

§ 1786.164

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 accord-

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ance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.

[End of sample contract terms]

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

§ 1786.164 Loan fund audit.

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

§ 1786.165 Reporting.

Borrowers that no longer have any loans made or guaranteed by RUS and are considering applying for other financial assistance pursuant to the RE

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Act are encouraged to file the end-of-year operating report, RUS Form 7.

§ 1786.166 Approvals.

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

§ 1786.167 Restrictions to additional RUS financing.

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

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

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

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

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

(1) Shall not be eligible except at the discretion of the Administrator as stated in paragraph §1786.167(a), to apply for or receive direct or insured loans during the 180-month period beginning on the date of the prepayment; and

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

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

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

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

(c) Borrowers who prepaid prior to October 1, 1987, are eligible for assistance under the RE Act in the same