

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1730

RIN 0572-AA74

#### Electric System Operations and Maintenance

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations by adding a new part on electric system operations and maintenance. This action codifies and clarifies RUS policy relating to the operations and maintenance of electric systems by RUS electric borrowers. This rule also contains provisions relating to the review and evaluation of borrowers' electric systems and facilities operations and maintenance practices. These policies are presently contained in RUS Bulletin 161-5, which will be rescinded when the final rule becomes effective. This action clarifies the policies, procedures, and requirements, facilitates understanding and compliance, and improves program effectiveness with respect to electric system operations and maintenance.

**EFFECTIVE DATE:** This rule is effective February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250-1569, telephone (202) 720-1398, e-mail fgatchel@rus.usda.gov.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore

has not been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this rule.

#### National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

#### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Final Rule-Related Notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 Fed. Reg. 47034) exempted RUS loans and loan guarantees from coverage under this order.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards in section 3 of the Executive Order.

#### National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

#### Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under control number 0572-0025.

#### Unfunded Mandates

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

#### Background

RUS has promulgated policies and procedures regarding the review and evaluation of the operations and maintenance practices of RUS financed electric systems. These policies and procedures are presently contained in RUS Bulletin 161-5, Electric System Review and Evaluation. The security instrument and loan contract between RUS and electric borrowers set certain standards for the operation and maintenance of each borrower's electric system. The purpose of this rule is to implement the operations and maintenance provisions of the security instrument and loan contract between RUS and electric borrowers and to consolidate and clarify RUS policies and procedures with respect to electric system operations and maintenance. Most of the provisions of this rule represent policies and requirements that have been in effect for some time. One new provision expands the requirement for electric system review and evaluation of borrower's electric systems to include power supply borrowers in addition to the distribution borrowers presently covered by Bulletin 161-5. Proper operation and maintenance practices are equally significant for power supply borrowers, so RUS believes that power supply borrowers' operation and maintenance practices should be covered under the review and evaluation requirements of this rule. RUS Form 300, Review Rating Summary, has also been updated and revised based on RUS' experience using this form.

## Comments

On April 16, 1997, RUS published a proposed rule at 62 Fed. Reg. 18544. Comments were received from ten parties, including two cooperative associations, a borrower engineering committee, two distribution borrowers, and five power supply borrowers. RUS considered all comments received. The significant and most commonly made comments are addressed herein.

Several commenters requested that RUS provide more guidance and supplemental information regarding these requirements, especially the ratings of the items on RUS Form 300, Review Rating Summary. RUS is currently preparing Bulletin 1730-1, "Electric System Operation and Maintenance (O&M)," which will provide guidelines related to O&M, including a rating guide for RUS Form 300.

Some commenters requested that RUS provide for an "alternative dispute resolution" procedure if a borrower disagrees with a rating or determination made by RUS. This type of disagreement has rarely occurred, and RUS believes that an adequate appeal avenue already exists. Any disagreements with the RUS staff's rating can always be appealed with the Regional Director or the Administrator.

One commenter requested that this rule address more operational concerns, such as momentary interruptions, voltage stability, job training and safety, and lightning protection. It was also suggested that RUS require that an O&M survey be completed prior to beginning a new construction work plan (CWP) or long-range engineering plan (LRP). RUS encourages borrowers to expand and elaborate on the O&M requirements prescribed by this rule to meet their specific needs; however, RUS has decided not to expand the requirements of this rule in these areas.

Some commenters recommended that the O&M reviews be limited to specific areas where a borrower has experienced problems, to borrowers with specific financial problems, or to certain specific types of facilities. RUS believes that all aspects of all borrowers' O&M should be reviewed periodically and these reviews should cover all facilities. These reviews can reveal potential problem areas that can be corrected before they manifest themselves as operational or financial difficulties. Therefore, RUS has not changed the scope of this rule.

Several commenters pointed out that the proposed rule does not adequately address borrowers who own but do not operate certain facilities. The rule has been changed to address this situation.

