Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, 1724, and 1730

RIN 0572–AC19

Energy Efficiency and Conservation Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS or Agency) is proposing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This notice of proposed rulemaking proposes changes to RUS regulations on General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees. This regulation was finalized December 20, 1993. The notice of proposed rulemaking also proposes conforming amendments to additional RUS regulations. Under Section two of the Rural Electric Act, RUS is authorized to assist electric borrowers in implementing demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. The scope of this proposed regulation falls within the authority of the Act.

DATES: Comments must be submitted on or before September 24, 2012.

ADDRESSES: Submit comments by either of the following methods: Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: Gerard Moore, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250–1569, telephone (202) 205–9692 or email to *gerard.moore@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary: The Rural Utilities Service (RUS or Agency) is proposing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This notice of proposed rulemaking is designed to supplement the policies contained in 7 CFR part 1710, GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES, which were finalized in December 1993. Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly ''authorized and empowered to make loans in the several States and Territories of the United States * * * for the purpose of assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.'' As noted, Section 6101 of the 2008 Farm Bill inserted the words ''and energy efficiency'' into this provision. In order to implement this new focus of the program, RUS proposes to amend 7 CFR part 1710 by adding a new subpart H entitled ''Energy Efficiency and Conservation Loan Program.''

The goals of an eligible Energy Efficiency Program that could be funded under this program under this proposed subpart may include: (1) Increasing energy efficiency at the end user level, (2) modifying electric load such that there is a reduction in overall system demand, (3) effecting a more efficient use of existing electric distribution, transmission and generation facilities, (4) attracting new businesses and create jobs in rural communities by investing in energy efficiency, and (5) encouraging the use of renewable energy fuels for both demand side management and the reduction of conventional fossil fuel use within the service territory.

The Energy Efficiency and Conservation Loan Program may include loans supporting energy efficiency activities undertaken by the utility itself, the finance of energy efficiency projects undertaken by others and investments made by the utility to accomplish their obligations under utility energy services contracts.

Impacts

The new Subpart H. for the Energy Efficiency and Conservation Loan Program can have several economic impacts. The benefits include: (1) The value of purchased energy saved; (2) the value of corresponding avoided generation, transmission and/or distribution; (3) reserve investments as may be displaced or deferred by program activities; and (4) savings in energy bills.

The proposed loan program is estimated to have a maximum funding level of $250 million annually. The estimated administrative cost to the applicant and federal government are relatively low, at about $740,000 total for applicants, and about $1.7 million for the Federal government.

Executive Order 12866 and 13563

This proposed rule has been reviewed under Executive Order (EO) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), and has been determined to be significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO. As required by OMB circular A–4 the regulatory impact analysis will be published along with this proposed rule on regulations.gov

The agency has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866 and 13563. In this analysis, the Agency identifies potential benefits and costs of the Energy Efficiency and Conservation Loan Program to borrowers, and RUS. The analysis contains quantitative estimates of the burden to the public and the Federal government and qualitative descriptions of the expected economic, environmental, and energy impacts associated with the Energy Efficiency and Conservation Loan Program.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is an eligible purpose/subsidiary program of the Electrification Loans and Loan Guarantee program as listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. The Catalog is available on the Internet at *http://www.cfda.gov.*

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), comments are invited on this information collection for which the Agency has requested approval from the Office of Management and Budget (OMB).

Comments on this proposed rule must be received by September 24, 2012.

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

Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 1522, Room 5162 South Building, Washington, DC 20250.

Title: Energy Efficiency and Conservation Loan Program.

Type of Request: New information collection.

Abstract: The Agency manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act), which expressly provides for assisting electric borrowers in their implementation of demand side management (DSM), EE Programs and energy conservation programs. This proposed rulemaking expands upon the policies and procedures which are specific to loans for EE Programs. As a practical matter, energy efficiency investment includes the eligible purposes of DSM and energy conservation as well as investments resulting in the better management of existing loads or a reduction in investment needed for additional electric facilities.

The implementation of effective EE Programs by utilities also benefits rural America by creating jobs and these programs stimulate the economy by catalyzing material and equipment orders needed to implement the programs.

Title 7 CFR part 1710 General and Pre-loan Policies and Procedures Common to Electric Loans and Guarantees, subpart H, Energy Efficiency Programs, will provide for insured or guaranteed loans to new or existing borrowers for EE Programs undertaken by them in their service territory.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 hours per response.

Respondents: Not for profit organizations, business or other for profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Responses: 20.

Estimated Total Annual Burden on Respondents: 160 hours.

Copies of this information collection can be obtained from Thomas P. Dickson, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue SW., STOP 1522, Room 5164, Washington, DC 20250–1522. Telephone: 202–690–4492.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Certification

In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Agency will prepare a Programmatic Environmental Assessment (PEA) for this loan program activity as part of this rulemaking process. The PEA will be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS' NEPA implementing regulations, Environmental Policies and Procedures (7 CFR part 1794). A notice will be published in the **Federal Register** announcing the availability of this PEA for public review. No obligations under this proposed new subpart will be processed until the Agency has made a determination of environmental finding for the actions contemplated in the proposed new subpart.

Regulatory Flexibility Act Certification

It has been determined the Regulatory Flexibility Act is not applicable to this rule since the RUS is not required by 5 U.S.C. 551 et seq. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Unfunded Mandates

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards in § 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any, must be exhausted before any action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states and local governments, on the relationship between the national government and the states and locals, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Between October 2010 and January 2011, the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions established a baseline of consultation for future actions, should any be necessary, regarding this rule. As a result of the input received during these sessions, Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

