

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1710

[0572–AC21]

#### Project Financing Loans

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

**ACTION:** Advanced notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The Rural Utilities Service (RUS or Agency) is considering regulatory reforms to codify statutory changes related to “project financing” requirements to advance the agency’s rural development mission and improve its ability to finance electric infrastructure projects, including those that use renewable sources of energy. RUS is also considering regulations to clarify the agency’s procedures for single asset/project financing arrangements for all RUS eligible projects. This advance notice of proposed rulemaking seeks comments on the parameters necessary to more effectively and prudently use project financing in the RUS electric loan program and will serve several purposes.

It will assist the agency to gather information and comments about its ability to make loans for renewable electric generation even where the consumers may be non-rural residents.

It will help develop a record on industry standards and public recommendations related to financing arrangements and collateral requirements which could be used to implement a focused Project Financing Program (PFP) for investments in electric generation, transmission, and distribution facilities, including plant necessary for generating electricity from renewable energy sources.

It will also help the agency better understand the potential demand for financing utilizing either or both of the aforementioned authorities, collect comments from potential applicants and

co-lenders on PFP, terms, and renewable energy financing as well as help inform the public about federal financing options available through the RUS Electric Loan Program.

The RUS is also announcing a public meeting for interested parties to express their views on the opportunities and challenges related to the use of the agency’s authority for electric generation from renewable energy sources and project financing within the electric utility sector.

**DATES:** *Written comments:* Comments must be received by RUS, or bear a postmark or equivalent, no later than July 30, 2013.

*Public meeting:* Two public meetings will be held on July 9, 2013. The first meeting will begin at 9:00 a.m. eastern time, and the second meeting will begin at 1:15 p.m. Registration will begin at 8:00 a.m. and 12:15 p.m., respectively. The public meetings will last no more than 4 hours, with 20 minutes of introductory remarks from the RUS Administrator, followed by a PowerPoint presentation explaining the ANPR. RUS will then open the floor to discussion.

**ADDRESSES:** *Comments:* Submit comments by either of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

*Public meeting:* The public meeting will be held in the Jefferson Auditorium, South Building, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC. Persons interested in making a presentation at the meeting should send a written request to Nivin A. Elgohary, Assistant Administrator, Electric Program, Rural Utilities Service, room 5165–S, Stop 1560, 1400 Independence Avenue SW., Washington, DC 20250–1565.

**FOR FURTHER INFORMATION CONTACT:** Kristi Kubista-Hovis, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1560, Washington, DC 20250–1560, telephone (202)720–

0424 or email to [kristi.kubista-hovis@wdc.usda.gov](mailto:kristi.kubista-hovis@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This 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.

*Background:* The RUS provides long term financing to electric utility systems providing services to eligible rural communities. Loan funds are typically available for construction on a reimbursement basis once the project is completed. Private sector lenders or utility assets are used as bridge financing. The Electric program of RUS manages a portfolio of well-established loan programs that continue to meet the needs of eligible applicants. It represents the largest federal direct investment in the electric sector. RUS’ Electric loan programs provide loans for rural electrification to persons, corporations, States, Territories, and subdivisions, tribal entities and agencies for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for furnishing and improving electric service to people living in rural areas. Current RUS borrowers are well established utilities, most frequently rural electric cooperatives that have a history of participation in the program. RUS loans are secured by a system-wide mortgage or indenture on the tangible assets of the utility as well as a contractual claim on system revenues. Security and feasibility of RUS financing for power supply has historically been based on all requirements wholesale power contracts; an after acquired property clause within the mortgage; a loan contract which identifies performance criteria during the term of the loan. Primary support documents are used to determine financial and engineering feasibility for all loans. In recent years, electric infrastructure, including generation systems using renewable energy, peaking units and transmission lines have been increasingly financed on a “project basis.”

Section 317 Authority—The Rural Electrification Act of 1936, as amended ((7 U.S.C. 940 et seq.) RE Act) provides authority for the financing of assets used

in furnishing or improving electric service to rural areas. Section 13 of the RE Act defines a rural area as a community of 20,000 or less or an area within the service territory of a borrower that had an outstanding loan on the date of enactment of the Food, Conservation, and Energy Act of 2008, more commonly known as the 2008 Farm Bill (June 18, 2008). That definition expanded the number of communities eligible to be served by an RUS financed entity.