Several commenters requested that the frequency of inspection and test be determined giving due consideration to the manufacturer's recommendations, but that borrowers should not be specifically required to blindly follow such recommendations. RUS agrees and has revised the rule accordingly.

Some commenters requested that RUS clarify the requirement to evaluate compliance with the prior editions of the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), when applicable. The rule has been clarified with respect to the NEC. Since the NESC itself specifically addresses facilities that comply with prior editions of the NESC, no change is needed in the rule with respect to the NESC.

Several commenters requested that RUS eliminate duplication of reviews made by other Federal agencies and State commissions, etc. The rule has been changed to indicate that RUS will not duplicate these reviews, but may review the reports of these other reviewers. Since some of these other reviews may target a specific area (e.g., safety), and the RUS' review covers a wider range of areas (e.g., safety, reliability, economy, etc.), the RUS review may partially overlap the reviews of others.

Several commenters requested that RUS eliminate the requirement for an explanation of the borrower's rating of acceptable items. It is not RUS' intent to require an extensive discussion of these items, but simply an explanation of how the borrower arrived at its rating. RUS believes that this should involve little extra effort and should improve the overall value of the review, so no change has been made to this requirement.

One commenter suggested that RUS require that the borrower's Board of Directors be appraised of the findings of the O&M review. Item 15 of RUS Form 300 calls for the date that the O&M review was reviewed by the Board of Directors. For purposes of clarifying the rule, a specific provision has been added to the rule requiring discussion of the O&M review with the Board of Directors.

One commenter suggested that RUS not require a corrective action plan (CAP) in all cases where there is an unsatisfactory (i.e., 0 or 1) rating. RUS considers any unsatisfactory rating to be a potentially serious problem, so a CAP should be prepared. However, if the correction of the deficiency is already underway or can be accomplished in a short time or simply, the CAP may be very short and simple, such as referring to an item in an approved CWP. The

rule does not specify the format or amount of detail required for a CAP, so that borrowers have sufficient flexibility to tailor it to the seriousness and complexity of the problem. No change has been made to this requirement.

A number of commenters requested that RUS clarify or eliminate various items on the RUS Form 300. RUS has reviewed these items and has determined that requiring "Staff Hours" under part IV, Operations and Maintenance Budgets, is confusing, burdensome, and of limited benefit. This item has been deleted. RUS believes that Bulletin 1730-1, "Electric System Operation and Maintenance (O&M)," should provide additional guidance.

Some commenters are concerned that RUS requirements with respect to O&M may require excessive and unavailable funding. RUS recognizes that correcting operating and maintenance deficiencies may indeed be expensive, especially if the system has been allowed to deteriorate. Nevertheless, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. It is essential that each borrower budget sufficient resources to operate and maintain its system efficiently and properly.

One commenter stated that "this wasteful activity [the proposed rule] is unneeded, unnecessary and without common sense." RUS disagrees. As stated above, proper O&M of borrowers' systems is essential to the success of the rural electric program and to protecting the property that is the security for the Government's loans and guarantees. This rule is intended to clearly outline RUS policies and procedures and the borrowers' responsibilities with respect to O&M.

### List of Subjects in 7 CFR Part 1730

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

In view of the above, RUS hereby amends 7 CFR chapter XVII by adding part 1730 to read as follows:

### PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

#### Subpart A—General

Sec.

1730.1 Introduction.

1730.2 RUS policy.

1730.3 RUS addresses.

1730.4 Definitions.

1730.5–1730.19 [Reserved]

**Subpart B—Operations and Maintenance Requirements**

- 1730.20 General.  
 1730.21 Inspections and tests.  
 1730.22 Borrower analysis.  
 1730.23 Review rating summary, RUS Form 300.  
 1730.24 RUS review and evaluation.  
 1730.25 Corrective action.  
 1730.26 Engineer's certification.  
 1730.27–1730.99 [Reserved]

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

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

**Subpart A—General****§ 1730.1 Introduction.**

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation of such practices.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the security instrument and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the security instrument and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause, on a case by case basis, certain requirements and procedures of this part.

