

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1700

RIN 0572-AC23

#### Substantially Underserved Trust Areas (SUTA)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to issue regulations in order to provide loans and grants to facilitate the construction, acquisition, or improvement of infrastructure projects in Substantially Underserved Trust Areas (SUTA). The intent is to implement Section 906F of the Rural Electrification Act (7 U.S.C. 960f) by providing the process by which eligible applicants may apply for funding by the agency.

**DATES:** Comments must be submitted on or before December 13, 2011.

**ADDRESSES:** Submit comments by either of the following methods:

- *Federal eRulemaking Portal* at <http://www.regulations.gov>. Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250-1522.

Additional information about the Agency and its programs is available on the Internet at <http://www.rurdev.usda.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1510, Room 5135-S, Washington, DC 20250-1590. Telephone number: (202) 720-9542, Facsimile: (202) 720-1725.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Rural Development has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

##### Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS 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 that exceed any direct economic costs associated with complying with RUS regulations and requirements.

##### Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by December 13, 2011.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including

the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5159 South Building, Washington, DC 20250-1522.

*Title:* Substantially Underserved Trust Areas.

*Type of Request:* Approval of a new collection.

*Abstract:* The RUS provides loan, loan guarantee and grant programs for rural electric, water and waste, and telecommunications and broadband infrastructure. The SUTA initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecommunications and broadband programs. The data covered by this collection of information are those materials necessary to allow the agency to determine applicant and community eligibility and an explanation and documentation of the high need for the benefits of the SUTA provisions. Program specific application materials are covered by the information collection package for the specific RUS program being applied for.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Tribes, tribal leaders, tribal members and other stakeholders interested in developing utility infrastructure on trust areas.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 20 hours.

Copies of this information collection can be obtained from Michele Brooks,

Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

### **E-Government Act Compliance**

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

### **Catalog of Federal Domestic Assistance**

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under number 10.759, Special Evaluation Assistance for Rural Communities and Households Program (SEARCH); 10.760, Water and Waste Disposal Systems for Rural Communities; 10.761, Technical Assistance and Training Grants; 10.762, Solid Waste Management Grants; 10.763, Emergency Community Water Assistance Grants; 10.770, Water and Waste Disposal Loans and Grants (Section 306C); 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees, 10.855, Distance Learning and Telemedicine Loans and Grants; 10.857, State Bulk Fuel Revolving Fund Grants; 10.859, Assistance to High Energy Cost Rural Communities; 10.861, Public Television Station Digital Transition Grant Program; 10.862, Household Water Well System Grant Program; 10.863, Community Connect Grant Program; 10.864, Grant Program to Establish a Fund for Financing Water and Wastewater Projects; 10.886, Rural Broadband Access Loans and Loan Guarantees.

The Catalog is available on the Internet at <http://www.cfda.gov>.

### **Executive Order 12372**

Most programs covered by this rulemaking are excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled “Department Programs and Activities Excluded from Executive Order 12372,” (50 FR 47034). However, the Water and Waste Disposal Loan Program, CFDA number 10.770, is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### **Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

### **National Environmental Policy Act Certification**

Rural Development 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.

### **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**

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal, Alaska native, or native Hawaiian governments and sovereign institutions or have tribal implications that preempt tribal law. Prior to development of this rulemaking, the agency held Tribal Consultations at seven (7) USDA regional consultations, conducted sixteen (16) SUTA specific consultations and hosted three (3) internet and toll free teleconference based webinars in order to determine the impact of this rule on Tribal governments, communities, and individuals. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration, the annual SUTA Report to Congress and were used extensively throughout the drafting of this proposed rule.

### **Background**

USDA Rural Development (Rural Development) is a mission area within the U.S. Department of Agriculture comprising the Rural Housing Service, Rural Business/Cooperative Service and Rural Utilities 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 forty programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

The 2008 Farm Bill (Pub. L. 110–246, codified at 7 U.S.C. 906f) authorized the Substantially Underserved Trust Area (SUTA) initiative. The SUTA initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecom and broadband programs. Given the challenges, dynamics, and opportunities in implementing the SUTA initiative, RUS has aimed to foster a process that includes the voices of tribal leaders, tribal community members, Alaska Native Regional and Village Corporations, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, and other stakeholders.

