



## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1735 and 1737

[RUS-20-TELECOM-0044]

RIN 0572-AC48

### Implementation of Telecommunications Provisions of the Agricultural Improvement Act of 2018

**AGENCY:** Rural Utilities Service, Department of Agriculture (USDA).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Rural Utilities Service (RUS) is issuing a final rule with comment to implement statutory provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill). The intent of this rule is to modify existing regulations to include the statutory revisions authorized by the 2018 Farm Bill.

**DATES:** *Effective date:* This final rule with comment is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comment date:* Comments due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by docket number RUS-20-TELECOM-0044 and Regulatory Information Number (RIN) number 0572-AC48 through <https://www.regulations.gov>.

**Instructions:** All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general inquiries, contact Laurel Leverrier, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: [laurel.leverrier@usda.gov](mailto:laurel.leverrier@usda.gov), telephone: (202) 720-9556.

**SUPPLEMENTARY INFORMATION:**

*Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health, and safety advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. In accordance with Executive Order 12866, the Agency conducted a Regulatory Impact Analysis, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available in Docket No. RUS-20-TELECOM-0044. The following is a summary discussion of the Analysis:

This final rule does not directly address any specific market failure. The Agency is publishing this rulemaking action to codify the mandatory changes outlined in the 2018 Farm Bill. Many of the benefits provided by these mandatory changes include:

- (1) Providing new information regarding grant eligibility in conjunction with the Farm Bill Broadband Program covered under 7 CFR part 1738;
- (2) General language clarifications and duplication removals;
- (3) Providing information for, or the removals of, specific service requirements;

- (4) Changes in program financing thresholds to conform to the 2018 Farm Bill requirements;
- (5) Additional application information to ensure criteria are met;
- (6) New reporting requirements that ensure similar data is reported and collected across multiple USDA broadband programs to improve oversight and integrity; and
- (7) Changes in language to ensure that programs can meet funding deadlines while still maintaining the integrity of the environmental review process.

These changes are expected to result in great transparency from the Agency and increased financing opportunities for providers of rural telecommunications services. Telecommunications services are having a profound effect on the Nation's economy, its strength and its growth by reducing the barriers of distance, remoteness, and time.

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs has designated this rule as not being a major rule, as defined by 5 U.S.C. 804(2).

#### *Executive Order 12988, Civil Justice Reform*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

#### *Executive Order 12372, Intergovernmental Consultation*

This final rule has been excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with state and local officials. See “Department Programs and Activities Excluded from Executive Order 12372,” 50 FR 47034 (Nov. 14, 1985).

#### *Administrative Procedures Act*

The Administrative Procedures Act (APA) exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C.553(a)(2)). The Rural Telecommunications Program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits under the loan program. Based on this, any changes to the program fall under this exemption.

#### *Regulatory Flexibility Act Certification*

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute. As outlined above, this rule is not subject to the APA under 5 U.S.C. 553(a)(2).

#### *Environmental Impact Statement*

This final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a

“cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the Telecommunications Infrastructure Loans & Guarantees Program is 10.851. The Catalog is available on the Internet at <https://beta.sam.gov/>. The Government Publishing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at (202) 512–1800 or toll free at (866) 512–1800, or access GPO’s online bookstore at <https://bookstore.gpo.gov>.

#### *Unfunded Mandates*

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

#### *E-Government Act Compliance*

Rural Development is committed to complying with the E-Government Act of 2002, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### *Executive Order 13132, Federalism*

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

*Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Broadband programs in general have a significant impact on Tribes. These specific statutory provisions, however, were predominantly mandatory, leaving very few areas for discretion for Tribal consultation and guidance. The primary areas of discretion were: 1) removing guarantee fee language, 2) correcting a citation, 3) removing obsolete year 2000 compliance information and 4) removing a duplicative refinancing section.