Background

RUS proposes to amend 7 CFR part 1710 by adding a new subpart H entitled ''Energy Efficiency and Conservation Loan Program''. Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly ''authorized and empowered to make loans in the several States and Territories of the United States * * * for the purpose of assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.'' As noted, Section 6101 of the 2008 Farm Bill inserted the words ''and energy efficiency'' into this provision which was originally added as an amendment to the RE Act by the Rural Electrification Loan Restructuring Act of 1993 (''RELRA'') (Pub. L. 103–129 sec. 2(c)(1)(B)).[1] Energy conservation was a part of the Agency's mission even before RELRA explicitly recognized this. In 1980, RUS developed an Energy Resources Conservation Program by issuing RUS Bulletin 20–23, Section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980).[2] Commonly known as the ERC Loan Program, the Administrator used his broad discretion under the RE Act to employ Section 11 of the RE Act, authority to extend the time for payments as the foundation for creating the ''ERC Loan Program.'' RUS did not make ERC Loans directly. It operated the program by entering into agreements with its borrowers to defer amortization of their loans in order for the borrowers to fund energy conservation improvements. The electric cooperatives made loans to their members out of the cash flow resulting from the deferments they received from RUS on their own loans. Even though RUS did not make the ERC loans itself, it provided financial assistance to rural consumers by using the electric cooperatives as intermediaries. Congress subsequently amended Section 12 to expand it, first in 1990 to enable deferments to enable borrowers to provide financing to local businesses to stimulate rural economic development and again in 2008 to authorize energy efficiency and use audits and to install energy efficient measures or devices to reduce demand on electric systems. The recent grant of additional authority in Section 3 of the RE Act to make loans and guarantees for energy efficiency, as contrasted with authority to merely defer payments on direct loans, has become increasingly significant as percentage of the RUS portfolio represented by direct loans continues to amortize. In recent times the Agency delivers nearly all of its electric program assistance in the form of loan guarantees. As a guarantor, RUS does not have the same discretion to defer payments that it does when it is the lender. Consequently, RUS has determined that it is now necessary and appropriate to develop a loan program for this RE Act purpose.

''The REA Act, 7 U.S.C. 904, commits to the discretion of the Administrator the making of loans for rural electrification * * *.'' *Alabama Power Co.* v. *Ala. Elec. Coop.,* 394 F.2d 672 at 675 (CA 5) *cert. denied* 393 U.S. 1000

[1] Senator Patrick Leahy, as the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, explained this provision in a letter dated June 18, 1993 to Senator Jim Sasser, the Chairman of the Senate Committee on the Budget, as follows: ''These amendments also permit REA [RUS] to make loans for demand side management and energy conservation program[s] which are required by some state agencies. They are also often the most cost effective methods of meeting the energy needs of rural areas.''

[2] This Bulletin was rescinded in 2002 when RUS updated and codified the ERC Loan Program as 7 CFR Part 1721, subpart B. (See 67 FR 484, January 4, 2002).

(1968). ''REA is the administrative agency charged by Congress with responsibility for facilitating rural electrification. REA was intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose.'' *Public Utility District No. 1 of Franklin County* v. *Big Bend Electric Cooperative, Inc.,* 618 F.2d 601 at 603 (CA 9 1980). By broadly adding ''energy efficiency'' in the 2008 Farm Bill as a legislative purpose for the RE Act loans, Congress left it to the Administrator's discretion to fashion the appropriate method to accomplish this purpose. Drawing on more than three decades of experience in using electric cooperatives as local intermediaries to accomplish RE Act objectives at the consumer level, RUS is proposing to deliver this energy efficiency program drawing upon its favorable past successes with using its electric borrowers as intermediaries.

RUS anticipates that borrowers under this subpart will be generation and transmission (G&T) borrowers or their distribution members or unaffiliated distribution borrowers who are current on their loan payments and in compliance with their loan documents. RUS will only make loans for these purposes to electric utility systems. RUS also anticipates that the EE improvements installation work may be contracted by either the utility or the ultimate recipient, or performed directly by employees of the borrower, at the discretion of the utility designing the EE Program. In all cases, the Eligible Borrower is expected to hold title to the receivables funded by the RUS loan.

RUS is authorized by the RE Act to make loans to implement DSM, EE Programs and conservation programs, and on-grid and off-grid renewable energy systems. Energy Efficiency in this regulation can be defined as the degree a system or component performs its designated function with minimum consumption of resources. Renewable energy systems have a specific role in this regulation. Renewable generation can be used as load modifiers. Load modifiers can increase the efficiency of energy consumption from the utilities perspective and are highly effective at decreasing energy used by decreasing load during system peaks. Renewable energy and conservation savings associated with this regulation are from the utilities perspective, though the energy savings could be realized by both the consumer and utility, depending on the type of project, as the utility is the RUS borrower and is culpable for repayment of the loan. Energy efficiency as contemplated in this proposed regulation may, depending on the given project, accomplish either DSM, energy conservation, or both. The goals of an eligible EE Program under this proposed subpart may include one or more of the following: (1) To increase energy efficiency at the end user level, (2) to modify electric load such that there is a reduction in overall system demand, (3) to effect a more efficient use of existing electric distribution, transmission and generation facilities, and (4) to attract new businesses and create jobs in rural communities by investing in energy efficiency, and (5) to encourage the use of renewable energy fuels to accomplish either DSM or a reduction in the consumption of conventional fossil fuel within the service territory.

The primary differences between the existing energy resource conservation program codified in subpart B of 7 CFR part 1721 (ERC program) and the EE Program proposed in this rulemaking are: (1) The existing ERC program is limited to direct loan principal deferments and is not available for RUS guaranteed loans, (2) the list of eligible loan purposes for this proposed program is more expansive than for the ERC program and, where applicable, emphasizes that the assets in question must be characterized as an integral part of the Consumer's real property that would typically transfer with the title under applicable state law, and (3) the term of financing available under this proposed subpart is longer than the term allowed for principal deferments under the ERC loan program.

Rural electric cooperatives are proponents of energy efficiency measures. According to the National Rural Electric Cooperative Association, 73% of co-ops plan on significantly expanding existing efficiency programs in the next two years, 70% of co-ops offer financial incentives to promote greater energy efficiency, 96% of co-ops have some form of energy efficiency program in place, cooperatives are responsible for nearly 25% of residential peak load management capacity and cooperatives have 10% of retail electricity sales but are responsible for 20% of actual peak demand reduction. Representatives from rural electric cooperatives have commented that access to low interest funds can be the difference between success and failure for an energy efficiency program.

