

RUS notes means those notes, bonds, or other obligations evidencing indebtedness created by loans made by RUS pursuant to titles I, II, or III of the Act.

Subaccount means the *Rural Economic Development Subaccount* established pursuant to the Act as part of the Fund.

§ 1785.68 Establishing an RUS cushion of credit payment account.

A cushion of credit account shall be automatically established by RUS for each borrower who makes a payment after October 1, 1987, in excess of amounts then due on an RUS note. Such account will bear interest at a rate of 5 percent per annum. All payments on RUS notes which are in excess of required payments and not otherwise designated shall be deposited in the borrowers' respective cushion of credit accounts. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due.

§ 1785.69 Cushion of credit payment account computations.

(a) *Deposits.* Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) *Interest.* Interest at the rate of 5 percent per annum shall be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction in the interest billed on the borrower's RUS notes and will be separately shown on RUS Form 694, "Statement of Interest and Principal Due."

§ 1785.70 Application of RETRF cushion of credit payments.

(a) If a maturing installment on an RUS note or a note which has been guaranteed by RUS is not received by its due date, funds will be withdrawn from the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest of such notes as follows: first, to

current interest then due on all notes; second, to the accumulated interest due, if any, on all notes; and third, to the principal then due on all notes. In those instances where a borrower has prior to October 2, 1987, maintained an advance payment account with RUS, its cushion of credit account will be applied in accordance with the provisions of this section prior to using any balance remaining in its advance payment account to pay interest and principal installments on notes. Computations required under this section have been made by RUS as of October 2, 1987; however, on or before May 25, 1989 any borrower may make a one time irrevocable election to have all such computations made as of April 5, 1989, by filing written notice to that effect with Robert D. Ruddy, Director, Fiscal Accounting Division, Rural Utilities Service, Washington, DC 20250-1500.

(b) A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the Act.

[54 FR 13669, Apr. 5, 1989; 54 FR 17703, Apr. 25, 1989]

PART 1786—PREPAYMENT OF RUS GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart A—General [Reserved]

1786.1-1786.24 [Reserved]

Subpart B—Prepayment of RUS Guaranteed Federal Financing Bank Loans Pursuant to Section 306(A) of the RE Act

Sec.

1786.25 Purpose.

1786.26 Policy.

1786.27 Definitions and rules of construction.

1786.28 Qualifications.

1786.29 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.

1786.30 Processing procedure.

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1786.33 Forms.

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- 1786.35 Loss, theft, destruction, mutilation, or defacement of RUS guarantee.
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- 1786.209 Outstanding loan documents.
- 1786.210 Approvals.

AUTHORITY: 7 U.S.C. 901–950b; Title I, subtitle B, Pub. L. 99–509; Pub. L. 101–624, 104 Stat. 4051; Pub. L. 103–354, 108 Stat. 3178, (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

SOURCE: 55 FR 1145, Jan. 11, 1990, unless otherwise noted.

Subpart A—General [Reserved]

§§ 1786.1–1786.24 [Reserved]

Subpart B—Prepayment of RUS Guaranteed Federal Financing Bank Loans Pursuant to Section 306(A) of the RE Act

AUTHORITY: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; Title I, Pub. L. 100–202; Pub. L. 100–203; Title VI, Pub. L. 100–460; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 55 FR 1145, Jan. 11, 1990, unless otherwise noted. Redesignated at 55 FR 49250, Nov. 27, 1990.

§ 1786.25 Purpose.

This subpart contains the general regulations of the Rural Utilities Service (RUS) for implementing the provisions of (a) section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act); (b) section 633 of the Rural

Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202) (the continuing resolution); and (c) section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460) (the 1989 Appropriations Act) which permit, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of RUS to be prepaid by RUS electric and telephone borrowers by paying the outstanding principal balance due on the FFB loan, using a private loan with the existing RUS guarantees or using internally generated funds.

§ 1786.26 Policy.

It is the policy of RUS to facilitate the prepayment of FFB loans in accordance with the provisions of section 306(A) of the RE Act and section 633 of the continuing resolution as modified by section 637 of the 1989 Appropriations Act. Furthermore, consistent with the RE Act, the continuing resolution and the 1989 Appropriations Act, it is the policy of RUS to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on RUS.

§ 1786.27 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of RUS.

Application Category shall have the meaning set forth in § 1786.29(c).

Application period means a period during which RUS is accepting applications to make prepayments pursuant to this subpart, and initially means:

(1) In the case of telephone borrowers, the period commencing on February 12, 1990 and ending on March 12, 1990;

(2) In the case of financially distressed borrowers, the period commencing October 1, 1990 and ending on July 30, 1993; or

(3) In the case of other borrowers, the period to be announced by RUS.

Borrower means any organization which has an outstanding FFB loan guaranteed by RUS under the RE Act.

Business Day means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. section 6103 for the purposes of statutes relating to pay and leave of employees, or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

Continuing Resolution means section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202).

Date Received means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of RUS, as the date the application was received.

Documentation means all or part of the agreements relating to a prepayment under this part, irrespective of whether RUS is a party to each agreement, including all exhibits to such agreements.

Electric Program Applications shall have the meaning specified in § 1786.29(c)(1).

Existing Loan Guarantee means a guarantee of payment issued by RUS to FFB pursuant to the RE Act for an FFB loan made on or before July 2, 1986.

Fees means any fees, costs or charges, incurred in connection with obtaining the private loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

Financially Distressed Borrower means an RUS-financed electric system determined by the Administrator to be either (1) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (2) participating in a work out or debt restructuring plan with RUS, either as

the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring.

Financially Viable Lender means:

(1) A lender (i) which has a capital and surplus of at least \$50 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$50 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$50 million from a lending institution with a capital and surplus of at least \$50 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$50 million; or

(2) In the event of a prepayment totalling less than \$100 million, a lender (i) which has a capital and surplus of at least \$10 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of \$10 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of \$10 million from a lending institution with a capital and surplus of at least \$10 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of \$10 million;

FFB means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

FFB Loan means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and guaranteed by RUS pursuant to section 306 of the RE Act (7 U.S.C. 936).

Guarantee means the original endorsement, in the form specified by RUS which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

Increase in Loan Guarantee Risk means the change in any of the components of loan guarantee risk associated

with the private loan which in the judgment of RUS increases the magnitude or duration of the loan guarantee risk currently assumed by RUS in connection with the existing loan guarantee;

Internally Generated Funds means money belonging to the borrower other than: (1) Proceeds of loans made or guaranteed under the RE Act or (2) funds on deposit in the cash construction trustee account;

Lender means the organization making and servicing the private loan which is to be guaranteed under the provisions of this subpart and used to prepay the FFB loan. The term *lender* does not include the FFB, or any other Government agency.

Loan Guarantee Agreement means the written contract by and among the lender, the borrower, the Administrator, and such other parties that RUS may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this subpart.

Loan Guarantee Risk means the risk as determined by RUS associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

- (1) The outstanding principal balance of a loan;
- (2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;
- (3) The final maturity date of a loan;
- (4) The annual principal amortization of the loan; and
- (5) Any other factor that as determined by RUS increases the magnitude or duration of the guarantee.

Mortgage means the mortgage and security agreements by and among the borrower and RUS, as from time to time supplemented, amended and restated.

1989 Appropriations Act means the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460).

Notice of Intent to Prepay the Federal Financing Bank means the notice in the form specified in §1786.33 hereof.

Prepayment Authority shall have the meaning specified in §1786.29(a).

Private Loan means a loan or loans to be guaranteed under the provisions of

this part and used to prepay an FFB loan.

Pro-rated Percentage shall have the meaning specified in § 1786.30(b)(1).

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901-950b), as amended.

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

Service or *Servicing* means the following activities:

(1) The billing and collecting of the private loan payments from the borrower;

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

(3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and

(4) Such other activities as may be specified in the loan guarantee agreement.

Settlement Date means the date the borrower disburses funds to the FFB in order to complete a prepayment pursuant to this subpart, and shall be a date agreed to by RUS, and a date on which both the FFB and the Federal Reserve Bank of New York are open for business.

Standard Electric Program Application shall have the meaning specified in § 1786.29(c)(1).

Telephone Borrower means a borrower that provides telephone service as defined in 7 CFR 1735.2(a).

Telephone Program Applications shall have the meaning specified in § 1786.29(c)(2).

