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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-91-001]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the order issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1990 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: July 10, 1991.

ADDRESSES: Ralph L. Tapp. Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA, room, 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, (202) 382–1115.

SUPPLEMENTARY INFORMATION: This action was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule because it does not meet the criteria contained therein for a major rule.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the amount of assessments on imported pork and pork products subject to assessment by four- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated increase in assessments of $350,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909 and 53 FR 30243) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule increases the assessments of all of the imported pork and pork products subject to assessment that appears in 7 CFR 1230.110 (October 22, 1990; 55 FR 42554). This increase is consistent with the increase in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1990 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule does not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversation Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1990, the average annual seven market price increased to $54.55, an increase of about 23 percent of the 1989 per hundred weight price of $43.77 which results in an increase in assessment for all the Harmonized Tariff Systems (HTS) numbers listed in the table in section 1230.110 of an amount equal to four- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1990, through October 31, 1990, the increases in the assessment amounts would result in an estimated $350,000 increase in assessments over a 12-month period.

On March 19, 1991, AMS published in the **Federal Register** (56 FR 11519) a proposed rule which would increase the per pound assessment on imported pork and pork products consistent with increases in 1990 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposal was published with a request for comments by April 18, 1991. No comments were received. Accordingly, this final rule establishes the per pound and per kilogram assessments on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value
0103.91.00006	0.25 percent Customs Entered Value
0103.92.00005	0.25 percent Customs Entered Value

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment cents/lb	Assessment cents/kg
0203.11.00002	.20	.440920
0203.12.10107	.20	.440920
0203.12.10205	.20	.440920
0203.12.90100	.20	.440920
0203.12.90208	.20	.440920
0203.19.20108	.23	.507058
0203.19.20901	.23	.507058
0203.19.40104	.20	.440920
0203.19.40907	.20	.440920
0203.21.00000	.20	.440920
0203.22.10007	.20	.440920
0203.22.90000	.20	.440920
0203.29.20008	.23	.507058
0203.29.40004	.20	.440920
0206.30.00006	.20	.440920
0206.41.00003	.20	.440920
0206.49.00005	.20	.440920
0210.11.00101	.20	.440920
0210.11.00209	.20	.440920
0210.12.00208	.20	.440920
0210.12.00404	.20	.440920
0210.19.00103	.23	.507058
0210.19.00906	.23	.507058
1601.00.20105	.27	.597009
1601.00.20908	.27	.597009
1602.41.20203	.29	.639334
1602.41.20409	.29	.639334
1602.41.90002	.20	.440920
1602.42.20202	.29	.639334
1602.42.20408	.29	.639334
1602.42.40002	.20	.440920
1602.49.20009	.27	.597009
1602.49.40005	.23	.507058

Done at Washington, DC, on June 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–13703 Filed 6–7–91; 8:45 am]

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Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1735, 1737, 1744

RIN 0572–AA51

Rural Telephone Bank and Telephone Program Loan Policies, Procedures and Requirements

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Act of 1936 (RE Act) has been amended by the Rural Economic Development Act of 1990 (RED Act), title XXIII of the Farm Bill, Public Law 101–624. In order to make changes in the regulations of the Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) that are required as a consequence of these amendments, REA hereby amends parts 1610, 1735, 1737, and 1744 in title 7 of the Code of Federal Regulations.

In addition to the changes related to the RED Act, REA adds two additional defined terms, "access line" and "subscriber", to the definitions of parts 1735 and 1737. This action will conform REA usage of these terms to industry practice thereby simplifying reporting requirements.

All Rural Telephone Bank borrowers will be affected by the proposed amendment of part 1610 by spreading out the required purchase of class B stock.

All Telephone Program borrowers will be affected by the amendment of parts 1735, 1737, 1744 in that the obtaining of loans will be simplified.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250 South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12291. 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. Therefore, this rule has been determined to be "non major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule will not represent a major Federal action significantly affecting 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.

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 (50 FR 47034), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This final rule contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.). The existing reporting and recordkeeping requirements have been approved by the Office of Management and Budget (OMB), under control number 0572–0079.

These revisions require the redesignation of several sections and the following distribution table is included:

Old part or section	New part or section
1735.17(b)	Removed
1735.17(c)	1735.17(b)
1735.17(d)	1735.17(c)
1735.42	Removed
1737.20	Removed
1737.22(b)(5)	1737.22(b)(10)
1737.41(b)(1)	1737.41(b)(2)(i)
1737.41(b)(2)	1737.41(b)(2)(ii)
1737.41(b)(3)	1737.41(b)(2)(iii)
1737.70(d)	1737.70(g)
1737.70(e)	1737.70(h)
1737.70(f)	1737.70(i)
1737.70(g)	1737.70(j)
1737.90(a)(4)	Removed
1737.90(a)(5)	1737.90(a)(4)
1737.90(a)(6)	1737.90(a)(5)
1737.90(a)(7)	1737.90(a)(6)
1737.90(a)(8)	Removed

Background

On March 19, 1991, REA published a Proposed Rule in the **Federal Register** (56 FR 11522) to amend 7 CFR parts 1610, 1735, 1737, and 1744, chapter XVII in title 7 of the Code of Federal Regulations. Subtitle F of the Rural Economic Development Act of 1990, title XXIII of the Farm Bill, Public Law 101–624, contains a number of provisions that amend the Rural Electrification Act of 1936 and require changes in the regulations of REA and RTB. The following is a list of revisions resulting from the RED Act:

(1) Section 1610.9, Temporary Waiver of Prepayment Premium, has expired and is replaced with a new section involving the pro rata purchase of Class B stock as set forth by section 2364 of the RED Act. In addition, §§ 1610.5 and 1610.6 are revised to eliminate ambiguities and potential conflicts with § 1610.10, Determination of interest rate on Bank loans.

(2) Sections 1735.2 and 1737.2, Definitions, are revised to incorporate the expanded definition of "telephone service" set out in section 2354 of the RED Act.

(3) Section 1735.10, General, is revised to include the provisions of section 2353 of the RED Act with regards to the level of general funds of a borrower.