Eligible EE Programs may be comprised of a variety of activities, performed by either the utility or third parties. This proposed rule sets forth the policies and procedures related to eligible EE Programs where the RUS will finance: (1) Energy efficiency activities undertaken by the utility itself, (2) loans made by the utility to finance energy efficiency projects undertaken by others and (3) investments made by the utility to accomplish their obligations under utility energy services contracts. The types of activities that are eligible for RUS financing under this subpart include but are not limited to: (1) Residential and commercial energy audits, (2) community awareness and outreach programs, (3) services, materials and equipment provided by a qualified local contractor to improve energy efficiency at the Consumer level, and (4) energy efficiency loans made by the utility to its customers. RUS is considering allowing fuel switching as an eligible activity under this regulation. Fuel switching would not be designed to be a permanent change from one fuel to another, rather a method to handle peak loads during limited time periods. A description of EE Programs that would qualify for RUS financing may be found in the proposed § 1710.405. Eligible investments are listed in the proposed § 1710.406. Finally, eligible borrowers are defined in the proposed § 1710.404.

The term ''Energy efficiency'' is used in this part to refer to eligible load modification investments as well as traditional energy efficiency projects. A program to finance photovoltaic (solar) installations, for example, would typically be classified as distributed renewable generation, not energy efficiency. Distributed solar investments, however, including those made by individual Consumers, may also impact the load profile of the interconnected utility in a positive way, or facilitate demand side management, and they would be an eligible purpose for this program where any associated power flow from them into the grid is incidental. Small scale renewable energy systems that are constructed with the primary purpose of supplying energy to the grid would not be considered an energy efficiency investment under this loan program. Such small scale renewable energy systems may be financed under this Agency's traditional loan programs. The operative distinctions between eligible investments under this proposed subpart and the regular loan program are (1) these assets would ordinarily be on the customer side of the meter and (2) to the extent these assets deliver electricity to the grid, it will not exceed an incidental amount. This rulemaking proposes that the small scale renewable energy system investments financed on the Consumer side of the meter under this program will be presumed to be incidental where the nameplate generation capacity is less than 50% of the average anticipated electrical load associated with the end user.

Some programs designed by utilities may have the utility initially owning an asset even though it is located on a Consumer's premise and the asset is later conveyed to the Consumer after it is paid for or a period of time has elapsed. Where this is the case, RUS is proposing that the application include an additional or revised Schedule C to the RUS mortgage listing these assets as Excepted Property under the RUS mortgage, so as to preclude the assets being captured under the after acquired clause that is standard in the RUS mortgage codified in 7 CFR part 1718. It is the intent of RUS that a release of lien need not be executed by the Agency for the utility to convey to the Consumer clear title to these assets when this Schedule C is recorded.

This proposed rulemaking recognizes that energy may take a variety of forms, not just electricity. The criteria to be met by eligible programs include energy efficiency as measured by Btu [3] input relative to Btu output, in order to facilitate the widest and greatest contribution by the rural utility in optimizing the energy consumption profile of its service territory. The proposed rulemaking also provides that an eligible program must demonstrate that the financial strength of the electric utility is not harmed by EE Program activities funded under this proposed new subpart.

An important distinction between eligible energy efficiency assets to be financed under this new subpart H and other energy efficiency activities is that the assets located at a Consumer's premises, whether or not title is to be held by the utility must, for the most part, be considered an integral part of the real property that would typically transfer with the title under applicable State law (a specified exception relates to lighting) in order to be financed pursuant to an eligible program under this proposed rulemaking.

Eligible programs may provide that the utility will recoup all or part of the costs from specific ratepayers on whose behalf an investment has been made. Recoupment may take the form of Consumer loan repayment or a dedicated tariff. An eligible program under this part must show that the payment terms and loan term offered to the Consumer are generally correlated with the expected life of the applicable assets. An eligible program must also offer an undertaking that funds collected from ratepayers in excess of the current amortization requirements for the RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan. These prepayments would be in addition to scheduled principal and interest debt service payments.

Applications for program financings under this subpart must fully describe a Business Plan that meets the requirements of § 1710.407.

The Agency recognizes that energy efficiency investments that reduce energy consumption at the Consumer premises (for instance those that affect the power factor) may prompt a need for investments at the system level to sustain the reliability and stability of the grid. The business plan called for in this proposed rulemaking must identify the related system investment to be identified as part of the EE Program, but these system level investments would be reflected in the utility's construction work plan and financed as part of a traditional loan application.

It is not required that an eligible program fund energy audits performed at Consumer premises. However, if the utility proposes to provide audits the rulemaking proposes that the program must also include a provision for assisting Consumers in implementing changes suggested by the audit in those cases where the recommended investments are expected to achieve minimum performance objectives. A program that funds energy audits without providing assistance for implementing audit recommendations included in the audit would not be an eligible program and only those activities that meet minimum performance objectives are eligible to be funded under this program. Only those audit recommendations that taken together will achieve an overall reduction in annualized energy consumption at a specific premise of at least 10% may be financed with RUS loan funds under this subpart.

The list of eligible investments and activities that a qualified plan may incorporate is not intended to be exhaustive. The intent is to facilitate flexibility for the utility's EE Program consistent with the resources and Consumer profiles in its service territory.

Performance thresholds have been established in this regulation. The objective of these thresholds is to ensure a minimum increase in energy efficiency for a given system. This approach also ensures that any energy efficiency upgrades will not be marginal. These thresholds appear as percent increases in system efficiency. At this time there are no standards to apply to each of these systems.

This proposed lending program is designed for utility-designed and directed EE Programs. As such it anticipates that eligible loan purposes will include program administrative and other soft costs, such as marketing expenses, where not more than four percent of the loan budget may be used for these purposes. A utility's program may include acting as an intermediary lender, where the utility uses RUS financing to make Consumer loans to finance these investments on the Consumers' premises. Where this is the case, this rulemaking proposes to cap the interest rate at one percent that the utility can charge.

The process for applying for EE Program loans is intended to largely conform to the Agency's existing process for loans relating to other eligible purposes. Accordingly, the requirements discussed throughout 7 CFR part 1710 are proposed to apply equally to EE Program loans unless otherwise stated after giving effect to the proposed conforming amendments incorporated in this rulemaking. Expenditures by the utility will be reimbursed by the Agency after the fact pursuant to an inventory of work orders system as is typical for our existing loan process. The analytical material needed to support an EE Program loan is different from what is needed to analyze a generation or transmission loan. Accordingly, the proposed subpart H elaborates on what is needed for RUS to approve an EE Program and loans to execute the program. EE Program activity will be captured under a separate energy efficiency work plan. Energy efficiency investments will not be listed on the traditional construction work plan that applies to utility assets financed by RUS.

