

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR	
1745.....	13345
1749.....	13345
8 CFR	
245a.....	13360
10 CFR	
50.....	13361
12 CFR	
226.....	13455
14 CFR	
71.....	13455
20 CFR	
217.....	13362
21 CFR	
Proposed Rules:	
347.....	13490
348.....	13490
358.....	13480
22 CFR	
34.....	13364
23 CFR	
646.....	13369
32 CFR	
80.....	13369
169.....	13373
372.....	13376
384.....	13379
392.....	13381
33 CFR	
100.....	13382
Proposed Rules:	
165.....	13389
40 CFR	
52.....	13383
60.....	13384
82.....	13502
799 (2 documents).....	13470, 13472
Proposed Rules:	
52 (3 documents).....	13389
42 CFR	
62.....	13458
47 CFR	
Proposed Rules:	
97.....	13390
48 CFR	
Proposed Rules:	
3.....	13391
49 CFR	
Proposed Rules:	
350.....	13391
390.....	13391
50 CFR	
23.....	13387

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1745 and 1749

General Policies, Types of Loans, Loan Requirements—Telephone Program; Preloan Procedures and Requirements—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration hereby amends 7 CFR Chapter XVII by adding Part 1745, General Policies, Types of Loans, Loan Requirements, and Part 1749, Preloan Procedures and Requirements. These new parts consolidate, revise, and clarify the policies, requirements, and procedures contained in the following existing REA Bulletins:

- 320-1 Preloan Procedures for Rural Telephone Cooperatives
- 320-4 Preloan Procedures for Telephone Loan Applicants
- 320-14 Loans for Telephone System Improvements and Extensions
- 320-22 Guarantee of Loans for Telephone Facilities
- 321-2 Loan Security Requirements for Telephone Loans
- 322-1 Area Coverage Survey
- 322-2 Rural Area Coverage—Telephone Loans
- 323-1 Determination by Administrator with Respect to Nonduplication of Lines, Facilities, or Systems
- 324-1 Loans for Refinancing Outstanding Indebtedness of Telephone Borrowers
- 325-1 Financing Lines, Facilities, or Systems Outside of Rural Areas
- 326-1 Acquisitions of Telephone Facilities and Systems
- 360-1 Checklist for Review of a Supplemental Loan Proposal or an Area Coverage Design
- 385-5 Loans to Finance Radio Equipment for Subscriber Service

Bulletins 320-1, 320-14, 322-1, 324-1, and 360-1 will be rescinded upon publication of the final rules. The other Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR parts. When that is accomplished, those Bulletins will also be rescinded.

These new parts contain the provisions and requirements of the Rural Electrification Act, as amended (RE Act), and the administrative policies, requirements, and procedures of the REA telephone program for first time applicants and existing borrowers seeking financial assistance from REA to furnish and improve telephone service in rural areas. The primary objectives of the final rules are to update, consolidate, clarify, and simplify REA policies and procedures; to facilitate the loan application process; and to decrease processing time by REA.

EFFECTIVE DATE: These final rules are effective April 3, 1989, except that the provisions of §§ 1745.22(f), 1745.43(a), and 1745.43(b) with respect to the 2 year principal deferral period and the 5 year loan advance period shall not apply to loans currently in process for which REA has, as of the effective date of these rules, sent a loan characteristics letter to the borrower and the borrower has concurred in said characteristics and other conditions specified in said letter and so notified REA in writing within 20 days of the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8530. The Final Regulatory Impact Analysis describing the options considered in developing these rules and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: These rules are issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of these rules would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. [1976]) and, therefore, does not require an environmental impact statement or an environmental assessment.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in these final rules have been approved by the Office of Management and Budget (OMB). The OMB approval number for these requirements is 0572-0079.

Public reporting burden of this collection of information is estimated to average 7.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0079), Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements concerning telephone loans and the administrative policies, requirements and procedures covering preloan activities are contained in numerous REA Bulletins, several sections of the REA Telecommunications Engineering and Construction Manual (TE&CM) and the REA Telecommunications Operations Manual (TOM), and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register**.

There is currently considerable confusion over what constitutes an Area Coverage Design (ACD) or a Supplemental Loan Proposal (SLP). These are replaced with a streamlined Loan Design (LD) which will be the basis for determining the amount and purposes of all loans. Most of the items included in the LD are similar for all loans. There are, however, certain data requirements that apply only to initial loans and loans to serve areas not previously financed by REA, and other data requirements that apply to subsequent loans.

Some supplementary information is also required to support a loan application. Currently, this information is often submitted over a period of time. In the future, it will all be submitted at one time, with the LD. This will end confusion over the status of an application and when all of the required information is to be completed and submitted. REA office engineers and loan specialists will be able to prepare a cost study and loan recommendation without having to wait for a large amount of additional information to be submitted. With all the information required to process a loan received at one time, financial and statistical data will all be as of the same date, simplifying processing. As necessary, REA staff will continue to assist borrowers during the preloan period.

These rules eliminate some reporting requirements and streamline others, reducing the borrowers' burden. Generally, borrowers will be required to submit only the year-end Financial and Statistical Report (REA Form 479). They will no longer have to submit June 30 reports as are now required when the loan is made 9 or more months after the date of the last year-end report. Borrowers will be required to submit only rate schedules, and not their entire tariff. Borrowers are currently required

to submit their tariff to the Area Office. This can be quite a large document, and to send a copy to REA costs a borrower a significant amount for copying and postage. The rate schedules normally are only a few pages and generally provide all the tariff information necessary to prepare a feasibility study. Borrowers will still be required to have their tariff available for review by the REA field representative, as necessary.

Joint use agreements will no longer have to be submitted to REA for review and approval. REA Form 809, "Fundamental Plan Information," is eliminated. Certain of the information on this form will be shown on the trunking diagram required as an exhibit to the LD. The rest of the information is no longer needed. Many borrowers now produce equivalents of REA Forms 569, "Area Coverage Survey Report;" 495, "Construction Cost Estimates;" and 494, "Loan Design Summary." These equivalents will now be accepted by REA, which will save the borrower the time and expense of transferring the data to the REA forms.

Recognizing the growing experience of borrowers and their familiarity with REA design criteria and construction standards, greater reliance will be placed on certifications provided by borrowers and their engineers. Currently, a principal of the engineering firm, the borrower and the REA field representative all sign the same certification as to the correctness and reasonableness of the LD. In the future, only the engineer and borrower will sign the certification, which has been expanded to include the certification that "this Loan Design adheres to REA engineering and construction standards and practices." This places a greater responsibility on the borrower and engineer, and provides REA greater loan security. The REA field representative will now review and recommend acceptance of the LD as the basis for REA financing. Final approval of the LD will rest with the Area Director.

If a recommended LD and the required supplementary information are not submitted within 1 year of the date of the loan application, the application generally will be cancelled by REA. There currently is no formal procedure for determining when a loan application should be cancelled. The borrower will now be given a time limit to complete its loan application. One year is an ample amount of time in which to prepare a LD.

The present maximum loan period is 35 years, with a 32-year amortization period. With rapidly changing technology, obsolescence is occurring

more quickly; therefore, borrowers are depreciating their facilities at a faster rate. New plant facilities, especially digital central offices, are generally depreciated at a higher rate than the plant replaced. About 95 percent of REA telephone borrowers have composite depreciation rates for all plant of at least 4 percent; about 84 percent have a rate of at least 4.5 percent. The median for all REA telephone borrowers is now 5.6 percent.

If plant financed by an REA loan is retired and replaced by new plant before the loan is repaid, earnings from this new plant will have to be used to pay the old loan and any new loan used to finance the replacement facilities. If the loan period is longer than the depreciation period and the capital recovered through depreciation is not used to replace plant, the loan could be undercollateralized and the borrower's rate base would be eroded.

The loan period will now approximate the anticipated useful life of the facilities financed. The maximum loan period for all loans will remain at 35 years, with a 32-year amortization period.

The principal deferment period will be reduced to 2 years. Currently, on advances of loan funds within 3 years of the date of the note representing a loan, borrowers do not begin repaying principal until the first basis date. This is 3 years after the date of the note. For funds advanced from that date until the second basis date, 6 years after the date of the note, borrowers do not begin repaying principal until that second basis date. All funds advanced during a particular basis date period are amortized at the same rate. Unless a new basis date agreement is executed, the borrower cannot draw down any unadvanced loan funds after the second basis date.

The new system would set the basis date 2 years after the date of the note and defer the start of principal repayments until then. There would be no second basis date. Principal repayments on all funds advanced after the basis date would begin with the first billing after the advance. Thus, each of these advances would have a different amortization rate. At the Administrator's discretion, the 2-year deferment could be altered.

This change is being made because a significant portion of loan funds should be advanced within 2 years of the date of the note. The retention of a deferment period allows the borrower to have a substantial portion of the new plant in place and earning revenues with which to repay the loan.

Under the current form of note, the Government is not obligated to advance funds after 6 years. The final rule changes this to 5 years and established a procedure for extending this period in certain circumstances.

7 CFR Part 1745 supersedes any sections of REA Bulletin 320-12, "Loan Payments and Statements", with which it is in conflict.

Currently, there is no minimum for REA loans. The Rural Telephone Bank has had a \$50,000 minimum for a number of years. Recognizing the increase in plant costs, the borrowers' expenses for system design, and REA's administrative costs, REA will no longer consider applications for loans of less than \$50,000.