**§ 1730.2 RUS policy.**

It is RUS policy to require that all property of a borrower be operated and maintained properly in accordance with the requirements of each borrower's loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

**§ 1730.3 RUS addresses.**

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522, telephone (202) 720–8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to

be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

**§ 1730.4 Definitions.**

Terms used in this part have the meanings set forth in 7 CFR Part 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR Part 1710.2, the term *Prudent Utility Practice* has the meaning set forth in Article 1, Section 1.01 of Appendix A to Subpart B of 7 CFR Part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this Part.

**§§ 1730.5–1730.19 [Reserved]****Subpart B—Operations and Maintenance Requirements****§ 1730.20 General.**

Each distribution borrower and power supply borrower shall operate and maintain its system in compliance with Prudent Utility Practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, for maintaining records of the physical and electrical condition of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system in accordance with the requirements of this part. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

**§ 1730.21 Inspections and tests.**

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system,

and maintain adequate records of such inspections and tests.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, manufacturer's recommendations, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable regulatory requirements and Prudent Utility Practice. The retention period should be of a sufficient time period to identify long-term trends. Records must be retained at least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

**§ 1730.22 Borrower analysis.**

(a) Each borrower shall periodically analyze in writing its operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical condition or the operational effectiveness of the system or suggest a need for changes in operations or maintenance practices. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more

than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

#### § 1730.23 Review rating summary, RUS Form 300.

RUS Form 300 in Appendix A shall be used when required by this part.

#### § 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (e.g., other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

#### § 1730.25 Corrective action.

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower shall prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's

Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS in writing progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

#### § 1730.26 Engineer's certification.

Where provided for in the borrower's loan documents, RUS may require the borrower to provide an "Engineer's Certification" as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

#### §§ 1730.27–1730.99 [Reserved]

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

Borrower Designation \_\_\_\_\_  
Date Prepared \_\_\_\_\_

Ratings on form are:

- 0: Unsatisfactory—no records
  - 1: Unsatisfactory—corrective action needed
  - 2: Acceptable, but should be improved—see attached recommendations
  - 3: Satisfactory—no additional action required at this time
- N/A: Not applicable

#### PART I—TRANSMISSION AND DISTRIBUTION FACILITIES

1. Substations (Transmission and Distribution)
  - a. Safety, Clearance, Code Compliance—Rating: \_\_\_\_\_
  - b. Physical Condition: Structure, Major Equipment, Appearance—Rating: \_\_\_\_\_
  - c. Inspection Records Each Substation—Rating: \_\_\_\_\_
  - d. Oil Spill Prevention—Rating: \_\_\_\_\_
2. Transmission Lines
  - a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions—Rating: \_\_\_\_\_
  - b. Physical Condition: Structure, Conductor, Guying—Rating: \_\_\_\_\_
  - c. Inspection Program and Records—Rating: \_\_\_\_\_
3. Distribution Lines—Overhead
  - a. Inspection Program and Records—Rating: \_\_\_\_\_
  - b. Compliance with Safety Codes: Clearances—Rating: \_\_\_\_\_

- Compliance with Safety Codes: Foreign Structures—Rating: \_\_\_\_\_
- Compliance with Safety Codes: Attachments—Rating: \_\_\_\_\_
- c. Observed Physical Condition from Field Checking: Right-of-Way—Rating: \_\_\_\_\_
- Observed Physical Condition from Field Checking: Other—Rating: \_\_\_\_\_
- 4. Distribution—Underground Cable
  - a. Grounding and Corrosion Control—Rating: \_\_\_\_\_
  - b. Surface Grading, Appearance—Rating: \_\_\_\_\_
  - c. Riser Poles: Hazards, Guying, Condition—Rating: \_\_\_\_\_
- 5. Distribution Line Equipment: Conditions and Records
  - a. Voltage Regulators—Rating: \_\_\_\_\_
  - b. Sectionalizing Equipment—Rating: \_\_\_\_\_
  - c. Distribution Transformers—Rating: \_\_\_\_\_
  - d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers—Rating: \_\_\_\_\_
  - Pad Mounted Equipment—Appearance: Settlement, Condition—Rating: \_\_\_\_\_
  - e. Kilowatt-hour and Demand Meter Reading and Testing—Rating: \_\_\_\_\_

