Policy. [Reserved]

1709.3 Definitions.

1709.4 Allocation of available funds among programs.

1709.5 Determination of energy cost benchmarks.

1709.6 Appeals.

1709.7 Applicant eligibility.

1709.8 Electronic submission.

1709.9 Grant awards and advance of funds.

1709.10 Ineligible grant purposes.

1709.11 Award conditions.

1709.12 Reporting requirements.

1709.13 Grant administration.

1709.14 Inspections.

1709.15 Grant close out.

1709.16 Performance reviews.

1709.17 Environmental review.

1709.18 Civil rights.

1709.19 Other USDA regulations.

- 1709.20 Member delegate clause.
- 1709.21 Audit requirements.
- 1709.22 Project changes.
- 1709.23–1709.99 [Reserved]
- 1709.100 OMB control number.

#### Subpart B—RUS High Cost Energy Grant Program

- 1709.101 Purpose.
- 1709.102 Policy.
- 1709.103–1709.105 [Reserved]
- 1709.106 Eligible applicants.
- 1709.107 Eligible communities.
- 1709.108 Supporting data for determining community eligibility.
- 1709.109 Eligible projects.
- 1709.110 Use of grant funds.
- 1709.111 Limitations on use of grant funds.
- 1709.112 Ineligible grant purposes.
- 1709.113 Limitations on grant awards.
- 1709.114 Application process.
- 1709.115 Availability of application materials.
- 1709.116 Application package.
- 1709.117 Application requirements.
- 1709.118 Submission of applications.
- 1709.119 Review of applications.
- 1709.120 Evaluation of applications.
- 1709.121 Administrator's review and selection of grant awards.
- 1709.122 Consideration of eligible grant applications under later grant announcements.
- 1709.123 Evaluation criteria and weights.
- 1709.124 Grant award procedures.
- 1709.125–1709.200 [Reserved]

#### Subpart C—Bulk Fuel Revolving Fund Grant Program

- 1709.201 Purpose.
- 1709.202 Policy. [Reserved]
- 1709.203 Definitions.
- 1709.204–1709.206 [Reserved]
- 1709.207 Eligible applicants.
- 1709.208 Use of grant funds.
- 1709.209 Limitations on use of grant funds.
- 1709.210 Application process.
- 1709.211 Submission of applications.
- 1709.212 Application review.
- 1709.213 Evaluation of applications.
- 1709.214 Administrator's review and selection of grant awards.
- 1709.215 Consideration of unfunded applications under later grant announcements.
- 1709.216 Evaluation criteria and weights.
- 1709.217 Grant award.
- 1709.218–1709.300 [Reserved]

#### Subparts D–F—[Reserved]

#### Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes

- 1709.601 Policy.
- 1709.602–1709.700 [Reserved]
- 1709.701–1709.999 [Reserved]

**Authority:** 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

#### Subpart A—General Requirements

##### § 1709.1 Purpose.

The purpose of the Rural Utilities Service (RUS) Assistance to High Energy Cost Rural Communities Program is to

help local communities meet their energy needs through direct loans and grants for energy facilities in qualifying extremely high energy cost communities, grants and loans to the Denali Commission for extremely high energy cost communities in Alaska, and grants to States to support revolving funds to finance more cost effective means of acquiring fuel in qualifying communities. This subpart sets forth definitions and requirements which are common to all grant and loan programs in this part administered by the RUS Electric Program under section 19 of the Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 918a).

##### § 1709.2 Policy. [Reserved]

##### § 1709.3 Definitions.

*Administrator* means the Administrator of the Rural Utilities Service (RUS), United States Department of Agriculture (USDA).

*Agency* means the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

*Census block* means the smallest geographic entity for which the U.S. Census Bureau collects and tabulates decennial census information and which are defined by boundaries shown on census maps.

*Census designated place (CDP)* means a statistical entity recognized by the U.S. Census Bureau comprising a dense concentration of population that is not within an incorporated place but is locally identified by a name and which has boundaries defined on census maps.

*Electric program* means the office within RUS, and its successor organization, that administers rural electrification programs authorized by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) and such other programs so identified in USDA regulations.

*Extremely high energy costs* means community average residential energy costs that are at least 275 percent of one or more home energy cost benchmarks identified by RUS and based on the latest available information on national average residential energy expenditures as reported by the Energy Information Administration (EIA) of the United States Department of Energy.

*Financial assistance* means a grant, loan, or grant-loan combination issued under this part.

*Home energy* means any energy source or fuel used by a household for purposes other than transportation, including electricity, natural gas, fuel oil, kerosene, liquified petroleum gas (propane), other petroleum products,

wood and other biomass fuels, coal, wind and solar energy. Fuels used for subsistence activities in remote rural areas are also included.

*High energy cost benchmarks* means the criteria established by RUS for eligibility as an extremely high energy cost community. Extremely high energy cost benchmarks are calculated as 275 percent of the relevant national average household energy benchmarks.

*Indian Tribe* means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include “\* \* \* any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

*Person* means any natural person, firm, corporation, association, or other legal entity, and includes Indian tribes and tribal entities.

*State* means any of the several States of the United States, and, where provided by law, any Territory of the United States or other area authorized to receive the services and programs of the Rural Utilities Service or the Rural Electrification Act of 1936, as amended.

*Target area* means the geographic area to be served by the grant.

*Target community* means the unit or units of local government in which the target area is located.

##### § 1709.4 Allocation of available funds among programs.

The Administrator, in his sole discretion, shall allocate available funds among the programs administered under this part and determine the grant application periods under each program. In making fund allocations for each fiscal year, the Administrator may consider the amount of available funds, the nature and amount of unfunded grant applications and prior awards, Agency resources, Agency priorities, and any other pertinent information.