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.27(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990, and amended at 59 FR 66440, Dec. 27, 1994]

§ 1786.28 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB loan pursuant to this subpart, the borrower must:

(1) Demonstrate that the FFB loan was outstanding on July 2, 1986;

(2) Prepay the FFB loan by:

(i) Using a private loan with the existing loan guarantee;

(ii) Using internally generated funds; or

(iii) Using a combination of a private loan with the existing loan guarantee and internally generated funds; and

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(b) *Lenders.* To participate pursuant to this subpart, in a borrower's prepayment of an FFB loan by means of a private loan, the lender must:

(1) Be a private legally organized lender, or a lender established pursuant to the Farm Credit Act of 1971, as amended;

(2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the Loan is located;

(ii) Be a financially viable lender; or

(iii) Be a trust administered by an entity meeting the requirements of paragraph (b)(2) (i) or (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan. A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* A borrower who qualifies pursuant to §1786.28(a) may at its option elect to use a private loan to make a prepayment, or a portion of a prepayment, pursuant to this subpart.

Private loans, the proceeds of which are used exclusively to prepay FFB loans, shall be eligible for a guarantee under this subpart. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. The private loan shall be structured in a manner which in the judgment of RUS shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^n (C_o - A_i) T_i}{(J - n)}$$

Where,

C_r =The revised interest rate cap;

C_o =The original interest rate cap at the time of prepayment;

A_i =The average interest rate actually charged in the i^{th} period;

T_i =Length of the i^{th} period expressed in years;

n =The number of years that have elapsed since the initial prepayment;

J =The initial term of the private loan, at the time of prepayment;

Subject to the constraint that A_1 must be less or equal to C_o .

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this subpart was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially

similar to the private loan, on such dates as the lender, the borrower and RUS may agree, provided however, that such a refunding loan shall comply with the provisions of §1786.28(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except

(i) With the written approval of the Administrator;

(ii) In the event that the guaranteed note evidencing the private loan is held

by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to §1786.28(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide RUS with the right to accelerate the note evidencing the private loan upon the occurrence of any "Event of Default" under the mortgage with the effect that all of the unpaid principal and interest on any such note shall become immediately due and payable to RUS, and RUS shall continue to pay under its guarantee the principal of and interest on such note without taking into account such acceleration. The loan documentation shall also provide RUS with a right, upon the occurrence of such an "Event of Default," to accelerate payment on its guarantee and accelerate payment on the note evidencing the private loan on the earlier of any date the interest rate on the private loan is reset, without premium or penalty; any date the borrower may prepay in accordance with the terms of the private loan, or the tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of the private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in §1786.28(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *Prepayments Without a Guarantee.* Qualifying borrowers may elect to utilize internally generated funds without a guarantee to prepay an FFB loan, or partially prepay an FFB loan, pursuant to this subpart, if

(1) The borrower notifies RUS, of its intent to prepay using internally generated funds in accordance with the application procedures set forth in this subpart; and

(2) The borrower submits a certification to RUS that the prepayment does not, materially adversely affect the financial stability of the borrower and its ability to meet all its obligations, including debt service on all loans made, guaranteed or lien accommodated under the RE Act which will remain outstanding after the date of the prepayment.

(e) *The Use of both a Private Loan and Internally Generated Funds.* Qualifying borrowers may elect to utilize a combination of private loans and internally generated funds without a guarantee, to prepay an FFB loan pursuant to this subpart, if

(1) The private loans comply with the provisions of paragraph (c) of this section, and

(2) The borrower complies with paragraph (d) of this section.

(f) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this subpart are:

(1) *Qualifying Borrowers.* In the case of qualifying borrowers other than financially distressed borrowers, FFB advances with long-term maturity dates may be prepaid pursuant to this subpart; and

(2) *Financially distressed borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in the opinion of the Administrator, if prepaid, would result in an economic savings to the financially distressed borrower.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

§1786.29 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.

(a) *Prepayment Authority.* So long as the aggregate amount of prepayments made after December 22, 1987, including prepayments made pursuant to §1786.28(d) and §1786.28(e), under section 306(A) of the RE Act, does not exceed \$2.5 billion, the approval of the Secretary of the Treasury is not required in order to make a prepayment pursuant to this subpart (such amount

of prepayments is hereinafter called prepayment authority).

(b) *Program Allocations.* In accordance with the provisions of section 637 of the 1989 Appropriations Act, \$350 million of prepayment authority is allocated to RUS-financed electric systems and \$150 million of prepayment authority is allocated to RUS-financed telephone utilities. The amounts of prepayment authority allocated to electric program borrowers and telephone program borrowers shall not be transferred between programs. Borrowers may not sell, assign, or otherwise transfer prepayment authority to another borrower.

(c) *Categories of Prepayment Applications.* Applications received by RUS from borrowers desiring to prepay pursuant to this subpart will be separated into the following two application categories:

(1) *Electric Program Applications.* Electric program applications are applications to make a prepayment pursuant to this subpart from RUS-financed electric utilities, that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period. Electric program applications will be further subdivided and classified as being either (i) a financially distressed borrower's application, or (ii) a standard electric program application. Applications received from borrowers determined by the Administrator not to be a financially distressed borrower will be classified and processed as a standard electric program application;

(2) *Telephone Program Applications.* Telephone program applications are applications to make a prepayment pursuant to this subpart from RUS-financed telephone utilities that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period;

(d) *Financially distressed borrowers' reserve.* The \$350 million of prepayment authority allocated for RUS-financed electric utilities, is initially set aside into a financially distressed borrowers' reserve. This reserve of prepayment authority will be available for prepayments pursuant to this subpart by financially distressed borrowers who apply to make such a prepayment during the application period. In the event

that a portion of financially distressed borrowers' reserve remains unsubscribed at the end of the initial application period, the unallocated portion of the financially distressed borrowers' reserve will be allocated to other electric borrowers having submitted applications during an application period to be announced by RUS. Such prepayment applications shall be classified as standard electric program applications.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35427, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

§ 1786.30 Processing procedure.

(a) *Priority of Processing.* The determination of the order or method in which applications or portions of applications will be processed by RUS pursuant to this subpart rests solely within the discretion of the Administrator. RUS expects that a number of prepayment applications will be processed simultaneously. In the event that it becomes necessary to establish priorities of processing, prepayment applications will be processed without regard to the date received, generally in the following order of priority:

(1) Applications from telephone borrowers;

(2) Applications from financially distressed borrowers;

(3) Applications from all other borrowers. When assigning priority to such applications, RUS will consider a number of factors, including without limitation, (i) the number of prepayment applications being processed by the area office; (ii) the novelty or complexity of the proposed transaction; (iii) the method of prepayment; and (iv) the availability of resources. In the event that RUS receives during the initial application period, prepayment applications from such borrowers in an amount less than remaining prepayment authority for each respective program, RUS will establish a new application period and publish a notice to that effect in the FEDERAL REGISTER.

(b) *Pro-rated Applications.* Standard electric program applications, and telephone program applications will be

prorated within their respective application categories to permit partial prepayments in the event that the aggregate amount of prepayment applications received during the application period exceeds the amount of prepayment authority allocated to that application category. In such circumstances, the amount of each borrower's permitted prepayment shall be determined within each respective application category, as follows:

(1) The principal amount of FFB advances under each individual application, which, if prepaid pursuant to this subpart, would result in an economic savings to the borrower, shall be divided by the aggregate principal amount of FFB advances, under all of the applications, which, if prepaid pursuant to this subpart, would result in an economic savings to the borrowers, in order to determine a percentage (hereinafter called a pro-rated percentage) for each borrower;

(2) Each borrower's share of the prepayment authority for its application category shall be equal to the product of (i) the prepayment authority times (ii) the respective pro-rated percentage, and may be used to prepay a portion of any of the borrower's FFB loans listed pursuant to § 1786.31(a)(2);

(3) If any approved prepayment transaction fails to be settled within 180 days of the date the borrower is notified by RUS of its prepayment allocation, RUS may rescind its approval. The unused prepayment authority represented by such a failed transaction is subject to being included in any subsequent notice of a new application period under this subpart; and

(4) In the event that applications from financially distressed borrowers exceed the amount prepayment authority remaining in the financially distressed borrowers' reserve, the Administrator at his discretion shall select one or more of such applications and allocate the reserve. In making such a selection and allocation, the Administrator may consider various factors, including without limitation, (i) the dollar amount of savings to be realized by the proposed prepayment; (ii) the interest rates on the FFB loans proposed to be prepaid; (iii) the magnitude of the default or potential default; and (iv)

whether the borrower has previously completed a prepayment under section 306(A).