(4) Section 1735.17, Facilities Financed, has been changed in accordance with the facilities financed provision of section 2357 of the RED Act.

(5) Section 1735.22, Loan Security, is revised to implement the TIER provision in section 2355 and section 2361 of the RED Act. A borrower will not be required to increase its TIER as a condition for receiving a loan. For a loan made under section 305 of the RE Act, borrowers will be required to have a TIER of at least 1.0. A borrower's TIER will be calculated on an after-tax basis for obtaining a loan and for maintenance purposes.

(6) Section 1735.32, Guaranteed Loans, is revised to indicate that guarantees will only be considered when specifically requested by a borrower as provided for in section 2362 of the RED Act. In addition, language has been added to clearly indicate that borrowers may request that loans guaranteed under this section be made by the Federal Financing Bank.

(7) Section 1735.43, Payment on Loans, is revised to allow borrowers to select loan maturities up to a maximum of 35 years as provided in section 2360 of the RED Act. Under existing regulations the loan maturity period approximated the anticipated economic life of the facilities financed, as recommended in OMB Circular A–129. This provision of the RED Act creates a breach in the Government's loan security because if the loan maturity period is longer than the anticipated economic life of the facilities financed (depreciation period) and the capital recovered through depreciation is not used to replace plant, then the loan could be undercollateralized and the borrower's rate base eroded, thereby jeopardizing the borrower's ability to repay the loan. Therefore, additional provisions have been added to ensure adequate collateralization over the life of the loan and provide assurance of the borrower's ability to repay the loan.

Similar loan maturity requirements for RTB loans were provided in section 2366 of the RED Act. Because the RTB has adopted the regulations of the REA Telephone Program (see 7 CFR 1610.8), the changes made in section 1735.43 will apply to both REA and RTB loans.

(8) Section 1735.47, Rescissions of Loans, is revised to agree with the rescission of loan provisions in section 2357 of the RED Act.

(9) Section 1735.51, Required Findings, is revised to agree with the loan amortization period provisions as provided in sections 2360 and 2366 of the RED Act.

(10) Subpart C of part 1737, The Loan Application, is revised to clarify what constitutes an application package and the procedure for submitting an application.

(11) As a result of the above changes to subpart C of 1737, changes have also been made to subpart E to allow in some cases requests for interim financing without having a "completed application" on file.

(12) Section 1737.70, Description of Feasibility, is revised to agree with the provisions of sections 2355, 2357, and 2361 of the RED Act. These revisions affect the manner in which loan feasibility is determined. In particular, the RED Act requires the following considerations: (a) The use of existing or impending local service rates, (b) the interest rate charged for section 305 loans will vary from 2 to 5 percent, depending on the forecasted TIER, and (c) the use of appropriate depreciation expenses. In addition, the method in which debt service payments are calculated for feasibility purposes has been added to this section. Language was also added to this section in order to ensure REA's ability to project expenses which are representative of the normal operations of the borrower, and to inform borrowers of their options if REA determines that a loan application is not feasible.

(13) Section 1744.66, The Financial Requirement Statement, is revised to include the pro rata purchase of class B stock provision of section 2364 of the RED Act.

Section 1744.68, Order and Method of Advances of Telephone Loan Funds, is presently in agreement with the order of advance provision of section 2357 of the RED Act, consequently no changes are required. Also, the provision of section 2356 regarding investments made by REA borrowers in rural development projects will be addressed by REA in a future regulation.

As a result of the above changes, several terms have been be added to the regulations that require definition. The term "forecast period" is added to the definition section of parts 1735 and 1737. The terms "composite economic life", "depreciation", "economic life", and "funded reserve" are added to the definition section of part 1735. Due to the expansion of feasibility discussions in part 1737 to include TIER calculations, the definition of "TIER" previously found only in § 1735.2 is added to § 1737.2. The definition of TIER has been revised in both sections to be calculated on an after-tax basis only.

In addition to the changes related to the RED Act, REA has added two additional defined terms, "access line" and "subscriber", to the definition sections of parts 1735 and 1737 for the following reasons.

Consistency and accuracy in "subscriber" data are important to REA in calculating density (as required by section 408(b)(2) of the RE Act), conducting engineering studies, determining loan feasibility and preparing statistical reports.

While REA has traditionally used the term "subscriber" in these applications, REA has never formally defined this term. In years past this was of little concern as the industry generally understood the term. As technology evolved, expanding the range of telecommunication services offered, the term "subscriber" became nebulous in meaning and the term "access line" came into general use. Today, "subscriber;; is a concept used primarily by REA. Many telephone companies maintain data only on access lines and not subscribers. This causes considerable confusion to a number of borrowers and their consulting engineers as to what to report to REA when asked for "subscriber" data.

The terms "subscriber" and "access line" are used somewhat interchangeably in the industry. "Access line" is the preferred term with "subscriber" falling into disuse because of the need to relate to the service provided. "Access line" is defined narrowly in technical terms that are understood industry wide, while "subscriber" is not.

We therefore have added definitions for the terms "subscriber" and "access line" to § 1735.2, Definitions. "Subscriber" for REA purposes will mean the same as access line. "Access line" will mean "a transmission path between user terminal equipment and a switching center that is used for local exchange service." For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center. This definition is based on the definition used by the National Exchange Carriers Association and the definition proposed by the National Telecommunications and Information Administration.

Density in terms of "subscribes" per mile as used in the RE Act is intended to be a relative measure of the cost of building a telephone system, i.e. a system with one subscriber per mile costs more to construct per "subscriber" than a system having four subscribers per mile. Defining "subscriber" as equal to an "access line" does not change the relativity of this measure. An analysis of the data reported to us by borrowers in 1988 indicates that a number of borrowers are already reporting "access lines" for "subscribers". Since "subscriber" is presently undefined, there is uncertainty as to what the remaining borrowers are reporting as "subscribers". The definition would eliminate this ambiguity and lend accuracy and consistency to the reported figures.

From both the engineering and financial forecasting viewpoints, "access line" is the preferred measure since it is the unit that determines plant capacities and requirements and the unit used for pricing services.