USDA has held a series of Tribal consultations conducted by USDA Rural Development and USDA Office of Tribal Relations regarding tribal broadband. The consultations included consultations on 1) tribal broadband specifically (both at the national level and numerous regional and state level tribal consultations), 2) the USDA ReConnect broadband program, 3) participation with Department of Commerce NTIA on the Tribal Broadband Connectivity Program, and on 4) Executive Order 13985, “Advancing Racial Equity and Support for

Underserved Communities Through the Federal Government” (1/20/21). Through these consultations, the USDA compiled the following Tribal government requested “Tribal Broadband Principles” which were considered and used where applicable in drafting this regulation:

- Require Tribal resolution. Require any new or legacy applicant for USDA funds proposing to serve Tribal lands to have a Tribal resolution of support to qualify for eligibility.
- Increase flexibility. Read any ambiguous statutory requirements and limitations as broadly as possible and in favor of Tribes in light of our trust obligations.
- Narrow duplication definition. Read “duplication” limitations as broadly and as flexibly as possible when working with Tribal nations to ensure their eligibility for USDA programs to serve their own lands.
- All self-certification. Tribal nations must be the certifiers of whether they are being served/are underserved or other similar requirements.
- Enforce compliance with Tribal laws. Include a requirement of compliance with Tribal laws and regulations in the sections of loan and grant agreements that require compliance with state and local laws. Enforce the terms of Federal loan and grant agreements which require compliance with local (including tribal) laws and regulatory bodies.

### *Civil Rights Impact Analysis*

The Rural Development’s Civil Rights Office reviewed this rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. The Rural Development’s Civil Rights Office worked with the RUS program offices to compile program descriptions, data, and outreach activities strategies for the subject program. The Rural Development’s Civil Rights Office assessed civil rights implications

and impacts of eligibility criteria, methods of administration, and other requirements associated with the final rule including strategies to eliminate, alleviate, or mitigate (where applicable) civil rights impacts identified in the Civil Rights Impact Analysis. The Rural Development's Civil Rights Office agrees to monitor the implementation of all civil rights strategies that were instituted in connection with this final rule, evaluate their effectiveness, and take follow-up action where civil rights impacts may ensue.

### *Information Collection and Recordkeeping Requirements*

The Information Collection and Recordkeeping requirements contained in this rule have been approved under OMB Control Number 0572-0079 and submitted for approval under OMB Control Number 0572-0154.

### **Background**

Rural Development is a mission area within the USDA comprising the Rural Utilities Service, Rural Housing Service, and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, business, and infrastructure throughout rural America.

The Agricultural Improvement Act of 2018 (2018 Farm Bill) made mandatory changes to the Rural Telephone Loan Program administered by the Telecommunications Program of the Rural Utilities Service.

These modifications to the program's regulations will allow RUS to fully implement the requirements of the 2018 Farm Bill. RUS is also taking the opportunity to make minor changes to the program regulations that will update or correct existing regulatory citations, data speeds,



and other program provisions to bring them in line with the statutory changes required by the 2018 Farm Bill.

Changes to 7 CFR part 1735 “General Policies, Types of Loans, Loan Requirements – Telecommunications Program” include:

Adding paragraph (d) to § 1735.1. The addition of paragraph (d) provides notice to applicants that they may be eligible to receive grant assistance through Title VI which is governed by 7 CFR part 1738. The Agency determined this was the most effective way to provide this information.

The addition of a definition of Retail Broadband Service to § 1735.2. The definition provides information to the public on what the Agency considers “retail broadband service” for the purposes of this part.

Clarifying, at § 1735.10(a)(2)(ii), that multiuse networks that provide critical transportation-related services are considered integrated interoperable emergency communications and therefore are an eligible loan purpose.

Removing the requirement for a certificate of convenience and necessity from § 1735.12. While necessary when the program was implemented, the prevalence of services at this time and changes to state regulatory bodies has rendered the certificate meaningless for Agency purposes. The Agency also expanded the authority of the RUS Administrator, at § 1735.12(a), to determine non-duplication of services. Previously the Administrator only made that determination for states in which there was no regulatory body. This change will reduce the burden on applicants and aid in streamlining the application process. Clarification regarding non-duplication verification for existing borrowers is provided by the Agency, at § 1735.12(b).