As with other loans made pursuant to 7 CFR part 1710, a borrower's Environmental Report (ER) is expected to accompany the energy efficiency work plan associated with the loan request. The ER is in accordance with 7 CFR 1794. This Part contains the policies and procedures of the Rural Utilities Service for implementing the requirements of the National Environmental Policy Act. In the case of an EE Program loan, this ER will be expected to reference the PEA as completed by the Agency for EE Program loans, and identify any investments that are proposed in the work plan that were not captured in the PEA.

This new subpart H is not intended to be duplicative of requirements

[3] British Thermal Unit.

otherwise prescribed in part 1710, but rather, adaptive. It identifies requirements that are unique to loans made under the proposed subpart H to finance EE Programs. It addresses federal requirements that arise when our direct borrower acts as an intermediary lender to accomplish the investments outlined in an approved EE program. Where there is an express conflict with requirements elsewhere in part 1710, the provisions of the proposed subpart H would apply, but otherwise this proposed subpart H is not intended to supplant the applicability of the rest of part 1710 or other applicable parts in the Code of Federal Regulations.

Subpart H, as required with for all of 1710, will work with DOE, following the requirements set of by the Rural Electrification Act of 1936, Section 16 that states: ''the Secretary in making or guaranteeing loans for the construction, operations, or enlargement of generating plants or electric transmission lines or systems shall consider such general criteria consistent with the provisions of this Act as may be published by the Secretary of Energy.''

Comments Are Specifically Invited on the Following Questions

1. What should be the threshold for determining when small scale renewable energy systems on the Consumer side of the meter is presumed incidental and thereby qualify for reimbursement under this program?

2. What is the appropriate markup above the Treasury-based interest rate paid to RUS that the utility should be allowed to add to cover its administrative costs in the interest rate it establishes for Consumer loans funded under this proposed subpart?

3. What is the appropriate performance thresholds that should be set to ensure products purchased with loan funds are significantly more energy efficient than conventional products, have reasonable payback periods, and perform at least as well as conventional products? Are the percentage energy efficiency improvements for specific projects appropriate measures for this program's energy efficiency standards? Should this rule reference existing energy efficiency standards or criteria such as those from ENERGY STAR, FEMP, ANSI, or other voluntary consensus standards as a means of ensuring products purchased with loan funds are significantly more energy efficiency than conventional products?

4. Should fuel switching be an eligible activity under this programmatic regulation? Should the agency consider any net increases in conventional fossil fuel consumption or emissions due to fuel switching even though the utility's electrical load may be reduced during peak periods? Would limiting fuel switching projects to 50% of the average anticipated electrical load associated with the end user, adequately address any concerns with potential emissions or overall energy generation increases?

5. RUS requests comment on the one percent cap on interest rates that utilities may charge under this program, where the utility uses RUS financing to make Consumer loans to finance these investments on the Consumers' premises. RUS also requests comment on the four percent limit of the loan budget that may be used on administration and other soft costs, such as marketing expenses.

6. RUS requests comment on the appropriate funding cap for this program. Should it be $250 million?

List of Subjects

7 CFR Part 1710

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Loan programs energy, Rural areas.

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Agency proposes to amend 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

2. In § 1710.2(a) revise the definition of ''Demand side management'' and add a new definition of ''Eligible Energy Efficiency Programs'' in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

Demand side management (DSM) means the deliberate planning and/or implementation of activities to influence Consumer use of electricity provided by a distribution borrower to produce beneficial modifications to the system load profile. Beneficial modifications to the system load profile ordinarily improve load factor or otherwise help in utilizing electric system resources to best advantage consistent with acceptable standards of service and lowest system cost. Load profile modifications are characterized as peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load profile. (See, for example, publications of the Electric Power Research Institute (EPRI), 3412 Hillview Avenue, Palo Alto, CA 94304, especially ''Demand-Side Management Glossary'' EPRI TR–101158, Project 1940–25, Final Report, October 1992.) DSM includes energy conservation programs. It does not include sources of electrical energy such as renewable energy systems unless the power flow into the grid from such an interconnected resource is incidental to the operation of the source. A small scale renewable energy source with a nameplate capacity 50 percent or less than the average anticipated load of the associated end user(s) is presumed to be incidental.

* * * * *

Eligible Energy Efficiency and Conservation Programs (Eligible EE Program) means an energy efficiency and conservation program that meets the requirements of subpart H of this part.

* * * * *

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 [Amended]

3. In § 1710.100, amend the first sentence by adding the words ''efficiency and'' before ''energy conservation.''

§ 1710.101 [Amended]

4. In § 1710.101, amend the second sentence of paragraph (b) by adding the word ''direct'' before ''loans to individual Consumers.''

§ 1710.102 [Amended]

5. Amend § 1710.102 as follows:

a. Amend the first sentence of paragraph (a) of by adding ''energy efficiency and'' before ''energy conservation.''

b. Amend the first sentence of paragraph (b) by adding ''energy efficiency and'' before ''energy conservation.''

6. Amend § 1710.106 by adding a new paragraph (a)(6), and revising paragraphs (c)(1) and (d) to read as follows:

§ 1710.106 Uses of loan funds.

(a) * * *

(6) Eligible Energy Efficiency and Conservation Programs pursuant to subpart H of this part.

* * * * *

(c) * * *

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the Consumer, except for assets financed pursuant to an Eligible EE Program, and qualifying items included in a loan for demand side management or energy resource conservation programs, or small scale renewable energy systems.

* * * * *

(d) A distribution borrower may request a loan period of up to 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation facilities and improvements or replacements of generation facilities. The loan period for new generating facilities and DSM activities will be determined on a case by case basis. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator's sole discretion, a loan made for the longer period would fail to meet RUS requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

* * * * *

§ 1710.109 [Amended]

7. In § 1710.109 amend the first sentence of paragraph (a) by adding the words ''energy efficiency and conservation program work plan,'' after ''construction work plan.''

8. Amend § 1710.115 by adding a new paragraph (c) to read as follows:

§ 1710.115 Final maturity.

* * * * *

(c) The term for loans made to finance Eligible EE Programs will be determined in accordance with § 1710.408 of this part.