Preliminary research by RUS identified various reports that provided several insights. In 2007, the United States Census Bureau Facts for Features article (dated 10/29/07) reported that the poverty rate of people who reported being sole race American Indian and Alaska Native (AI/AN) was 27 percent. Additionally, in 2006, the United States Government Accountability Office reported that based on the 2000 decennial census, the telephone subscription rate for Native American households on tribal lands was substantially below the national level of about 98 percent. Specifically, about 69 percent of Native American households on tribal lands in the lower 48 states and about 87 percent in Alaska Native villages had telephone service. Finally, in 2000, the United States Census Bureau reported that on Native American lands, 11.7 percent of residents lack complete plumbing facilities, compared to 1.2 percent of the general U.S. population.

There are special considerations and challenges in implementing an initiative

on trust lands. Many American Indians, Alaska Natives, Native Hawaiians, and Pacific Islanders have a deep spiritual, cultural, and historical relationship with the land. In certain circumstances, the objectives of economic and infrastructure development can be at odds with spiritual, cultural, historical, and environmental values. Additionally, there are special legal considerations inherent in financing projects in areas where the land itself cannot be used as security.

The SUTA initiative identifies the need and improves the availability of RUS programs to reach trust areas when they are determined by the Secretary of Agriculture (such authority has been delegated to the Administrator of RUS) to be substantially underserved. The RUS programs that are affected by this provision include: Rural Electrification Loans and Guaranteed Loans, and High Cost Energy Grants; Water and Waste Disposal Loans, Guaranteed Loans and Grants; Telecommunications Infrastructure Loans and Guaranteed Loans; Distance Learning and Telemedicine Loans and Grants; and Broadband Loans and Guaranteed Loans.

In addition to its discretionary authority to implement the SUTA provisions, RUS is under a continuing obligation to make annual reports to Congress on (a) The progress of the SUTA initiative, and (b) recommendations for any regulatory or legislative changes that would be appropriate to improve services to substantially underserved trust areas. RUS has submitted three reports to Congress, dated June 18, 2009, and June 21, 2010, and August 23, 2011.

The USDA Office of Native American Programs (since renamed the Office of Tribal Relations, hereinafter OTR) and RUS began exploring a potential SUTA initiative in 2008 after passage of the Farm Bill. RUS in conjunction with OTR interpreted this to include formal USDA Tribal Consultation in working with stakeholders that are federally recognized tribes. Pursuant to this determination and in accordance with President Obama's November 5, 2009, Memorandum on Tribal Consultation, RUS conducted sixteen (16) direct tribal consultations, seven (7) regional consultations, one listening session and three (3) internet and toll free teleconference based webinars on implementation of the SUTA provision with Indian tribes from across the country. Additionally, the agency heard from six Federal agencies at three separate consultations on how best to implement the SUTA provision.

Federal agencies that were consulted include: the Department of the Interior, as the primary Federal agency with direct responsibilities to serve Native American and Pacific Islander stakeholders; the Department of Veterans Affairs, for its clarification of the definition of "trust land"; the Environmental Protection Agency, because it has information regarding underserved trust areas with environmental challenges; the Department of Energy, because it has an interest in promoting energy development in trust areas; the Department of Commerce and the Federal Communications Commission, because each agency has an interest in telecommunications development in trust areas; the Department of Health and Human Services; and the Office of Management and Budget.

As a result of categorizing and analyzing the comments received at both sets of consultations, RUS was able to identify certain issues that impact both the underserved areas who seek better access to RUS programs, and the federal agencies who have similar yet sometimes competing interests in these areas. This regulation is informed by the insight gained through the consultations, and is designed to complement existing loan, grant, and combination loan and grant programs with the SUTA provisions that authorize the Administrator to apply certain discretionary authorities (2 percent interest and extended repayment terms; waivers of nonduplication restrictions, matching fund requirements, or credit support requirements; and highest funding priority) for the benefit of eligible communities, and the entities that serve them, in underserved Trust areas.