The incorporation of the definition of "access line" into REA regulations will (1) ease borrower reporting requirements by clearly defining a required data element in terms of an accepted industry standard; (2) improve the accuracy and consistency of data reported to REA; and (3) improve the accuracy of studies and statistics derived from the reported data.

Also, part 1737 is further amended as follows: Pursuant to OMB Circular A–129, REA will require borrowers to report any Federal debt delinquency and the reason for the delinquency prior to the approval of an REA loan, see §§ 1737.22(b)(9) and 1737.41(b)(2)(iv). Borrowers must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt, see § 1737.22(a)(19). Notification shall also be given that REA may obtain commercially available credit reports on borrowers, see § 1737.70(k).

Comments

In the Proposed Rule published in the **Federal Register** on March 19, 1991 (56 FR 11522), the Rural Electrification Administration invited interested parties to file comments on or before April 18, 1991. Comments were received from four trade associations, four borrower associations, two members of Congress, and forty-two individual borrowers. In addition, four other interested parties filed comments past the deadline. However, their concerns have been addressed since the issues raised were similar to those received prior to the deadline. The comments and recommendations are summarized as follows:

Section 1610 RTB Loan Policies

Comment summary. Respondents stated that REA failed to address the issue of "penalty-free prepayment" of RTB loans. It was requested that REA include language in its regulations to make it clear that REA will not require a prepayment premium from RTB borrowers retiring debt prior to maturity. It was also noted that REA was relying on its "Note" which provides for the prepayment premium.

Response. The RTB prepayment premium was not addressed in changes required by the RED Act. In general, RTB's prepayment premium policy has been determined by the RTB Board of Directors. In fact, the original prepayment policy was established by the RTB Board of Directors on February 10, 1972, and later revised on May 3, 1984. The Omnibus Budget Reconciliation Act of 1987 did permit temporary waivers of RTB prepayment premiums from December 22, 1987, through September 30, 1988. Information regarding temporary waivers of prepayment premiums was addressed in § 1610.9; however, since the time period has expired, this language has been removed.

Section 1610.5 Concurrent REA and Bank loans

Section 1610.6 Exclusive Bank financing for current loan needs

Comment summary. Respondents objected to the language "and with prudent operations," stating that there is no definition or standard in the proposed rule establishing "prudent operation." It was requested that this language be deleted from the final rule.

Response. REA has deleted language in this final rule referencing "prudent operations."

Sections 1735.2 and 1737.2 Definitions

Comment summary. One respondent indicated that REA should not revise the definition of subscriber.

Response. REA defined subscriber as an access line because of the numerous requests by borrowers who are having difficulty maintaining data on subscribers for REA while all other industry organizations are requiring data in the form of access lines. A review of REA borrowers has indicated that equating subscribers to access lines would impact only a small number of the almost 1000 REA borrowers.

Comment summary. Due to wide use of the term "depreciation," it was requested that REA include this term in the definition section of the rule (for the public's benefit).

Response. Although this term is widely used in the telephone industry and REA believes that all parties concerned are already familiar with the definition, REA has complied with this request and defined the term "depreciation" in § 1735.2. This definition is based upon the definition provided in the Federal Communications Commission's (FCC's) Uniform System of Accounts. In addition, REA has replaced the term "useful life" with the term "economic life" to eliminate any confusion when using these terms.

Comment summary. Respondents stated that there was no basis for the use of a "before-tax" TIER. TIER should be calculated only on an "after-tax" basis. All other references to "before-tax" TIER should be eliminated from the final rule.

Response. REA has eliminated any references to "before-tax" TIER will be calculated on an "after-tax" basis.

Section 1735.17(b)(4) Facilities financed

Comment summary. Respondents stated that REA must loan for all RE Act purposes. Objections were made to excluding from financing those facilities that would be fully depreciated within the Forecast period (usually 5 years); and that REA has no authority to exclude such facilities.

Response. § 1735.17(b)(4) regarding facilities which are fully depreciated within the Forecast period has been deleted from the final rule.

Section 1735.22(f) Loan Security.

Comment summary. Respondents requested that the TIER maintenance provisions be removed from the final rule, stating that they place an undue burden on the borrower because there are a number of factors that could cause the borrower's TIER to fall below the maintenance level stated in the borrower's mortgage. Several respondents stated that imposing a TIER maintenance provision could require a borrower to increase its ratio of net income or margins (i.e., through local service revenues), which is contrary to the RED Act. Further, the respondents stated that setting a TIER maintenance level at the projected feasibility TIER (but greater than 1.5) would be unreasonable because of the factors affecting the borrower during the Forecast period in which the system is being constructed and because projected revenues from new subscribers have not yet been achieved. (Other arguments included the possible overestimating of revenues and underestimating of expenses which would give a distorted high TIER.) Objections were also made to the 1.5 TIER requirement on guaranteed loans.

Response. This requirement does not impose a need for the borrower to raise local service rates or to increase TIER. It merely requires the borrowers to maintain the TIER predicted by the projections given to REA by the borrower and on which REA relied on making the loan. The minimum TIER requirement provides some assurance of adequate loan security without placing an additional burden on the borrower. In 1989, ninety-five percent of REA's reporting borrowers has a TIER greater than 1.5. In general, borrowers with a TIER of less than 1.5 have similar financial characteristics to those borrowers with TIERs greater than 1.5 (such as profit or expenses per subscriber and density). These borrowers should not experience any significant difficulty in meeting the minimum TIER requirements. In addition, a minimum TIER of 1.5 is typically required by other lenders that loan to REA borrowers, such as the Rural Telephone Finance Cooperative.

The language has been revised to clearly indicate the borrower's responsibilities and to give assurance that borrowers will not be subject to extraneous requirements. In particular, § 1735.22(f)(1) now contains language indicating that any borrower eligible for an REA loan will be required to maintain a TIER of at least 1.0 during the Forecast period. After the Forecast period, borrowers will be required to maintain a TIER at least equal to the forecasted TIER. This includes existing RTB borrowers (that were previously required to maintain a TIER of 1.5) that are eligible for and receive an REA loan.