* * * * *

§ 1710.120 [Amended]

9. In § 1710.120 add the words ''energy efficiency and conservation program work plans,'' after ''construction work plans,''

Subpart D—Basic Requirements for Loan Approval

10. Amend § 1710.152 by adding a new paragraph (e) to read as follows:

§ 1710.152 Primary support documents.

* * * * *

(e) *EE Program work plan (EEPWP).* In the case of a loan application to finance an Eligible Energy Efficient Program, an EE Program work plan shall be prepared in lieu of a traditional CWP required pursuant to paragraph (b) of this section. The requirements for an EEPWP are set forth in § 1710.255 and in subpart H of this part.

Subpart E—Load Forecasts

11. Amend § 1710.202 by adding a new paragraph (d) to read as follows:

§ 1710.202 Requirement to prepare a load forecast—power supply borrowers.

* * * * *

(d) Notwithstanding paragraphs (a) through (c) of this section, a power supply borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

12. Amend § 1710.203 by adding a new paragraph (f) to read as follows:

§ 1710.203 Requirement to prepare a load forecast—distribution borrowers.

* * * * *

(f) Notwithstanding paragraphs (a) through (e) of this section, a distribution borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

§ 1710.205 [Amended]

13. In § 1710.205 amend paragraph (b)(5) by adding the words ''and energy efficiency and conservation program'' after ''demand side management''.

Subpart F—Construction Work Plans and Related Studies

14. Add § 1710.255 to subpart F to read as follows:

§ 1710.255 Energy efficiency work plans—energy efficiency borrowers.

(a) All energy efficiency borrowers must maintain a current EEWP approved by their board of directors covering all new construction, improvements, replacements, and retirements of energy efficiency related equipment and activities;

(b) An energy efficiency borrower's EEWP shall cover a period of between 2 and 4 years, and include all facilities to be constructed or improved which are eligible for RUS financing, whether or not RUS financial assistance will be sought or be available for certain facilities. The term for any RUS financing provided for the facilities may be up to 30 years for ground source heat pump systems and up to 15 years for all other energy efficiency improvements and installations. The construction period covered by an EEWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities;

(c) The borrower's EEWP may only include facilities, equipment and other activities that have been approved by RUS as a part of an Eligible Energy Efficiency and Conservation Program pursuant to subpart H of this part;

(d) The borrower's EEWP must be consistent with the documentation provided as part of the current RUS approved EE Program as outlined in § 1710.410(c); and

(e) The borrower's EEWP must include an estimated schedule for the implementation of included projects.

Subpart G—Long Range Financial Forecasts

15. Amend § 1710.300 by redesignating paragraphs (d)(3) through (d)(5) as paragraphs (d)(4) through (d)(6) respectively; and adding a new paragraph (d)(3) to read as follows:

§ 1710.300 General.

* * * * *

(d) * * *

(3) RUS-approved EE Program work plan;

* * * * *

§ 1710.302 [Amended]

16. In § 1710.302 amend paragraph (d)(5) by removing the reference ''§ 1710.300(d)(5)'' and adding in its place ''§ 1710.300(d)(6)''.

Subpart I—Application Requirements and Procedures for Loans

17a. In subpart I, redesignate §§ 1710.400 through 1710.407 as §§ 1710.500 through 1710.507, respectively.

17b. Add subpart H consisting of §§ 1710.400 through 1710.499, to read as follows:

Subpart H—Energy Efficiency and Conservation Loan Program

Sec.

Subpart H—Energy Efficiency and Conservation Loan Program

§ 1710.400 Purpose.

This subpart establishes policies and requirements that apply to loans and loan guarantees to finance Energy Efficiency and Conservation programs (EE Programs) undertaken by an eligible utility system to finance demand side management, energy efficiency and conservation, or on-grid and off-grid renewable energy system programs that will result in the better management of their system load growth, a more beneficial load profile, or greater optimization of the use of alternative energy resources in their service territory.

§ 1710.401 RUS policy.

EE Programs under this part may be financed at the distribution level or by an electric generation and transmission provider. RUS encourages borrowers to coordinate with the relevant member systems regarding their intention to implement a program financed under this part. RUS also encourages borrowers to leverage funds available under this subpart with State, local, or other funding sources that may be available to implement such programs.

§ 1710.402 Scope.

This subpart adapts and modifies, but does not supplant, the requirements for all borrowers set forth elsewhere where the purpose of the loan is to finance an approved EE program. In the event there is overlap or conflict between this subpart and the provisions of this part 1710 or other parts of the Code of Federal Regulations, the provisions of this subpart will apply for loans made or guaranteed pursuant to this subpart.

§ 1710.403 General.

EE Programs financed under this subpart may be directed at all forms of energy consumed within a utility's service territory, not just electricity, where the electric utility is in a position to facilitate the optimization of the energy consumption profile within its service territory and do so in a way that enhances the financial or physical performance of the rural electric system and enables the repayment of the energy efficiency loan.

§ 1710.404 Definitions.

For the purpose of this subpart, the following terms shall have the following meanings. In the event there is overlap or conflict between the definitions contained in § 1710.2, the definitions set forth below will apply for loans made or guaranteed pursuant to this subpart.

British thermal unit (Btu) means the quantity of heat required to raise one pound of water one degree Fahrenheit.

Cost effective means the cost of an EE Program is less than the financial benefit of the program over time. The cost of a program for this purposes shall include the costs of incentives, measurement and verification activity and administrative costs, and the benefits shall include the value of energy saved, the value of corresponding avoided generation, transmission or distribution and reserve investments as may be displaced or deferred by program activities.

Demand means the electrical load averaged over a specified interval of time. Demand is expressed in kilowatts, kilovolt amperes, kilovars, amperes, or other suitable units. The interval of time is generally 15 minutes, 30 minutes, or 60 minutes.

Demand savings means the quantifiable reduction in the load requirement for electric power, usually expressed in kilowatts (kW) or megawatts (MW) such that it reduces the cost to serve the load.

Eligible borrower means a utility system that has direct or indirect responsibility for providing retail electric service to persons in a rural area.