#### List of Subjects in 7 CFR Part 1700

Authority delegations (Government agencies), Electric power, Freedom of information, Loan programs—communications, Loan programs—energy, Organization and functions (Government agencies), Rural areas, Telecommunications, Broadband loan and grant programs, Water and waste loan and grant program, and the Distance Learning and Telemedicine program.

For reasons set out in the preamble, the agency proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by proposing to amend part 1700 to read as follows:

#### PART 1700—GENERAL INFORMATION

1. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*; 7 CFR 2.7, 2.17 and 2.47.

#### §§ 1700.59 through 1700.99 [Reserved]

2. Add and reserve §§ 1700.59 through 1700.99 to Subpart C of part 1700.

3. Add subpart D, consisting of §§ 1700.100 to 1700.150, to read as follows:

#### Subpart D—Substantially Underserved Trust Areas

Sec.

- 1700.100 Purpose.
- 1700.101 Definitions.
- 1700.102 Eligible programs.
- 1700.103 Eligible communities.
- 1700.104 Financial feasibility.
- 1700.105 Determining whether land meets the statutory definition of "trust land."
- 1700.106 Discretionary provisions.
- 1700.107 Considerations relevant to the exercise of SUTA discretionary provisions.
- 1700.108 Application requirements.
- 1700.109 RUS review.
- 1700.110–1700.150 [Reserved]

#### Subpart D—Substantially Underserved Trust Areas

##### § 1700.100 Purpose.

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) implementation of the Substantially Underserved Trust Areas (SUTA) initiative under section 306F of the Rural Electrification Act of 1936, as amended (7 U.S.C. 906f). The purpose of this rule is to identify and improve the availability of eligible programs in communities in substantially underserved trust areas.

##### § 1700.101 Definitions.

*Administrator* means the Administrator of the Rural Utilities Service, or designee or successor.

*Applicant* means an entity that is eligible for an eligible program under that program's eligibility criteria.

*Borrower* means any organization that has an outstanding loan or loan guarantee made by RUS for a program purpose.

*Completed application* means an application that includes the elements specified by the rules for the applicable eligible program in form and substance satisfactory to RUS.

*ConAct* means the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*).

*Credit support* means equity, cash requirements, letters of credit, and other financial commitments provided in support of a loan or loan guarantee.

*Eligible community* means a community as defined by 7 CFR 1700.103.

*Eligible program* means a program as defined by 7 CFR 1700.102.

*Financial assistance* means a grant, combination loan and grant, loan guarantee or loan.

*Financial feasibility* means the ability of a project or enterprise to meet operating expenses, financial performance metrics, such as debt service coverage requirements and return on investment, and the general ability to repay debt and sustain continued operations at least through the life of the RUS loan or loan guarantee.

*Matching fund* requirements means the applicant's financial or other required contribution to the project for approved purposes.

*Nonduplication* generally means a restriction on financing projects for services in a geographic area where reasonably adequate service already exists as defined by the applicable program.

*Project* means the activity for which financial assistance has been provided.

*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, successor to the Rural Electrification Administration.

*Substantially underserved trust area* means a community in trust land with respect to which the Administrator determines has a high need for the benefits of an eligible program.

*Trust land* means "trust land" as defined in section 3765 of title 38, United States Code as determined by the Administrator under 7 CFR 1700.104.

*Underserved* means an area or community lacking an adequate level or quality of service in an eligible program, including areas of duplication of service provided by an existing provider where such provider has not provided or will not provide adequate level or quality of service.

#### **§ 1700.102 Eligible programs.**

SUTA does not apply to all RUS programs. SUTA only applies to eligible programs. An eligible program means a program administered by RUS and authorized in (a) the RE Act, or (b) paragraphs (1), (2), (14), (22), or (24) of section 306(a) (7 U.S.C. 1926(a)(1), (2), (14), (22), (24)), or sections 306A, 306C, 306D, or 306E of the Con Act (7 U.S.C. 1926a, 1926c, 1926d, 1926e).

#### **§ 1700.103 Eligible communities.**

(a) An eligible community is a community that:

- (1) Is located on trust land;
- (2) May be served by an RUS administered program; and
- (3) Is determined by the Administrator as having a high need for benefits of an eligible program.