In general, TIER calculated on an after-tax basis is more difficult to achieve than TIER calculated on a before-tax basis. Because of the easing of TIER restrictions during the Forecast period for all borrowers and because RTB borrowers receiving an REA loan will not be required to maintain a TIER of 1.5 (if previously required), these amendments reduce the TIER maintenance requirements imposed on borrowers by existing regulations.

Section 1735.22(g) Loan Security.

Comment summary. It was requested that this section be more clearly written to clarify that REA will not require borrowers to increase TIER as a requirement for receiving a loan (using language from the RE Act was suggested). It was further requested that the second sentence in this section which reads "Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA" be deleted, stating that REA cannot deny a loan, advance, etc., based on policy that has not been published in the **Federal Register.**

Response. Since TIER is defined in the beginning of part 1735 and the first sentence clearly states that the borrower is not required to raise TIER as a condition to receiving a loan, no further elaboration is deemed necessary. The second sentence in this section was not affected by changes required by the RED Act. The generic loan documents will be published in the near future.

Section 1735.30(b) Insured loans.

Comment summary. Some respondents were concerned that REA had eliminated "hardship" loans established under section 305(b) of the RE Act.

Response. Proposed language was deleted from this section (as well as in § 1737.70(d)) to clearly differentiate between "hardship" loans made under section 305(b) of the RE Act and "variable interest rate" loans made under section 305(d) of the RE Act, as amended by the RED Act.

Section 1735.32(a) Guaranteed loans.

Comment summary. Respondents stated that there is no provision in the RE Act or regulations that provide for making concurrent RTB-guaranteed loans. The respondents requested that if REA allows for such loans, it should be only at the request of the borrower. Objections were also made to language limiting loan guarantees to what REA considers "major" telephone loans and setting a minimum loan amount of $7 million.

Response. Section 306 of the RE Act does not preclude the Administrator from approving concurrent RTB-guaranteed loans. In the last sentence of § 1735.32(a), REA did not intend to delineate between major and minor telephone loans. Reference to loan amounts of $7 million has been eliminated. Also, § 1735.32(a) clearly states that loan guarantees made under this section will be considered for only those borrowers specifically requesting a guarantee.

Section 1735.42 Extension of advances.

Comment summary. Respondents requested further explanation of why this section was deleted, stating that it was done so without explanation.

Response. This section was replaced by § 1735.43(b). As a result of this revision, borrowers are now permitted to draw down loan funds over the life of the loan and without the need to execute new loan documents. The provision regarding the limitation of two advances per year (after 5 years from the date of the note) has been removed.

Section 1735.43 Payments on loans.

Comment summary. Respondents objected to the options provided by REA in order to allow for loan maturity periods of up to 35 years. General objections include:

(1) REA has adequate security instruments in place and does not need further loan security measures imposed by the funded reserve option or the net plant to long-term debt ratio option (historical "no default" argument noted). It was also noted that these options would be burdensome to the borrower, force them to choose shorter amortization periods, and divert the borrowers use of general funds.

(2) Long-term financing is necessary and commonplace in the telecommunications industry. The respondents requested that REA allow borrowers to elect a loan maturity period of up to 35 years without further burden or conditions.

Response. If the loan maturity exceeds the composite economic life of the facilities to be financed, and REA-financed plant is retired and replaced by new plant before the REA loan is repaid, earnings from this new plant will be channelled back to repay the debt on the retired plant plus repay any new debt incurred for the replacement facilities. REA not only relies on the value of the facilities financed for collateral but also depends on the revenues produced by these facilities to repay its loans. When the loan period is longer than the depreciation period, and the capital recovered through depreciation is not used to replace plant, serious problems could result such as undercollateralization and rate base erosion.

Section 201 of the RE Act states that loans "shall not be made unless the Administrator finds and certifies that in his judgement the security therefor is reasonably adequate and such loan will be repaid within the time agreed * * *" (similar language is also contained in section 408 of the RE Act). The RED Act permits borrowers to select a loan amortization period up to a maximum of 35 years. REA has clearly stated that borrowers shall, at the time the loan application is submitted, select a loan maturity up to a maximum of thirty-five years. In order to comply with sections 201 and 408 of the RE Act, REA has provided two options for the borrower to choose if the loan maturity is extended past the composite economic life of the facilities financed by the loan (see § 1735.43(a)(1) and § 1735.43(a)(2)). These options are intended to allow the borrower the flexibility of extending loan maturity while allowing the government to maintain adequate security for its loans.

Respondents also stated that borrowers who were not able to maintain a net plant to secured-debt ratio of 1.2 would be excluded from receiving long-term financing, noting that forty-four percent of the borrowers reporting in 1989 had a net plant to long-term debt ratio of less than 1.2. In fact, further analysis by REA shows that twenty-three percent of REA's borrowers had a net plant to long-term debt ratio of less than 1.0 for the same period. REA believes that this situation could signify potential loan security problems and indicates a possible undercollateralization problem. However, these borrowers would not be excluded from long-term financing. Borrowers in this category could elect the funded reserve option provided by REA if they wish to extend loan maturity past the composite economic life of the facilities financed, plus 3 years.

Respondents were also concerned about actions taken by REA if a borrower, under the ratio option, has a net plant to secured debt ratio that falls below 1.2. Where possible, REA will assist the borrower in correcting this situation. (This issue will be addressed in more detail in the proposed revision to 7 CFR part 1744, to be published for public comment in the near future.) Further, language has been added to this section to state that borrowers choosing the ratio option must achieve this ratio beginning 1 year after the date of the first advance of loan funds.

It is common practice for lenders to set the amortization period of loans for capital assets equal to the expected economic life of the facilities financed. REA is establishing neither a unique or burdensome requirement. Moreover, when the term for REA loans was originally established at 35 years, the expected economic life of typical telephone facilities closely approximated this period. Revising this section simply acknowledges the technological changes in the telephone industry that have resulted in shorter economic lives for many types of equipment.

Comment summary. One respondent stated that the definition of "funded reserve" is deficient because it does not include cash.