Energy audit means an inspection and analysis of energy flows in a building, process, or system with the goal of identifying opportunities to enhance energy efficiency. The activity should result in an objective standard- based technical report containing recommendations for improving the energy efficiency. The report should also include a cost benefit analysis reflecting the estimated benefits and costs of pursuing each recommendation.

Energy efficiency and conservation measures means equipment, materials and practices that when installed and used at a Consumer's premise result in a verifiable reduction in energy consumption, measured in Btus, or demand as measured in Btu-hours, or both, at the point of purchase relative to a base level of output. The ultimate goal is the reduction of utility energy needs.

Energy efficiency and Conservation program (EE Program) means a program of activities undertaken or financed by a utility within its service territory to reduce the amount or rate of energy used by Consumers relative to a base level of output.

HVAC means heating, ventilation, and air conditioning.

Load means the Power delivered to power utilization equipment performing its normal function.

Load factor means the ratio of the average load over a designated period of time to the peak load occurring in the same period.

Net Utility Plant means Total Utility Plant net of accumulated depreciation.

Peak demand (or maximum demand) means the highest demand measured over a selected period of time, e.g., one month.

Peak demand reduction means a decrease in electrical demand on an electric utility system during the system's peak period, calculated as the reduction in maximum average demand achieved over a specified interval of time.

Power means the rate of generating, transferring, or using energy. The basic unit is the watt, where one Watt is approximately 3.41213 Btu/hr.

Re-lamping means the initial conversion of bulbs or light fixtures to more efficient lighting technology but not the replacement of like kind bulbs or fixtures after the initial conversion.

Seasonal Energy Efficiency Rating (SEER) means the commonly used measure of efficiency of Consumer central air conditioners and heat pumps. It is the ratio of cooling output divided by electric energy input (Btu/Wh).

SI means the International System of Units: the modern metric system.

Smart Grid Investments means capital expenditures for devices or systems that are capable of providing real time, two way (utility and Consumer) information and control protocols for individual Consumer owned or operated appliances and equipment, usually through a Consumer interface or smart meter.

Ultimate Recipient means a Consumer that receives a loan from a borrower under this subpart.

Utility Energy Services Contract (UESC) means a contract whereby a utility provides a Consumer with comprehensive energy efficiency improvement services or demand reduction services.

Utility System means an entity in the business of providing retail electric service to Consumers (distribution entity) or an entity in the business of providing wholesale electric supply to distribution entities (generation entity) or an entity in the business of providing transmission service to distribution or generation entities (transmission entity), where, in each case, the entities provide the applicable service using self-owned or controlled assets under a published tariff that the entity and any associated regulatory agency may adjust.

Watt means the SI unit of power equal to a rate of energy transfer (or the rate at which work is done), of one joule per second.

§ 1710.405 Eligible energy efficiency and conservation programs.

(a) *General.* Eligible EE Programs shall:

(1) Be developed and implemented by an Eligible borrower and applied within its service territory;

(2) Consist of eligible activities and investments as provided in § 1710.406

(3) Provide for the use of State and local funds where available to supplement RUS loan funds;

(4) Incorporate the applicant's policy applicable to the interconnection of distributed resources;

(5) Incorporate a business plan that meets the requirements of § 1710.407;

(6) Incorporate a quality assurance plan that meets the requirements of § 1710.408;

(7) Demonstrate that the program can be expected to be Cost effective;

(8) Demonstrate that the program will have no net negative cumulative impact on the borrower's financial condition over the time period contemplated in the analytical support documents provided pursuant to § 1710.411;

(9) Demonstrate energy savings or peak demand reduction for the service territory overall; and

(10) Be approved in writing by RUS prior to the investment of funds for which reimbursement will be requested.

(b) *Financial Structures.* Eligible EE Programs may provide for direct recoupment of expenditures for eligible activities and investment from Consumers as follows:

(1) Loans made to Consumers located in a rural area where—

(i) The Consumers may be wholesale or retail;

(ii) The loans may be secured or unsecured;

(iii) The loan receivables are owned by the Eligible Borrower;

(iv) The loans are made or serviced directly by the Eligible Borrower or by a financial institution pursuant to a contractual relationship between the Eligible Borrower and the financial institution;

(v) Due diligence is performed to confirm the repayment ability of the Consumer;

(vi) Loans are funded only upon completion of the project financed or to reimburse startup costs that have been incurred;

(vii) The rate charged the Consumer is less than or equal to the direct Treasury rate established daily by the United States Treasury pursuant to § 1710.51(a)(1) or § 1710.52, as applicable, plus 1%, as of the date the Consumer loan is approved; and

(viii) Loans are not used to refinance a preexisting loan.

(2) A tariff that is specific to an identified rural Consumer, premise or class of ratepayer; or

(3) Other financial recoupment mechanisms as may be approved by RUS.

(c) *Period of Performance*—(1) *Performance Thresholds.* (i) Eligible EE Programs activities that are listed under § 1710.406(b) should be designed to achieve the applicable operating performance thresholds within one year of the date of installation of the facilities.

(ii) All activities other than those included in subparagraph (c)(1)(i) above should be designed to achieve the applicable operating performance targets within the time period contemplated by the analytic support documents for the overall EE Program as approved by RUS.

(2) *Cost effectiveness.* Eligible EE Programs must demonstrate that Cost effectiveness as measured for the program overall will be achieved within five years of initial funding.

§ 1710.406 Eligible activities and investments.

(a) *General.* Eligible program activities and investments:

(1) Shall be designed to improve energy efficiency or managed demand on the customer side of the meter;

(2) Shall be Cost effective in the aggregate after giving effect to all activities and investments contemplated in the approved EE Program; and

(3) May apply to all Consumer classes.

(b) *Eligible activities and investments.* Eligible program activities and investments may include, but are not limited to, the following:

(1) Energy efficiency and conservation measures where assets financed at a Consumer premises can be characterized as an integral part of the real property that would typically transfer with the title under applicable state law.