#### PART II—OPERATION AND MAINTENANCE

6. Line Maintenance and Work Order Procedures
    - a. Work Planning and Scheduling—Rating: \_\_\_\_\_
    - b. Work Backlogs: Right-of-Way Maintenance—Rating: \_\_\_\_\_
    - Work Backlogs: Poles—Rating: \_\_\_\_\_
    - Work Backlogs: Retirement of Idle Services—Rating: \_\_\_\_\_
    - Work Backlogs: Other—Rating: \_\_\_\_\_
  7. Service Interruptions
    - a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)
      1. Power Supplier \_\_\_\_\_
      2. Major Storm \_\_\_\_\_
      3. Scheduled \_\_\_\_\_
      4. All Other \_\_\_\_\_
      5. Total \_\_\_\_\_
    - b. Emergency Restoration Plan—Rating: \_\_\_\_\_
  8. Power Quality  
General Freedom from Complaints—Rating: \_\_\_\_\_
  9. Loading and Load Balance
    - a. Distribution Transformer Loading—Rating: \_\_\_\_\_
    - b. Load Control Apparatus—Rating: \_\_\_\_\_
    - c. Substation and Feeder Loading—Rating: \_\_\_\_\_
  10. Maps and Plant Records
    - a. Operating Maps: Accurate and Up-to-Date—Rating: \_\_\_\_\_
    - b. Circuit Diagrams—Rating: \_\_\_\_\_
    - c. Staking Sheets—Rating: \_\_\_\_\_
- #### PART III—ENGINEERING
11. System Load Conditions and Losses
    - a. Annual System Losses, \_\_\_\_\_%—Rating: \_\_\_\_\_
    - b. Annual Load Factor, \_\_\_\_\_%—Rating: \_\_\_\_\_

- c. Power Factor at Monthly Peak, \_\_\_\_\_%—Rating: \_\_\_\_\_
- d. Ratio of Individual Substation Peak kW to kVA, \_\_\_\_\_—Rating: \_\_\_\_\_
12. Voltage Conditions
- a. Voltage Surveys—Rating: \_\_\_\_\_
- b. Substation Transformer Output Voltage Spread—Rating: \_\_\_\_\_
13. Load Studies and Planning
- a. Long Range Engineering Plan—Rating: \_\_\_\_\_
- b. Construction Work Plan—Rating: \_\_\_\_\_
- c. Sectionalizing Study—Rating: \_\_\_\_\_
- d. Load Data for Engineering Studies—Rating: \_\_\_\_\_
- e. Load Forecasting Data—Rating: \_\_\_\_\_

#### PART IV—OPERATION AND MAINTENANCE BUDGETS

For Previous 2 Years:

Normal Operation—Actual \$ \_\_\_\_\_

Normal Maintenance—Actual \$ \_\_\_\_\_

Total—Actual \$ \_\_\_\_\_

For Present Year:

Normal Operation—Budget \$ \_\_\_\_\_

Normal Maintenance—Budget \$ \_\_\_\_\_

Total—Budget \$ \_\_\_\_\_

For Future 3 Years:

Normal Operation—Budget \$ \_\_\_\_\_

Normal Maintenance—Budget \$ \_\_\_\_\_

Additional (Deferred) Maintenance—Budget \$ \_\_\_\_\_

Total—Budget \$ \_\_\_\_\_

14. Budgeting:

Adequacy of Budgets For Needed Work—Rating: \_\_\_\_\_

15. Date Discussed with Board of Directors \_\_\_\_\_

Remarks: \_\_\_\_\_

#### EXPLANATORY NOTES

Item No. \_\_\_\_\_ Comments \_\_\_\_\_

Rated by \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Manager \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ RUS GFR \_\_\_\_\_