Subsidized loans are provided to telephone borrowers for the purpose of providing and improving telephone service in rural areas. These subsidies are not provided for purposes beyond those unauthorized by the RE Act.

In accordance with REA Bulletins 320-1, 320-4, and 320-14, REA generally does not finance (1) headquarters facilities other than warehouse and garage facilities, (2) office equipment, (3) vehicles and other work equipment, (4) furniture, and (5) station apparatus and associated inside wiring. REA will continue to finance the first four items only in cases of financial hardship, as determined by the Administrator. REA will no longer finance the last item. These changes are based on considerations of loan security and the borrowers' net worth and financial strength.

Station apparatus and inside wiring have been deregulated and generally are not capitalized. Borrowers are no longer obligated to provide these items. To improve the security of REA's loans and the borrowers' financial position, borrowers are encouraged to invest internally generated funds in the five items listed above.

REA will continue to not finance any duplicative facilities. Additionally, REA will not finance facilities to serve subscribers outside the local exchange service areas of the borrower unless those facilities are necessary to furnishing or improving telephone service in rural areas. This restriction is aimed primarily at preventing the financing of services that are outside of a borrower's territory and which primarily serve nonrural subscribers. REA will still finance those portions serving subscribers within the borrower's territory.

For many years REA has had a policy of not making a loan for the same purposes twice. The intent of this policy was to prevent a borrower from

rescinding a loan solely for the purpose of refinancing the loan. This policy is now being codified in clarified form.

Based on loan security considerations, REA will now require that before a loan is approved by REA a borrower must meet certain Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship. For a loan made solely by REA, a borrower must have a TIER of at least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower is subject to the provisions discussed in the next paragraph. The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

For a loan guaranteed by REA, made concurrently by REA and RTB, or made entirely by RTB, a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

A new policy will allow REA, for loan security purposes, to require a new applicant to increase its net worth as a percentage of assets to the highest level not to exceed 40 percent, recorded at the end of any calendar quarter since 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will determine the feasibility of the proposed loan.

REA believes these revised policies, requirements, and procedures will lessen the burden on borrowers and permit REA to maintain the security of the Government's loans.

Comments

In the proposed rules published August 24, 1988 (53 FR 32235), the Rural Electrification Administration invited interested parties to file comments on or before September 23, 1988.

Comments were received from: 37 Members of Congress, 7 Telephone Trade Associations, 68 Borrowers, 2 Other Interested Parties.

The comments received addressed the following issues and Sections of the Rules:

Extension of Time for Comments

Several respondents requested an extension of the 30 day time period for submission of written comments on proposed rules 7 CFR Parts 1745 and 1749. The 30 day public comment period was chosen because of the time constraints imposed by Pub. L. 100-203.

Section 1745.2(e) Definitions—Rural Areas

One respondent stated that the definition of "rural area" should make it clear that "rural area" includes territories and possessions of the United States. Accordingly we have clarified the definition of "rural area" in §§ 1745.2 and 1749.2 to read: "Rural area" means any area of the United States, its territories and insular possessions not included within the boundaries * * *.

The language of this section has also been modified to clearly indicate that the data sources listed are not intended to be exclusive sources.

Section 1745.2(g) Definitions—Times Interest Earned Ratio

One respondent noted two technical corrections in this definition that would put it in conformance with the way the term is generally defined by the financial community. The first is that a time period, namely 1 year, needs to be included in the definition. The second is that only interest on debt with a maturity greater than one year should be included in the definition.

Several respondents objected to the definition of "Times Interest Earned Ratio" being on a pre-tax basis. They note that Section 408(b)(4)(ii) of the RE Act uses a TIER based on "net income or margins before interest" and interpret this phrase to mean after taxes. They also note that the RTB has historically used an after tax TIER in its feasibility computation.

The technical corrections have been made as suggested. In view of the historical use of an after tax TIER by the RTB as a pro forma feasibility test, the definition has been modified to an after tax TIER for purposes of Section 408(b)(4)(ii) of the RE Act.

Section 1745.10 General

One respondent requested that § 1745.10 be modified to recognize that REA provides funds for refinancing as well as financing to furnished and improve telephone service in rural areas. As refinancing is addressed in detail under § 1745.21, no change has been made.

Section 1745.11 Area Coverage

Thirteen respondents objected to the use of the phrase "on a cost effective basis" in the section on area coverage. The comments state that "cost effective" is not defined and that the phrase places a new requirement on borrowers which will result in fewer loans and limit access to the program. It was not the intent of REA to change the area coverage policy as stated in the Act. The phrasing of the Act has always been interpreted to mean on a "cost effective basis". These words were used to reflect the historic practice of REA and consequently do not impose any new requirement on borrowers or limit access to the program.

To impose the area coverage provision when the costs would be exorbitant would be burdensome to borrowers and counter productive to achieving the objectives of the RE Act. We have none the less deleted the phrase "cost effective" because it is not necessary. The provisions of the loan contract will cover the implementation of the area coverage policy.

Section 1745.13 Location of Facilities * * * Nonrural Subscribers

Several respondents objected to the inclusion of "incidental" as a test for financing facilities in nonrural areas. The test for financing facilities in nonrural areas reflects REA interpretation of the Act as it has been consistently applied since the inception of the REA loan program. Section 201 of the Act provides:

When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, such loans may be made for the improvement, expansion, construction, acquisition and operation of telephone lines, facilities, or systems without regard to their geographical location.

Pursuant to this provision the Administrator has included in loans funds to finance urban facilities only where the primary purpose of the loan is furnishing and improving service to rural areas and the financing of urban facilities serves only as an incidental means to the accomplishment of this primary purpose. This determination has and can be made only on a case-by-case basis considering such matters as subscriber ratios and cost ratios. A discussion of the legal principals underlying this interpretation of the Act as well as its application in specific cases is set forth in a series of opinions to the Administrator from the Office of General Counsel, Department of Agriculture.

One respondent suggested that clarification be added to indicate that financing of facilities to benefit nonrural subscribers is not limited to the examples cited. Clarification has been added.

Section 1745.14 Borrower Eligibility

One respondent pointed out that the last sentence of §1745.14 inadvertently omits start-up telephone systems that propose to serve new areas. REA agrees that new systems are eligible for loans, as stated in the first sentence of §1745.14, and has therefore changed the last sentence to read * * * To be eligible for a loan, a borrower must provide or propose to provide the basic local exchange telephone service needs of rural areas, and it must be incorporated.

Section 1745.17(b) Facilities Financed

A number of respondents objected to the restriction placed on financing of facilities listed in this section stating that the Act clearly allows financing of said facilities. This section is a restatement of existing regulations that have been in effect for a number of years. The section does not eliminate financing of the facilities but only limits financing to cases of financial hardship. REA has determined that this restriction is appropriate considering that the facilities covered generally are non-revenue producing or have short economic lives, or are highly mobile and represent poor collateral.

Section 1745.17(c) Facilities Financed

A number of respondents objected to eliminating financing of the facilities listed in this section arguing that the Act provides for such financing.

REA considers furniture, which is generally expensed rather than capitalized, and is highly mobile and thus affords poor collateral, to be an inappropriate item for long term financing. However, it has been removed from this list of items not eligible for financing and added to the list of items limited to financing in cases of financial hardship.

Since deregulation of station apparatus and associated inside wiring, it is the responsibility of the subscriber and not the borrower to provide station apparatus and associated inside wiring. As the borrower no longer needs to purchase said items to provide telephone service, REA is no longer financing such items.

A number of respondents questioned the provision that REA does not finance duplicative toll facilities. REA agrees that toll facilities should not be singled

out and the wording has been changed to "any duplicative facilities."

Section 1745.17(d) Facilities Financed

Several respondents objected to this section on the basis that it could potentially deny benefits to intended beneficiaries of the Act. The purpose of this policy has always been to prevent borrowers from rescinding loans in order to reapply for a loan that may have more favorable terms. This would result in a wasteful and unnecessary use of REA's annual lending authority and an abuse of the program. REA considers this policy necessary for the effective application of the eligibility criteria set forth in the Act for the various loan programs administered by the Agency. To clearly state this policy § 1745.17(d) has been modified and § 1745.47, rescission of loans has been added. Section 1747.47(a) is a statement of existing policy based on the requirements of the loan documents.

Section 1745.18 Additional Equity

Several respondents opposed § 1745.18, believing the additional equity requirement to be arbitrary in terms of time frame and unnecessary in light of the telephone program's no-default history. Most respondents assumed this section would apply to all borrowers. However, the section was intended to apply only to initial loan applicants and wording to clarify this has been added. The section is needed to prevent a new applicant, who would not be subject to REA mortgage controls, from intentionally or unintentionally degrading the viability of the system and the security of the facilities to be mortgaged prior to approval of the loan. A cap of 40 percent has been set on the net worth restoration required in this section to be consistent with the maximum net worth provision of existing mortgages.

Section 1745.19 Mergers and Consolidations

There were two comments on § 1745.19. One comment requested that the rule state that additional loans are dependent upon continued eligibility, or be deleted while the other recommended the section be eliminated. REA believes this section to be necessary and clearly worded. The comment suggesting the rule be clarified objected to the phrase "REA will consider making loans * * *." REA has retained this phrase because loans made by REA are dependent on all aspects of eligibility and thus it is inappropriate to state that REA will make a loan without

"considering" all aspects of a surviving company's eligibility.