##### § 1709.5 Determination of energy cost benchmarks.

(a) The Administrator shall establish, using the most recent data available, and periodically revise, the home energy cost benchmarks and the high energy cost benchmarks used to determine community eligibility for high energy cost grant and loan programs and the Denali Commission high energy cost grants and loans. In

setting these energy cost benchmarks, the Administrator shall review the latest available information on home energy costs published by the EIA. High energy cost benchmarks will be set at 275 percent of the applicable national average home energy cost benchmark as determined by the Administrator from the published EIA data. Eligibility benchmarks shall be published in each grant announcement.

(b) For use in determining eligibility for High Energy Cost Grants, the Administrator may establish benchmarks for national average annual household expenditures and for national average household per unit energy expenditures for major home energy sources or fuels, including, but not limited to, electricity, natural gas, fuel oil, kerosene, liquified petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind and solar energy.

#### **§ 1709.6 Appeals.**

An applicant may appeal a decision by the Assistant Administrator, Electric Program rejecting an application for failure to meet eligibility requirements. Applicants may not appeal rating panel scores or rankings. An appeal must be made, in writing to the Administrator, within 10 days after the applicant is notified of the determination to reject the application. Appeals must state the basis for the appeal and shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1500, Washington, DC 20250-1500. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. The Administrator's determination shall be final. A written copy of the Administrator's decision will be furnished promptly to the applicant.

#### **§ 1709.7 Applicant eligibility.**

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a grant or loan under this part until the judgment is paid in full or otherwise satisfied. RUS financial assistance under this part may not be used to satisfy the judgment.

#### **§ 1709.8 Electronic submission.**

Applicants may submit applications and reports electronically if so provided in the applicable grant announcement and grant agreements or if other regulations provide for electronic submission. Any electronic submissions

must be in the form prescribed in the applicable grant announcement, grant agreement, or regulation.

#### **§ 1709.9 Grant awards and advance of funds.**

The grantee must execute a grant agreement that is acceptable to the Agency. The grantee must sign and return the grant agreement to the Agency, within the time specified, before any grant funds will be advanced.

#### **§ 1709.10 Ineligible grant purposes.**

Grant funds under this part may not be used to:

(a) Pay costs of preparing the application package for funding under programs in this part, or for any finders fees or incentives for persons or entities assisting in the preparation or submission of an application.

(b) Fund political activities;

(c) Pay any judgment or debt owed to the United States; or

(d) Pay construction costs of the project incurred prior to the date of grant award except as provided herein. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved.

(1) Applicants may request Agency approval for reimbursement of pre-award construction obligations if there are compelling reasons for proceeding with construction before grant approval. Such requests may be approved if the Agency determines that:

(i) Compelling reasons, as determined by the Agency, exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) All environmental requirements applicable to the Agency and the applicant have been met;

(iv) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the grant financed property; and

(v) The expenditure is incurred no more than 18 months before the date of the Administrator's approval of the grant award.

(2) The Agency may authorize payment of approved pre-award project construction obligations at the time of award approval. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

#### **§ 1709.11 Award conditions.**

In addition to all other grant requirements, all approved applicants will be required to do the following:

(a) Enter into a grant agreement with the Agency in form and substance acceptable to the Agency;

(b) Request advances or reimbursements, as applicable, as provided in the grant agreement; and

(c) Maintain a financial management system that is acceptable to the Agency.

#### **§ 1709.12 Reporting requirements.**

To support Agency monitoring of project performance and use of grant funds, Grantees shall file periodic reports, required under 7 CFR part 3015, as provided in this part, and the grant agreement as follows:

(a) A financial status report listing project expenditures by budget category in such form and at such times as provided in the grant agreement.

(b) Project performance reports in such form and at such intervals as provided in the grant agreement. The project performance report shall compare accomplishments to the objectives stated in the proposal and grant agreement. The project performance report should identify all completed tasks with supporting documentation. If the project schedule as approved in the grant agreement is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in the grant agreement.

(c) A final project performance report with supporting documentation in such form and at the time specified in the grant agreement.

(d) Such other reports as the Agency determines are necessary to assure effective grant monitoring as part of the grant agreement or the grant announcement as a condition of the grant award or advances of funds.

#### **§ 1709.13 Grant administration.**

The authority to approve administrative actions is vested in the Administrator except as otherwise provided in the RUS delegations of authority. Administration of RUS grants is governed by the provisions of this subpart and subpart B of this part, the terms of the grant agreement and, as applicable, the provisions of 7 CFR parts 3015, 3016 and 3017, or their successors.

#### **§ 1709.14 Inspections.**

The grantee will permit periodic inspection of the grant project operations by a representative of the Agency.

**§ 1709.15 Grant closeout.**

Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, the final project report has been submitted and found acceptable by RUS and RUS accepts final expenditure information. No monitoring action by RUS of the grantee is required after grant closeout. However, grantees remain responsible in accordance with the terms of the grant agreement for compliance with conditions on property acquired or derived through grant funds.

**§ 1709.16 Performance reviews.**

Each grant agreement shall include performance criteria and RUS will regularly evaluate the progress and performance of grantee according to such criteria. If the grantee does not comply with or does not meet the performance criteria set out in the grant agreement, the Administrator may require amendment of the grant agreement, or may suspend or terminate the grant pursuant to 7 CFR 2015, subpart N.

**§ 1709.17 Environmental review.**

(a) All grants made under this subpart are subject to the requirements of 7 CFR part 1794 or its successor.

(b) Applicants must address environmental aspects of their projects in the grant application in sufficient detail to allow the Agency to categorize the project for purposes of compliance with environmental review requirements. The grant announcement will establish the form and content of the environmental information required for the application.

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency under 7 CFR part 1794 prior to final award approval. The Agency may require the selected applicant to submit additional information, including an environmental report, environmental assessment, or environmental impact statement, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

**§ 1709.18 Civil rights.**

This program will be administered in accordance with applicable Federal Civil Rights Law. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. In addition, all

grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. Grantees are required to comply with certain regulations on nondiscrimination in program services and benefits and on equal employment opportunity including 7 CFR parts 15 and 15b; and 45 CFR part 90, as applicable.