In the 2008 Farm Bill, Congress added a new section 317 to the RE Act. The provision gave the agency the authority to make electric loans under Title III of the RE Act for “electric generation from renewable energy resources for resale to rural and nonrural residents.” The statute defined a “renewable energy source” as “an energy conversion system fueled from a solar, wind, hydropower, biomass or geothermal source of energy.” Section 317 authorities could be used to provide financing to construct renewable energy generation facilities to serve both rural and non-rural residents.

The RUS is committed to utilizing section 317 in a manner that spurs rural economic development, expands renewable energy options for consumers and protects taxpayers from undue risks. Rural areas hold the potential of producing significant amounts of renewable energy. Rural development can be enhanced by facilitating the rural production and use of renewable electric resources. The RUS Electric Program can add value to rural markets by using its program to increase physical assets, set policies and regulations that encourage success, foster job creation and enhance energy independence. The RUS seeks comments on several issues related to the effective use of section 317.

1. Under what conditions should section 317 authorities be used? Are there any legislative impediments to utilizing the authority on an ad hoc or programmatic manner?

2. What is the level of interest among current and past RUS program participants in providing financing for renewable energy projects where consumers of the power may be non-rural? What is the level of interest among potential non-traditional applicants?

3. Do renewable energy generation projects serving non-rural consumers require the agency to take into consideration factors not addressed in the existing RUS electric loan program requirements?

Project Financing—Prudence has been a core value of the RE Act’s Electric

Loan Program. The electric program has a current default rate of less than 1 percent. This has enabled the agency in recent years to generate billions of dollars of rural infrastructure investment with little or no budget authority other than the salaries and expenses of the staff necessary to run the loan program. RUS loans are generally secured by a mortgage or indenture on the tangible assets of the borrower’s electric system. The collateral includes the borrowers’ real property, revenue streams through contractual arrangements, and any future acquisitions. This “system” approach has served the program and rural America well. The RUS electric loan portfolio exceeds \$43 billion. While RUS has authority to finance electric infrastructure on a “project” basis and has occasionally used that authority, the “system” approach has been the predominant financing method for the agency.

As the regulatory and business environments evolve for electric utilities, the agency notes that there is a growing use of and interest in investing in electric infrastructure on a “project” basis, especially for power generation from natural gas and renewable sources of energy and transmission line investments. In a “project” finance model, the assets and revenues from a particular investment form the security for the loan rather than the assets of the entire electric system. Often additional credit support is needed, such as equity investment or third party commitments to minimize risk to the lender. For example, the assets and revenues from a specific generating facility might be financed and secured by that investment rather than by placing a lien on the assets of the whole utility. In a renewable energy illustration, a lender might finance only the wind turbine assets and not take or be able to take a security interest beyond those assets. This Advance Notice of Proposed Rule Making seeks comments on the project structure for infrastructure developments when an entire utility system is not pledged as collateral. While the existing RUS project financing authority has been used on an ad hoc basis, the agency is considering new regulations to create a more focused PFP to potentially provide financing for eligible applicants for electric utility projects, enabling utilities, tribal entities and corporations to access the lowest cost capital. The agency advises entities interested in pursuing PFP loans, that all RUS projects must take into account a number of factors not typically involved

in private sector project financing arrangements, including (1) beneficiary determinations; (2) government social clauses; (3) executive orders; (4) a statutory preference for not-for-profit entities; (5) appropriations/allocation schedules; (6) application processing time; (7) loan advance and interest rate lock-ins at time of advance; (8) construction and procurement standards; and (9) reporting requirements. See 7 CFR Part 1710, subpart B.

The RUS is seeking public comment on the following questions and potential requirements:

1. The RUS program relies on borrowers financing commercially proven technologies suitable for rural deployment. If the RUS were to expand its project financing authority, especially for renewable energy investments, what infrastructure should be eligible for PFP loans? What entities should qualify for PFP loans?

2. Based on the information provided in this Advance Notice of Proposed Rulemaking is there interest in seeking a PFP loan from the RUS under that authority or Section 317 authority referenced above?

3. All RUS investments must comply with the National Environmental Policy Act (NEPA). As it relates to project construction, will potential PFP applicants be able to meet the timing requirements of the NEPA, as codified at 7 CFR Part 1794?

4. The ability to repay must be established prior to loan approval for RUS financing. In considering a PFP loan, risk mitigation and revenue assurance are key issues. What type of credit support, in addition to power purchase agreements and corporate guarantees, are available to secure the government’s interest and ensure a long term revenue stream to repay PFP loans?