Section 1745.20 Acquisitions

Several respondents objected to the inclusion of a "necessary and incidental" test for acquisitions. The test for financing acquisitions reflects REA's interpretation of the Act as it has been consistently applied since the inception of the REA loan program. Section 201 of the Act, which explicitly permits loans for the acquisition of telephone facilities, provides that the primary purpose of the loan must be to furnish and improve telephone service in rural areas. Pursuant to section 201, the Administrator has approved loans which include funds for acquiring facilities only where the Administrator determined that financing the acquisition of facilities is a necessary and incidental means to accomplishing the primary purpose of the loan—furnishing and improving telephone service in rural areas. This determination can be made only on a case-by-case basis taking into account such matters as subscriber ratios and cost ratios. The legal principals underlying this interpretation and its application to certain specific cases are set forth in several opinions to the Administrator from the Office of General Counsel, Department of Agriculture.

Section 1745.21(b) Refinancing Loans

Two respondents objected to the provision prohibiting refinancing solely to enable borrowers to lower interest rates, arguing that this is not a limitation authorized by the RE Act. One of the test specified by the RE Act is that the refinancing must be necessary to furnishing or improving telephone service in rural areas. If a borrower can carry the debt service requirements of existing indebtedness without jeopardizing the viability of the proposed loan project, refinancing is not "necessary" as provided by the RE Act. Thus, this section is clearly within the terms of the RE Act.

One respondent objected to the provision that REA could require the borrower to liquidate existing indebtedness with its own funds. This provision is necessary in conjunction with the other provision of this section to prevent REA from being required to refinance indebtedness that does not meet the requirements of the RE Act or REA regulations. Without this control a borrower could claim eligibility for purposes clearly outside the intent of the Act by first financing them with non-REA loans and then invoking the refinancing of the Act.

Section 1745.21(c) Refinancing Loans

Several respondents expressed concern that this section does not recognize that REA may accommodate or subordinate its lien to permit other lenders to provide financing to borrowers. REA's policy on lien accommodation and subordination is contained in 7 CFR Part 1747. Paragraph (c) of § 1745.21 applies to situations not covered under 7 CFR Part 1747, or when the other lender is unwilling to accommodate or subordinate its lien.

Section 1745.21 (d) and (e) Refinancing Loans

Several respondents objected to the restriction on refinancing contained in these parts. Parts (d) and (e) rather than being restrictive, allow REA flexibility to determine other situations where refinancing could be "necessary" under the RE Act.

Section 1745.22(f) Loan Security—TIER

A majority of respondents objected to this provision. They claim that it would disqualify a large number of borrowers from additional financing. Others noted that the RE Act does not specifically provide for such requirement.

The TIER requirements in the final rule of 1.25 for REA loans and 1.5 for RTB loans will not have the severe impact suggested by these comments. For example, with respect to the proposed requirements on TIER (times interest earned ratio), the vast majority of our borrowers already meet this requirement. Ninety-five percent of our borrowers have a TIER of 125 or greater, 93 percent have a TIER of 150 or greater. Those borrowers that have a TIER below these minimums appear to be about average in comparison to our other borrowers in terms of economic and financial characteristics, such as subscriber density (number per route mile), net profit per subscriber, operating expense per subscriber, etc. It appears that most of these borrowers would not have any more difficulty in meeting the minimum requirements for TIER than those borrowers that already meet the requirements.

Moreover, under this rule the Administrator would have the authority to waive the TIER requirements if they would impose a financial burden on the borrower.

The Rural Electrification Act (RE Act) requires that a borrower must be able to meet a TIER of 150 to be eligible for a RTB loan. The rule simply provides assurance that RTB borrowers will continue to maintain a 150 TIER. Nor is a 150 TIER requirement new to REA. For years the electric program has required

its borrowers to maintain a 150 TIER. Moreover, a minimum TIER of 150 for telephone loans is required by the Rural Telephone Finance Cooperative, which is owned by REA borrowers, as well as by virtually all other private lenders. For these reasons the final rule includes the TIER requirements as proposed.

Section 1745.22(f) and (g) Loan Security—Net Worth

A majority of respondents objected to the provisions for a minimum net worth requirement. REA has concluded that this additional security requirement is not needed at this time. Consequently § 1745.22(g) has been deleted from the final rule.

Section 1745.31 RTB Loans

Several respondents objected to the provision in this section RTB loans be made in preference to REA loans. Such preference is required by section 408(b)(2) of the RE Act.

One respondent questioned the legal authority to make RTB loans concurrently with a guaranteed loan. REA concluded that such concurrent loans can be made under the Act.

Section 1745.32(a) Guaranteed Loans

One respondent found "no basis for determining that applications requiring \$7 million should be approved as loan guarantees." The regulation does not state that all applications over \$7 million will be approved as guaranteed loans. This level is only one criterion for considering the application as a guarantee. The \$7 million level is a restatement of existing policy as published in a *Federal Register* notice dated September 8, 1975, Vol. 40, No. 174.

Section 1745.32 (a) and (b) Guaranteed Loans

One respondent expressed concern that these parts would prohibit borrowers from obtaining a loan guarantee. REA did not intend such restriction and has added language to make this clear.

Section 1745.42 Automatic Rescissions

The majority of commentators objected to the inclusion of § 1745.42 which institutes automatic rescissions of all telephone loan funds not encumbered 5 years after the date of the note. This provision has been deleted and § 1745.42 has been retitled *Extension of Advances*. The wording of § 1745.42(b) has been retained in modified form to provide for extension of advances past a 5-year period (currently 6 years) provided for in the notes.

It should be understood that the loan contract currently used by REA contains a provision allowing the Administrator to terminate advances of loan funds three years after the date of the loan contract or most recent amendment thereto. Also under the current form of note, the Government is not obligated to advance funds after 6 years. In the final rule this period is 5 years.

Section 1745.43(a) Payment on Loans

A majority of respondents objected to both the matching of the loan maturity to the economic life of the facilities and the reduction of the maximum loan period to 22 years. The final rule establishes that the repayment period will be based on the approximate useful life of the facilities financed. Collateral for REA loans rests on the value of the facilities financed. REA relies on the revenues produced by the facilities financed for repayment of the loans. If the loan repayment period is greater than the economic life of the facilities financed the long term results can be undercollateralization and rate base erosion.

A number of respondents argued that reducing the loan amortization period from 35 years to the actual depreciation period would increase borrowers' capital costs and thus increase rates to subscribers. As the regulation ties the loan amortization period to the borrowers' actual depreciation period, the capital recovered through depreciation is sufficient to meet the principal payments without any increase in rates. In fact, if the loan period exceeds the depreciation period, interest costs over the life of the loan are increased and these costs are ultimately borne by the ratepayer.

It is general practice for lenders making loans for capital assets to set the amortization period of the loan equal to the expected economic life of the items financed. Consequently, REA is not seeking to establish a unique requirement in this area. In fact, when the term for REA loans was originally established at 35 years, the expected economic life of typical telephone facilities closely approximated this period. REA is updating its policy to recognize changes in the industry that have resulted in shorter economic lives for many types of telecommunications equipment.

Section 1745.43(b) Payment on Loans

A majority of respondents objected to a single two-year deferment period on principal repayments since the typical construction period is generally longer.

This provision is entirely consistent with the intent of the RE Act. The

existing principal deferment provision was established nearly 40 years ago when many new telephone cooperatives were being started from scratch, and these systems did not have an ongoing operation generating sufficient revenues during the first years to meet payments on both principal and interest. That situation has changed greatly. All loans made today are either to existing borrowers or new borrowers that have established telephone systems and thus have the cash flow from the beginning to meet both principal and interest payments. In the past 25 years, REA has financed the establishment of only three new telephone systems, two cooperatives in Alaska (1980) and a system owned by an Indian tribe in Arizona (1985). In the event any new systems are financed in the future, the Administrator could increase the 2-year deferment period for these loans. It should also be noted that the principal deferment period is 2 years in the electric program.

Section 1745.46 Loan Security Documents

One respondent stated that § 1745.46 was too vague regarding the sharing of collateral with other lenders. Part 1745 is intended to state only the general policies and requirements of the REA telephone program. The specific policy on sharing collateral with other lenders is contained in 7 CFR Part 1747, Lien Accommodations. Section 1745.46 has been revised to reference the chapter on lien accommodation and subordination.

Section 1745.51 Required Findings

Four respondents objected to the factors listed for considering the security of a proposed loan on the basis that they are not objective and/or would exclude numerous borrowers from obtaining loans. The RE Act requires that "Loans under this section (201) shall not be made unless the Administrator finds and certifies that in his judgment (emphasis added) the security therefore is reasonably adequate * * *". This section lists the factors the Administrator may consider in making a judgment about security and is clearly within the authority granted to the Administrator by the RE Act.

Section 1745.51(a)(3) Required Findings

Two respondents objected to the "appropriate" local service rate provision on the grounds it lacked objectivity and that REA lacks the authority to regulate rates.

This section recognizes that REA may consider whether local service rates will yield adequate revenues to support the

proposed loan. If REA determines that an increase in revenues is necessary to support the loan, the borrower can be required to seek said increases as a condition of the loan.

Section 1749.2(f) Definitions—Interim Financing

One respondent requested a clearer definition of interim financing to reference the fact that the borrower has applied for REA financing to replace the interim financing. Accordingly, we have changed the definition to clarify this point. Further explanation of the interim financing process is contained in 7 CFR Part 1749, Subpart E, "Interim Financing of Construction of Telephone Facilities."