Date \_\_\_\_\_

Dated: January 14, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 98-1661 Filed 1-22-98; 8:45 am]

BILLING CODE 3510-15-P

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 900, 932 and 933

[No. 97-83]

RIN 3069-AA66

#### Membership Eligibility

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending the definition of the term "State" in its Membership Regulation to include the

U.S. Territory of American Samoa (American Samoa) and the U.S. Commonwealth of the Northern Mariana Islands (the Northern Mariana Islands). Institutions organized under the laws of American Samoa and the Northern Mariana Islands, therefore, will be eligible to apply for Federal Home Loan Bank (Bank) membership. In accordance with these changes, the Finance Board also is clarifying in its regulations that the Seattle Bank District includes American Samoa and the Northern Mariana Islands. In addition, the Finance Board is designating Hawaii as the State in which members with a principal place of business in American Samoa, the Northern Mariana Islands, or Guam, shall be deemed to be located for purposes of election of Bank directors.

**DATES:** The final rule is effective on February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sharon B. Like, Senior Attorney-Adviser, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

###### A. Membership Eligibility Requirement—Definition of "State"

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. See 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. See *id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

Specifically, under the Act and the Membership Regulation, applicants for Bank membership must satisfy, among other requirements, the requirement that they are "duly organized under the laws of any State or of the United States." See 12 U.S.C. 1424(a)(1)(A); 12 CFR 933.6(a)(1), 933.7. Section 2(3) of the Act defines the term "State" as follows:

The term "State" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 U.S.C. 1422(3). Guam and the U.S. Virgin Islands are U.S. Territories, while Puerto Rico is a U.S. Commonwealth.

Section 933.1(cc) of the Finance Board's Membership Regulation implements the statutory definition by defining the term "State" as follows:

*State* means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 CFR 933.1(cc). The regulatory definition does not specifically include any other U.S. Territories, Commonwealths or Dependencies within the meaning of "State." Therefore, financial institutions organized under the laws of such other jurisdictions currently are not eligible for Bank membership under the regulation, unless other specific laws or agreements executed by the United States and these jurisdictions make the Act applicable to such jurisdictions.

On September 24, 1997, the Finance Board published a proposed rule to amend the definition of the term "State" in § 933.1(c) of the Membership Regulation to include American Samoa and the Northern Mariana Islands. See 62 FR 49943 (Sept. 24, 1997). The Finance Board received six comment letters on the proposed rule. Commenters included: one Bank; a representative of a Guamanian housing counseling/advocacy organization who serves on the Bank's Advisory Council; the Congressional representative for American Samoa; the Governor of American Samoa; an American Samoan commercial bank that is a member of the Federal Reserve System with deposits insured by the Federal Deposit Insurance Corporation; and a Northern Mariana Islands public housing corporation.

In the proposed rule, the Finance Board stated that it believes that the term "State" under the Membership Regulation should be defined comprehensively to include all other U.S. Territories, Commonwealths and Dependencies that share a political status similar to that of the specified entities in the statute, *i.e.*, Guam, the U.S. Virgin Islands, and Puerto Rico. In addition, if any specific laws or agreements executed by the United States and particular jurisdictions make the Act applicable to such jurisdictions, then the regulatory definition of the term "State" should be amended to include those jurisdictions, consistent with the laws or agreements.

Accordingly, as described in the proposed rule, the Finance Board undertook a broad analysis of existing and former U.S. Territories, Commonwealths and Dependencies to determine whether any of the jurisdictions satisfy the above requirements. The research revealed that only American Samoa and the Northern Mariana Islands meet the requirements, as further discussed below. In order to ensure that all eligible jurisdictions were included in the