(2) Small Scale Renewable Energy Systems, including—

(i) On or Off Grid Renewable energy systems;

(ii) Fuel cells;

(3) Demand side management (DSM) investments excluding Smart Grid Investments;

(4) Energy audits;

(5) Utility Energy Services Contracts;

(6) Consumer education and outreach programs;

(7) Power factor correction equipment on the Consumer side of the meter;

(8) Re-lamping to more energy efficient lighting; and

(9) Other activities and investments as approved by RUS as part of the EE Program

(c) *Intermediary lending.* EE Program loan funds may be used for direct re-lending to Consumers where the requirements of § 1710.405(b) are met

(d) *Performance thresholds.*

(1) *Energy efficiency and conservation measures:*

(i) Appliance upgrades must achieve a reduction in energy consumption for the appliance equal to or greater than 20%;

(ii) Cooling system improvements must be designed to achieve a SEER increase of not less than 20%, and the improved SEER rating must be greater than or equal to the minimum applicable SEER standard promulgated by the U.S. Department of Energy for the cooling system;

(iii) Building envelope improvements must be designed to achieve a reduction of annualized baseline energy consumption (measured in Btus) greater than 10% for the building;

(2) *Energy audit recommendations.* Only those recommendations that taken together will achieve an overall reduction in annualized energy consumption of at least 10% at the Consumer premises covered by the audit may be financed with RUS loan funds under this subpart.

(3) Heating system improvements must demonstrate an annualized energy reduction in Btu consumption equal to or greater than 20%.

(4) Activities not otherwise listed in this paragraph (d) must demonstrate energy savings which will be determined on a case by case basis by RUS, but in any event not less than a 10% improvement in energy efficiency.

(e) The borrowers shall follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency and conservation measures associated with different technologies. RUS will make this bulletin or publication publicly available and revise it from time to time as RUS deems it necessary.

§ 1710.407 Business plan.

An Eligible EE Program must have a business plan for implementing the program. The business plan must have the following elements:

(a) Executive summary. The executive summary shall capture the overall objectives to be met by the Eligible EE Program and the timeframe in which they are expected to be achieved.

(b) Organizational background. The background section shall include descriptions of the management team responsible for implementing the Eligible EE Program.

(c) Marketing plan. The marketing section should identify the target Consumers, promotional activities to be pursued and target penetration rates by Consumer category and investment activity.

(d) Operations plan. The operations plan shall include but is not limited to:

(1) A list of the activities and investments to be implemented under the EE Program and the Btu savings goal targeted for each category;

(2) An estimate of the dollar amount of investment by the utility for each category of activities and investments listed under paragraph (d)(1) of this section;

(3) A staffing plan that identifies whether and how outsourced contractors or subcontractors will be used to deliver the program;

(4) A description of the process for documenting and perfecting collateral arrangements for Consumer loans, if applicable; and

(5) The overall Btu savings to be accomplished over the life of the EE Program.

(e) Financial Plan. The financial plan shall include but is not limited to:

(1) A schedule showing sources and uses of funds for the program;

(2) An itemized budget for each activity and investment category listed in the operations plan;

(3) A Cost effectiveness forecast for each activity and investment category listed in the operations plan;

(4) Where applicable, provision for Consumer loan loss reserves. These loan loss reserves will not be funded by RUS.

(5) Identify expected loan delinquency and default rates and report annually on deviations from the expected rates

(f) Risk analysis. The business plan shall include an evaluation of the financial and operational risk associated with each activity and investment category listed in the operations plan, including an estimate of prospective Consumer loan losses consistent with the loan loss reserve to be established pursuant to subparagraph (e)(4) above.

(g) The borrowers shall follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency business plans. RUS will make this bulletin or publication publicly available and revise it from time to time as RUS deems it necessary.

§ 1710.408 Quality assurance plan.

An Eligible EE Program must have a quality assurance plan as part of the program. The quality assurance plan must have the following elements:

(a) Quality assurance assessments shall include the use of qualified energy managers or professional engineers to evaluate program activities and investments;

(b) Energy audits shall be performed for energy efficiency investments involving the building envelope at a Consumer premises;

(c) Energy audits must be performed by certified energy auditors; and

(d) Follow up audits shall be performed within one year after installation on all investments made to confirm whether efficiency improvement expectations are being met.

(e) In cases involving energy efficiency upgrades to a single system (such as a ground source heat pump) the new system must be designed and installed by certified and insured professionals acceptable to the utility.

(f) Industry or manufacturer standard performance tests, as applicable, shall be required on any system upgraded as a result of an EE Program. This testing shall indicate the installed system is meeting its designed performance parameters.

(g) In some programs the utility may elect to recommend independent contractors who can perform energy efficiency related work for their customers. In these cases utilities shall monitor the work done by the contractors and confirm that the contractors are performing quality work. Utilities should remove substandard contractors from their recommended lists if the subcontractors fail to perform at a satisfactory level.

(h) Contractors not hired by the utility may not act as agents of the utility in performing work financed under this subpart.

(i) The borrowers shall follow a bulletin or other publication that RUS deems appropriate and contains and describes best practices for energy efficiency quality assurance plans. RUS will make this bulletin or publication publicly available and revise it from time to time as RUS deems it necessary.

§ 1710.409 Loan provisions.

(a) *Loan term.* The maximum term for loans under this subpart shall be 15 years unless the loans relate to ground source loop investments. The maximum term for loans for ground source loop investments only shall be 30 years. Ground source loop investments as the term is used in this paragraph do not include ancillary equipment related to ground source heat pump systems.

(b) *Loan feasibility.* Loan feasibility must be demonstrated for all loans made under this subpart. Loans made under this subpart shall be secured.

(c) *Reimbursement for completed projects.* (1) A borrower may request an initial advance not to exceed five percent of the total loan amount for working capital purposes to implement an eligible EE Program;

(2) Except for the initial advance provided for in paragraph (c)(1) of this section, all advances under this subpart shall be used for reimbursement of expenditures relating to a completed activity or investment; and

(3) Advances shall be in accordance with RUS procedures.

(d) *Loan amounts.* (1) Cumulative loan amounts outstanding under this subpart may not exceed 100% of Net Utility Plant less total outstanding debt inclusive of any loan applied for under this subpart; and

(2) Financing for Consumer education and outreach programs may not exceed 4% of the total loan amount.

(3) The Rural Utilities Service reserves the right to place a cap on both the total amount of funds an eligible entity can apply for, as well as a cap on the total amount of funds the energy efficiency and Conservation program can utilize in the appropriations. These caps will be announced regularly through the **Federal Register**.

§ 1710.410 Application documents.