(c) *Notification of Borrowers' Allocations.* Promptly after allocating the prepayment authority to borrowers and completing any proration calculations that may be necessary, RUS will return to each borrower submitting a prepayment application pursuant to this subpart, a copy of their Notice of Intent to Prepay the Federal Financing Bank specifying the amount of the borrower's prepayment allocation.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 49250, Nov. 27, 1990]

§ 1786.31 Application procedure.

Applications to make a prepayment pursuant to this subpart shall be submitted to RUS on such forms as RUS may prescribe in the following manner:

(a) *Application.* Each borrower desiring to make a prepayment pursuant to this subpart shall submit an application to RUS. No application from a borrower will be accepted by RUS prior to the commencement of the application period. An application shall not be deemed submitted to RUS until it is received by RUS, and the "Date Received" has been inscribed on the Notice of Intent to Prepay the Federal Financing Bank by an authorized official of RUS. Incomplete applications may be returned to the borrower at the discretion of RUS and thereafter must be resubmitted in order to be processed. To be considered complete, the application should include the following:

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in § 1786.33 hereof;

(2) A listing of each FFB loan advance to be prepaid by loan designation, RUS note number, RUS account number, advance date, maturity date, original amount, outstanding balance, and interest rate;

(3) Evidence that the borrower meets the qualification provisions of § 1786.28(a) of these regulations;

(4) The certification set forth in part A of the Notice of Intent to Prepay the Federal Financing Bank executed by the chief executive officer of the borrower;

(5) In the event that a borrower submits a prepayment application which

proposes to utilize a portion of the financially distressed borrowers' reserve, a certification signed by the chief executive officer of the system to the effect that the borrower is either (i) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (ii) participating in a work out or debt restructuring plan with RUS, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring and stating why the borrower is in default or near default.

(b) *Election of Method of Prepayment.* Prior to requesting RUS to schedule a settlement date, the borrower shall (1) elect whether it will use a private loan, internally generated funds, or a combination of a private loan and internally generated funds to make the prepayment, by completing part C of its Notice of Intent to Prepay the Federal Financing Bank; (2) specify in part C of the Notice of Intent to prepay the Federal Financing Bank a date after which a prepayment closing may be scheduled; (3) if appropriate, execute the certification set forth in part C of the Notice of Intent to Prepay the Federal Financing Bank; and (4) return a completed copy of the Notice of Intent to Prepay the Federal Financing Bank to the RUS area office.

(c) *Final Documentation.* All documentation in connection with a proposed prepayment made pursuant to this subpart shall have been submitted to RUS in final form, no later than 5 business days prior to the settlement date agreed to by the borrower and RUS. To be considered complete, the final documentation shall include the following material:

(1) A completed copy of the Notice of Intent to Prepay the Federal Financing Bank;

(2) In the event that a borrower proposes to utilize a private loan in connection with a prepayment or a portion of a prepayment,

(i) Evidence, in form and substance satisfactory to RUS, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate

that meets the requirements of § 1786.28(c)(1);

(ii) Evidence that the lender meets the qualification provisions of § 1786.28(b);

(iii) Evidence that the private loan meets the qualification provisions of § 1786.28(c); and

(iv) The final documentation for the private loan;

(3) Estimate of fees, and expenses, including any taxes, in connection with the prepayment transaction;

(4) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting RUS approval of the prepayment.

(5) In the case of financially distressed borrowers, evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates has acknowledged its awareness of this requirement;

(6) In the event that borrower is unable to deliver final documentation or the evidence specified in accordance with, § 1786.31(c), RUS may reschedule the settlement date at its discretion.

(Approved by the Office of Management and Budget under control number 0572-0088)

§ 1786.32 Settlement procedure.

(a) *General.* Settlements in connection with prepaying FFB loans pursuant to this subpart shall be conducted in accordance with the provisions of this section.

(b) *Settlement Date.* The prepayment will be settled and if a private loan is utilized, the guarantee will be delivered, on a settlement date agreed upon by the borrower and RUS. Prior to scheduling a settlement date for a borrower's prepayment pursuant to this subpart, RUS shall have received the material specified in § 1786.31(b).

(c) *Place of Settlement.* All settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is proposed for the same settlement date, RUS reserves the right to coordinate the date and location of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to RUS through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to RUS in another manner acceptable to RUS and FFB, in an amount sufficient to pay the outstanding principal of the FFB loan being prepaid plus accrued interest from the last payment date to and including the settlement date.

(e) *Documentation.* The borrower shall deliver, or cause to be delivered to RUS and FFB, not less than 3 business days prior to the settlement date, written notice of the settlement date and a complete listing of each FFB loan advance to be prepaid or partially prepaid, in the format required by §1786.31(a)(2). In the event that a private loan is used in connection with the prepayment, the following executed documents, opinions and material shall be delivered at the settlement:

- (1) The guaranteed note evidencing the private loan.
- (2) The guarantee.
- (3) The loan guarantee agreement.
- (4) Copy of the private loan agreement between the lender and the borrower.
- (5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.
- (6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse RUS for any amounts that RUS may pay under the guarantee.
- (7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (e)(6) of this section, remains undisturbed.
- (8) An approving opinion of the lender's legal counsel to the effect that the

loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by RUS to ensure that the obligations of the borrower to reimburse RUS for any amounts that RUS pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

(Approved by the Office of Management and Budget under control number 0572-0088)

§ 1786.33 Forms.

Guarantees and loan guarantee agreements executed by RUS pursuant to this subpart will be on forms prescribed by RUS. Such forms will include, without limitation, additional details on servicing, procedures for notifying RUS of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by RUS. RUS may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to §1786.31 of this subpart.

§ 1786.34 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of RUS (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to RUS guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and RUS find convenient.

§ 1786.35 Loss, theft, destruction, mutilation, or defacement of RUS guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the RUS Administrator is authorized on behalf of RUS to issue a replacement guarantee(s) for

one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to RUS for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms;

(ii) Legal name and address of lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the guarantor, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the guarantee; and

(vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to RUS (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to RUS shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less

than \$1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Utilities Service. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save RUS harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.36 Other prepayments.

Nothing contained in this subpart shall prohibit a borrower from making prepayments of FFB loans in accordance with the terms thereof.

§ 1786.37 Application of regulation to previous prepayments.

Nothing contained in this subpart shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to February 27, 1988, may, in their discretion request RUS approval and if required by prior regulations the concurrence of the Secretary of the Treasury, of any amendments necessary to make the terms and conditions of such loans consistent with, or to consolidate such loans with, loans guaranteed under these regulations.

§ 1786.38 Judicial review.

This subpart is intended to set forth RUS policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act, section 633 of the continuing resolution, and section 637 of the 1989 Appropriations Act and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

§§ 1786.39-1786.49 [Reserved]

Subpart C—Special Discounted Prepayments on RUS Direct/Insured Loans

AUTHORITY: 7 U.S.C. 901-950b; Title I, Subtitle B, Pub. L. 99-509; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 51 FR 46999, Dec. 29, 1986, unless otherwise noted. Redesignated at 55 FR 49250, Nov. 27, 1990.

§ 1786.50 Purpose.

This subpart sets forth the policies and procedures of RUS whereby electric and telephone borrowers may prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing.

§ 1786.51 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of RUS.

Discounted Present Value shall have the meaning specified in § 1786.53

Fund means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS Loan Agreement means the agreement between the borrower and RUS providing for loans pursuant to the Act.

RUS Notes means those notes, bonds or other obligations evidencing indebtedness created by loans made pursuant to Titles I, II or III of the Act (7 U.S.C. 901-940).

[51 FR 46999, Dec. 29, 1986. Redesignated at 55 FR 49250, Nov. 27, 1990, as amended at 59 FR 66441, Dec. 27, 1994]

§ 1786.52 Prepayment.

Through September 30, 1987, the Administrator may, pursuant to this subpart, permit eligible electric and telephone borrowers to prepay all outstanding RUS Notes issued or assumed by such borrowers and held in the Fund, upon paying the lesser of the outstanding balance or the Discounted Present Value.

§ 1786.53 Discounted present value.