Modifying the criteria at § 1735.12(c) to remove specific transmission and reception rates and require coverage as described in § 1735.11 for local area exchanges. These changes remove outdated terminology, create a single requirement which reduces confusion and creates consistency for all applicants.

Changing the thresholds, at § 1735.21, regarding refinancing to conform to 2018 Farm Bill requirements. Prior to the 2018 Farm Bill, the Agency was only able to refinance non-RUS loans as long as no more than 40 percent of the new loan was used for refinancing. The 2018 Farm Bill removed the 40 percent cap and extended the ability to refinance 100 percent of non-RUS and RUS debt. Refinancing limits will be published in the funding opportunity announcement opening an application window and based on amounts that are authorized for a given fiscal year. However, the Agency is considering limiting refinancing of non-RUS loans to 50 percent of the total loan amount while allowing 100 percent refinancing of existing RUS loans. Additional information was added to this section to provide information on loans eligible for refinancing as well as maximum amortizations.

Modifications to § 1735.22(f), (g), and (i) to remove outdated references to year 2000 compliant systems and correct an incorrect reference that was carried forward from a previous version of the regulation, respectively.

The addition of public notice filing and response requirements at § 1735.23. The notice will allow existing service providers to respond to pending applications before the agency that propose to provide broadband service outside of their territory that receives federal universal support.

New reporting requirements at § 1735.24. These new requirements ensure similar data is reported and collected across multiple USDA broadband programs to improve oversight and integrity.

Removal of refinancing language at §1735.52 that is now duplicative due to the changes at §1735.21.

Changes to 7 CFR part 1737, “Pre-Loan Policies and Procedures Common to Insured and Guaranteed Telecommunications Loans” include multiple changes to § 1737.22 to include the removal of the requirement for a certified copy of a certificate of convenience and necessity as that certificate is no longer required due to changes implemented by the 2018 Farm Bill.

Additional application information was added to § 1737.22(c) and (e) for loans involving refinancing. This additional information is necessary to ensure that the loans to be refinanced meet the criteria set forth in this regulation and the funding opportunity announcement that opens a funding window.

Changes at § 1737.90 to include language allowing obligation but not disbursement of funds, under certain circumstances, prior to the completion of historical or other types of review identified during the environmental review. This change allows for obligation of funds so awardees know that funds will be available while still maintaining the integrity of the environmental review process.

### **Amendments and Comparison to the Current Regulation**

The Telecommunications Program and the organizations that apply for its funding face significant challenges putting in place projects that can deliver and maintain robust, affordable telecommunication services to rural consumers. These challenges include rapidly evolving technology, competition, and the ever-present higher costs of serving rural areas. The final rule will implement statutory changes required by the 2018 Farm Bill, as well as minor conforming changes that will update and/or correct existing regulatory citations, data speeds and other program provisions to ensure they are in line with the required statutory changes. The changes are expected to create greater program transparency and ensure program rules are clear and consistent.

Table 1 below shows which sections of the regulations were changed due to the statutory authority contained in the 2018 Farm Bill and those changes where RUS is exercising discretion to improve program clarity. If the sections of the regulations are not specifically stated within the table, no changes were made to those sections.