The required application documentation listed in this section is not all inclusive but is specific to Eligible borrowers requesting a loan under this subpart and in most cases is supplemental to the general requirements for loan applications provided for in this part 1710:

(a) A letter from the Borrower's General Manager requesting a loan under this subpart.

(b) A copy of the board resolution establishing the EE Program that reflects an undertaking that funds collected in excess of then current amortization requirements for the related RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan.

(c) Current RUS-approved EE Program documentation that includes:

(1) A Business Plan that meets the requirements of § 1710.407;

(2) A Quality Assurance Plan that meets the requirements of § 1710.408;

(3) Analytical support documentation that meets the requirements of § 1710.411;

(4) A copy of RUS' written approval of the EE Program.

(d) An EE Program work plan that meets the requirements of § 1710.255;

(e) A statement of whether an initial working capital advance pursuant to § 1710.409(c)(1) is included in the loan budget together with a schedule of how these funds will be used.

(f) A proposed draft Schedule C pursuant to 7 CFR part 1718 that lists assets to be financed under this subpart as excepted property under the RUS mortgage, as applicable.

§ 1710.411 Analytical support documentation.

Applications for loans under this subpart may only be made for eligible activities and investments included in an RUS-approved EE Program. In addition to a business plan and operations plan, a request for EE program approval must include analytical support documentation that demonstrates the program meets the requirements of § 1710.303 and assures RUS of the operational and financial integrity of the EE Program. This documentation must include, but is not necessarily limited to, the following:

(a) A comparison of the utility's projected annual growth in demand after incorporating the EE Program together with an updated baseline forecast on file with RUS, where each includes an inventory of energy consuming devices used by customers in the service territory and a specific time horizon as determined by the utility for meeting the performance objectives established by them for the EE Program;

(b) An itemized estimate of the energy savings and peak demand reduction to be obtained for each category of eligible activities and investments to be pursued;

(c) An evaluation of the Cost effectiveness of each category of eligible activities and investments to be pursued under the EE Program;

(d) Demonstration that the required periods of performance under § 1710.405(c) can reasonably be expected to be met;

(e) A report of discussions and coordination conducted with the power supplier, where applicable, issues identified as a result, and the outcome of this effort.

(f) An estimate of the amount of direct investment in utility-owned generation that will be deferred as a result of the EE Program;

(g) A description of efforts to identify state and local sources of funding and, if available, how they are to be integrated in the financing of the EE Program; and

(h) Copies of sample documentation used by the utility in administering its EE Program.

(i) Such other documents and reports as the Administrator may require.

§ 1710.412 Borrower accounting methods, management reporting and audits.

Nothing in this subpart changes a Borrower's obligation to comply with RUS's accounting, monitoring and reporting requirements. In addition thereto, the Administrator may also require additional management reports that provide the agency with a means of evaluating the extent to which the goals and objectives identified in the EE Plan are being accomplished.

§ 1710.413 Compliance with other laws and regulations.

Nothing in this subpart changes a Borrower's obligation to comply with all laws and regulations to which it is subject.

§§ 1710.414–1710.499 [Reserved]

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

18. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

19. Amend § 1717.852 by revising paragraph (b)(2)(ii) to read as follows:

§ 1717.852 Financing purposes.

* * * * *

(b) * * *

(2) * * *

(ii) Renewable energy systems and RUS-approved programs of demand side management, energy efficiency and energy conservation; and

* * * * *

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED AND GUARANTEED ELECTRIC LOANS

20. The authority citation for part 1721 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—Advance of Funds

21. Amend § 1721.1 by revising paragraph (a) to read as follows:

§ 1721.1 Advances.

(a) *Purpose and amount.* With the exception of minor projects, insured loan funds will be advanced only for projects that are included in an RUS approved borrower's construction work plan (CWP), EE Program work plan (EEWP), or approved amendment, and in an approved loan as amended. Loan fund advances can be requested in an amount representing actual costs incurred.

* * * * *

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

22. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart C—Engineering Services

23. Amend § 1724.30 by revising paragraph (a) to read as follows:

§ 1724.30 Borrowers' requirements—engineering services.

* * * * *

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the planning (including the development of an EE Program eligible for financing pursuant to subpart H of part 1710 of this chapter, design, and construction management of the system.

* * * * *

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

24. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart B—Operations and Maintenance Requirements

25. Amend Appendix A to subpart B of Part 1730 by adding a new paragraph 13.f. to read as follows:

Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

* * * * *

13. * * *

f. Energy Efficiency and Conservation Program quality assurance compliance—Rating:____

* * * * *

Dated: July 16, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–17784 Filed 7–25–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0774; Directorate Identifier 2010–SW–057–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350BA helicopters with certain AERAZUR emergency flotation gear container assemblies installed. This proposed AD would require replacing each affected emergency flotation gear container assembly (container assembly) at specified time limits based on the date of manufacture. This proposed AD is prompted by a recognition that container assemblies with an intended operating limitation of 10 years may not have been replaced because the limit is no longer recorded in the Maintenance Program. The proposed actions are intended to prevent failure of the emergency container assembly due to age and subsequent damage to the helicopter and injury to the occupants after an emergency water landing.

DATES: We must receive comments on this proposed AD by September 24, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, email gary.b.roach@faa.gov.

SUPPLEMENTARY INFORMATION

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No. 2008–0189, dated October 10, 2008, to correct an unsafe condition for the Eurocopter Model AS350BA helicopters with certain AERAZUR emergency flotation gear installed. EASA advises that the container assemblies have an operating life limit of 10 years from the date of manufacture. The EASA AD states that ‘‘as of June 2006, this limit is no longer recorded in the Maintenance Program; therefore, after June 2006, container assemblies having already exceeded the 10-year limit could have not been replaced yet.’’ The EASA AD also states that ‘‘floating performance of a helicopter may prove to be insufficient in the event of ditching, in case of failure of a container assembly being operated beyond its operating time limit.’’

FAA's Determination

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, EASA has kept the FAA informed of the situation described above.

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 25.01.02, dated September 24, 2008 (EASB), which specifies certain times measured from the date of manufacture to replace the container assemblies. EASA classified this EASB as mandatory and issued AD No. 2008–0189, dated October 10, 2008, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require determining the manufacturing date of each part-numbered container assembly, and depending on the date, replacing