The Discounted Present Value shall be calculated five business days before prepayment is made by summing the present values of all remaining payments by using the following formula:

$$\text{Present Value} = \sum_{k=1}^n \frac{P_k}{\prod_{i=1}^k \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366} \right) \times I \right]}$$

Where:

P_k =Total payment including interest, due on the k^{th} payment date following the prepayment date.

n =Total number of remaining payments dates.

I =The discount rate, in decimals, which shall be the average rate on utility bonds bearing a rating of "Aa" as set forth in that issue of Moody's Public Utility News Re-

ports most recently published prior to the date on which Discounted Present Value is calculated.

$D1_i$ =Number of days in the i^{th} payment period that are in a non-leap year (365 day year).

$D2_i$ =Number of days in the i^{th} payment period that are in a leap year (366 day year).

§ 1786.54 Eligibility criteria.

To be eligible to prepay RUS Notes at the Discounted Present Value a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding RUS Notes and all other payment obligations owed to RUS and the Rural Telephone Bank.

(b) The borrower must agree to prepay all of its outstanding RUS Notes.

(c) The borrower must identify the source of private financing that will be used to refinance its outstanding RUS Notes, which financing may not include obligations the income of which is exempt from taxation under the Internal Revenue Code of 1986.

(d) The borrower must have expended all funds advanced on account of the RUS Notes for the purposes for which such funds were advanced.

(e) The borrower must agree to a rescission of the unadvanced balance of the RUS Notes.

(f) The borrower must agree that the borrower, its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the RUS Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective RUS Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

§ 1786.55 Application procedure.

Any borrower seeking to prepay its RUS Notes under this subpart should apply to the appropriate RUS Area Director by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding RUS Notes, and

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.54 of this subpart.

(b) A list of all RUS Notes together with the outstanding amount on such notes.

(c) Such additional information as the Administrator shall request.

§ 1786.56 Approval of applications.

The applications will ordinarily be reviewed and, if satisfactory, approved, and closing schedule based on the order in which executed prepayment agreements are received. The Administrator may limit the number of applications approved and closings scheduled from time to time taking into account, among other matters, the financial interests and administrative considerations of the Government.

§ 1786.57 Prepayment agreement.

Upon approving an application for prepayment under this subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The RUS Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place and conditions for closing.

(c) Agreement that the unadvanced balance of RUS Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the RUS Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective RUS Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.58 Security.

If, after prepayment of RUS Notes, the Government should continue to hold liens on the borrower's property that secure loans made or guaranteed pursuant to the Act, the Administrator of RUS or the Governor of the Rural Telephone Bank, as the case may be, will consider request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay RUS Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the RUS Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.59 Loan fund audit.

Within 6 months of closing RUS shall have the right to audit transactions involving the RUS construction fund established and maintained by the borrower pursuant to the terms of the RUS Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should RUS determine that the borrower has made disbursements of funds advanced pursuant to RUS Notes which do not comply with the requirements of the RUS Loan Agreement, the borrower shall be required to pay to the Government an amount equal to the difference between the amount which the borrower prepaid on such RUS Notes evidencing RUS loan funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of non-compliance if the borrower had not prepaid such RUS Notes. (See 7 CFR part 1721)

§ 1786.60 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement including such approvals as may be required by regulatory bodies and other lenders.

(b) The RUS Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement; *Provided, however,* That no closing may be sched-

uled for after September 30, 1987. At closing, a borrower shall prepay the RUS Notes by paying to the Government an amount equal to the Discounted Present Value of the RUS Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.61 Other prepayments.

RUS loan documentation generally permits borrowers to prepay RUS Notes by paying the outstanding balance due thereon. Nothing in this subpart shall prohibit any borrower from prepaying its outstanding RUS Notes in accordance with the terms thereof. The provisions of this subpart shall not be applicable to such prepayment.

§§ 1786.62-1786.74 [Reserved]**Subpart D [Reserved]****Subpart E—Discounted Prepayments on RUS Notes in the Event of a Merger of Certain RUS Electric Borrowers**

SOURCE: 56 FR 37268, Aug. 6, 1991, unless otherwise noted.

§ 1786.95 Purpose.

This subpart sets forth the policies and procedures of RUS whereby certain electric borrowers may prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing.

§ 1786.96 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of RUS.

Consolidation means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

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Discounted Present Value shall have the meaning specified in § 1786.98.

Fund means the Rural Electrification and Telephone Revolving Fund pursuant to the Act.

Merger means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS Loan Agreement means the agreement between the borrower and RUS providing for loans pursuant to the Act.

RUS Notes means those notes, bonds or other obligations evidencing indebtedness created by loans made or guar-

anteed by RUS pursuant to titles I and III of the Act (7 U.S.C. 901-940).

[56 FR 37268, Aug. 6, 1991, as amended at 59 FR 66440, Dec. 27, 1994]

§ 1786.97 Prepayment.

There were 29 former RUS electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See subpart C of this part.) These borrowers are listed in appendix A to subpart E of this part. Any RUS electric borrower which is the result of a merger or consolidation involving any of these 29 former borrowers and a borrower with outstanding Notes may, after meeting all requirements of this subpart, prepay all outstanding RUS Notes issued or assumed by the borrower upon paying the lesser of the outstanding balance or the Discounted Present Value. Such prepayment must be made not later than one year after the effective date of the merger or consolidation.

§ 1786.98 Discounted present value.

(a) The Discounted Present Value shall be calculated by RUS before prepayment is made by summing the present values of all remaining payments on all outstanding notes according to the following formula to compute the discounted present value of each note and adjusting as here and after provided for tax exempt financing.

$$\text{Present Value} = \sum_{k=1}^n \frac{P_k}{\prod_{i=1}^k \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366} \right) \times I \right]}$$

Where:

P_k =Total payment, including interest, due on the k^{th} payment date following the prepayment date. n =Total number of remaining payment dates. I =The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" which is published each Monday. (See appendix B to subpart E of this part.) The specific discount rate will be the discount rate(s) specified in the "Treasury Constant

Maturities" section of this publication eight working days prior to the closing. In applying the discount rate, the 1-year Treasury rate will be used for all notes with a remaining term of less than 2 years; the 2-year Treasury rate for notes with maturities between 2 and 3 years; the 3-year Treasury rate for all notes with maturities between 3 and 5 years; the 5-year Treasury rate for all notes with maturities between 5 and 7 years; the 7-year Treasury rate for all notes with maturities between 7 and 10

years; the 10-year Treasury rate for all notes with maturities between 10 and 30 years; and the 30-year Treasury rate for all notes with maturities longer than 30 years.
 $D1_i$ =Number of days in the i^{th} payment period that are in a non-leap year (365 day year).
 $D2_i$ =Number of days in the i^{th} payment period that are in a leap year (366 day year).

(b) Notwithstanding paragraph (a) of this section, in the event that the borrower shall elect to prepay using tax exempt financing, the calculation of the Discounted Present Value shall be adjusted to make the discount the equivalent of fully taxable financing.

§ 1786.99 Eligibility criteria.

To be eligible to prepay RUS Notes at the Discounted Present Value, a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding RUS Notes and all other payment obligations owed to RUS;

(b) The borrower must agree to prepay all of its outstanding RUS Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding RUS Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as RUS may request to enable RUS to adjust the discount to the equivalent to fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the RUS Notes for the purposes for which such funds were advanced or repaid RUS for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any RUS Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the RUS Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the power supplier's Notes at the time outstanding as shall be determined by the power supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its RUS Notes under this Subpart should apply to the appropriate RUS Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding RUS Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.99 of this subpart; and

(3) Identifies the source of financing.

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(b) A list of all RUS Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The RUS Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of RUS Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the RUS Notes between the amount outstanding on the RUS Note and the Discounted Present Value of the prepaid RUS Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective RUS Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of RUS Notes, the Government should continue to hold liens on the borrower's property, the Administrator of RUS will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay RUS Notes.

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Such lien accommodations shall be limited in amount to the Discounted Present Value of the RUS Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

RUS shall have the right to audit within 6 months of closing, transactions involving the RUS construction fund established and maintained by the borrower pursuant to the terms of the RUS Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should RUS determine that the borrower has made disbursements of funds advanced pursuant to RUS Notes which do not comply with the requirements of the RUS Loan Agreement, the borrower shall be required to pay the Government an amount equal to the difference between the amount which the borrower prepaid on such RUS Notes evidencing RUS loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of non-compliance if the borrower had not prepaid such RUS Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

(b) The RUS Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. RUS shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the RUS Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the RUS Notes. The closing shall otherwise

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be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

RUS loan documentation generally permits borrowers to prepay RUS Notes by paying the outstanding balance due thereon. Nothing in this subpart shall prohibit any borrower from prepaying its outstanding RUS Notes in accordance with the terms thereof. The provisions of this subpart shall not be applicable to such prepayment.