**§ 1709.19 Other USDA regulations.**

The grant programs under this part are subject to the provisions of other departmental regulations, including but not limited to the following departmental regulations, or their successors, as applicable:

- (a) 7 CFR part 3015, Uniform Federal Assistance Regulations;
- (b) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
- (c) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
- (d) 7 CFR part 3018, New Restrictions on Lobbying;
- (e) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and
- (f) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

**§ 1709.20 Member delegate clause.**

Each grant agreement under this part shall provide that no member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a member of Congress.

**§ 1709.21 Audit requirements.**

The grantee shall provide the Agency 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 grantee is a for-profit entity, an RUS Electric or Telecommunication borrower or any other entity not covered

by paragraph (b) of this section, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, "Policy on Audits of RUS Borrowers" and the grant agreement.

(b) If the grantee is a State or local government, or a non-profit corporation (other than an RUS Electric or Telecommunication Borrower), the recipient shall provide an audit in accordance with 7 CFR part 3052.

**§ 1709.22 Project changes.**

The Grantee shall obtain prior written approval from the Agency for any change to the scope or objectives of the approved grant project.

**§§ 1709.23–1709.99 [Reserved]****§ 1709.100 OMB control number.**

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0136.

**Subpart B—RUS High Energy Cost Grant Program****§ 1709.101 Purpose.**

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) High Energy Cost Grant Program under section 19(a)(1) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 918a(a)(1)). The purpose of this grant program is to assure access to adequate and reliable energy services for persons in extremely high energy cost communities by providing financial assistance to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving the community.

**§ 1709.102 Policy.**

(a) All high energy cost grants will be awarded competitively subject to the limited exceptions in 7 CFR 3015.158(d).

(b) RUS may give priority consideration to projects that benefit smaller rural communities, communities experiencing economic hardship, projects that extend service to households that lack reliable centralized or commercial energy services, and projects that correct imminent hazards to public safety, welfare, the environment or critical community energy facilities. RUS may also give priority to projects that are coordinated with State rural development initiatives or that serve a Federally-identified Empowerment Zone or Enterprise Community (EZ/EC) or a USDA-identified "Champion Community." Priority consideration will be provided

through the award of additional points under the project selection criteria as specified in the grant announcement.

**§§ 1709.103–1709.105 [Reserved]**

**§ 1709.106 Eligible applicants.**

(a) Eligible applicants for grants to fund projects serving eligible extremely high energy cost communities include Persons, States, political subdivisions of States, and other entities organized under the laws of States.

(b) Eligible applicants may be for-profit or non-profit business entities including but not limited to corporations, associations, partnerships, limited liability partnerships (LLPs), cooperatives, trusts, and sole proprietorships.

(c) Eligible government applicants include State and local governments, and agencies and instrumentalities of States and local governments.

(d) Indian tribes, other tribal entities, and Alaska Native Corporations are eligible applicants.

(e) Individuals are also eligible applicants under this program, however the proposed grant project must provide community benefits and not be for the sole benefit of the individual applicant or an individual household.

(f) As a condition of eligibility, the applicant must demonstrate the capacity:

- (1) to enter into a binding grant agreement with the Federal Government at the time of the award approval; and
- (2) to carry out the proposed grant project according to its terms.

**§ 1709.107 Eligible communities.**

(a) An eligible community under this program is one in which the average home energy costs exceed 275 percent of the national average under one or more high energy cost benchmarks established by RUS based on the latest available residential energy information from the Energy Information Administration (EIA) of the United States Department of Energy. RUS will update the national and high energy cost community benchmarks periodically to incorporate any changes in national home energy costs reported by EIA. RUS will publish the high energy cost community benchmark criteria in the grant announcement. Community eligibility will be determined by RUS at the time of application based on the criteria published in the applicable grant announcement.

(b) The Application must include information demonstrating that each community in the grant's proposed target area exceeds one or more of the

RUS high energy cost community benchmarks to be eligible for assistance under this program. The smallest area that may be designated as a target area is a 2000 Census block

(c) The target community may include an extremely high cost to serve portion of a larger service area that does not otherwise meet the criteria, provided that the applicant can establish that the costs to serve the smaller target area exceed the benchmark.

(d) In determining the community energy costs, applicants may include additional revenue sources that lower the rates or out of pocket consumer energy costs such as rate averaging, and other Federal, State, or private cost contributions or subsidies.

(e) The applicant may propose a project that will serve high energy cost communities across a State or region, but where individual project beneficiaries will be selected at a later time. In such cases, to establish eligibility, the applicant must provide sufficient information in the application to determine that the proposed target area includes eligible high energy cost communities and proposed selection criteria to assure that grant funds are used to serve eligible communities.

**§ 1709.108 Supporting data for determining community eligibility.**

The application shall include the following:

(a) *Documentation of energy costs.* Documents or references to published or other sources for information or data on home energy expenditures or equivalent measures used to support eligibility, or where such information is unavailable or does not adequately reflect the actual cost of average home energy use in a local community, reasonable estimates of commercial energy costs.

(b) *Served areas.* A comparison of the historical residential energy cost or expenditure information for the local commercial energy provider(s) serving the target community or target area with the benchmark criteria published by the Agency.

(c) *Engineering estimates.* Estimates based on engineering standards may be used in lieu of historical residential energy costs or expenditure information under the following circumstances:

- (1) Where historical community energy cost data are unavailable (unserved areas), incomplete or otherwise inadequate;
- (2) Where the target area is not connected to central station electric service to a degree comparable with other residential customers in the State or region.

(3) Where historic energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure that would have the effect of raising costs above one or more of the Agency benchmarks.

(d) *Independent Agency review.* Information to support high energy cost eligibility is subject to independent review by the Agency. The Agency may reject applications that are not based on credible data sources or sound engineering estimates.