<b>Table 1: Statutory and Discretionary Changes to the Regulations</b>			
<b>Section of Regulation</b>	<b>Revision</b>	<b>2018 Farm Bill Requirement</b>	<b>Discretionary</b>
<b>7 CFR Part 1735 – General Policies, Types of Loans, Loan Requirements – Telecommunications Program</b>			
<b>§ 1735.1 General Statement</b>	Paragraph that entities applying under this part could be eligible for grant funds under 7 CFR 1738.101 added.	X	
<b>§ 1735.2 Definitions</b>	Retail Broadband service definition added.	X	
<b>§ 1735.10 General</b>	Updated terminology for 911 service added.	X	
	Language on guaranteed fees removed.		X
<b>§ 1735.12 Nonduplication</b>	Certificate of Convenience and Necessity requirement was removed.	X	
	Outdated broadband speeds were removed.	X	
<b>§ 1735.21 Refinancing Loans</b>	Updated with new RUS refinancing authorities.	X	
<b>§ 1735.22 Loan Security</b>	“Year 2000” system compliance language was removed.		X
	Paragraph citation errors corrected.		X
<b>§ 1735.23 Public Notice</b>	New public notice requirements and timeframe added.	X	
<b>§ 1735.24 Additional Reporting Requirements</b>	New reporting requirements and policies added.	X	
<b>§ 1735.51 Required Findings</b>	Certificate of Convenience and Necessity requirement removed.	X	
<b>§ 1735.52 Findings Required for Particular Loan Purposes</b>	Duplicative refinancing language removed.		X
<b>7 CFR Part 1737 – Pre-Loan Policies and Procedures Common to Insured and Guaranteed Telecommunications Loans</b>			
<b>§ 1737.22 Supplemental Information</b>	Certificate of Convenience and Necessity requirement removed.	X	
	Refinancing requirements updated.	X	
	Public Notice requirements added.	X	
<b>§ 1737.90 Loan</b>	Language added to allow obligations	X	

<b>Approval Requirements</b>	prior to environmental reviews being complete if related to specific broadband equipment.		
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**List of Subjects**

**7 CFR Part 1735**

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

**7 CFR Part 1737**

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

For reasons set forth in the preamble, 7 CFR parts 1735 and 1737 are amended as follows:

**PART 1735 – GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS – TELECOMMUNICATIONS PROGRAM**

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

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

**Subpart A – General**

2. Amend §1735.1 by adding paragraph (d) to read as follows:

**§ 1735.1 General statement.**

\* \* \* \* \*

(d) Entities applying for a loan under this part may be eligible to receive a grant under 7 CFR 1738.101, for a portion of the project providing retail broadband service.

3. Amend §1735.2 by adding, in alphabetical order, the definition of “Retail broadband service” to read as follows:

## **§ 1735.2 Definitions.**

\* \* \* \* \*

*Retail broadband service* means any technology identified by the Administrator as having the capacity to provide transmission facilities that enable the subscriber to receive a minimum level of service equal to at least a downstream transmission capacity of 25 megabits per second (Mbps) and an upstream transmission capacity of 3 Mbps. The agency may change the minimum transmission capacity by way of notice in the Federal Register. The minimum transmission capacity may be higher than 25 Mbps downstream and 3 Mbps upstream but cannot be lower.

\* \* \* \* \*

### **Subpart B – Loan Purposes and Basic Policies**

4. Amend § 1735.10 by:

a. Revising paragraph (a)(2)(ii);

b. Removing paragraph (e); and

c. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

The revision reads as follows:

### **§ 1735.10 General.**

(a) \* \* \*

(2) \* \* \*

(ii) Integrated interoperable emergency communications, including multiuse networks that provide critical transportation-related information services in addition to emergency communications services;

\* \* \* \* \*

5. Amend § 1735.12 by:

a. Revising paragraph (a) and (b);

b. Removing paragraphs (c)(2) and (3);

c. Redesignating paragraphs (c)(4) through (12) as paragraphs (c)(2) through (10), respectively; and

d. Revising newly redesignated paragraph (c)(5).

The revisions read as follows:

**§ 1735.12 Nonduplication.**

(a) A loan will not be made unless the Administrator determines that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan.

(b) Existing borrowers that apply to upgrade existing facilities in their existing service area are exempt from the non-duplication requirement in paragraph (a) of this section.

(c) \* \* \*

(5) The LEC's network is capable of providing retail broadband service as defined in § 1735.2 to any subscriber location.

\* \* \* \* \*

6. Revise § 1735.21 to read as follows:

**§ 1735.21 Refinancing loans.**

(a) Any new direct or guaranteed loan authority provided under the RE Act may be used to refinance an outstanding obligation of the applicant on another loan made under Titles II and VI

of the RE Act, or on a non-RUS loan if that loan would have been for eligible

telecommunications purposes under the RE Act provided that:

(1) The applicant is current with its payments on the RUS loan(s) to be refinanced; and

(2) The amortization period for that portion of the loan request that will be needed for refinancing will not exceed the remaining amortization period for the loan(s) to be refinanced. If multiple notes are being refinanced, an average remaining amortization period will be calculated based on the weighted dollar average of the notes being refinanced.