Response. In an effort to clarify the meaning of "funded reserve," REA has elaborated on the definition to include cash and other securities as approved by REA. REA's primary concern was that the funded reserve should consist of marketable securities that are liquid and earn interest.

Section 1735.47 Rescissions of loans.

Comment summary. Respondents requested that the provisions listed in this section which condition a borrower's voluntary rescission of loan funds be removed. Other respondents requested that language be added to state that "REA may only initiate a rescission * * *".

Response. This section establishes the specific conditions under which borrowers can request a rescission of loan funds (§ 1735.47 (a) and (b)). These conditions have not been changed from existing regulations. These conditions were established to insure that the main objectives of the RE Act (i.e., provide service to the widest practical number of rural subscribers) will be carried out by the recipients of REA telephone loans. As for REA's ability to rescind loan funds, the language used in § 1735.47(b) has been restated to more concisely reflect the requirements provided for in the RED Act.

Section 1735.51 Required findings.

Comment summary. One respondent requested the language "in excess of operating expenditures (including maintenance and replacement)" be removed because the TIER calculation assures that there will be adequate revenues to repay the loan.

Response. The TIER calculation will only measure the borrower's ability to meet normal operating and interest expenses. This calculation does not consider plant replacement or extraordinary occurrences.

Section 1737.21 The completed loan application.

Comment summary. In reference to returning an incomplete application to a borrower after 90 working days, it was requested that REA include language in this section to make it clear that the application is being returned without prejudice and that the borrower may resubmit the completed application.

Response. REA has added language to indicate that any application returned is done so without prejudice and that the borrower may resubmit the completed application.

Section 1737.22 Supplementary information.

Comment summary. With regards to what actions the government is authorized to take if a borrower becomes delinquent, respondents requested a further explanation of what constitutes a "delinquent debt or account," stating that such an explanation should be included in the definition section.

Response. This section has been revised to clarify the meaning of "delinquency" according to OMB Circular A-129. Information concerning delinquent debt or accounts and other pertinent financial details is contained in the borrower's mortgage and loan contract, and will be addressed in more detail in the proposed revision to 7 CFR part 1744 (to be published for comment in the near future).

Comment summary. One respondent wanted to limit the concept of approved depreciation rates to those of state regulatory bodies.

Response. It is possible that other regulatory bodies, such as the FCC, could in some instances have authority in approving depreciation rates. Consequently, the language regarding the approval of depreciation rates has remained unchanged.

Section 1737.70(d) Description of feasibility.

Comment summary. Respondents objected to the "one-way variable" interest rate provision and stated that there was no provision allowing for a downward adjustment in the interest rate if the borrower's financial condition further deteriorates. Several respondents commented that a "variable" interest rate could make long-term financial planning difficult as well as complicate regulatory matters. It was also stated that REA was placing an undue burden on its own staff and its borrowers with regards to the annual studies used to monitor the borrower's financial condition and make adjustments in the interest rate if necessary. The respondents requested the deletion of this provision.

Response. Through the provisions of section 305(d) of the RE Act, as amended, REA is making available loans bearing interest at less than 5 percent, but not less than 2 percent, to borrowers who are unable to qualify for financing from REA under the requirements of § 1735.22(f) at the standard loan interest rate of 5 percent. REA's intent is to provide borrowers with the financing necessary to provide modern telephone service to the widest practical number of rural subscribers. REA does not believe that the "variable" interest rate will impose any significant financial planning problems for borrowers. The maximum interest rate that a loan could be adjusted to is 5 percent; and the borrower is made aware of this before any loan funds have been advanced (i.e. through this regulation and the loan documents). Interest rate adjustments will only be made if it is determined by the Administrator that the borrower has the ability to meet its debt service obligations. In addition, variable interest rates are not uncommon to the REA lending programs. Since 1988, REA has been processing adjustable interest rate RTB loans with no adverse impact on RTB borrowers (FFB loans may also have variable interest rates).

REA believes that the additional time involved in the financial analysis of these borrowers is necessary in order to provide assistance to the borrower for establishing a sound financial position. Language has been added to this section to allow downward adjustments in the interest rate to a minimum equal to the borrower's original feasibility interest rate. Downward and upward adjustments in the interest rate will be rounded down to the nearest one-half or whole percent. Language has also been added to this section to clearly indicate that the variable interest rate provisions apply to only those loans made under this section at an interest rate of less than 5 percent.

Proposed language was also deleted from this section to clearly differentiate between "hardship" loans made under section 305(b) of the RE Act and "variable interest rate" loans made under section 305(d) of the RE Act, as amended by the RED Act.

Section 1737.70(e) Description of feasibility.

Comment summary. Respondents requested the use of the word "or" instead of "and" when applying depreciation rates to be used in determining feasibility.

Response. The choice of the word "and" is technically correct and is used in the same context in the RED Act (that is, in instances where some of the items to be financed have commission-approved depreciation rates and some do not, a combination of commission-approved and REA-median rates will be used).

Section 1737.70(h) Description of feasibility.

Comment summary. One respondent stated that the language in this section (which states—if operating experience is not adequate, etc., REA will base estimates on state and regional standards) should be removed, stating that it "seeks to confer agency discretion."

Response. These types of estimates are necessary for REA to use, particularly if the loan applicant is a newly created organization with no previous operating history, has never received an REA loan, or is replacing older telecommunications equipment with state-of-the-art facilities. These estimates are critical because the borrowers may have limited or no operating experience, or are replacing current facilities new to the borrower's system. For example, a borrower's maintenance expense could be inaccurate if a borrower is replacing aerial copper with buried facilities or is replacing analog switching with digital.

Section 1737.70(l) Description of feasibility.

Comment summary. With regards to returning an application to a borrower if it is determined that the loan is not feasible, the respondents stated that there was no justification for REA imposing a 90 working day deadline for the borrower to make adjustments, etc., and return the application to REA before it is canceled.

Response. This deadline is not onerous and is necessary to ensure efficient management of REA's manpower resources while maintaining timely review and approval of REA's loan applications. The 90-day time period should be more than ample.

Section 1737.80(a) Description of characteristics letter.