Section 1749.2(h) Definitions—Rural Areas

See § 1745.2(e).

Section 1749.20 The Loan Application Form

Several respondents objected to the cancellation of loan applications after 1 year if the Loan Design and supplementary information have not been received. We have added language to clarify that the application is cancelled without prejudice and that the prospective borrower may reapply at any time for the same or other loan purposes. The intent of this section is to encourage borrowers to promptly pursue completion of preloan requirements and to effectively manage the distribution of the workload amongst REA staff.

Section 1749.31(e) Area Coverage Survey

Several respondents requested that this section be changed to require REA action within a specified time frame.

REA will carry out its responsibilities in a timely manner. Due to the different conditions and characteristics of each loan proposal, it is not possible to set specific time frames that would be appropriate for all circumstances.

Section 1749.40 General (Interim Financing)

One respondent requested that this subpart be deleted and borrowers be given the latitude to incur short-term interim debt as they see fit.

We agree that borrowers should have the flexibility to construct plant when they need to. However, if the construction must proceed prior to loan funds becoming available, a method has to be establishing to allow this to happen and yet assure REA that the construction will be qualified for REA financing in accordance with the same

rules that pertain to all post-loan funded construction.

If a borrower does proper long-range financial and construction planning, the need for interim financing should be minimal.

We feel the establishment of Subpart E provides more flexibility for borrowers to meet their obligations on a timely basis.

Section 1749.41(c)(3) Interim Financing

One respondent objected to the open-ended nature and lack of objectivity of this restriction. This provision is necessary because every situation of interim financing that might jeopardize loan security or other Act requirements can't be identified in advance.

List of Subjects in 7 CFR Parts 1745 and 1749

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA amends 7 CFR Chapter XVII by adding the following new Parts 1745 and 1749:

PART 1745—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

- Sec.
1745.1 General statement.
1745.2 Definitions.
1745.3 Availability of forms.

Subpart B—Loan Purposes and Basic Policies

- 1745.10 General.
1745.11 Area coverage.
1745.12 Nonduplication.
1745.13 Location of facilities and service for nonrural subscribers.
1745.14 Borrower eligibility.
1745.15 Civil rights.
1745.16 Minimum loan amount.
1745.17 Facilities financed.
1745.18 Additional equity.
1745.19 Mergers and consolidations.
1745.20 Acquisitions.
1745.21 Refinancing loans.
1745.22 Loan security.

Subpart C—Types of Loans

- 1745.30 Insured loans.
1745.31 Rural telephone bank loans.
1745.32 Guaranteed loans.

Subpart D—Terms of Loans

- 1745.40 General.
1745.41 Notes.
1745.42 Extension of advances.
1745.43 Payments on loans.
1745.44 Prepayment premiums.
1745.45 Extension of payments.
1745.46 Loan security documents.
1745.47 Rescission of loans.

Subpart E—Requirements for Loan Approval

- 1745.50 Administrative findings.

- 1745.51 Required findings.
1745.52 Findings required for particular loan purposes.
Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1745.1 General statement.

This CFR part supersedes all portions of the following REA Bulletins which are in conflict with it:

- 320-4 Preloan Procedures for Telephone Loan Applicants
320-22 Guarantee of Loans for Telephone Facilities
321-2 Loan Security Requirements for Telephone Loans
22-2 Rural Area Coverage—Telephone Loans
323-1 Determination by Administrator with Respect to Nonduplication of Lines, Facilities, or Systems
325-1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326-1 Acquisitions of Telephone Facilities and Systems
385-5 Loans to Finance Radio Equipment for Subscriber Service

§ 1745.2 Definitions.

As used in this part:

- (a) "Administrator" means the Administrator of REA.
(b) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.
(c) "Feasibility study" means the pro forma financial analysis performed by REA to determine the economic feasibility of a loan. See 7 CFR Part 1751.
(d) "Loan" means any loan made or guaranteed by REA.
(e) "Rural area" means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.
(f) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to

render such service. It does not mean (1) message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

(g) "Times Interest Earned Ratio" (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense, except that for the purposes of section 408(b)(4)(ii) of the geRE Act taxes shall not be included in the numerator of the TIER ratio. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

§ 1745.3 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Loan Purposes and Basic Policies

§ 1745.10 General.

The Rural Electrification Administration (REA) makes loans for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 et seq.), and 7 CFR Chapter XVII. REA provides borrowers specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities when necessary to aid the development of rural telephone service and to protect loan security.

§ 1745.11 Area coverage.

Borrowers must make adequate telephone service available to the widest practical number of rural subscribers during the life of the loan. Both the nature of the service area and the cost per subscriber must be fully considered. The borrower must seek to provide service to all interested potential subscribers in the service area. Borrowers are not required to extend

service in situations where the costs would be exorbitant. The loan contract shall contain appropriate provisions to effect this requirement. See 7 CFR 1749.11(a), Preapplication Determinations: Area to be Served.

§ 1745.12 Nonduplication.

(a) In states having a state regulatory body with authority to regulate telephone service and to require certificates of convenience and necessity, the borrower must obtain such a certificate before REA will make a loan. Facilities or services not specifically covered by such certificate will be subject to the provisions of § 1745.12(b).

(b) In states where there is no such regulatory body, a loan will not be made unless the Administrator determines that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan.

(c) REA shall consider the following criteria in determining whether service is reasonably adequate:

(1) Availability of telephone service to commercial establishments, professional offices, essential community services, and residences in the community.

(2) Reasonable audibility and clarity of sound transmission and reception.

(3) Absence of frequent interruptions.

(4) Adequacy of line circuits and central office facilities to permit reasonably frequent subscriber use without unreasonable delay.

(5) Availability of connections with other exchanges and with the interexchange facilities of the Nation.

(6) Any other criteria the Administrator determines to be applicable to the particular case.

§ 1745.13 Location of facilities and service for nonrural subscribers.

(a) When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, loans may be made for the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems without regard to their geographical location.

(b) To the greatest extent practical, loans are limited to providing telephone facilities that serve subscribers in rural areas. In order to furnish and improve service to rural subscribers it may at times be necessary to provide loan funds to finance telephone facilities which (1) will also serve nonrural subscribers, or (2) are located in nonrural areas. Loans may be approved to finance such facilities if the Administrator determines, on a case-by-

case basis, that (i) the primary purpose of the loan is to provide service to rural areas and (ii) the financing of facilities for nonrural subscribers is necessary and incidental to furnishing or improving telephone service in rural areas.

(c) Loan funds may be approved for facilities to serve nonrural subscribers only if (1) the principal purpose of the loan is to furnish and improve rural service and (2) the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. The following are examples of purposes for which such loans may be made (such loans are not limited to these examples):

(i) In the case of construction of a new system, if the loan would not be economically feasible and self-liquidating unless the nonrural as well as the rural portions of the telephone service area are included in the proposed system, the loan may include funds for both portions.

(ii) Where the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition.

(iii) When a system is being converted to modern service for rural subscribers, the loan may include funds for the conversion of the nonrural facilities, if the rural service will be improved as a result of such nonrural improvements and it is impractical to finance and serve the nonrural and rural areas separately.

(4) A loan may include funds to serve nonrural subscribers located in community centers frequently called by the rural subscribers if the construction to serve such nonrural subscribers will be incidental to, and contribute substantially to, the provision of adequate service for the rural subscribers.

§ 1745.14 Borrower eligibility.

REA makes loans to:

(a) Entities providing, or who may hereafter provide, telephone service in rural areas,

(b) Public bodies providing telephone service in rural areas as of October 28, 1949, and

(c) Cooperative, nonprofit, limited dividend, or mutual associations. REA does not make loans to individual subscribers. REA gives preference to those borrowers (including initial loan applicants) already providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations. To be eligible for

a loan, a borrower must provide or propose to provide the basic local exchange telephone service needs of rural areas, and it must be incorporated.

§ 1745.15 Civil rights.

Borrowers are required to comply with certain regulations on nondiscrimination and equal employment opportunity. See REA Bulletin 320-19 and REA Bulletin 320-15, respectively.

§ 1745.16 Minimum loan amount.

Recognizing plant costs, the borrower's cost of system design, and REA's administrative costs, REA will not consider applications for loans of less than \$50,000.

§ 1745.17 Facilities financed.

(a) REA makes loans to finance the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities or systems to furnish and improve telephone service in rural areas.

(b) Except in cases of financial hardship, as determined by the Administrator, REA does not make loans to finance the following items:

(1) Headquarters facilities, other than warehouse and garage facilities.

(2) Office equipment, including computers.

(3) Vehicles and other work equipment.

(4) Furniture.

(c) REA will not make loans to finance the following items:

(1) Station apparatus and associated inside wiring.

(2) Any duplicative facilities. See 7 CFR 1745.12.

(3) Facilities to serve subscribers outside the local exchange service area of the borrower unless those facilities are necessary to furnishing or improving telephone service in rural areas.

(d) If an unadvanced loan, or portion thereof, is rescinded, a new loan shall not be made for the same purposes as in the rescinded loan, except as provided in § 1745.47.

§ 1745.18 Additional equity.

If determined by the Administrator to be necessary for loan security, a borrower applying for an initial loan shall increase its net worth as a percentage of assets to the highest level recorded, not to exceed 40 percent, at the end of any calendar quarter in the period beginning 2 years prior to the receipt by REA of the borrower's loan application form (REA Form 490). This restoration to the higher level of net worth shall take place before REA will

determine the feasibility of the proposed loan.