#### **§ 1700.104 Financial feasibility.**

(a) *Financial Feasibility.* The Administrator will only make grants, loans and loan guarantees that RUS finds to be financially feasible and that provide eligible program benefits to substantially underserved trust areas. The financial feasibility of an application will be determined pursuant to normal underwriting practices for a particular eligible program, as supplemented by available SUTA provisions. All income and assets available to and under the control of the Applicant will be considered as part of the Applicant's financial profile.

#### **§ 1700.105 Determining whether land meets the statutory definition of "trust land."**

The Administrator will use one or more of the following resources in determining whether a particular community is located in trust land:

- (a) Official maps of Federal Indian Reservations based on information compiled by the U.S. Department of the Interior, Bureau of Indian Affairs and made available to the public;
- (b) Title Status Reports issued by the U.S. Department of the Interior, Bureau of Indian Affairs showing that title to such land is held in trust or is subject to restrictions imposed by the United States;
- (c) Trust Asset and Accounting Management System data, maintained by the Department of the Interior, Bureau of Indian Affairs;
- (d) Official maps of the Department of Hawaiian Homelands of the State of Hawaii identifying land that has been given the status of Hawaiian home lands under the provisions of section 204 of the Hawaiian Homes Commission Act, 1920;
- (e) Official records of the U.S. Department of the Interior, the State of Alaska, or such other documentation of ownership as the Administrator may determine to be satisfactory, showing that title is owned by a Regional Corporation or a Village Corporation as such terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*);
- (f) Evidence that the land is located on Guam, American Samoa or the Commonwealth of the Northern Mariana

Islands, and is eligible for use in the Veteran's Administration direct loan program for veterans purchasing or constructing homes on communally-owned land; and

(g) Any other evidence satisfactory to the Administrator to establish that the land is "trust land" within the meaning of 38 U.S.C. 3765(1).

#### **§ 1700.106 Discretionary provisions.**

(a) To improve the availability of eligible programs in eligible communities determined to have a high need for the benefits of an eligible program, the Administrator retains the discretion, on a case-by-case basis, to:

- (1) Make available to qualified applicants financing with an interest rate as low as 2 percent, or extend repayment terms;
- (2) Waive non-duplication restrictions, matching fund requirements, and/or credit support requirements from any loan or grant program administered by RUS;
- (3) Give the highest funding priority to designated projects in substantially underserved trust areas.

(b) Requests for waivers of nonduplication restrictions, matching fund requirements, or credit support requirements, and requests for highest funding priority will be reviewed on a case-by-case basis upon written request of the applicant filed pursuant to 7 CFR 1700.108.

(c) Notwithstanding the requirements in paragraph (b) of this section, the Administrator reserves the right to evaluate any application for an eligible program for use of the discretionary provisions of this subpart without a formal, written request from the applicant.

#### **§ 1700.107 Considerations relevant to the exercise of SUTA discretionary provisions.**

(a) In considering a request to make available financing with an interest rate as low as 2 percent, and/or with extended repayment terms, the Administrator will evaluate the effect of and need for such terms on the finding of financial feasibility.

(b) In considering a request for a non-duplication waiver, the Administrator will consider the offerings of all existing service providers to determine whether or not granting the non-duplication waiver is warranted. A waiver of non-duplication restrictions will not be given if the Administrator determines as a matter of financial feasibility that, taking into account all existing service providers, an applicant or RUS borrower would not be able to repay a loan or successfully implement a grant agreement. Requests for waivers of non-

duplication restrictions will be reviewed by taking the following factors into consideration:

(1) The size, extent and demographics of the duplicative area;

(2) The cost of service from existing service providers;

(3) The quality of available service; and

(4) The ability of the existing service provider to serve the eligible service area.

(c) Requests for waivers of matching fund requirements will be evaluated by taking the following factors into consideration:

(1) Whether waivers or reductions in matching or equity requirements would make an otherwise financially infeasible project financially feasible;

(2) Whether permitting a matching requirement to be met with sources not otherwise permitted in an affected program due to regulatory prohibition may be allowed under a separate statutory authority; and

(3) Whether the application could be ranked and scored as if the matching requirements were fully met.