Comment summary: Objections were made with regards to REA requiring concurrence from the borrower to the terms stated in the letter when REA is not committed to approve the loan. It was suggested that the borrower's response to the letter should state that it has noted the terms and will seek to complete the agreement with REA. It was also suggested that a "borrower should be able to provide additional data to REA before signing the loan documents and perhaps gain better terms." One respondent proposed replacing the characteristics letter with a loan commitment letter that is binding by the REA if accepted by the borrower. It was further requested that the term "other prerequisites" be defined.

Response: The language in § 1737.80(a) is structured to provide flexibility to the borrower regarding modifications to and/or agreement with any aspect of the characteristics letter. Borrowers have the opportunity to change the loan amortization period and to suggest other changes to any of the conditions or terms proposed by REA. Since REA believes the language as stated is appropriate, it will remain unchanged.

Section 1744.66 The financial requirement statement (FRS).

Although no comments were received concerning the need for borrowers to report any Federal debt delinquency prior to the approval of an advance of loan funds, REA has determined that this requirement in unnecessary and has deleted this language from the final rule.

Effective Date

Pursuant to U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this final rule for 30 days after publication in the **Federal Register**, and for making the revision effective upon publication in the **Federal Register**. The amendments to the RE Act made by the Farm Bill gave REA until May 27, 1991 (180 days from November 28, 1990) to promulgate these regulations. REA has put forth every effort to publish, as soon as possible, regulations encompassing the complicated issues raised by these amendments.

REA has been unable to continue its telephone loan program pending the implementation of these regulations. Unless this final rule is made effective immediately, REA may be unable to process and approve loan applications in sufficient numbers and amounts to meet loan levels mandated by Congress for the REA telephone loan program in fiscal year 1991. These circumstances would prevent REA from meeting Congressional goals. An additional delay of 30 days would cause great difficulty to many REA borrowers that might not receive loans this year. Funding delays would also result in delays in service and higher construction costs. Delaying the implementation of this final rule would create uncertainty about the requirements borrowers must satisfy to obtain REA financing and further inhibit REA's ability to assist borrowers seeking REA loans.

Although the revision takes effect upon publication, REA will review and consider all comments received by July 10, 1991.

List of Subjects

7 CFR Part 1610

Loan programs—communications, Rural areas, Telephone.

7 CFR Parts 1735 and 1737

Reporting and recordkeeping requirements, Rural areas, Loan programs—communications, Telephone.

7CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone. Therefore, REA amends 7 CFR chapters XVI and XVII as follows:

Chapter XVI—[Amended]

PART 1610—[AMENDED]

1. The authority citation for 7 CFR part 1610 is revised to read as follows:

Authority: 7 U.S.C. 941 et seq.

2. Section 1610.5 is revised to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

The Bank will consider making a loan concurrently with REA when REA has requested the applicant, pursuant to section 307 of the Act, to obtain a loan for part of its credit needs from a credit source other than REA, and the Governor finds that the applicant could, consistent with achieving the objectives of the Act, produce a TIER of 1.5, as determined by the feasibility study prepared in connection with these loans, on all its outstanding and proposed loans, including a loan from REA at its standard interest rate of 5 percent for enough of its current loan needs to qualify the applicant for a loan from the Bank in accordance with § 1610.11 for the balance of such current loan needs, as determined by the Governor. The interest rate on the Bank loan shall be determined as provided in § 1610.10.

3. Section 1610.6 is revised to read as follows:

§ 1610.6 Exclusive Bank financing for current loan needs.

The Bank will consider making a loan for the applicant's total current needs as determined by the Governor when the Governor finds that the applicant could, consistent with achieving the objectives of the Act, produce a TIER of 1.5, as determined by the feasibility study prepared in connection with this loan, on all its outstanding and proposed loans, including an annual interest rate on the loan for the current needs as provided for in § 1610.11. The actual interest rate on the loan shall be determined as provided in § 1610.10.

4. Section 1610.9 is revised to read as follows:

§ 1610.9 Class B stock.

Borrowers receiving loans from the Bank shall be required to invest in class B stock at 5 percent of the total amount of loan funds advanced. Borrowers may purchase class B stock by:

(1) Paying an amount (using their own general funds) equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance; or

(2) Requesting that funds for the purchase of class B stock be included in the loan. If funds for class B stock are included in a loan, the funds for class B stock shall be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan fund advance, at the time of such advance.

Chapter XVII—[Amended]

PART 1735—[AMENDED]

5. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

6. In subpart A, § 1735.2, the paragraph designations at the beginning of the definitions are removed, the definitions for "Times Interest Earned Ratio" and "Telephone Service" are revised; and the remaining following definitions are added alphabetically to read as follows:

§ 1735.2 Definitions.

* * * * *

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Composite economic life as applied to facilities financed by loan funds means the weighted (by dollar amount of each class of facility in the loan) average economic life of all classes of facilities in the loan.

* * * * *

Depreciation means the loss not restored by current maintenance, incurred in connection with the consumption or prospective retirement of telecommunications plant in the course of service from causes which are known to be in current operation, against which the company is not protected by insurance, and the effect of which can be forecast to a reasonable approach to accuracy.

Economic life as applied to facilities financed by loan funds, means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) approved by the regulatory body with jurisdiction over the telephone service provided by the borrower for the class of facility involved or, if no approved rate exists, by the median depreciation rate expressed as a percent as published by REA in its Statistical Report, Rural Telephone Borrowers for all REA and RTB borrowers for that class of facility.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a) of this chapter. For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

Funded reserve means a separate asset account, approved by REA, consisting of any or all of the following:

(1) Federal government securities purchased in the name of the borrower;

(2) Other securities issued by an institution whose senior unsecured debt obligations are rated in any of the top three categories by a nationally recognized rating organization; or

(3) Cash.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems 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.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income (after taxes) plus interest expense, all divided by interest expense. 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.