APPENDIX A TO SUBPART E OF PART 1786—LISTING OF ELIGIBLE BORROWERS

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose.
Florida	Lee County Electric Coop. Inc., North Fort Myers.
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg.
Louisiana	Beauregard Electric Cooperative, Inc., Deridder.
Missouri	Culvre River Electric Cooperative, Inc., Troy.
Nebraska	Roosevelt Public Power District, Mitchell.
Nebraska	Howard Greely Rural Public Power Dist., St. Paul.
Nebraska	Cuming County Public Power District, West Point.
Nebraska	York County Rural Public Power District, York.
Nebraska	Elkhorn Rural Public Power District, Battle Creek.
Nebraska	Southern Nebraska Rural P. P. D., Grand Island.
Nebraska	McCook Public Power District, McCook.
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill.
Nebraska	Cornhusker Public Power District, Columbus.

State	Borrower name and address
Nebraska	Custer Public Power District, Broken Bow.
Nebraska	Northwest Rural Public Power Dist., Hay Springs.
Nebraska	Southwest Public Power District, Pali-sade.
Nebraska	Loup Valleys Rural Public Power District, Ord.
Nebraska	South Central Public Power District, Nel-son.
Oklahoma	Peoples' Electric Cooperative, Ada.
Texas	Deaf Smith County Electric Coop. Inc., Hereford.
Texas	Pedernales Electric Coop. Inc., Johnson City.
Texas	Bandera Electric Cooperative, Inc., Bandera.
Texas	Guadalupe Valley Electric Coop., Inc., Gonzales.
Texas	Bluebonnet Electric Cooperative, Inc., Giddings.
Texas	Cap Rock Electric Cooperative, Inc. Stan-ton.
Texas	San Bernard Electric Cooperative, Inc., Bellville.
Washington	Inland Power & Light Company, Spo-kane.
Washington	Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen.

APPENDIX B TO SUBPART E OF PART 1786—FEDERAL RESERVE STATIS-TICAL RELEASE

FEDERAL RESERVE STATISTICAL RELEASE

These data are released each Monday. The availability of the release will be announced when the information is available, on (202) 452-3206.

H. 15 (519)

For immediate release February 4, 1991.

SELECTED INTEREST RATES

[Yields in percent per annum]

Instruments	1991 Jan. 28	1991 Jan. 29	1991 Jan. 30	1991 Jan. 31	1991 Feb. 1	This week	Last week	1991 Jan.
Federal Funds (ef-fective) ^{1 2 3}	7.61	7.16	6.96	8.18	6.30	7.46	6.88	6.91
Commercial paper ^{3 4 5}								
1-Month	6.88	6.96	6.95	6.99	6.73	6.90	6.83	7.12
3-Month	6.92	6.96	6.94	6.95	6.67	6.89	6.92	7.10
6-Month	6.87	6.91	6.88	6.88	6.58	6.82	6.86	7.02
Finance paper placed di-rectly ^{3 4 6}								
1-Month	6.76	6.85	6.83	6.83	6.55	6.76	6.68	6.95
3-Month	6.75	6.83	6.83	6.76	6.46	6.73	6.77	6.92
6-Month	6.53	6.53	6.59	6.53	6.19	6.47	6.55	6.59
Bankers accept-ances (top rated) ^{3 4 7}								
3-Month	6.80	6.82	6.77	6.68	6.30	6.67	6.76	6.96
6-Month	6.67	6.70	6.65	6.55	6.15	6.54	6.63	6.84

SELECTED INTEREST RATES—Continued

[Yields in percent per annum]

Instruments	1991 Jan. 28	1991 Jan. 29	1991 Jan. 30	1991 Jan. 31	1991 Feb. 1	This week	Last week	1991 Jan.
CDS (secondary market) ^{3 8}								
1-Month	6.78	6.85	6.87	6.82	6.52	6.77	6.77	7.10
3-Month	6.94	6.95	6.93	6.88	6.51	6.84	6.94	7.17
6-Month	6.95	6.98	6.95	6.88	6.51	6.85	6.97	7.17
Eurodollar deposits (London) ^{3 9}								
1-Month	6.81	6.88	6.88	6.88	6.88	6.86	6.81	7.13
3-Month	6.94	7.06	7.00	6.94	6.94	6.98	7.01	7.23
6-Month	7.00	7.00	7.00	6.94	6.94	6.98	7.04	7.23
Bank prime loan ^{2 3 10}	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.52
Discount window borrowing ^{2 11}	6.50	6.50	6.50	6.50	6.00	6.50	6.50	6.50
U.S. Government securities								
Treasury bills								
Auction average ^{3 4 12}								
3-Month	6.22					6.22	6.14	6.30
6-Month	6.28					6.28	6.21	6.34
1-Year								6.22
Auction average (investment) ¹²								
3-Month	6.41					6.41	6.32	6.49
6-Month	6.58					6.58	6.50	6.64
Secondary market ^{3 4}								
3-Month	6.25	6.22	6.20	6.19	6.00	6.17	6.12	6.22
6-Month	6.26	6.26	6.24	6.20	5.97	6.19	6.20	6.28
1-Year	6.24	6.20	6.17	6.13	5.91	6.13	6.19	6.25
Treasury Constant maturities ¹³								
1-Year	6.64	6.59	6.56	6.51	6.27	6.51	6.58	6.64
2-Year	7.12	7.10	7.07	7.05	6.83	7.03	7.09	7.13
3-Year	7.38	7.35	7.34	7.30	7.10	7.29	7.35	7.38
5-Year	7.67	7.64	7.64	7.62	7.45	7.60	7.66	7.70
7-Year	7.93	7.90	7.90	7.89	7.75	7.87	7.92	7.97
10-Year	8.06	8.05	8.05	8.03	7.91	8.02	8.04	8.09
30-Year	8.23	8.20	8.23	8.21	8.09	8.19	8.22	8.27
Composite								
Over 10 years (long-term) ¹⁴	8.29	8.26	8.29	8.27	8.15	8.25	8.28	8.33
Corporate bonds								
Moody's Seasoned								
AAA	9.03	9.01	9.00	8.99	8.96	9.00	9.05	9.04
BAA	10.43	10.37	10.35	10.33	10.24	10.34	10.44	10.45
A-Utility ¹⁵					9.65	9.65	9.80	9.83
State and local bonds ¹⁶				7.00		7.00	7.06	7.08
Conventional mortgages ¹⁷					9.56	9.56	9.61	9.64

Footnotes:

¹ The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.² Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.³ Annualized using a 360-day year or bank interest.⁴ Quoted on a discount basis.⁵ An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.⁶ An average of offering rates on paper directly placed by finance companies.⁷ Representative closing yields for acceptances of the highest rated money center banks.⁸ An average of dealer offering rates on nationally traded certificates of deposit.⁹ Bid rates for Eurodollar deposits at 11 a.m. London time.¹⁰ One of several base rates used by banks to price short-term business loans.¹¹ Rate for the Federal Reserve Bank of New York.¹² Auction date for daily data; weekly and monthly averages computed on an issue-date basis.¹³ Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.

¹⁴ Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.

¹⁵ Estimate of the yield on a recently offered, A-rated utility bond with a maturity of 30 years and call protection of 5 years; Friday quotations.

¹⁶ Bond buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.

¹⁷ Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

NOTE: Weekly and monthly figures are averages of business days unless otherwise noted.

Description of the Treasury Constant Maturity Series

Yields on Treasury securities at "constant maturity" are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

Subpart F—Discounted Prepayments on RUS Electric Loans

AUTHORITY: 7 U.S.C. 901 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 59 FR 13620, Mar. 22, 1994, unless otherwise noted.

§ 1786.150 Purpose.

This subpart sets forth the policies and procedures of RUS whereby borrowers may prepay, with private financing or internally generated funds, outstanding RUS Notes evidencing electric loans at the Discounted present value of the RUS Notes, pursuant to the provisions of section 306(B) of the RE Act as amended by Public Law 102-428, 106 Stat. 2183, adopted October 21, 1992.

§ 1786.151 Definitions and rules of construction.

(a) *Definitions.* As used in this subpart:

Administrator means the Administrator of the Rural Utilities Service (RUS).