§ 1745.19 Mergers and consolidations.

REA does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, REA will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas. See REA Bulletins 320-4, 321-2, 325-1, and 326-1.

§ 1745.20 Acquisitions.

(a) REA finances the acquisition by a borrower of another system, lines, or facilities only when the acquisition is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.13.

(b) REA determines the amount it will lend for each acquisition. If the acquisition price exceeds this amount, the borrower shall provide the remainder.

(c) For additional policies on acquisitions, see REA Bulletins 320-4, 321-2, 325-1, and 326-1.

§ 1745.21 Refinancing loans.

(a) REA makes loans to refinance outstanding indebtedness of corporations furnishing telephone service when such refinancing is necessary and incidental to furnishing or improving telephone service in rural areas. Refinancing may not constitute more than 40 percent of the loan.

(b) Loans for refinancing are not made solely to enable borrowers to obtain a lower interest rate or a longer amortization period. REA requires borrowers, to the greatest extent possible, to liquidate outstanding indebtedness through the use of nonloan funds.

(c) If deemed necessary by REA to provide itself with adequate security, REA will consider loans for refinancing outstanding indebtedness secured by a lien on property offered as security for the loan, if the property covered by the lien is integral to the operation of the system.

(d) REA will consider loans for refinancing when the borrower would otherwise be unable to meet payments on both the outstanding indebtedness and the loan as they become due.

(e) REA may consider loans for refinancing in other situations.

§ 1745.22 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the

time agreed. See 7 CFR 1745.18 and 7 CFR 1745.51.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR 1745.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien on all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that continuous and efficient telephone service will be rendered.

(d) The borrower shall provide REA with a satisfactory Area Coverage Survey. See 7 CFR 1749.30 and 1749.31.

(e) REA makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by REA.

(f) To obtain a loan after April 3, 1989, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements, except when the Administrator determines that the borrower would experience financial hardship.

(1) For a 100 percent REA loan, that is, a loan made solely under Section 305 of the RE Act, a borrower must have a TIER of at least 125 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower has received a loan subject to the provisions of 7 CFR 1745.22(f)(2). In the latter case, the borrower must continue to meet the TIER requirements of 7 CFR 1745.22(f)(2). The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 125 percent. The borrower will also be expected to demonstrate progress toward achieving a TIER of 150 percent.

(2) For a loan guaranteed by REA or made concurrently by REA and the Rural Telephone Bank (RTB) (and for a 100 percent RTB loan), a borrower must have a TIER of at least 150 percent on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of 150 percent.

(g) Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

Subpart C—Types of Loans

§ 1745.30 Insured loans.

(a) REA makes insured loans under section 305 of the RE Act. These loans bear interest at an annual rate of five percent, unless the Administrator finds that the borrower:

(1) Has experienced extreme financial hardship; or

(2) Cannot, in accordance with generally accepted management and accounting principles and without charging rates to its subscribers so high as to create a substantial disparity between its rates and the rates charged for similar service by others in the same or nearby areas, provide service consistent with objectives of the RE Act.

(b) If the Administrator makes a finding in accordance with paragraph (a)(1) or (a)(2) of this section, REA may make an insured loan at an interest rate lower than 5 percent, but not less than 2 percent.

§ 1745.31 Rural telephone bank loans.

(a) RTB makes loans under Section 408 of the RE Act. Rules and regulations of the RTB are contained in Chapter XVI of this title.

(b) Loans shall be made by RTB in preference to being made by REA, if the borrower is eligible for such a loan and funds are available therefor.

(c) Notwithstanding paragraph (b) of this section, if a borrower has an average subscriber density of three or fewer per route mile of line, an RTB loan can be made only at the election of the borrower.

(d) RTB loans may be made concurrently with either insured loans or guaranteed loans.

§ 1745.32 Guaranteed loans.

(a) *General.* REA provides loan guarantees pursuant to Section 306 of the RE Act to enable borrowers to secure major telephone loans from non-REA sources. A major telephone loan is a loan requiring over 7 million dollars or such other sum as may be determined from time to time by the Administrator. Guaranteed loans may be made concurrently with insured loans or RTB loans. REA will consider guaranteeing a loan if the borrower meets all requirements set forth in regulations applicable to a loan made by REA. No fees or charges are assessed for any guarantee of a loan provided by REA. In view of the Government's guarantee, REA generally obtains a first lien on all assets of the borrower; see 7 CFR 1745.46. REA will consider applications less than \$7 million for a loan guarantee

when the borrower specifically requests a guarantee.

(b) *New worth requirements.* REA generally requires that borrowers seeking guaranteed loans have a net worth in excess of 20 percent of assets. For the purpose of this section, the term "net worth" means "Total Retained Earnings or Margins and Capital Credits" plus either "Total Capital Stock Outstanding and Subscribed" or "Total Membership and Capital Certificates" as reported to REA pursuant to REA Telecommunications Operations Manual Section 1800. REA will consider loan guarantees for borrowers with a net worth less than 20 percent.

(c) *Full amount guaranteed.* Loans are guaranteed in the full amount of principal and interest. Because of the Government's full faith and credit 100 percent guarantee of these loans, only REA obtains a mortgage on the borrower's assets.

(d) *Federal Register notice.* After REA has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project, it shall publish a Notice in the *Federal Register*. The Notice will include a description of the proposed project, the estimated total cost, the estimated amount of the guaranteed loan, a statement that the Federal Financing Bank (FFB) has a standing loan commitment agreement with REA, and the name and address of the borrower to which financing proposals may be submitted.

(e) *Qualified lenders.* REA considers loan guarantees on a case by case basis for loans made by the FFB and any other legally organized lending agency or by a combination of lenders that the Administrator determines to be qualified to make, hold and service the loan. "Legally organized lending agency" and "lender" include commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money. The borrower is responsible for evaluating all proposals received from lenders other than FFB. The borrower furnishes REA with a report on the evaluations and its choice of proposals. However, at the request of the borrower, the guaranteed loan shall be made by the FFB.

(f) *Interest rate.* Guaranteed loans shall bear interest at the rate agreed upon by the borrower and lender. Guaranteed FFB loans shall be at a rate of interest that is not more than the rate of interest applicable to other similar loans then being made or purchased by FFB.

(g) *Condition of guarantee.* REA will not guarantee a loan if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purpose of Chapter I of the Internal Revenue Code of 1954.

(h) *Contract of guarantee.* If REA is satisfied with the engineering and economic feasibility of the project and approves the borrower's choice of proposal, subject to the submission of satisfactory financing documents and to the satisfaction of other pertinent terms and conditions, REA will prepare a contract of guarantee to be executed by the borrower, the lender, and REA within a specified time. The lender, or its representative, shall have the right to examine the borrower's application and supporting data submitted to REA in support of its request for financial assistance.

(i) *Loan servicing.* The contract of guarantee will require that arrangements satisfactory to REA be made to service the loan. Required servicing by the lender will include:

(1) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security instruments have been fulfilled. Such determinations may be met by obtaining REA approval of each advance.

(2) Billing and collecting loan payments from the borrower.

(3) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submitting a report, as soon as possible thereafter, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(4) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

(j) *Payments under the contract of guarantee.* Upon receipt of the notification required in § 1745.32(i)(3) of this section, REA will pay the lender the amount in default with interest to the date of payment. When REA has made a payment under a contract of guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest at the rate of interest specified in the lending agreement. REA will work with the borrower and the lender in an effort

to eliminate the borrower's default as soon as possible. REA may also proceed with other remedies available under its security instruments.

(k) *Pledging of contract of guarantee.* Subject to applicable law, REA will consider, on a case by case basis, permitting pledging of the contract of guarantee in order to facilitate the obtaining of funds by the lending agency to make the guaranteed loan.

Subpart D—Terms of Loans

§ 1745.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in REA Bulletins and Regulations. Forms of the mortgage, note, and loan contract can be obtained from REA.

§ 1745.41 Notes.

Loans are represented by one or more notes. Interest accrues only on funds advanced. There are no loan commitment fees or charges. See REA Bulletin 320-12 (or 7 CFR Part 1785) for additional information. This CFR Part supersedes those portions of REA Bulletin 320-12 "Loan Payments and Statements" with which it is in conflict.

§ 1745.42 Extensions of advances.

The Administrator may agree to an extension of the obligation of the Government to advance funds (see § 1745.43(b)) if the borrower demonstrates to the satisfaction of the Administrator that the loan funds will be needed for approved loan purposes. To apply for an extension, borrowers must send to the Area Office, at least 120 days before the Government's obligation to advance loan funds terminates, the following: (a) A certified copy of a board resolution requesting an extension of the obligation of the Government to advance unencumbered loan funds, (b) evidence that those loan funds continue to be needed for approved loan purposes, and (c) notice of the estimated date for completion of construction and complete drawdown of the loan funds. If the Administrator approves a request for an extension, the Administrator shall notify the borrower in writing of the extension and the terms and conditions thereof.

(Approved by the Office of Management and Budget under control number 0572-0079)

§ 1745.43 Payments on Loans.

(a) Generally, loans approved after April 3, 1989, must be repaid with interest within a period, up to a maximum of 35 years, that approximates

the expected useful life of the facilities to be financed. The expected useful life shall be based on the composite depreciation rates that the borrower proposes for the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory commission approval of depreciation rates for rate making purposes, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower shall seek state commission approval, provided that these rates are deemed appropriate by REA. In cases where a state regulatory commission does not approve depreciation rates, if the rates proposed by the borrower are not deemed appropriate by REA, REA shall base expected useful life on accepted industry standards. Borrowers may request a repayment period that is shorter than the expected useful life of the facilities financed. The Administrator may approve a longer period, up to 35 years, if the borrower would otherwise experience financial hardship.