**§ 1709.109 Eligible projects.**

Eligible projects are those that acquire, construct, extend, repair, upgrade or otherwise improve energy generation, transmission or distribution facilities serving communities with extremely high energy costs. All energy generation, transmission and distribution facilities and equipment used to provide or improve electricity, natural gas, home heating fuels, and other energy services to eligible communities are eligible. Projects providing or improving service to communities with extremely high energy costs through on-grid and off-grid renewable energy technologies, energy efficiency, and energy conservation projects and services are eligible. A grant project is eligible if it improves, or maintains energy services, or reduces the costs of providing energy services to eligible communities. Examples of eligible activities include, but are not limited to, the acquisition, construction, replacement, repair, or improvement of:

(a) Electric generation, transmission, and distribution facilities, equipment, and services serving the eligible community;

(b) Natural gas distribution or storage facilities and associated equipment and activities serving the eligible community;

(c) Petroleum product storage and handling facilities serving residential or community use.

(d) Renewable energy facilities used for on-grid or off-grid electric power generation, water or space heating, or process heating and power for the eligible community;

(e) Backup up or emergency power generation or energy storage equipment, including distributed generation, to serve the eligible community; and

(f) Implementation of cost-effective energy efficiency, energy conservation measures that are part of the implementation of a coordinated demand management or energy conservation program for the eligible community, such as, for example, weatherization of residences and

community facilities, or acquisition and installation of energy-efficient or energy saving appliances and devices .

**§ 1709.110 Use of grant funds.**

(a) *Project development costs.* Grants may be used to fund the costs and activities associated with the development of an eligible energy project. RUS will in no case approve the use of grant funds to be used solely or primarily for project development costs. Eligible project development costs must be reasonable and directly related to the project and may include the following:

(1) Costs of conducting, or hiring a qualified consultant to conduct, a feasibility analysis of the proposed project to help establish the financial and technical sustainability of the project, provided that such costs do not exceed more than 10 percent of total project costs;

(2) Design and engineering costs, including costs of environmental and cultural surveys and consulting services necessary to the project and associated environmental review, siting and permit approvals; and

(3) Fees for legal and other professional services directly related to the project.

(b) *Construction costs.* Grant funds may be used for the reasonable costs of construction activities, including initial construction, installation, expansion, extension, repair, upgrades, and related activities, including the rental or lease of necessary equipment, to provide or improve energy generation, transmission, or distribution facilities or services;

(c) *Acquisitions and purchase.* Grant funds may be used for the acquisition of property, equipment, and materials, including the purchase of equipment, and materials, the acquisition or leasing of real or personal property, equipment, and vehicles associated with and necessary for project development, construction, and operation. Grant funds may be used for the acquisition of new or existing facilities or systems where such action is a cost-effective means to extend or maintain service to an eligible community or reduces the costs of such service for the primary benefit of community residents.

(d) *Grantee cost contributions.* Grant funds may be applied as matching funds or cost contributions under Federal or other programs where the terms of those programs so allow use of other Federal funds.

**§ 1709.111 Limitations on use of grant funds.**

(a) *Planning and administrative costs.* Not more than 4 percent of each grant

award may be used for the planning and administrative expenses of the applicant that are unrelated to the grant project.

(b) *Unproven technology.* Only projects that utilize technology with a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment, are eligible for funding. Energy projects utilizing experimental, developmental, or prototype technologies or technology demonstrations are not eligible for grant funds. The determination by RUS that a project relies on unproven technology shall be final.

**§ 1709.112 Ineligible grant purposes.**

(a) Grant funds may not be used for the costs of preparing the grant application, finders fees, fuel purchases, routine maintenance or other operating costs, or purchase of equipment, structures or real property not directly associated with providing energy services in the target community, or, except as provided in § 1709.11(d), project construction costs incurred prior to the date of the grant award.

(b) In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

(c) Grant funds may not be used to refinance or repay the applicant's outstanding loans or loan guarantees under the Rural Electrification Act of 1936, as amended.

**§ 1709.113 Limitations on grant awards.**

(a) The Administrator may establish minimum or maximum amount of funds that may be awarded in a single grant application within in any grant cycle in order to distribute available grant funds as broadly as possible. If the Administrator elects to impose a minimum or maximum grant amount, the limitations will be published in the grant announcement.

(b) The Administrator may restrict eligible applicants to a single award of grant funds or to a monetary cap on grant awards within a grant cycle in order to assure that the available grant funds are distributed as broadly as possible. If the Administrator elects to impose a limit or cap on grant awards, the terms will be established in the grant announcement.

**§ 1709.114 Application process.**

The RUS will request applications for high energy cost grants on a competitive basis by publication of a grant

announcement as a Notice of Funds Availability (NOFA) or Notice of Funding Opportunity. The grant announcement will establish the amount of funds available, the application package contents and additional requirements, the availability of application materials, high energy cost community eligibility benchmarks, selection criteria and weights, priority considerations, and deadlines and procedures for submitting applications.

**§ 1709.115 Availability of application materials.**

Application materials, including copies of the grant announcement and all required forms and certifications will be available by request from the Agency and by such other means as the Agency may determine. In addition, the Agency may make available an application guide and other materials that may be of assistance to prospective applicants.

**§ 1709.116 Application package.**

The requirements for the application package will be established in the grant announcement. A complete application package will consist of the standard application for federal assistance (SF-424 series), as applicable, a narrative project proposal prepared in accordance with the grant announcement, an RUS environmental profile, and such other supporting documentation, forms, and certifications as required in the grant announcement and this part.

**§ 1709.117 Application requirements.**

(a) *Required forms.* The forms required for application and where to obtain them will be specified in the announcement. All required forms must be completed, signed and submitted by a person authorized to submit the proposal on behalf of the applicant. For applications and forms that are submitted electronically, the application must be authenticated as provided in the grant announcement. In the case of grant applications submitted electronically, the applicant may be required to provide signed originals of required forms prior to and as a condition of the grant award.