5. RUS is considering limiting lending under a new PFP to a maximum of 75 percent of the RUS eligible project costs. The government’s interest rate on an RUS Electric Program loan is tied to Treasury rates of interest. The most popular option in recent times has been a loan with an interest rate equal to the Treasury rate, at the time of the loan fund advance, plus one eighth of one percent. The loan term is based on the shorter of the useful life of the asset, term of power purchase agreements, term of fuel supply, or term of license that ensure a revenue stream or as deemed appropriate to ensure the repayment of the debt. What other criteria can be built into the credit structure to ensure the repayment of PFP loans?

6. RUS is considering a requirement that PFP borrowers contribute equity in an amount equal to at least 25 percent of the eligible project costs at the time of the RUS loan obligation. What other equity levels are acceptable for this type of credit and what types of credit enhancements can be provided by the applicant?

7. Other credit enhancements have been suggested to ensure repayment including the establishment of a debt service reserve fund required at the time of the RUS obligation for an amount up to one year of debt service. This amount will be maintained while the loan is outstanding with funds deposited in an escrow account to be withdrawn only by RUS or with RUS approval. Will private financing institutions consider this RUS requirement in their interim financing arrangement? Should an operation and maintenance reserve account be required at the time of the RUS obligation for an amount agreed to by RUS and the applicant and maintained while the loan is outstanding? What are typical costs or percentages for Operations and Maintenance expenses for the RUS eligible facilities? Please consider the effects of unplanned as well as planned maintenance.

8. RUS does not presently intend to provide construction loans for project financing. What entities would be interested in partnering with the federal government on these types of projects by providing construction financing? What are the details of the financing arrangements available from the private lending institutions?

9. RUS frequently lends in concurrence with private sector lenders. Will private lending institutions participate in financing facilities on a term financing basis?

10. Outside consultants and legal counsel are often used by RUS loan applicants. Under current regulations project applicants will fund the costs of outside legal, engineering and environmental consultants working for RUS. What should the appropriate cost range be for such expenses incurred by private lenders for a potential PFP loan?

11. Would borrowers accommodate a take or pay Power Purchase agreement equivalent with a component where RUS will always be paid?

12. Federally Recognized Tribes in rural areas have access to a large share of rural renewable energy resources on lands that they own, that are held in Trust by the Federal Government. What additional financing and regulatory considerations should RUS take into consideration to ensure that Electric Program policy changes are structured to help meet the renewable energy

development needs of Federally Recognized Tribes?

13. What additional intergovernmental cooperation and collaboration between Federal agencies and Federally Recognized Tribes might better position RUS to meet the renewable energy development needs of Federally Recognized Tribes?

14. Would Federally Recognized Tribes like to consult with RUS on proposed Electric Program policy changes to help meet their renewable energy development needs? If so, what recommendations do Tribes have for conducting such consultation?

Dated: May 30, 2013.

**John Charles Padalino,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2013-13313 Filed 6-4-13; 8:45 am]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR PART 1710

**RIN 0572-AC32**

#### Rural Determination and Financing Percentage

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS or Agency) is proposing policies and procedures for determining rural eligibility for all loans and loan guarantee financial assistance. In addition, policies and procedures are proposed for determining the percentage of total project costs the Agency will finance where the project supplies electricity to an electric utility serving an area that is less than 100 percent rural. By codifying these policies and procedures the agency will provide needed flexibility in the methods utilized to determine eligibility and percentage of financing.

**DATES:** Written comments must be received by RUS no later than August 5, 2013.

**ADDRESSES:** Submit comments by either of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Postal Mail/Commercial Delivery:* Please send your comments addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue SW., STOP 1522, Room 5162, Washington, DC 20250-1522.

*Other Information:* Additional information about Rural Development and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Lou Riggs, USDA—Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250-1569, telephone (202) 690-0551 or email to [lou.riggs@wdc.usda.gov](mailto:lou.riggs@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been formally reviewed by the Office of Management and Budget. This regulation expands the scope of RUS's lending authority to promote renewable energy and support smaller projects that do not qualify under current regulations. Due to the expanded scope of the program, RUS is working with the Office of Management and Budget on a program review to better understand the implications of these changes.

##### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at <http://www.cfda.gov>.

##### Executive Order 12372

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

##### Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by August 5, 2013.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including