(b) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. Notes for refinancing and acquisitions generally provide for a 6-month deferral of principal payments. Notes will generally contain a provision that the Government will not be obligated to advance funds five years after the date of the note unless the time is extended in accordance with § 1745.42. This CFR part supersedes those portions of REA Bulletin 320-12, "Loan Payments and Statements" with which it is in conflict.

§ 1745.44 Prepayment premiums.

The loan documents normally provide that REA insured loans may be repaid in full at any time without prepayment premiums. Depending upon the lender, there may be prepayment premiums on loans guaranteed by REA. See 7 CFR Part 1610 for prepayment premiums on RTB loans. See REA Bulletin 320-12 (or 7 CFR Part 1785) for additional

information. This CFR part supersedes those portions of REA Bulletin 320-12, "Loan Payments and Statements", with which it is in conflict.

§ 1745.45 Extension of payments.

REA may extend the time of payment of principal or interest on a loan. Under section 12 of the Rural Electrification Act, as amended, this extension may be up to 5 years after such payment is due. Under section 236 of the Disaster Relief Act of 1970 (Pub. L. 91-606) payment may be deferred by the Secretary of Agriculture as long as necessary in disaster situations so long as the final maturity date is not later than 40 years after the date of the loan. See REA Bulletin 320-2 for additional information.

§ 1745.46 Loan security documents.

Loans are to be repaid according to their terms. REA generally obtains a first lien on all assets of the borrower. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust made by and between the borrower and a trustee, satisfactory to the Administrator, together with such security agreements, financing statements, or other security documents as REA may deem necessary in a particular case. Where a borrower is unable by reason of pre-existing encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may, if he determines such security to be reasonably adequate and the form and nature thereof otherwise appropriate, accept other forms of security. See REA Bulletins 320-4, 320-22, 321-2, 322-2, 323-1, and 326-1 for details. See 7 CFR Part 1747 for information on lien accommodations and subordinations.

§ 1745.47 Rescission of loans.

(a) Rescissions of a loan may be requested by a borrower at any time. REA may initiate rescission of a loan at a time 3 years or more after the date of the last amendment of the loan contract. The party initiating the rescission must demonstrate (1) that the purposes of the loan being rescinded have been completed, (2) that sufficient funds are available from sources other than REA, RTB or FFB to complete the purposes of the loan being rescinded or (3) the purposes of the loan are no longer required to extend or improve telephone service in rural areas. (b) REA may also terminate advances, after one year for initial loans and after three years for subsequent loans as provided in the loan contract. (c) Borrowers submitting loan applications containing purposes previously covered by a loan that has

been rescinded shall include in the application an explanation satisfactory to REA, of the change of conditions since the rescission that re-establishes the need for these purposes.

Subpart E—Basic Requirements For Loan Approval

§ 1745.50 Administrative findings.

The RE Act requires that the Administrator make certain findings to approve a telephone loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings. Details on the information required to support these findings are included in 7 CFR Part 1749.

§ 1745.51 Required findings.

(a) *Feasibility of and security for the Loan.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and the loan will be repaid on time. This finding is based on the following factors:

(1) Self-liquidation of the loan within a period specified by REA; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

(2) Reasonable assurance of achieving the telephone market projections upon which the loan is based.

(3) Economic feasibility (based on projected revenues, expenses, net income, maximum debt service, and rate of return on investment) for the proposed system using local service rate schedules appropriate for the area served.

(4) Impact of the proposed loan and construction on the ratio of the borrower's secured debt to assets.

(5) Projected growth in the borrower's equity.

(6) Satisfactory experience and reputation of the system's principal owners and manager.

(7) A first lien on the borrower's total system or other adequate security.

(8) Fair market value of the borrower's assets as represented in its financial reports to REA.

(9) Appropriate financial and managerial controls included in the loan documents.

(10) Other factors determined to be relevant by REA.

(b) *Area coverage.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that adequate telephone

service will be made available to the widest practical number of rural users during the life of the loan.

(c) *Nonduplication or certificate requirement.* The borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that no duplication of service shall result from a particular loan for those borrowers not required by the state regulatory commission to have a certificate of convenience and necessity (or its equivalent). For borrowers required to have a certificate of convenience and necessity, all portions of the existing and proposed system must be covered by the certificate.

§ 1745.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans that include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1745.21.

(b) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide REA with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

PART 1749—PRELOAN PROCEDURES AND REQUIREMENTS—TELEPHONE PROGRAM

Subpart A—General

- Sec.
1749.1 General statement.
1749.2 Definitions.
1749.3 Availability of REA forms.

Subpart B—Preapplication Stage

- 1749.10 Initial contact.
1749.11 Preapplication determinations.

Subpart C—The Loan Application

- 1749.20 The loan application form.
1749.21 The completed loan application.
1749.22 Supplementary information.

Subpart D—Preloan Studies—Area Coverage Survey and Loan Design

- 1749.30 General.
1749.31 Area Coverage Survey (ACS).
1749.32 Loan Design (LD).

Subpart E—Interim Financing of Construction of Telephone Facilities

- Sec.
1749.40 General.
1749.41 Procedure for obtaining approval.
1749.42 Procedure for construction.
Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1749.1 General statement.

This part prescribes policies, procedures and responsibilities relating to applications for REA loans to finance the improvement and extension of telephone service in rural areas. Requirements for both initial and subsequent loans are discussed, with differences pointed out.

§ 1749.2 Definitions.

- As used in this part:
(a) "Administrator" means the Administrator of REA.
(b) "Area Coverage" means the provision of adequate telephone service to the widest practical number of rural users during the life of the loan.
(c) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, on which is seeking such financing.
(d) "Initial loan" means the first loan made to a borrower.
(e) "Interim construction" means the purchase of equipment or the conduct of construction under an REA-approved plan of interim financing.
(f) "Interim financing" means funding for a project which REA has acknowledged will be included in a loan, should said loan be approved, but for which REA loan funds have not yet been made available.
(g) "Loan" means any loan made or guaranteed by REA.
(h) "Rural area" means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.
(i) "Subsequent Loan" means any loan to a borrower which has already received a loan.

§ 1749.3 Availability of REA forms.

Single copies of REA forms and publications cited in this Part are

available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Preapplication Stage

§ 1749.10 Initial contact.

Initial loan applicants seeking assistance should write the Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. A field representative will be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Existing borrowers initiate the contact directly with their assigned field representative. Borrowers consult with REA field representatives and headquarters staff, as necessary.

§ 1749.11 Preapplication determinations.

Before submitting an application to REA, the borrower should consider the following:

- (a) *Area to be served.* The proposed service area should neither include subscribers already receiving adequate service from another telephone system nor leave out unserved pockets of potential subscribers who have indicated an interest in service and are located between the proposed system and neighboring systems. See 7 CFR 1745.11 on Area Coverage and 7 CFR 1745.12 on Nonduplication. In establishing service area boundaries, borrowers should consider the location of adjoining systems, natural boundaries such as rivers and mountains, and economic and cultural features such as trading and community centers.
(b) *Number of subscribers.* The borrower must estimate the number of subscribers that will request service from the proposed system.
(c) *Acquisitions.* A borrower considering an acquisition should refer to 7 CFR 1745.20 and REA Bulletins 320-4, 321-2, 325-1, and 326-1.
(d) *Mergers and consolidations.* A borrower considering a merger or consolidation should refer to 7 CFR 1745.19.
(e) *Refinancing.* Restrictions on the use of loan funds for refinancing are contained in 7 CFR 1745.21.
(f) *Service for nonrural subscribers.* In some situations, REA loan funds may be used to finance facilities to serve nonrural subscribers. See 7 CFR 1745.13.
(g) *Loan amount.* The initial loan request is based on the borrower's best estimate of financing needs. REA requires detailed studies by the

borrower to complete the application and the initial estimate is subject to revision.

(h) *Loans for partial systems.* If it is impractical in a single loan to provide adequate service throughout the borrower's entire telephone service area, REA will consider a loan application to finance improvements to a portion of a borrower's system.

Subpart C—The Loan Application

§ 1749.20 The loan application form.

REA Form 490, "Application for Telephone Loan or Loan Guarantee," shall be used to apply to REA for a loan. The application must be submitted in duplicate. A sketch or map showing the existing and proposed service areas must be attached to the form. (Where there have been no changes in the service area since the last loan application was submitted, and none are proposed, the map may be omitted.) Form 490 serves as formal notice to REA of the borrower's application for REA financing and provides information REA uses to make a preliminary determination of the borrower's eligibility for a loan. If the borrower fails to submit a Loan Design recommended by the REA field representative and all required supplementary information within 1 year of submission of the Form 490, the application generally will be cancelled and returned to the borrower. Extensions of time will be granted when the borrower can demonstrate that it is actively pursuing completion of all items required to support the application. Cancellations under this section are without prejudice. Borrowers may reapply at any time for the same or other loan purposes.

(Approved by the Office of Management and Budget under control number 0572-0079)

§ 1749.21 The completed loan application.