(b) *Narrative proposal.* Each application must include a narrative proposal describing the proposed project and addressing eligibility and selection criteria. The grant announcement will specify the contents, order, and format for the narrative proposal. The proposal must include all the required elements identified in this subsection. The grant announcement may establish additional required elements that must be addressed in the narrative project proposal.



(1) *Executive summary.* A summary of the proposal should briefly describe the project including target community, goals, tasks to be completed and other relevant information that provides a general overview of the project. The applicant must clearly state the amount of grant funds requested and identify any priority ratings for which the applicant believes it is qualified.

(2) *Applicant eligibility.* The narrative and supporting documentation must describe the applicant and establish its eligibility.

(3) *Community eligibility.* This section must describe the target area and communities to be served by the project and demonstrate eligibility. The applicant must clearly identify the:

(i) Location and population of the areas to be served by the project;

(ii) Population of the local government division to which they belong;

(iii) Identity of local energy providers; and

(iv) Sources of the high energy cost data and estimates used.

(4) *Project eligibility.* The narrative must describe the proposed project in sufficient detail to establish that it is an eligible project.

(5) *Project description.* The project description must:

(i) Describe the project design, materials, and equipment in sufficient detail to support a finding of technical feasibility;

(ii) Identify the major tasks to be performed and a proposed timeline for completion of each task; and

(iii) Identify the location of the project target area and the eligible extremely high energy cost communities to be served.

(6) *Project management.* The applicant must describe how and by whom the project will be managed during construction and operation. The description should address the applicant's organizational structure, key project personnel and the degree to which full time employees, affiliated entities or contractors will be utilized. The applicant must describe the identities, legal relationship, qualifications and experience of those persons that will perform project management functions. If the applicant proposes to use the equipment or design, construction and other services from non-affiliated entities, the applicant must describe how it plans to contract for such equipment or services.

(7) *Budget.* The budget narrative must present a detailed breakdown of all estimated costs and allocate these costs among the listed tasks in the work plan. All project costs, not just grant funds,

must be accounted for in the budget. A pro forma operating budget for the first year of operations must also be included. The detailed budget description must be accompanied by SF-424A, "Budget Information—Non-Construction Programs," or SF-424C "Budget Information—Construction Programs," as applicable.

(8) *Project goals and objectives.* The applicant must identify unambiguous measures for expected cost reduction, efficiencies or other improvements and the degree to which the incremental benefit will be enjoyed by residents of the eligible community. The description should specifically address how the project will provide or improve energy generation, transmission or distribution services in the target area. The project objectives and proposed evaluation measures will be the basis for project performance measures in the grant agreement.

(9) *Performance measures.* The application must include specific criteria for measuring project performance. These proposed criteria will be used in establishing performance measures incorporated in the grant agreement in the event the proposal receives funding under this subpart. These suggested criteria are not binding on the Agency. Appropriate measures of project performance include expected reductions in home energy costs, avoided cost increases, enhanced reliability, new households served, or economic and social benefits from improvements in energy services.

(10) *Proposal evaluation and selection criteria.* The application must address individually and in narrative form each of the proposal evaluation and selection criteria referenced in the grant announcement.

(11) *Rural development initiatives.* The proposal should describe whether and how the proposed project will support any State rural development initiatives. If the project is in support of a rural development initiative, the application should include confirming documentation from the appropriate rural development agency. The application must identify the extent to which the project is dependent upon or tied to other rural development initiatives, funding and approvals.

(12) *Environmental profile.* The application must include information about project characteristics and site specific conditions that may involve environmental, historic preservation and other resource issues. This information must be presented in sufficient detail so as to facilitate the Agency's identification of projects that may require additional environmental

review under 7 CFR part 1794 before a grant award can be approved. The format and requirements for the environmental profile will be established in the grant announcement.

(13) *Regulatory and other required project approvals.* The applicant must identify all regulatory or other approvals required by other Federal, State, local, tribal or private entities (including conditions precedent to financing) that are necessary to carry out the proposed project and an estimated schedule for obtaining the necessary permits and approvals.

#### **§ 1709.118 Submission of applications.**

Unless otherwise provided in the grant announcement, a complete original application package and two copies must be submitted by the application deadline to RUS at the address specified in the applicable announcement. Instructions for submittal of applications electronically will be established in the grant announcement.

#### **§ 1709.119 Review of applications.**

(a) RUS will review each application package received to determine whether the applicant is eligible and whether the application is timely, complete, and responsive to the requirements set forth in the grant announcement.

(b) RUS may, at its discretion, contact the applicant to clarify or supplement information in the application needed to determine eligibility, identifying information, and grant requests to allow for informed review. Failure of the applicant to provide such information in response to a written request by the Agency within the time frame established by the Agency may result in rejection of the application.

(c) After consideration of the information submitted, the Assistant Administrator, Electric Program will determine whether an applicant or project is eligible and whether an application is timely, complete, and responsive to the grant announcement and shall notify the applicant in writing. The Assistant Administrator's decision on eligibility may be appealed to the Administrator.

#### **§ 1709.120 Evaluation of applications.**

(a) The Agency will establish one or more rating panels to review and rate the grant applications. The panels may include persons not employed by the Agency.

(b) All timely and complete applications that meet the eligibility requirements will be referred to the rating panel. The rating panel will evaluate and rate all referred

applications according to the evaluation criteria and weights established in the grant announcement. Panel members may make recommendations for conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements.

(c) After the rating panel has evaluated and scored all proposals, in accordance with the point allocation specified in the grant announcement, the panel will prepare a list of all applications in rank order, together with funding level recommendations and recommendations for conditions, if any.

(d) The list of ranked projects and rating panel recommendations will be forwarded to the Administrator for review and selection.