(b) The amount that can be refinanced will be included in the funding opportunity announcement that will open a funding window based on the funds authorized for any given fiscal year.

7. Amend § 1735.22 by revising paragraphs (f), (g), and (i) to read as follows:

**§ 1735.22 Loan security.**

\* \* \* \* \*

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

(g) For purposes of determining compliance with TIER requirements, unless a borrower whose existing mortgage contains TIER maintenance requirements notifies RUS in writing differently, RUS will apply the requirements described in paragraph (h) of this section to the borrower regardless of the provisions of the borrower's existing mortgage.

\* \* \* \* \*



(i) Nothing in this section shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's TIER requirement to a level above that established in paragraph (h) of this section.

\* \* \* \* \*

8. Add §1735.23 to read as follows:

**§ 1735.23 Public notice.**

(a) Applications for funding request in which the applicant will provide retail broadband service, the Agency's mapping tool will include the following information from each application, and will be displayed for the public:

- (1) The identity of the applicant;
- (2) A description of the project that can deliver retail broadband service;
- (3) A map of the areas to be served, the proposed funded service area (PFSA), including identification of the associated census blocks;
- (4) The amount and type of funding requested;
- (5) The status of the application; and
- (6) The estimated number and proportion of households and businesses in the proposed funded service area without fixed retail broadband service, whether terrestrial or wireless, excluding mobile and satellite service.

(b) For funding requests outside an area where the applicant receives Federal universal service support, the public notice filing referenced under paragraph (a) of this section will accept public notice responses from existing service providers with respect to retail broadband service already being provided in the PFSA for 45 calendar days on the Agency's webpage. Existing

service providers are requested to submit the following information through the Agency's mapping tool:

(1) The number of residential and business customers within the PFSA currently purchasing broadband at the minimum threshold, the rates of data transmission being offered, and the cost of each level of broadband service charged by the existing service provider;

(2) The number of residential and business customers within the applicant's service area receiving voice and video services and the associated rates for these other services;

(3) A map showing where the existing service provider's services coincide with the applicant's service area using the Agency's mapping tool; and

(4) Test results for the service area in question for a minimum of at least the prior three months demonstrating that the asserted level of broadband is being provided. The test results shall be for different times of the day.

(c) The Agency may contact service providers that respond under paragraph (b) of this section to validate their submission, and so responding service providers should be prepared to:

(1) Provide additional information supporting that the area in question has sufficient access to broadband service;

(2) Have a technician on site during the field validation by RUS staff;

(3) Run on site tests with RUS personnel being present, if requested; and

(4) Provide copies of any test results that have been conducted in the last six months and validate the information submitted in the public notice response months.

(d) If no broadband service provider submits information pursuant to a pending application or if the existing provider does not provide the information requested under paragraphs (b) and (c) of this section, RUS will consider the extent of broadband service using any other data available through reasonable efforts, including utilizing the National Telecommunications and Information Administration's National Broadband Availability Map and the Federal Communications Commission broadband availability map. That may include the

agency conducting field validations so as to locate facilities in the application service area and determine, to the extent possible, if those facilities can provide the minimum threshold of broadband. Notwithstanding, conclusive evidence as to the existence of the level of broadband will be taken only through the public notice process. As a result, the Agency highly recommends that existing service providers in a PFSA submit public notice response to ensure that their service is considered in the determination of eligibility on an application.

(e) The Agency will notify respondents who are existing service providers whether their public notice response was accepted or not and allow for an opportunity to respond.

(f) The information submitted by an existing service provider under paragraphs (b) and (c) of this section will be treated as proprietary and confidential and not subject to disclosure, pursuant to 7 U.S.C. 950cc(b)(3).

(g) For all applications that are approved, the following information will be made available to the public:

(1) The information provided in paragraph (a) of this section;

(2) Each annual report required under §1735.24 will be redacted to protect any proprietary information; and

(3) Such other information as the Administrator of the RUS deems sufficient to allow the public to understand the assistance provided.