(d) Requests for waivers of credit support requirements will be evaluated taking the following factors into consideration:

(1) The cost and availability of credit support relative to the loan security derived from such support;

(2) The extent to which the requirement is shown to be a barrier to the applicant's participation in the program; and

(3) The alternatives to waiving the requirements.

(e) The Administrator may adapt the manner of assigning highest funding priority to align with the selection methods used for particular programs or funding opportunities.

(1) Eligible programs which use priority point scoring may, in a notice of funds availability or similar notice, assign extra points for SUTA eligible applicants as a means to exercise a discretionary authority under this subpart.

(2) The Administrator may announce a competitive grant opportunity focused exclusively or primarily on trust lands which incorporates one or more discretionary authorities under this subpart into the rules or scoring for the competition.

#### **§ 1700.108 Application requirements.**

(a) To receive consideration under this subpart, the applicant must submit to RUS a completed application that includes all of the information required for an application in accordance with the regulations relating to the program

for which financial assistance is being sought. In addition, the applicant must notify the RUS contact for the applicable program in writing that it seeks consideration under this subpart and identify the discretionary authorities of this subpart it seeks to have applied to its application. The required written request memorandum or letter must include the following items:

(1) A description of the applicant, documenting eligibility.

(2) A description of the community to be served, documenting eligibility in accordance with 7 CFR 1700.103.

(3) An explanation and documentation of the high need for the benefits of the eligible program, which may include:

(i) Data documenting a lack of service (*i.e.* no service or unserved areas) or inadequate service in the affected community;

(ii) Data documenting significant health risks due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable service.

(iii) Data documenting economic need in the community, which may include:

(A) Per capita income of the residents in the community, as documented by the U.S. Department of Commerce, Bureau of Economic Analysis;

(B) Local area unemployment and not-employed statistics in the community, as documented by the U.S. Department of Labor, Bureau of Labor Statistics and/or the U.S. Department of the Interior, Bureau of Indian Affairs;

(C) Supplemental Nutrition Assistance Program participation and benefit levels in the community, as documented by the U.S. Department of Agriculture, Economic Research Service;

(D) National School Lunch Program participation and benefit levels in the community, as documented by the U.S. Department of Agriculture, Food and Nutrition Service;

(E) Temporary Assistance for Needy Families Program participation and benefit levels in the community, as documented by the U.S. Department of Health and Human Services, Administration for Children and Families;

(F) Lifeline Assistance and Link-Up America Program participation and benefit levels in the community, as documented by the Federal Communications Commission and the Universal Service Administrative Company;

(G) Examples of economic opportunities which have been or may be lost without improved service.

(H) Data maintained and supplied by Indian tribes or other tribal or jurisdictional entities on "trust land" to the Department of Interior, the Department of Health and Human Services and the Department of Housing and Urban Development that illustrates a high need for the benefits of an eligible program.

(4) The impact of the specific authorities sought under this subpart.

(b) The applicant must provide any additional information RUS may consider relevant to the application which is necessary to adequately evaluate the application under this subpart.

(c) RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

(d) The applicant must submit a completed application within the application window and guidelines for an eligible program.

#### **§ 1700.109 RUS review.**

(a) RUS will review the application to determine whether the applicant is eligible to receive consideration under this subpart and whether the application is timely, complete, and responsive to the requirements set forth in 7 CFR 1700.107.

(b) If the Administrator determines that the application is eligible to receive consideration under this subpart and one or more SUTA requests are granted, the applicant will be so notified.

(c) If RUS determines that the application is not eligible to receive further consideration under this subpart, RUS will so notify the applicant. The applicant may withdraw its application or request that RUS treat its application as an ordinary application for review, feasibility analysis and service area verification by RUS consistent with the regulations and guidelines normally applicable to the relevant program.

#### **§§ 1700.110–1700.150 [Reserved]**

Dated: September 8, 2011.

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2011–26133 Filed 10–13–11; 8:45 am]

**BILLING CODE P**