Borrower means any organization which has an outstanding note(s) evidencing electric loans made by RUS, or

has previously prepaid such notes under subparts C and E of this part.

Business day means any day on which both the RUS and the Federal Reserve Bank of New York are open for business.

Construction Fund Account means the Cash—Construction Fund—Trustee Account, maintained by the borrower pursuant to the terms of the outstanding RUS Loan Contract.

Closing shall mean one of the several contemplated closings of the prepayment of the Qualified Notes prescribed by the Prepayment agreement.

Closing date shall mean any business day identified as such by the Government in its preclosing notice delivered to the Company pursuant to § 1786.158.

Closing request shall mean a request by the borrower of the Government to schedule a closing for certain Qualified Notes on the date requested therein.

Direct loan means a loan made pursuant to section 4 of the RE Act.

Discounted present value shall have the meaning set forth in § 1786.153.

Distribution borrower means a borrower that sells electric power and energy at retail in rural areas.

Electric loan means a Direct loan or an Insured loan made for the purpose of furnishing electric energy to persons in rural areas.

Final maturity means the final date on which all outstanding principal and accrued interest on an electric loan is due and payable.

Government means the United States of America, acting through the Administrator of the Rural Utilities Service.

Insured loan means a loan made pursuant to Section 305 of the RE Act.

Lien accommodation means the sharing of the Government's (RUS's) lien on property, usually all property, covered by the lien of the RUS Mortgage.

Loan guarantee means a loan guarantee under Section 306 of the RE Act.

Power supply borrower means a borrower that sells or intends to sell electric power at wholesale to distribution

or power supply borrowers pursuant to RUS wholesale power contracts.

Preclosing notice shall mean a notice delivered by the Government to the borrower in response to a closing request, identifying the closing date, the Qualified Notes to be prepaid at such closing and documents to be delivered by the borrower to the Government prior to the closing date.

Prepayment agreement shall have the meaning set forth in § 1786.158.

Qualified Notes shall have the meaning set forth in § 1786.154.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture.

RUS Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and RUS providing for loans or loan guarantees pursuant to the RE Act.

RUS Mortgage means collectively those mortgages and security agreements made by and among the borrower, the Government, and third parties, if any, securing indebtedness evidencing electric loans or loan guarantees made pursuant to the RE Act.

Rural development loans means loans or grants made pursuant to Rural development programs.

Rural development programs means loan or grant programs under the authority of the Administrator pursuant to sections 313, 501, and 502 of the RE Act.

Supplemental lender means a private lender whose loan to the borrower is secured by the RUS mortgage.

Tax exempt financing means borrowing evidenced by bonds, notes and other evidence of indebtedness the income of which is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1786.152 Prepayments of RUS loans.

An electric loan made under the RE Act shall not be sold or prepaid at a value that is less than the outstanding principal balance, except that, on request of a borrower, an electric loan made under the RE Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be prepaid by the borrower at the lesser of the outstanding principal balance of the loan or the discounted present value thereof.

§ 1786.153 Discounted present value.

(a) The discounted present value shall be calculated by summing the present values of all remaining payments on all Qualified Notes to be prepaid according to the following formula and adjusted as provided in paragraph (b) of this section if tax exempt financing is used.

$$\text{Present Value} = \sum_{k=1}^n \frac{P_k}{\prod_{i=1}^k \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366} \right) I \right]}$$

Where:

The Greek letter, Sigma (Σ) means the sum of the following terms.

The Greek letter, Pi (Π) means the product of the following terms.

P_k=Total payment, including interest due on the Kth payment date following the prepayment date.

n=Total number of remaining payment dates to final maturity.

D1_i=Number of days in the ith payment period that are in a non-leap year (365-day year).

D2_i=Number of days in the ith payment period that are in a leap year (366-day year).

I=The discount rate applied to each transaction ascertained by using data specified

in the "Federal Reserve Statistical Release" (H.15 (519)), which is published each Monday. The availability of this Release will be announced when the information is available by telephone on (202) 452-3206. See adjustment for tax exempt refinancing at paragraph (b) of this section. The specific discount rate will be based on the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication 8 business days prior to the closing and will be interpolated from that information as follows:

Remaining final maturity of RUS loan:		Treasury constant maturities
At least	But less than	
# years	# years	
0	2	1-year.
2	3	2-year.
3	4	3-year.
4	5	(¹)
5	6	5-year.
6	7	(²)
7	8	7-year.
8	9	(³)
9	10	(³)
10	11	10-year.
11	20	(⁴)
20	21	20-year.
21	30	(⁵)
30	36	30-year.

NOTES: ¹The arithmetic mean between the 3-year and 5-year Treasury Constant Maturities; i.e., if 3-year rate is 3.00% and the 5-year rate is 4.00% then the rate used would be 3.5%.

²The arithmetic mean between the 5-year and 7-year Treasury Constant Maturities computed as above.

³A straight line interpolated rate between the 7-year rate and the 10-year rate. (See formula below)

⁴A straight line interpolated rate between the 10-year note and the 20-year Bond rate. (See formula below)

⁵A straight line interpolated rate between the 20-year bond and the 30-year bond using the following formula:

$$I = B + \frac{((C - E) \times (A - B))}{F - E}$$

Where:

I=The discount rate interpolated from the cost of money to the Treasury.

A=The Treasury interest rate for the most recently published maturity (in years) that is the shortest Treasury term (in years) which is greater than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years then this rate is the 20-year Treasury rate)

B=The Treasury interest rate for the most recently published maturity (in years) that is the longest Treasury term (in years) which is less than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years but less than 20 years then this term is the 10-year Treasury rate)

C=The remaining number of full years to the final maturity of the borrower's note. Drop all fractions of a year and use the remaining full years.

E=The published Treasury term (in years) to maturity which is the longest term to maturity for the published term that is less than the remaining term (in years) to final maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 10 or if the note to be prepaid has remaining years to maturity between 21 years and 30 years then this term would be 20).

F=The published Treasury term (in years) to maturity which is the shortest term to maturity for the published term that is greater than the remaining term (in years) to maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 20 or if the remaining years to maturity is between 21 and 30 years then this term would be 30).

NOTE: The percentage terms used in the above formula will be truncated to two decimal places. For the purpose of the terms A, B, E, and F above the published Treasury rate and term shall mean the Treasury Constant Maturities from the Federal Reserve Statistical Release for 7 years, 10 years, 20 years, and 30 years.

(b)(1) In the event that the borrower prepays a loan under paragraph (a) of this section using, directly or indirectly, tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is no greater than the benefit the borrower would receive if the borrower used financing that was not tax exempt. The borrower shall certify in writing whether the financing will be tax exempt.

(2) The discount rate established in paragraph (a) of this section shall be adjusted for a tax exempt financing by substituting for the "I" term in the discount rate formula, a discount rate equal to the interest rate(s) published pursuant to 7 CFR 1714.5, determination of interest rates on municipal rate loans. This is the interest rate established for the new RUS loan program which is based on municipal interest rates for issues of comparable maturity. No interpolation or average will be used. If a note is to be prepaid under this subpart and is subject to this tax exempt adjustment, the discount rate will be determined from the published

table in the FEDERAL REGISTER. For example, if the note to be discounted matures in the year 1999 then the discount rate will be the interest rate for the year 1999. RUS will publish a schedule of interest rates for municipal rate loans in the FEDERAL REGISTER at the beginning of each calendar quarter. The published rates in effect eight business days prior to closing will be used for the discount rates. All notes to be prepaid that have remaining years to maturity of more than 20 years will be discounted at the interest rate in effect for new RUS municipal rate loans of comparable maturity at the time of closing.

§ 1786.154 Qualified Notes.

An eligible borrower may prepay Qualified Notes under this subpart at the discounted present value. A Qualified Note is a note evidencing an RUS electric loan, all advances of which were made prior to May 1, 1992, or not less than 2 years prior to the date of prepayment closing. See §§ 1786.155(a)(3) and 1786.158 (h) and (j).

§ 1786.155 Eligible borrower.

(a) To be eligible to prepay an electric loan under this subpart, the borrower must be in compliance with the following:

(1) The borrower shall be current on all payment obligations on outstanding loans made or guaranteed by RUS. For the purpose of determining eligibility for prepayment, a default by a power supply borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower;

(2) There shall exist no material defaults under the borrower's RUS Loan Contract and Mortgage;

(3) The borrower shall have expended all funds advanced pursuant to the RUS Loan Contract for the purposes for which such funds were advanced. A borrower will not be eligible to prepay under this subpart if it has any funds advanced pursuant to the RUS Loan Contract in its Construction Fund Account; and

(4) The borrower shall be current on all obligations under any wholesale power contract with an RUS financed power supply borrower.