(a) The completed loan application consists of four parts:

- (1) A completed REA Form 490.
- (2) A market survey called the Area Coverage Survey (ACS).
- (3) The plan and associated costs for the proposed construction, called the Loan Design (LD).
- (4) Various supplementary information specified in 7 CFR 1749.22.

(b) The REA field representative assists the borrower in assembling this information. Certain information is required from initial loan applicants but usually not from borrowers seeking subsequent loans.

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§ 1749.22 Supplementary information.

REA requires additional information in support of the loan application form. The information listed in paragraphs (a), (b), and (c) of this section must be submitted with the Loan Design.

(a) The following must be submitted by all initial loan applicants. Borrowers seeking subsequent loans must submit any changes in these items since they were last submitted.

(1) Name of attorney and manager, and certified copies of board resolutions selecting them.

(2) Certified copy of articles of incorporation showing evidence of filing with the Secretary of State and in county records.

(3) Certified copies of bylaws and board minutes showing their adoption.

(4) Certified sample stock certificates.

(5) Amounts of common and preferred stock issued and outstanding.

(6) Names, addresses, business affiliations, and stockholdings of the manager, officers, directors, and other principal stockholders (those owning at least 20 percent of borrower's voting stock).

(7) Certified copies of real estate deeds showing all recording information.

(8) Service agreements, such as for management or system maintenance.

(9) Certified copies of existing leases, except those for vehicles, furniture and office equipment, and computer equipment.

(10) Certified copies of existing franchises.

(11) Information on any franchises required as a result of the proposed loan project.

(12) Federal Communications Commission (FCC) authorizations.

(13) Certified copy of a certificate of convenience and necessity (or its equivalent), or information demonstrating the nonduplication of reasonably adequate facilities, for all areas in the loan project.

(14) For toll, operator office, traffic, and EAS agreements, the names of all parties to the agreement, the type of agreement, and the effective and termination dates of the agreement and annexes, and the exchanges involved.

(15) Copies of rate schedules. (A copy of the tariff must be available for review by the REA field representative.)

(16) Executed copy of REA Form 291, "Certification of Nonsegregated Facilities".

(b) The following must be submitted by all initial loan applicants and borrowers seeking subsequent loans:

(1) Certified financial statements for the last 3 years.

(2) Toll settlement statements and related data.

(3) Present exchange rates and any pending changes.

(4) Borrower's Environmental Report (BER)—See 7 CFR Part 1794.

(5) Any other supporting data required by the Administrator.

(c) The following must be submitted for all borrowers requesting funds for refinancing:

(1) Copies of all bonds, notes, mortgages, and contracts covering outstanding indebtedness proposed to be refinanced.

(2) For each note or bond, the name of the creditor, original amount of debt and amount as of last year-end, purpose of debt, dates incurred and due, interest rates, and repayment terms.

(3) Justification for refinancing and evidence that the use of loan funds is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1745.21.

(d) Borrowers requesting loan funds for acquisitions should refer to REA Bulletins 320-4, 321-2, 325-1, and 326-1 for requirements.

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Subpart D—Preloan Studies—Area Coverage Survey and Loan Design

§ 1749.30 General.

In support of a loan application, the borrower shall prepare and submit to REA: (a) A market forecast to determine service requirements (the Area Coverage Survey) and (b) engineering studies to determine the system design that provides service most efficiently (the Loan Design). The REA field representative confers with the borrower and its engineer to schedule the completion and submission of these studies.

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§ 1749.31 Area Coverage Survey (ACS).

(a) The Area Coverage Survey (ACS) is a market forecast of service requirements of subscribers in a proposed service area.

(b) The objective of the ACS is to determine the location, number and telephone service requirements of subscribers in a service area. REA will use the ACS to appraise the proposed plan for area coverage and to determine the largest practical number of rural subscribers which can be served on an economically feasible basis. Preparation of the ACS requires:

(1) A field survey of the service area to locate and identify on maps all

business and residential establishments, whether currently served or not. The location and identification of future establishments are also recorded on the maps.

(2) A forecast of the number of telephone subscribers, in the entire service area, by exchange, grade and class of service, projected for the end of the 5-year study period.

(c) The results of the survey and forecast shall be:

(1) Shown on maps (maps for those service areas previously financed by REA do not have to be included in the ACS provided that the borrower's records contain sufficient information as to subscriber development to enable cost estimates for the proposed facilities to be prepared);

(2) Tabulated on REA Form 569 "Area Coverage Survey Report," or its equivalent; and

(3) supported by a narrative (see § 1749.32(f)(1)(ii)) containing information on the bases for the service requirement forecasts in each exchange.

(d) Guidelines on preparing an ACS are provided in REA

Telecommunications Engineering and Construction Manual Section 205.

(e) The REA field representative reviews and approves the borrower's ACS. The borrower should make sure this is done before proceeding with the Loan Design in order to prevent unnecessary expense should the ACS not be approved. The borrower's engineer must use the REA-approved ACS in preparing the Loan Design.

(Approved by the Office of Management and Budget under control number 0572-0079)

§ 1749.32 Loan design (LD).

(a) A loan application requires supporting data collectively called a "Loan Design." The LD contains a forecast of service requirements and a narrative with supporting exhibits. Most of the items included in the LD are similar for all loan applications. However, as noted below, there are certain additional requirements for initial loans and for any exchange areas not previously financed by REA, and other additional requirements for subsequent loans for areas previously financed by REA.

(b) Because of the importance and complexity of the engineering studies necessary for the LD, it should be prepared by a competent experienced telecommunications engineer. While the LD is subject to REA approval, the borrower's selection of an engineer to perform preloan work is not. Note: The borrower's selection of an engineer to perform position work is subject to REA approval. This should be considered

when selecting a preloan engineer, if the same individual or company is to perform both services. See 7 CFR 1763.

(c) An LD for initial loans or for any exchange areas not previously financed by REA requires an Outside Plant Design that provides:

(1) The most economical and practical design for a telephone system that meets immediate service demands; and

(2) The basis for orderly expansion of the system to serve the widest practical number of rural establishments.

(d) The LD for a subsequent loan (which only includes areas previously financed by REA) does not require a detailed Outside Plant Design. The detailed Outside Plant Design for these subsequent loans may be completed for REA review and approval after loan approval, but before staking is started and plans and specifications are prepared. By scheduling preparation of the outside plant design closer to preparation for construction, the need for redesign resulting from changing conditions and its attendant costs are reduced.

(e) Guidelines on preparing an LD are provided in REA Telecommunications Engineering and Construction Manual Section 205.

(f) The LD shall include a narrative, several exhibits, and a certification, as explained below:

(1) *Narrative.* This section discusses the following topics, as appropriate.

(i) *General.* The purposes and amount of the proposed construction and both immediate and long range plans must be covered. The source and amount of any nonloan funds to be used for this construction must be discussed.

(ii) *Subscriber data.* The basis for the subscriber forecast, including any unusual factors expected to influence growth, must be discussed. Reasons for growth projections which vary from historic trends must be explained.

(iii) *Proposed construction.* All proposed construction must be described fully. Reference to the BER must be made here.

(iv) *Service area.* For subsequent loans only, proposed construction which is not within the boundaries of prior loan projects must be discussed. New areas to be served (even if from existing exchanges) must be shown on maps submitted with the proposal.

(v) *Toll and EAS.* Proposed new toll or extended area service (EAS) facilities, including any changes from the existing trunking arrangements, must be described fully. Minutes of meetings and correspondence with connecting companies, and connecting company concurrences, if any, must be included.

(vi) *Radio telephone service.* Proposed radio telephone service must be discussed. Results of studies demonstrating demand and/or need must be included as an exhibit.

(vii) *Special projects.* Facilities involving investment in excess of \$100,000 for any single subscriber must be discussed fully. Contractual arrangements with the subscriber, including a termination agreement providing for (A) the full recovery by the borrower of its capital costs of the facilities no later than the maturity date of the note representing the loan, (B) the immediate repayment of all remaining capital costs, if terminated, and (C) repayment to REA of the outstanding amount of the special note shall be submitted. Usually a separate short-term note is prepared for loans to finance Special Projects.

(viii) *Investment in nonrural areas.* (A) For initial loans or loans for areas not previously financed by REA, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area), must be discussed fully. The name of the community, the number of existing and projected new subscribers by grades of service within the community, detailed cost estimates of the facilities involved, and information sufficient to establish the necessity for the use of loan funds must be provided.

(B) For subsequent loans, proposed improvements or expansions in an exchange serving a community of over 1,500 population (a nonrural area) which had more than 1,500 at the time facilities to serve the community were first financed by REA, must be discussed as in paragraph (f)(1)(viii)(A) of this section. The population determination is based on the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA.

(C) For subsequent loans, the borrower shall state whether the population of a community which currently is more than 1,500 was 1,500 or less at the time REA first financed facilities to serve the community. Detailed cost estimates are not required if the population was 1,500 or less at the time REA first financed facilities to serve the community.

(ix) *Prior loan project.* For subsequent loans only, the reason for and amount of additional loan funds needed to complete construction in progress which was part of a prior loan project in central office areas not included in the current LD must be discussed fully.

(x) *Route miles.* Route miles of outside plant in central office areas not shown on REA Form 495 must be provided.

(xi) *Future plans.* Where the loan application is to finance part of a system-wide upgrading plan, plans for those remaining exchanges not included in the current loan proposal must be discussed.