7–8. In subpart B, § 1735.10 is amended by revising the first two sentences and adding a new sentence after the second sentence to read as follows:

§ 1735.10 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 will not deny or reduce a loan or an advance of loan funds based on a borrower's level of general funds. * * *

9. In § 1735.17, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c) respectively; in addition, newly designated paragraph (b)(1) is revised to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(b) * * *

(1) Station apparatus, except for that owned by the borrower, and any associated inside wiring.

* * * * *

10. In § 1735.22, paragraphs (f) and (g) are revised to read as follows:

§ 1735.22 Loan security.

* * * * *

(f) To obtain a loan after November 29, 1990, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements.

(1) For a 100 percent insured loan, that is, a loan made solely under section 305 of the RE Act, a borrower must have a TIER of at least 1.0 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 at least 1.0 during the Forecast period. At the end of the Forecast period, the borrower will be required to maintain at a minimum a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but not greater than 1.5.

(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 1.5 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 at a minimum a TIER equal to the borrowers prior loan TIER maintenance level, if any, stated in its mortgage but not less than 1.0. At the end of the Forecast period, the borrower will be required to maintain at a minimum a TIER of 1.5.

(g) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

11. In § 1735.30, paragraph (a)(2) is revised to read as follows:

§ 1735.30 Insured loans.

(a) * * *

(2) Cannot, in accordance with generally accepted management and accounting principals and without increasing rates to its subscribers, provide service consistent with objectives of the RE Act.

* * * * *

12. In § 1735.32, paragraph (a) and the first sentence of paragraph (d) are revised to read as follows:

§ 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). REA provides loan guarantees pursuant to section 306 of the RE Act to enable borrowers to secure telephone loans from non-REA sources. 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 1735.46.

* * * * *

(d) *Rederal Register notice.* After REA has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project and if the borrower has not specified that the loan be made from the FFB, REA shall publish a notice in the Federal Register.* * *

* * * * *

§ 1735.42 [Reserved]

13. Section 1735.42 is removed and reserved.

14. Section 1735.43 is revised to read as follows:

§ 1735.43 Payments on loans.

(a) Borrowers shall, at the time a loan application is submitted, select a loan maturity up to a maximum of 35 years. If the maturity selected exceeds the composite economic life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower electing to either:

(1) Establish and maintain, pursuant to a plan approved by REA, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the loan; or

(2) Maintain a net plant to secured debt ratio of at least 1.2. Secured debt shall mean the total of long term debt and current maturities of long term debt (whether owed to REA, RTB, or some other creditor) and capital leases.

The loan documents prepared by REA for the loan will contain the appropriate condition as selected by the borrower. If the funded reserve option is selected, funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the composite economic life of the facilities financed. If net plant to secured debt ratio option is selected, this ratio must be achieved one year following the first advance of loan funds and must be shown in REA's analysis of the borrower's operating report.

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

15. Section 1735.47 is revised to read as follows:

§ 1735.47 Rescissions of loans.

(a) Rescission of a loan may be requested by a borrower at any time. To rescind a loan, the borrower must demonstrate to REA that:

(1) The purposes of the loan being rescinded have been completed;

(2) 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) 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 those purposes.

(c) REA shall not initiate the rescission of a loan unless all of the purposes for which telephone loans have been made to the borrower under the Act have been accomplished with funds provided under the Act.

16. In § 1735.51, paragraph (a)(1) is revised to read as follows:

§ 1735.51 Required findings.

(a) * * *

(1) Self-liquidation of the loan within the loan amortization period; 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.

* * * * *

PART 1737—[AMENDED]

17. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

18. In subpart A, § 1737.2 the paragraph designations are removed; the definition "Telephone Service" is revised; and the following remaining definitions are added alphabetically to read as follows:

§ 1737.2 Definitions.

* * * * *

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for the completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a). For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems 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.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income (after taxes) plus interest expense, all divided by interest expense. 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.

§ 1737.20 [Reserved]

19-20. Section 1737.20 is removed and reserved.

21. In § 1737.21, a sentence is added at the end of paragraph (b), and paragraph (c) is added to read as follows:

§ 1737.21 The completed loan application.

* * * * *

(b) * * * Borrowers are to submit all information in paragraph (a) of this section to their REA field representatives, who will review and then forward the packages to REA headquarters.

(c) REA will make a determination of completeness of the application package and will notify the borrower of this determination within 10 working days of receipt of the information at REA headquarters. If the application package is not complete, REA will notify the borrower of what information is needed in order to complete the application package. If the information required to complete the application package is not received by REA within 90 working days from the date the borrower was notified of the information needed, REA may return the application package to the borrower. Returned applications are without prejudice and borrowers may resubmit the completed application.

* * * * *

22. In § 1737.22, the introductory text is revised, new paragraphs (a)(17), (a)(18), and (a)(19) are added, paragraph (b)(5) is redesignated as paragraph (b)(10), and new paragraphs (b)(5) through (b)(9) are added to read as follows:

§ 1737.22 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 as part of the loan application as specified in 7 CFR 1737.21.

(a) * * *

(17) A sketch or map showing the existing and proposed service areas.

(18) Executed assurance that the borrower will comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (see 49 CFR 24.4).

(19) A certification (which is included on REA Form 490, "Application for Telephone Loan or Guarantee") that the borrower has been informed of the collection options listed below that the Federal government may use to collect delinquent debt. REA and other government agencies are authorized to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults (OMB Circular A-129 defines "delinquency" for direct or guaranteed loans as debt more than 31 days past due on a scheduled payment):

(i) Report the borrower's delinquent account to a credit bureau.

(ii) Assess additional interest and penalty charges for the period of time that payment is not made.

(iii) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account.

(iv) Offset amounts owed to the borrower under other Federal programs.

(v) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund.

(vi) Refer the borrower's account to a private collection agency to collect the amount due.

(vii) Refer the borrower's account to the Department of Justice for litigation in the courts.

All of the actions in paragraph (a)(19) of this section can and will be used to recover any debts owed when it is determined to be in the interest of the Government to do so. The notification and the required form of certification in paragraph (a)(19) of this section are included on REA Form 490, Application for Telephone Loan or Guarantee.

(b) * * *

(5) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Public Law 101-121 (31 U.S.C. 1352)).