**§ 1709.121 Administrator's review and selection of grant awards.**

(a) The final decision to make an award is at the discretion of the Administrator. The Administrator shall make any selections of finalists for grant awards after consideration of the applications, the rankings, comments, and recommendations of the rating panel, and other pertinent information.

(b) Based on consideration of the application materials, ranking panel ratings, comments, and recommendations, and other pertinent information, the Administrator may elect to award less than the full amount of grant requested by an applicant. Applicants will be notified of an offer of a reduced or partial award. If an applicant does not accept the Administrator's offer of a reduced or partial award, the Administrator may reject the application and offer an award to the next highest ranking project.

(c) The projects selected by the Administrator will be funded in rank order to the extent of available funds.

(d) In the event an insufficient number of eligible applications are received in response to a published grant announcement and selected for funding to exhaust the funds available, the Administrator reserves the discretion to reopen the application period and to accept additional applications for consideration under the terms of the grant announcement. A notice regarding the reopening of an application period will be published in the **Federal Register**.

**§ 1709.122 Consideration of eligible grant applications under later grant announcements.**

At the discretion of the Administrator, the grant announcement may provide that all eligible but unfunded proposals submitted under preceding competitive

grant announcements may also be considered for funding. This option is provided to reduce the burden on applicants and the Agency. The grant announcement shall indicate how applicants may request reconsideration of previously submitted, but unfunded, applications and how they may supplement their applications.

**§ 1709.123 Evaluation criteria and weights.**

(a) *Establishing evaluation criteria and weights.* The grant announcement will establish the evaluation criteria and weights to be used in ranking the grant proposals submitted. Unless supplemented in the grant announcement, the criteria listed in this section will be used to evaluate proposals submitted under this program. Additional criteria may be included in the grant announcement. In establishing evaluation criteria and weights, the total points that may be awarded for project design and technical merit criteria shall not be less than 65 percent of the total available points, and the total points awarded for priority criteria shall not be more than 35 percent of the total available points. The distribution of points to be awarded per criterion will be identified in the grant announcement.

(b) *Project design and technical merit.* In reviewing the grant proposal's project design and technical merit, reviewers will consider the soundness of the applicant's approach, the project's technical and financial feasibility, the adequacy of financial and other resources, the capabilities and experience of the applicant and its project management team, the project goals, and identified community needs and benefits. Points will be awarded under the following project elements:

(1) *Comprehensiveness and feasibility.* Reviewers will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the eligible communities. The panel will review the proposed design, construction, equipment and materials for the proposed energy facilities to determine technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed. Reviewers will also evaluate

how the applicant proposes to manage available resources such as grant funds, income generated from the facilities and any other financing sources to maintain and operate a financially viable project once the grant period has ended. Reviewers must make a finding of operational sustainability for any points to be awarded. Projects for which future grant funding is likely to be required in order to assure ongoing operations will not receive any points.

(2) *Demonstrated experience.* Reviewers will consider whether the applicant or its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the application. The reviewers may assign a higher point score to proposals that develop the internal capacity to provide or improve energy services in the eligible communities over other proposals that rely extensively on temporary outside contractors.

(3) *Community needs.* Reviewers will consider the applicant's assessment of community energy needs to be addressed by the proposed project as well as the severity of physical and economic challenges affecting the target communities. In determining whether one proposal should receive more points than another under this criterion, reviewers will consider the relative burdens placed on the communities and individual households by extremely high energy costs, the hardships created by limited access to reliable and affordable energy services and the availability of other resources to support or supplement the proposed grant funding.

(4) *Project evaluation and performance measures.* Reviewers will consider the applicant's suggested project evaluation and performance criteria. Reviewers may award higher points to criteria that are quantifiable, directly relevant to project goals, and reflect serious consideration than to more subjective performance criteria that do not incorporate variables that reflect a reduction in energy cost or improvement in service.

(5) *Coordination with rural development initiatives.* Proposals that include documentation confirming coordination with State rural development initiatives may be credited points for this criterion.

(c) *Priority considerations.* Subject to the limitation in paragraph (a) of this section, evaluation points may also be awarded for projects that advance identified priority interests identified in the grant announcement to assist the Agency in selecting among competing projects when the amount of funding

requests exceed available funds. The grant announcement may incorporate all or some of the priority criteria listed below, and as discussed in paragraph (a) of this section, the grant announcement may supplement these criteria. The announcement will also specify the points that will be awarded to qualifying applications under these priority criteria.

(1) *Community economic hardship.* Economic hardship points may be awarded where the median household income for the target community is significantly below the State average or where the target community suffers from economic conditions that severely constrain its ability to provide or improve energy facilities serving the community. Applicants must describe in detail and document conditions creating severe community economic hardship in the proposal.

(2) *Rurality.* Priority consideration may be given to proposals that serve smaller rural communities. Applications will be scored based on the population of the largest incorporated cities, towns or villages or census designated places included within the grant's proposed target area as determined using the latest available population figures from the U.S. Census Bureau.

(3) *Unserviced energy needs.* Points may be awarded to projects that extend or improve electric or other energy services to eligible communities or areas of eligible communities that do not have reliable centralized or commercial service.

(4) *Imminent hazard.* Additional points may be awarded for projects that correct a condition posing an imminent hazard to public safety, public welfare, the environment, or to a critical community or residential energy facility in immediate danger of failure because of a deteriorated condition, capacity limitation, or damage from a natural disaster or accident.

(5) *Cost sharing.* Projects that evidence significant commitments of funds, contributed property, equipment, or other in kind support for the project may be awarded additional points for this criterion where the aggregate value of these contributions exceed ten percent of total eligible project costs.

#### **§ 1709.124 Grant award procedures.**

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete the

required environmental review under 7 CFR 1794 and to meet other pre-award conditions.