(b) The eligibility of borrowers that have had any indebtedness representing loans made or guaranteed by RUS restructured shall be determined on a case by case basis considering the terms and conditions of the restructuring agreement.

§ 1786.156 Application procedure.

Any borrower seeking to prepay Qualified Notes under this subpart should apply to the appropriate RUS Regional Director or the Director of the Power Supply Division. The application shall provide the following:

(a) Borrower's RUS designation;

(b) Borrower's name and address;

(c) A certified copy of a resolution of the board of directors of the borrower that the borrower wishes to enter into a prepayment agreement providing for the prepayment of all or a portion of its Qualified Notes;

(d) Listing of each Qualified Note to be prepaid by loan designation, RUS account number, advance date, maturity date, original amount, and outstanding principal balance;

(e) Evidence that the borrower has the ability to obtain the financing necessary to prepay its Qualified Notes listed in paragraph (d) of this section and identification of the source of financing and the need if any of obtaining a lien accommodation from RUS; and

(f) Such additional information as the Administrator may request.

§ 1786.157 Approval of applications.

(a) Ordinarily, within 30 days of receipt, an application will be reviewed and the borrower will be notified as to whether the application has been approved. If the application has not been approved, the borrower will be informed as to the reasons. If the application is approved the borrower shall thereafter be provided with a prepayment agreement for execution.

(b) The Administrator may limit the number of applications approved and closings scheduled from time to time, taking into account, among other matters, administrative considerations of the RUS.

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, RUS shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to RUS, which may include the following:

(a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms through which the borrower will notify the Government of each election it makes to prepay certain Qualified Notes upon a requested closing date and the Government will notify the borrower of the established closing date and prepayment amount for the Qualified Notes for each closing;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered prior to or at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice by either telephone or facsimile to be given by RUS to the borrower not more than 8 nor less than 3 business days before a scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the

terms and conditions of the financing as RUS may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding electric loans as of the date of initial closing;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide RUS, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agreements in form and substance, and on terms and conditions, satisfactory to RUS;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by RUS of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Initial closing.

(a) Upon receipt of the prepayment agreement, the borrower may submit, pursuant to the terms of the prepayment agreement, a closing request which shall request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to the borrower's closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date.

§ 1786.160 Subsequent closings.

(a) Each subsequent prepayment after the initial closing shall be facilitated with the submission of an additional closing request by the borrower. Each closing request must request a

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closing date no less than 30 business days from the date of the request.

(b) The Government will respond to each subsequent closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date in each case.

§ 1786.161 Return of Qualified Notes and release of lien.

Upon payment to RUS at closing of the full amount specified in the notice delivered by RUS to the borrower pursuant to the terms of the prepayment agreement (see § 1786.158(e)), RUS will deliver to the borrower at closing those Qualified Notes which have been paid in full at such closing, and upon payment and discharge of all outstanding RUS debt obligations by the borrower, RUS will deliver to the borrower at the final closing a release of lien prepared by the borrower pursuant to the terms of the prepayment agreement.

§ 1786.162 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its RUS Loan Contract, its outstanding notes issued to RUS, and the RUS Mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS Mortgage, or other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments of any loans pursuant to the RE Act in accordance with the terms of such loans.

§ 1786.163 Existing wholesale power contracts.

(a) If the borrower is a party to a wholesale power contract with a power supply borrower financed pursuant to the RE Act, the Administrator may require that the borrower and the power supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

7 CFR Ch. XVII (1–1–06 Edition)

SAMPLE CONTRACT TERMS

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes or other obligations as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either: (1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

The Administrator may require, among other things, that any payment owed under (2) of the preceding sentence that represents a portion of the power supply borrower's indebtedness on Notes shall be paid by the borrower in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.

[End of sample contract terms]

(b) The Administrator may exempt a borrower from the requirement to enter into a supplement to its outstanding wholesale power contract if the Administrator determines that such requirement is burdensome and unnecessary in light of the provisions of the existing wholesale power contract, other security arrangements of the power supply borrower, and any other relevant facts and circumstances. Normally such exemption will be granted only with the concurrence of the power supply borrower.

§ 1786.164 Loan fund audit.

In the event that a borrower shall prepay all its outstanding electric loans RUS shall have the right to audit within six (6) months of closing transactions involving the RUS Construction Fund Account established and maintained by the borrower pursuant to the terms of the RUS Loan Contract and to inspect all books, records, accounts, and other documents and papers of the borrower. Should RUS determine that the borrower has made disbursements of funds advanced pursuant to the RUS Loan Contracts which do not comply with the requirements thereof, the borrower shall be required to pay the RUS an amount equal to the difference between the amount which the borrower prepaid under this subpart with respect to such advances, and the amount which the borrower would otherwise have been required to return to the RUS as a result of noncompliance if the borrower had not prepaid such advances, plus interest. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.165 Reporting.

Borrowers that no longer have any loans made or guaranteed by RUS and are considering applying for other financial assistance pursuant to the RE Act are encouraged to file the end-of-year operating report, RUS Form 7.

§ 1786.166 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement,

including such approvals as may be required by regulatory bodies and other lenders.

§ 1786.167 Restrictions to additional RUS financing.

(a) No borrower that prepays an electric loan at a discount as provided under this subpart may apply for or receive direct or insured loans during the 120 months from the most recent closing date, except at the discretion of the Administrator. During the 120 month period the Administrator may consider providing an insured loan if, among other matters, it is necessary to assure repayment of, or protect the Government's security for any outstanding loans or loan guarantees, or the borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-RUS sources, including the Federal Emergency Management Agency, and from private sources. Upon expiration of the 120 months, such borrowers may apply for direct or insured loans in the same manner as other borrowers provided that such borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 120 months. Special provisions for mergers involving a borrower that has prepaid pursuant to this subpart are in 7 CFR 1717.158.

(b) Borrowers that prepay their direct or insured RUS loans under this subpart remain eligible for certain types of financial assistance under the RE Act, including loan guarantees and rural development loans.

[59 FR 13620, Mar. 22, 1994, as amended at 61 FR 66874, Dec. 19, 1996]

§ 1786.168 Borrowers who prepaid under this part prior to October 21, 1992.

(a) A borrower that had prepaid, prior to the date of enactment of Public Law 102-428 (106 Stat. 2183) on October 21, 1992, at a discount rate as provided at 7 CFR part 1786, subpart C:

(1) Shall not be eligible except at the discretion of the Administrator as stated in paragraph § 1786.167(a), to apply for or receive direct or insured loans

during the 180-month period beginning on the date of the prepayment; and

(2) Shall not be eligible to apply for or receive direct or insured loans from RUS until the borrower has repaid to the RUS the sum of:

(i) The amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury as calculated at §1786.153 at the time of the prepayment; and

(ii) Interest on the amount described in paragraph (a)(2)(i) of this section for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury. This rate will be calculated first on the date of prepayment and at one year intervals from that date based on the same U.S. Treasury issues published in the Federal Reserve Statistical Release closest to that date. The Treasury rate of interest to be applied for each year will be the rate for the Treasury issue of comparable maturity to the number of years from the prepayment date to the repayment date and at one year intervals thereafter.

(b) If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this section shall supersede any provision in the agreement relating to the restoration of eligibility for loans under the RE Act.

(c) Borrowers who prepaid prior to October 1, 1987, are eligible for assistance under the RE Act in the same manner as other borrowers with respect to loan guarantees and the rural development loans.

(d) During the 180 month period described in paragraph (a)(1) of this section the Administrator may consider providing an insured loan, if the conditions described in §1786.167(a) exist.

(e) Borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 180 month period described in paragraph (a)(1) of this section.

§1786.169 Liability.

It is the intent of this subpart that any failure on the part of RUS to comply with any provisions of this subpart, including without limitation, those provisions setting forth specified timeframes for action by RUS on applications for prepayments or closing requests, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§1786.170 Prepayment of loans approved after December 20, 1993. [Reserved]

§§1786.171–1786.199 [Reserved]

Subpart G—Refinancing and Prepayment of RUS Guaranteed FFB Loans Pursuant to Section 306(C) of the RE Act

AUTHORITY: 7 U.S.C. 901 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); sec. 1201(b) of subtitle B of title 1 of Pub. L. 103–66, 107 Stat. 312.

