

## § 1786.60

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 scheduled 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.

## 7 CFR Ch. XVII (1-1-12 Edition)

### § 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.

*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

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providing for loans pursuant to the Act.

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

rower 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  $k^{\text{th}}$  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  $i^{\text{th}}$  payment period that are in a non-leap year (365 day year).

$D2_i$ =Number of days in the  $i^{\text{th}}$  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,

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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 ac-

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quired, 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.

(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

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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. 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 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.,<br>Montrose.       |
| Florida .....   | Lee County Electric Coop. Inc., North<br>Fort Myers.  |
| Indiana .....   | Clark County Rural Elec. Memb. Corp.,<br>Sellersburg. |
| Louisiana ..... | Beauregard Electric Cooperative, Inc.,<br>Deridder.   |
| Missouri .....  | Culvre River Electric Cooperative, Inc.,<br>Troy.     |
| Nebraska .....  | Roosevelt Public Power District, Mitchell.            |
| Nebraska .....  | Howard Greeley Rural Public Power Dist.,<br>St. Paul. |
| Nebraska .....  | Cuming County Public Power District,<br>West Point.   |
| Nebraska .....  | York County Rural Public Power District,<br>York.     |

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| State          | Borrower name and address                          |
|----------------|----------------------------------------------------|
| 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.        |
| Nebraska ..... | Custer Public Power District, Broken Bow.          |
| Nebraska ..... | Northwest Rural Public Power Dist., Hay Springs.   |
| Nebraska ..... | Southwest Public Power District, Palisade.         |
| Nebraska ..... | Loup Valleys Rural Public Power District, Ord.     |
| Nebraska ..... | South Central Public Power District, Nelson.       |
| 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.   |

| State            | Borrower name and address                          |
|------------------|----------------------------------------------------|
| Texas .....      | Bluebonnet Electric Cooperative, Inc., Giddings.   |
| Texas .....      | Cap Rock Electric Cooperative, Inc. Stanton.       |
| Texas .....      | San Bernard Electric Cooperative, Inc., Bellville. |
| Washington ..... | Inland Power & Light Company, Spokane.             |
| Washington ..... | Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen. |

APPENDIX B TO SUBPART E OF PART 1786—FEDERAL RESERVE STATISTICAL 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 (effective) <sup>1,2,3</sup> .....       | 7.61         | 7.16         | 6.96         | 8.18         | 6.30        | 7.46      | 6.88      | 6.91      |
| Commercial paper <sup>3,4,5</sup> .....                |              |              |              |              |             |           |           |           |
| 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 directly <sup>3,4,6</sup> .....   |              |              |              |              |             |           |           |           |
| 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 acceptances (top rated) <sup>3,4,7</sup> ..... |              |              |              |              |             |           |           |           |
| 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      |
| CDS (secondary market) <sup>3,8</sup> .....            |              |              |              |              |             |           |           |           |
| 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) <sup>3,9</sup> .....      |              |              |              |              |             |           |           |           |
| 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 <sup>2,3,10</sup> .....                | 9.50         | 9.50         | 9.50         | 9.50         | 9.50        | 9.50      | 9.50      | 9.52      |
| Discount window borrowing <sup>2,11</sup> .....        | 6.50         | 6.50         | 6.50         | 6.50         | 6.00        | 6.50      | 6.50      | 6.50      |
| U.S. Government securities .....                       |              |              |              |              |             |           |           |           |
| Treasury bills .....                                   |              |              |              |              |             |           |           |           |
| Auction average <sup>3,4,12</sup> .....                |              |              |              |              |             |           |           |           |
| 3-Month .....                                          | 6.22         |              |              |              |             | 6.22      | 6.14      | 6.30      |
| 6-Month .....                                          | 6.28         |              |              |              |             | 6.28      | 6.21      | 6.34      |