9. Add §1735.24 to read as follows:

**§ 1735.24 Additional reporting requirements.**

(a) Entities receiving financial assistance from RUS that are used for retail broadband must submit annual reports for 3 years after project completion. The reports must include the following information:

(1) The purpose of the financing, including new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers (including the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure); and

(2) The progress towards fulfilling the objectives for which the assistance was made, including:

(i) The number of service points that will receive new broadband service, existing network improvements, and facility upgrades resulting from the federal assistance;

(ii) The speed of the broadband services;

(iii) The average price of the most subscribed tier of retail broadband service in each PFSA;

(iv) The number of new subscribers generated from the project; and

(v) Complete, reliable, and precise geolocation information that indicates the location of new broadband service that is being provided or upgraded within the service territory supported by the grant, loan, or loan guarantee.

(b) A notice will be published on the Agency's website that will include each annual broadband improvement report, redacted as appropriate to protect any proprietary information in the report.

#### **Subpart E—Basic Requirements for Loan Approval**

10. Amend § 1735.51 by revising paragraph (c) to read as follows:

#### **§ 1735.51 Required findings.**

\* \* \* \* \*

(c) *Nonduplication or certificate requirement.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that no duplication of telephone service shall result from a particular loan.

### **§ 1735.52 [Amended]**

11. Amend § 1735.52 by removing paragraph (a) and removing the paragraph (b) designation and heading.

## **PART 1737 – PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS**

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

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

### **Subpart C—The Loan Application**

13. Amend § 1737.22 by:

- a. Removing paragraph (a)(13);
- b. Redesignating paragraphs (a)(14) through (20) as paragraphs (a)(13) through (19), respectively;
- c. Designating the text of newly redesignated paragraph (a)(19) as paragraph (a)(19)(i);
- d. Designating the undesignated paragraph following newly designated paragraph (a)(19)(i) as paragraph (a)(19)(ii);
- e. In newly designated paragraph (a)(19)(ii), removing “(a)(19)” and adding “(a)(18)” in its place;

f. Revising paragraphs (b) introductory text, (c) introductory text, and (c)(3);

g. Redesignating paragraph (d) as paragraph (e); and

h. Adding a new paragraph (d) and paragraph (f).

The revisions and additions read as follows:

**§ 1737.22 Supplementary information.**

\* \* \* \* \*

(b) The following must be submitted by borrowers seeking subsequent loans:

\* \* \* \* \*

(c) For borrowers requesting funds for construction or refinancing, in addition to the information included in paragraphs (a) and (b) of this section, the following must be submitted:

\* \* \* \* \*

(3) Justification for refinancing and evidence that the underlying loan to be refinanced would have been eligible for RUS financing under the RE Act.

(d) Loan requests whose sole purpose is to refinance loans under Titles II and VI of the RE Act must submit the following:

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

(2) Five-year financial projections consisting of Income Statement, Balance Sheet, and Cash Flow Statement.

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

(4) Executed copy of Form AD-1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.”

(5) Borrower’s determination of loan maturity.

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

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

\* \* \* \* \*

(f) For all applications that request funding for retail broadband as defined in 7 CFR 1735.2, the application must include all information required for the public notice as stated in 7 CFR 1735.23(a).

\* \* \* \* \*

#### **Subpart J—Final Loan Approval Procedures**

14. Amend § 1737.90 by revising paragraph (a)(6) to read as follows:

#### **§ 1737.90 Loan approval requirements.**

(a) \*\*\*

(6) All environmental review requirements must be met in accordance with 7 CFR part 1970. The Agency may obligate, but not disperse, funds under the program pursuant to 7 U.S.C. 950cc-1, before the completion of the otherwise required environmental, historical, or other types of reviews if the Secretary of Agriculture determines that subsequent site-specific review

shall be adequate and easily accomplished for the location of towers, poles, or other broadband facilities in the service area of the awardee without compromising the project or the required reviews.

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Christopher A. McLean,  
Acting Administrator,  
Rural Utilities Service.

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