SOURCE: 58 FR 51008, Sept. 30, 1993, unless otherwise noted.

§1786.200 Purpose.

This subpart sets forth the policies and procedures of RUS through the existing FFB program, whereby borrowers may prepay and refinance, outstanding FFB Notes evidencing electric or telephone loans with FFB, pursuant to the provisions of section 306(C) of the RE Act as added by Public Law 103–66, 107 Stat. 312, enacted August 10, 1993.

§1786.201 Definitions and rules of construction.

(a) *Definitions.* As used in this subpart:

Administrator means the Administrator of the Rural Utilities Service (RUS).

Borrower means any organization which has an outstanding note(s) evidencing electric or telephone loans guaranteed by RUS, from FFB.

Business day means any such day on which both the Federal Financing Bank and Federal Reserve Bank—New York are open for business.

Electric loan means a loan made by FFB and guaranteed by RUS under section 306 of the RE Act for electric service.

FFB means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

Government means the United States of America, acting through the Administrator of the Rural Utilities Service.

Loan guarantee means RUS's guarantee under section 306 of the RE Act of a loan from FFB.

Payment date means the date that payment is due and is the last day in a calendar quarter.

Prepayment penalty means the same as prepayment premium.

Prepayment premium shall have the meaning set forth at § 1786.207.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

Refinancing note shall have the meaning set forth at § 1786.206.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS loan contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and RUS providing for loans or loan guarantees pursuant to the RE Act.

RUS mortgage means collectively those mortgages and security agreements made by and between the borrower and the Government, securing indebtedness evidencing electric and telephone loans or loan guarantees made pursuant to RE Act. The term in-

cludes such mortgages regardless whether third parties are mortgagees with RUS.

Supplemental lender means a private lender whose loan to the borrower is secured under an RUS mortgage.

Telephone loan means a loan made by FFB and guaranteed by RUS under section 306 of the RE Act for telephone service.

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

[58 FR 51008, Sept. 30, 1993, as amended at 59 FR 66440, Dec. 27, 1994]

§ 1786.202 Prepayment and refinancing of RUS guaranteed FFB loans.

The borrower of an electric or telephone loan made by the FFB and guaranteed by RUS under section 306 of the RE Act may, at the option of the borrower, refinance or prepay a loan or an advance on the loan, or any portion of the loan or advance in accordance with section 306C of the RE Act, after meeting certain conditions using the procedures prescribed in the note. After refinancing existing notes under this section, additional prepayments or refinancings will be governed by the terms of the refinancing note(s).

§ 1786.203 Special considerations.

Generally all FFB borrowers with loans guaranteed by RUS whose FFB notes have not been accelerated are eligible to prepay or refinance under this part. All requests for prepayment or refinancing will be processed in accordance with this subpart except that some requests for refinancing and prepayments are more complicated and thus will involve special considerations. These requests will have to be handled on a case by case basis and include:

(a) Telephone borrowers who are required to meet certain terms of their indenture;

(b) Borrowers who have amended their old form note or have already re-priced prior to September 30, 1993;

(c) Borrowers that have been involved in a merger or consolidation;

(d) Borrowers whose obligations to RUS, FFB notes, or security instruments differ from those normally used;

(e) A request to prepay or refinance an amount of less than \$100,000 or an amount of less than the full amount of an advance outstanding; or

(f) A request to prepay or refinance a note that includes unadvanced loan funds.

§ 1786.204 Limitations.

(a) No more than three refinancing notes will be executed for any borrower per calendar year.

(b) The borrower may not select a term for the refinanced advance that ends after the maturity date set for that advance.

§ 1786.205 Application procedure.

(a) Any borrower seeking to prepay or refinance an advance from the FFB under this subpart should apply by letter to the appropriate RUS Regional Director or, in the case of power supply borrowers, to the Director of the Power Supply Division. The borrower will be required to submit applications and elections in a digital format to be supplied by RUS. The application letter shall provide the following:

- (1) Borrower's RUS designation;
- (2) Borrower's name and address;

(3) Listing of each note to be prepaid by loan designation, RUS note number, RUS account number, advance date, maturity date, original amount, outstanding balance, and date(s) of any substitute FFB note(s) amending the original FFB Note;

(4) A statement of the borrower's intention to finance the premium by an addition to principal balance or to pay the premium in cash or with unsecured debt;

(5) A statement of the maturity options that the borrower wishes to select;

(6) Such additional information as the Administrator may request.

(b) Requests for refinancing or prepayment will ordinarily be processed in the order that they are received. Bor-

rower's may withdraw an application by notifying the appropriate RUS office in which they filed the application.

(c) When the request for prepayment or refinancing is approved for processing the borrower will be provided with appropriate instructions, documents and forms which may include but are not limited to the following:

- (1) An FFB refinancing note;
- (2) Resolution of Board of Directors;
- (3) Legal Opinion;
- (4) Certificate of Secretary;
- (5) Waiver of Notice;

(6) Notice to borrower electing an effective date other than a scheduled quarterly payment date (if applicable);

(7) Documentation of obligations secured pursuant to section 1786.208 if any; and

- (8) Security instrument.

(Approved by the Office of Management and Budget under control number 0572-0032)

§ 1786.206 Refinancing note.

(a) RUS will issue a replacement guaranty for refinancing notes delivered to FFB to replace and substitute for existing FFB notes in connection with any refinancing by FFB pursuant to section 306C of the RE Act.

(b) Generally, refinancing notes will, to the extent practicable, consolidate all of a borrower's existing FFB notes which have been guaranteed by RUS and containing terms and conditions as FFB may require and RUS and the borrower may accept.

(c) Notwithstanding any contrary provision contained in this subpart, RUS will give preference to processing refinancings that utilize a generic form of refinancing note in the event that FFB prescribes one.

[58 FR 51008, Sep. 30, 1993; 58 FR 58729, Nov. 3, 1993]

§ 1786.207 Prepayment premium.

(a) A premium shall be assessed against a borrower that refinances or prepays a loan or loan advance, or any portion of a loan or advance, under this section. RUS will collect the prepayment premium as calculated by FFB. FFB will calculate this premium as described in this section. Except as provided in paragraph (b) of this section,

the premium shall be equal to the lesser of:

(1) The difference between the outstanding principal balance of the loan being refinanced and the present value of the loan discounted at a rate equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid;

(2) 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced, multiplied by the ratio that:

(i) The number of quarterly payment dates between the date of the refinancing or prepayment and the maturity date for the loan advance; bears to

(ii) The number of quarterly payment dates between the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced was advanced and the maturity date of the loan advance; and

(3)(i) The present value of 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced or prepaid; plus

(ii) For the interval between the date of the refinancing or prepayment and the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced or prepaid was advanced, the present value of the difference between:

(A) Each payment scheduled for the interval on the loan amount being refinanced or prepaid; and

(B) The payment amounts that would be required during the interval on the amounts being refinanced or prepaid if the interest rate on the loan were equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid.

(b)(1) Except as provided in paragraph (b)(2) of this section, the premium provided by paragraph (a)(1) of this section shall be required for refinancing or prepayment under this section.

(2) In the case of a loan advanced under an agreement that permits the refinancing or prepayment of the loan advance based on the payment of 1 year of interest on the outstanding principal balance of the loan advance, a borrower may, in lieu of the premium required by paragraph (a)(1) of this section, pay a premium as provided by:

(i) Paragraph (a)(2) of this section, if the loan advance has reached the 12-year maturity required under the loan agreement for the refinancing or prepayment; or

(ii) Paragraph (a)(3) of this section, if the loan advance has not reached the 12-year maturity required under the loan agreement for the refinancing or prepayment.

§ 1786.208 Increased principal.

A borrower can meet the premium requirements by increasing the outstanding principal balance of the loan advance that is being refinanced. If it does so the borrower shall make a payment at the time of the refinancing equal to 2.5 percent of the amount of the premium that is added to the outstanding principal balance of the loan.

§ 1786.209 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its RUS loan contract, its outstanding notes issued to RUS, and the RUS mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage or the rights of any other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments on any loans pursuant to the RE Act in accordance with the terms thereof or as may be otherwise permitted by law.

§ 1786.210 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the refinancing note, including such approvals as may be required by regulatory bodies and other lenders.