## SELECTED INTEREST RATES—Continued

[Yields in percent per annum]

| Instruments                                | 1991 Jan.<br>28 | 1991 Jan.<br>29 | 1991 Jan.<br>30 <sup>1</sup> | 1991 Jan.<br>31 | 1991 Feb.<br>1 | This week | Last week | 1991 Jan. |
|--------------------------------------------|-----------------|-----------------|------------------------------|-----------------|----------------|-----------|-----------|-----------|
| 1-Year .....                               |                 |                 |                              |                 |                |           |           | 6.22      |
| Auction average (investment) <sup>12</sup> |                 |                 |                              |                 |                |           |           |           |
| 3-Month .....                              | 6.41            |                 |                              |                 |                | 6.41      | 6.32      | 6.49      |
| 6-Month .....                              | 6.58            |                 |                              |                 |                | 6.58      | 6.50      | 6.64      |
| Secondary market <sup>3,4</sup>            |                 |                 |                              |                 |                |           |           |           |
| 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 <sup>13</sup> |                 |                 |                              |                 |                |           |           |           |
| 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) <sup>14</sup>    | 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 <sup>15</sup>                    |                 |                 |                              |                 | 9.65           | 9.65      | 9.80      | 9.83      |
| State and local bonds <sup>16</sup>        |                 |                 |                              | 7.00            |                | 7.00      | 7.06      | 7.08      |
| Conventional mortgages <sup>17</sup>       |                 |                 |                              |                 | 9.56           | 9.56      | 9.61      | 9.64      |

## Footnotes:

- <sup>1</sup> The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.  
<sup>2</sup> Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.  
<sup>3</sup> Annualized using a 360-day year or bank interest.  
<sup>4</sup> Quoted on a discount basis.  
<sup>5</sup> An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.  
<sup>6</sup> An average of offering rates on paper directly placed by finance companies.  
<sup>7</sup> Representative closing yields for acceptances of the highest rated money center banks.  
<sup>8</sup> An average of dealer offering rates on nationally traded certificates of deposit.  
<sup>9</sup> Bid rates for Eurodollar deposits at 11 a.m. London time.  
<sup>10</sup> One of several base rates used by banks to price short-term business loans.  
<sup>11</sup> Rate for the Federal Reserve Bank of New York.  
<sup>12</sup> Auction date for daily data; weekly and monthly averages computed on an issue-date basis.  
<sup>13</sup> Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.  
<sup>14</sup> Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.  
<sup>15</sup> 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.  
<sup>16</sup> Bond buyer index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.  
<sup>17</sup> 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.

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**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.

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*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 ( $\Sigma$ ) means the sum of the following terms.

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

$P_k$  = Total payment, including interest due on the  $K^{\text{th}}$  payment date following the prepayment date.

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

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

$D2_i$  = Number of days in the  $i^{\text{th}}$  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             | ( <sup>1</sup> )             |
| 5 .....                               | 6             | 5-year.                      |
| 6 .....                               | 7             | ( <sup>2</sup> )             |
| 7 .....                               | 8             | 7-year.                      |
| 8 .....                               | 9             | ( <sup>3</sup> )             |
| 9 .....                               | 10            | ( <sup>3</sup> )             |
| 10 .....                              | 11            | 10-year.                     |
| 11 .....                              | 20            | ( <sup>4</sup> )             |
| 20 .....                              | 21            | 20-year.                     |
| 21 .....                              | 30            | ( <sup>5</sup> )             |
| 30 .....                              | 36            | 30-year.                     |

### NOTES:

<sup>1</sup> The 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%.

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

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

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



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<sup>5</sup>A 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

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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

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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,

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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 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:

**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

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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

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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

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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 bor-

rowers 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

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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 includes 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.

[59 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).

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## § 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 repriced 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,

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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. Borrower'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



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(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

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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.

## PART 1788—RUS FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELECOMMUNICATIONS BORROWERS

### Subpart A—Borrower Insurance Requirements

#### Sec.

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1788.54 Compliance with contracts.

1788.55 Providing RUS evidence.

AUTHORITY: 7 U.S.C. 901 et seq.; 7 U.S.C. 1921 et seq.; 7 U.S.C. 6941 et seq.

SOURCE: 64 FR 2, Jan. 4, 1999, unless otherwise noted.

### Subpart A—Borrower Insurance Requirements

#### § 1788.1 General and definitions.

(a) The standard forms of documents covering loans made or guaranteed by