(b) *Letter of conditions.* The Agency will notify each applicant selected as a finalist in writing setting out the amount of grant funds and the terms and conditions under which the grant will be made and requesting that the applicant indicate in writing its intent to accept these conditions.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the selected applicant must notify the agency in writing within the time period indicated, of its acceptance of the conditions, or if the proposed certain conditions cannot be met, the applicant must so advise the Agency and may propose alternate conditions. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(d) *Grant agreement.* The Agency and the grantee must sign a grant agreement acceptable to the Agency prior to the advance of funds.

#### **§§ 1709.125–1709.200 [Reserved]**

### **Subpart C—Bulk Fuel Revolving Fund Grant Program**

#### **§ 1709.201 Purpose.**

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) State Bulk Fuel Revolving Fund Grants. The purpose of this grant program is to assist State entities in establishing and supporting a revolving fund to provide a more cost-effective means of purchasing fuel for communities where the fuel cannot be shipped by means of surface transportation.

#### **§ 1709.202 Policy. [Reserved]**

#### **§ 1709.203 Definitions.**

As used in this subpart, the following definitions apply:

*Eligible area* means any area that is primarily dependent on delivery of fuel by water or air for a significant part of the year and where fuel cannot be shipped routinely by means of surface transportation either because of absolute physical constraints or because surface transportation is not practical or is prohibitively expensive.

*Fuel* means oil, diesel fuel, gasoline and other petroleum products, coal, and any other material that can be burned to make energy.

*State entity* means a department, agency, or instrumentality of any State.

*Surface transportation* means transportation by road, rail or pipeline.

#### **§§ 1709.204–1709.206 [Reserved]**

#### **§ 1709.207 Eligible applicants.**

Eligible applicants are restricted to State entities in existence as of November 9, 2000. Eligible State entities may partner with other entities, including other government agencies, in carrying out the programs funded by this program. Each applicant must demonstrate that it has the authority to enter into a binding agreement with the Federal Government to carry out the grant activities.

#### **§ 1709.208 Use of grant funds.**

Grant funds must be used to establish and support a revolving loan fund that facilitates cost effective fuel purchases for persons, communities, and businesses in eligible areas. Where a recipient State entity's existing program is authorized to fund multiple purposes, grant funds may only be used to the extent the recipient fund finances eligible activities.

#### **§ 1709.209 Limitations on use of grant funds.**

Not more than 4 percent of the grant award may be used for the planning and administrative expenses of the grantee.

#### **§ 1709.210 Application process.**

(a) *Applications.* The Agency will solicit applications on a competitive basis by publication of a grant announcement establishing the amount of funds available, the maximum grant award, the required application materials and where to obtain them, the evaluation and selection criteria and weights, and application deadlines. Unless otherwise specified in the announcement, applicants must file an original application package and two copies. Where provided in the grant announcement, applicants may submit electronic applications.

(b) *Required forms.* The grant application will use the Standard Application for Federal Assistance (SF-424 series or its successor) and other forms as provided in the grant announcement. The required forms must be completed, signed and submitted by a person authorized to submit the proposal on behalf of the applicants. Where provided in the grant announcement, applicants may file electronic versions of the forms in compliance with the instructions in the grant announcement.

(c) *Narrative proposal and required elements.* Each grant application must include a narrative proposal describing the project and addressing the following

elements. The form, contents, and order of the narrative proposal will be specified in the grant announcement. Additional elements may be published in the applicable grant announcement.

(1) *Executive summary.* This summary of the proposal must identify the State entity applying for the grant and the key agency contact information (telephone and fax numbers, mailing address and e-mail address). The applicant must clearly state the amount requested in this section. It should briefly describe the program, including the estimated number of potential beneficiaries in eligible areas, their estimated fuel needs, the projects and activities to be financed through the revolving fund and how the projects and activities will improve the cost effectiveness of fuel procured.

(2) *Applicant eligibility.* The application must establish that the applicant is a State entity that was in existence as of November 9, 2000, and has the legal authority to enter into a financial assistance relationship with the Federal Government to carry out the grant activities.

(3) *Assessment of needs and potential beneficiaries.* The application must provide estimates of the number, location and population of potentially eligible areas in the State and their estimated fuel needs and costs. The section must also describe the criteria used to identify eligible areas, including the characteristics that make fuel deliveries by surface transport impossible or impracticable. The description of beneficiary communities should provide a detailed breakdown of the density profile of the area to be served by eligible projects. Indicate to what extent persons in eligible areas live outside of communities of 2,500 persons or more, communities of 5,000 or more or outside of communities of 20,000 or more. All population estimates should be based on Census Bureau data where available. All representations should be supported with exhibits such as maps, summary tables and references to official information sources.

(4) *Project description.* The application must:

(i) Describe the legal structure and staffing of the revolving fund proposal for fuel purchase support.

(ii) Identify the objectives of the project, the proposed criteria for establishing project funding eligibility and how the project is to be staffed, managed and financed.

(iii) Describe how the potential beneficiaries will be informed of the availability of revolving fund benefits to them.

(iv) Explain how the proposed revolving fund program will help provide a more cost-effective means of meeting fuel supply needs in eligible areas, encourage the adoption of financially sustainable energy practices, the adequate planning and investment in bulk fuel facility operations and maintenance and cost-effective investments in energy efficiency.

(v) If the revolving fund program is not yet operational, a proposed implementation schedule and milestones should be provided.

(5) *Demonstrated experience.* The application shall describe past accomplishments and experiences that are relevant to determine whether the applicant is capable of administering the grant project.

(6) *Budget.* The application must include a pro forma operating budget for the proposed fund and a description of all funding sources. The level of detail must be sufficient for reviewers to determine that grant funds will be used only for eligible purposes and to determine the extent to which the program is entirely dependent on grant funding or whether it has financial support from the State or other sources.

(7) *Performance measures and project evaluation.* The application must provide unambiguous and quantifiable measures that will be used to evaluate the success and cost-effectiveness of the revolving fund in assuring adequate fuel supplies for eligible communities and for assessing the fuel supply projects financed. The grant announcement may establish additional required elements that must be addressed in the narrative proposal of the application package.