(6) Executed copy of Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

(7) Borrower's determination of loan maturity, including information noted in § 1735.43(a) of this chapter as required.

(8) Approved depreciation rates for items under regulatory authority jurisdiction.

(9) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the loan. REA Form 490, "Application for Telephone Loan or Guarantee," contains a section for providing the required statement and any appropriate explanation.

* * * * *

23. In § 1737.41, the parenthetical phrase at the end of paragraph (a) is transferred to the end of the section and paragraph (b) is revised to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * *

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

(1) All of the information required under § 1737.21 or with REA approval.

(2) The following documents:

(i) The loan application (REA Form 490) clearly marked "in support of interim financing request."

(ii) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1737.32.

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

(iv) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the interim financing, see 7 CFR 1737.22(b)(9).

(v) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Pub. L. 101-121 (31 U.S.C. 1352)).

(vi) Executed copy of Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

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

* * * * *

24. In § 1737.70, paragraphs (d) through (g) are redesignated as paragraphs (g) through (j); paragraph (a), the last sentence of paragraph (b), newly designated paragraph (g), and the first sentence of newly designated paragraph (h) are all revised; and new paragraphs (d), (e), (f), (k) and (l) are added to read as follows:

§ 1737.70 Description of feasibility study.

(a) In connection with each loan REA shall prepare a feasibility study that includes sections on consolidated loan estimates, operating statistics, projected telecommunications, plant, projected retirement computations, and projected revenue and expense estimates (including detailed estimates of depreciation and amortization expense, scheduled debt service payments, toll and access charge revenues, and local service revenues). Normally, projections will be for a 5-year period and used to determine the ability of the borrower to repay its loans in accordance with the terms thereof. REA will not require borrowers to raise local service rates. Local service revenue projections will be based on the borrower's existing local service rates or regulatory body approved rates not yet in effect but to be implemented within the Forecast period. In the latter case, if a borrower is not required to obtain regulatory body approval for the implementation of such rates, REA will require a resolution of the board of directors indicating when those rates will be in effect.

(b) * * * REA shall consider the factors discussed in paragraphs (c) through (j) of this section in determining feasibility.

* * * * *

(d) REA may make a loan at an interest rate lower than 5 percent but not less than 2 percent. For borrowers that qualify for a loan made at an interest rate of less than 5 percent but not less than 2 percent, a feasibility study will be prepared using the highest interest rate at which the borrower would be capable of producing a TIER of 1.0. If a loan is approved, the interest rate for the loan will be fixed, at the rate used in determining feasibility, from the date the loan is approved until the end of the Forecast period. At the end of the Forecast period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan feasibility study will be revised annually (beginning within four months after the end of the Forecast period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on July 1 of the year in which the adjustment was determined. If the Administrator determines that the borrower is capable of meeting the minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent on a loan or loans made under this section, then the loan interest rate shall be fixed, for the remainder of the loan repayment period, at the standard interest rate of 5 percent. In instances where a borrower has more than one loan made under this section with interest rates less than 5 percent adjustments to the interest rates will begin with the oldest applicable loan.

(e) Depreciation expense will be determined using depreciation rates appropriate to the normal operation of the borrower, based on:

(1) The borrowers regulatory body approved depreciation rates; and

(2) Where such rates as described in paragraph (e)(1) of this section do not exist for items which the borrower is seeking financing, the most recent median depreciation rates published by REA for all borrowers. REA will publish such depreciation rates annually in REA's "Statistical Report, Rural Telephone Borrowers."

(f) Projected scheduled debt service payments will generally be based on all of the borrower's outstanding and proposed loans from REA and all other lenders as of the end of the feasibility Forecast period (i.e. for a 5-year Forecast period, the amount of debt outstanding in year 5).

(g) The financial and statistical data are derived from REA Form 479, "Financial and Statistical Data for Telephone Borrowers," or for initial loans, the data may be obtained from the borrower's financial statements and other reports, and from other information supplied with the completed loan applications (see 7 CFR 1737.21 and 1737.22).

(h) When, in REA's opinion, the borrower's operating experience is not adequate or the borrower's current operations are not representative, the estimates in the feasibility study normally will be developed from state and regional standards based on the experience of REA borrowers. * * *

* * * * *

(k) REA may obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

(l) If it is determined that loan feasibility cannot be proven as described in this section, the loan application will be returned to the borrower with an explanation. A borrower whose application has been returned will have 90 working days, from the date the application was returned, to revise and resubmit its application. If a revised application is not received by REA within the 90-day period described above, the application will be canceled and a new application will need to be submitted if the borrower wishes further consideration.

25. In § 1737.80, paragraph (a) is revised to read as follows:

§ 1737.80 Description of characteristics letter.

(a) After all of the studies and exhibits for the proposed loan have been prepared, but before the loan is recommended, REA shall inform the borrower, in writing, of the characteristics of the proposed loan. The purpose of the characteristics letter is to inform the borrower and obtain its concurrence, before further consideration by REA of the loan approval and the preparation of legal documents relating to the loan, in such matters as the amount of the proposed loan, its purposes, rate of interest, loan security requirements, and other prerequisites to the advance of loan funds. The letter, whether or not concurred in by the borrower, does not commit REA to approve the loan on these or any other terms.

* * * * *

§ 1737.90 [Amended]

26. In § 1737.90, paragraphs (a)(4) and (a)(8) are removed and paragraphs (a)(5) through (a)(7) are redesignated as paragraphs (a)(4) through (a)(6) respectively.

PART 1744–[AMENDED]

27. The authority citation for part 1744 continues to read as follows:

Authority: 7. U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

28. In § 1744.66, paragraph (b)(4)(iv) is revised to read as follows:

§ 1744.66 The financial requirement statement (FRS).

* * * * *

(b) * * *

(4) * * *

(iv) *Bank stock.* Based on the requirements for purchase of class B Rural Telephone Bank stock established in the loan. Funds for class B stock will be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

* * * * *

Dated: May 15, 1991.

Gary C. Byrne,

Administrator, Rural Electrification Administration Governor, Rural Telephone Bank.

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