(2) *Exhibits.* (i) An REA Form 569, "Area Coverage Survey Report," or its equivalent shall be included for the total system and for each exchange in which system improvements or additions are proposed. (ii) An REA Form 495, "Construction Cost Estimates," or its equivalent shall be prepared for each exchange in which system improvements or additions are proposed. An explanation of the method used in developing these cost estimates must be included.

(iii) REA Form 494, "Loan Design Summary," or its equivalent shall be prepared for each loan. This must show all expected 5-year construction costs, loan and nonloan.

(iv) A schematic trunking diagram shall be included showing the number and type, length, ownership and makeup of existing and proposed toll and EAS trunks, plus transmission and traffic data for each trunk group.

(v) Detailed outside plant design maps must be submitted for all central office areas of initial loan applicants and for areas not previously served by existing borrowers or financed by REA. These design maps must be in sufficient detail to substantiate the construction cost estimates.

(vi) For subsequent loans only, if a change in system boundaries is proposed, a map must be furnished showing present and proposed boundaries, and existing establishments and subscribers in the new areas.

(vii) Any other special exhibits needed to support particular items in the loan proposal must be included.

(3) *Certification.* The following certification shall be signed by a principal of the engineering firm and the borrower:

We, the undersigned, certify that the data in this Loan Design are correct to the best of our knowledge and belief and reasonably reflect the cost to serve the subscribers as proposed on the Forms 569, "Area Coverage Survey Report," which are integral parts hereof, and that this Loan Design adheres to REA engineering and construction standards and practices.

(g) The REA field representative shall review and make a recommendation on each LD.

(1) After completion of the LD, the borrower arranges a meeting with its

engineer and REA's field representative to review:

(i) Design and cost estimates.

(ii) Reserves available from prior loans, if any, or internally generated funds which may be applied against the requirements of the current application.

(2) One copy of REA Form 567, "Checklist for Review of Loan Design," completed and signed by the borrower's engineer must be attached to the LD submitted to the REA field representative.

(3) The REA field representative recommends acceptance of the LD as the basis for REA financing.

(4) Three copies of the final LD with the REA field representative's recommendation are then sent to the relevant Area Office in REA. A fourth copy is retained by the REA field representative.

(5) A transmittal letter from the borrower must accompany the LDs, requesting that the application previously submitted be amended so as to be consistent with the approved LD.

(6) Final approval of the LD is given by the relevant Area Office in REA. To be approved, the LD must be cost effective, include appropriate technology, and provide area coverage.

(7) Upon receipt of the LD and any other required information, REA makes a preliminary analysis of the loan proposal. Before final consideration of the loan, REA reviews the results of its preliminary analysis with the borrower.

(Approved by the Office of Management and Budget under control number 0572-0079)

Subpart E—Interim Financing of Construction of Telephone Facilities

§ 1749.40 General.

(a) Under special circumstances a borrower may request that REA approve interim financing for interim construction. This subpart describes the circumstances in which REA will consider approving interim financing of construction, the information to be submitted to REA to support the borrower's request, REA's requirements relating to interim construction, and related matters.

(b) For a borrower to preserve the option of obtaining loan funds for reimbursement of interim financing, it must obtain prior REA approval of its interim financing plan and follow the procedures in 7 CFR 1749.41 and 7 CFR 1749.42.

(c) REA will approve interim financing only for projects which must be performed immediately.

(d) REA approval of interim financing is not a commitment that REA will make loan funds available.

(e) Equal employment opportunity requirements apply to interim construction. See REA Bulletin 320-15.

§ 1749.41 Procedure for obtaining approval.

(a) The borrower shall submit to the REA Area Office a written request for approval of interim financing. This request shall include:

(1) A description of the construction proposed under interim financing.

(2) An explanation of the urgency of proceeding with the proposed construction.

(3) An estimate of the cost.

(4) The source of funds to be used for interim financing.

(Approved by the Office of Management and Budget under control number 0572-0079).

(b) REA will not approve interim financing until it has reviewed and found acceptable the following documents:

(1) The loan application (REA Form 490).

(2) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1749.32.

(3) Evidence that the borrower has satisfied the requirements of 7 CFR Part 1794 applying to the proposed interim construction.

(c) REA will not approve a borrower's request for approval of interim financing if, in REA's judgment:

(1) The proposed interim financing does not comply with the requirements of this Subpart.

(2) The proposed interim construction will not qualify for REA financing.

(3) The proposed interim financing presents unacceptable loan security risks to REA, or otherwise is not in the best interests of REA.

§ 1749.42 Procedure for construction.

(a) If REA approves the interim financing, interim construction shall be conducted in accordance with 7 CFR Part 1763, 7 CFR 1788, REA Bulletin 320-15, and REA Bulletins 381-1, 381-2, 381-4, 381-7, 381-8, 381-9, 381-10, 381-11, 381-13, 382-1, 382-2, 382-3, 383-1, 383-4, 384-1, 384-2, 384-3, 385-1, 385-2, 385-3, 385-4, 385-5, 385-6, 387-1, 387-2, 387-3, 387-4, and 387-5) except for the following:

(1) All sellers and contractors invited to bid must be informed that funds from sources other than REA will be used to pay for construction.

(2) Contracts involving the interim construction must contain a provision, in form and substance satisfactory to REA, stating that REA is not committed to

lend or advance funds to finance the project.

(3) Contracts will not be approved by REA will the borrower demonstrates to REA's satisfaction that funds from sources other than REA will be available when needed to pay invoices submitted in accordance with contract payment terms.

(4) The borrower shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained.

(b) After REA loan funds are released, the borrower can obtain reimbursement for interim financing by submitting a Financial Requirement Statement. See 7 CFR Part 1754 (or REA Bulletin 327-1).

(1) The first advance of loan funds to a borrower that has received interim financing approval generally will be limited to funds to repay any interim financing indebtedness and such additional amounts as REA deems necessary. REA will make no further advances of loan funds until the borrower has submitted evidence, in form and substance satisfactory to the Administrator, that (i) any indebtedness created by the interim financing and any liens associated therewith have been fully discharged of record and (ii) the borrower has satisfied all other conditions on the advance of additional loan funds.

(2) If the source of funds for interim financing is the borrower's internally generated funds, the borrower may request reimbursement of those funds along with advances for other purposes on the first Financial Requirement Statement.

Date: March 28, 1989.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 89-7459 Filed 3-31-89; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1020R-89]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule.

SUMMARY: This rule addresses the submission of applications by temporary resident aliens to adjust their status to

aliens lawfully admitted for permanent resident. At present applicants can only submit their applications up to 60 days prior to their eligibility to file date. As a convenience to the public and to eliminate confusion as to when to submit an application, this rule will allow the submission of applications at anytime after an alien is granted temporary residence.

EFFECTIVE DATE: Interim rule is effective April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9862, March 28, 1988; 53 FR 23382, June 22, 1988, and at 54 FR 6504, February 13, 1989.

The Service is currently completing work on the final rule addressing the adjustment of status of temporary resident aliens to permanent residence and is presently operating under the provisions set forth in an interim rule published at 53 FR 43984 on October 31, 1988.

It has been determined, for the reasons set forth below, to publish this interim rule affecting the provisions of § 245a.3(a). As a result of operational developments in the Legalization Program and the receipt of numerous comments in response to the interim rule published at 53 FR 43984 on October 31, 1988, the Service will amend § 245a.3(a) to provide for submission of applications at anytime after the granting of lawful temporary residence but prior to the end of an applicant's twelve month period of eligibility to apply for adjustment to permanent resident status.

Summary of the Interim Rule

Due to the statutory construction of the Immigration Reform and Control Act of 1986, an applicant is not eligible to apply for permanent residence until after an 18-month period of temporary residence is completed. The Service has been operating under § 245a.3(a) since November 7, 1988, by accepting the submission of permanent resident application up to 60 days prior to an applicant's eligibility to file date.

Aliens adjusted to temporary residence were provided with a temporary resident card (I-688). The card served as proper identification and

employment authorization for an alien throughout the temporary residence period and the eligibility to file for permanent residence period. The card was prepared with an issuance date that reflected the date of filing for temporary residence and was valid for a period of 31 months. The 31 month validity period was arrived at by combining the 18 month period of temporary residence and the 12-month eligibility to file for permanent residence period, plus one month. Toward the end of the application period for temporary residence (April 1988), the Service experienced problems with certain automated systems which allowed for the generation of cards with inaccurate issuance dates that did not reflect the filing dates for temporary residence. The inaccurate dates on the cards has led to confusion for those affected temporary residents and their representatives, since the date temporary residence was to have been considered granted was to have been the same as the original filing date of the application, thus enabling the temporary resident to easily determine the eligibility date for permanent residence. It was estimated that less than 5-6% of the legalization temporary resident population was affected before corrective action was taken.

Notwithstanding the aforementioned situation, the Service received numerous comments from national community agencies, attorney organizations, and the public in general that it was going to be difficult for the temporary resident population to understand when they were supposed to apply for permanent residence. A temporary resident failing to apply for permanent residence would not only lose the opportunity for permanent residence, but would also lost the status of temporary resident and revert to an unlawful status. It was not, and is not the Service's intention to see eligible aliens lose the opportunity for permanent residence through no fault of their own. Therefore, the Service will, for the mutual benefit of all parties, accept applications at any time between the date an alien is granted temporary residence and the end of the alien's one-year eligibility period.

The Service is publishing this interim rule in order to implement the procedure as soon as possible. The final rule addressing the adjustment from temporary to permanent residence will be published in the near future.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service (INS) certifies that this rule does not have a significant adverse economic impact on a