#### **§ 1709.211 Submission of applications.**

Completed applications must be submitted to RUS at the address specified in the grant announcement on or before the deadline specified in the grant announcement. Instructions for submittal of applications electronically will be established in the grant announcement. Late applications will be rejected.

#### **§ 1709.212 Application review.**

The Agency will review all applications to determine whether the applicant is eligible and whether the application is timely, complete and sufficiently responsive to the requirements set forth in the grant announcement to allow for an informed review. Failure to address any of the required evaluation criteria or to submit all required forms will disqualify the proposal. The Agency reserves the right to contact the applicant to clarify information contained in the proposal to

resolve issues related to eligibility and the grant request. Applications that are timely, complete, and responsive will be forwarded for further evaluation.

Applications that are late, incomplete, or non-responsive will be rejected.

#### **§ 1709.213 Evaluation of applications.**

(a) The Agency will establish one or more rating panels to review and rate the grant applications. The panels may include persons not employed by the Agency.

(b) The rating panel will evaluate and rate all complete applications that meet the eligibility requirements according to the evaluation and selection criteria and weights established in the grant announcement. Panel members may make recommendations for conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements.

(c) After all proposals have been evaluated and scored, the proposals, the rankings, recommendations, and comments of the rating panel will be forwarded to the Administrator.

#### **§ 1709.214 Administrator's review and selection of grant awards.**

(a) The final decision to make a grant award is at the discretion of the Administrator. The Administrator shall consider the applications, the ranking, comments, and recommendations of the rating panel, and any other pertinent information before making a decision about which, if any, applications to approve, the amount of funds awarded, and the order of approval. The Administrator reserves the right not to make any awards from the applications submitted. When the Administrator decides not to make any awards, the Administrator shall document in writing the reason for the decision.

(b) Decisions on grant awards will be made by the Administrator after consideration of the applications, the rankings and recommendations of the rating panel. The Administrator may elect to award less than the full amount of grant requested by an applicant.

(c) The applications selected by the Administrator will be funded in rank order to the extent of available funds.

#### **§ 1709.215 Consideration of unfunded applications under later grant announcements.**

The grant announcement may provide that all eligible but unfunded proposals submitted under preceding announcements may also be considered for funding. The announcement shall describe whether and how prior applicants may request reconsideration

and supplement their application material.

**§ 1709.216 Evaluation criteria and weights.**

Unless supplemented in the grant announcement, the criteria listed in this section will be used to evaluate proposals submitted under this program. The total points available and the distribution of points to be awarded per criterion will be identified in the grant announcement.

(a) *Program Design.* Reviewers will consider the financial viability of the applicant's revolving fund program design, the proposed criteria for establishing eligible projects and borrowers, and how the program will improve the cost effectiveness of bulk fuel purchases in eligible areas. Programs demonstrating a strong design and the ability to improve cost effectiveness will receive more points than applications that are less detailed.

(b) *Assessment of needs.* Reviewers will award more points to programs that serve or give priority to assisting more costly areas than those that serve populations that suffer from less severe physical and economic challenges.

(c) *Program evaluation and performance measures.* Reviewers may award more points to performance measures that are relevant to the project objective and quantifiable than to performance measures that are more subjective and do not incorporate variables that reflect a reduction in fuel cost or improvement in service.

(d) *Demonstrated experience.* Applicants may be awarded points for relevant experience in administering revolving fund or other comparable programs.

(e) *Rurality.* Reviewers may award more points to proposals that give priority in access to funds to communities with low population density or that are located in remote eligible areas than to proposals that serve eligible, but less remote and higher population density communities.

(f) *Cost sharing.* Although cost-sharing is not required under this program, projects that evidence significant funding or contributed property, equipment or other in kind support for the project may be awarded points for this criterion where the aggregate value of these contributions exceed 25 percent of the annual funding operations.

(g) *Additional priority considerations.* The grant announcement may provide for additional points to be awarded to projects that advance identified Agency priority interests under this program.

**§ 1709.217 Grant award.**

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether or not they have been selected for a grant award.

(b) *Letter of conditions.* The Agency will notify a selected applicant in writing, setting out the amount of grant approved and the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the selected applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(d) *Grant agreement.* The Agency and the grantee must execute a grant agreement acceptable to the Agency prior to the advance of funds.

**§§ 1709.218–1709.300 [Reserved]**

**Subparts D–F [Reserved]**

**Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes**

**§ 1709.601 Policy.**

This subpart prescribes the policies of the Rural Utilities Service (RUS) when it is subsequently determined that the recipient of an Assistance to High Energy Cost Rural Communities program loan or grant was not eligible for all or part of the financial assistance received or that the assistance received was used for unauthorized purposes. It is the policy of the Agency that when assistance under this part has been received by an ineligible recipient or used for unauthorized purposes the Agency shall initiate appropriate actions to recover from the recipient the sum that is determined to be ineligible or used for unauthorized purposes, regardless of amount, unless any applicable statute of limitation has expired. The Agency shall make full use of available authority and procedures, including but not limited to those available under 7 CFR part 3015, subpart N.

**§§ 1709.602–1709.700 [Reserved]**

**§§ 1709.701–1709.999 [Reserved]**

Dated: January 13, 2005.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 05–1880 Filed 2–1–05; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–279–AD; Amendment 39–13957; AD 2005–03–01]**

**RIN 2120–AA64**

**Airworthiness Directives; Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that requires repetitive inspections of the nacelle strut-to-wing attachment structure, and repetitive overhaul of the diagonal brace and spring beam load paths, to maintain damage tolerance requirements and ensure long-term structural integrity; and follow-on and corrective actions if necessary. This action is necessary to ensure the structural integrity of the strut-to-wing load path and prevent separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 9, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2005.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).