

# Proposed Rules

Federal Register

Vol. 75, No. 16

Tuesday, January 26, 2010

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 1730

RIN 0572-ZA00

#### Emergency Restoration Plan (ERP)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend the requirements established for Emergency Restoration Plans (ERPs), currently mandated for all borrowers, to include compliance with the requirements established by the Federal Emergency Management Agency (FEMA) for public assistance grant eligibility in the event of a declared disaster. This amendment will ensure that RUS borrower's maintain their eligibility for financial aid from FEMA in the event they incur costs for disaster related system repair and restoration by including FEMA requirements in their ERPs.

**DATES:** Written comments must be received by RUS no later than March 29, 2010.

**ADDRESSES:** Submit comments by either of the following methods: *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency dropdown menu, then click on "Submit." In the Docket ID column, select RUS-09-Electric-0003 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

*Postal Mail/Commercial Delivery:* Please send your comments addressed to Michele L. Brooks, Director, Program Development and Regulatory Analysis,

USDA-Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1522, Room 5159, Washington, DC 20250-1522. Please state that your comment refers to Docket No. RUS-09-Agency-0003.

Other Information: Additional information about Rural Development and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Donald Junta, USDA-Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1569, Washington, DC 20250-1569, telephone (202) 720-1900 or e-mail to [donald.junta@wdc.usda.gov](mailto:donald.junta@wdc.usda.gov).

#### 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.

##### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 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 or at <http://www.cfda.gov>.

##### Executive Order 12372

This proposed rule is 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).

##### Information Collection and Recordkeeping Requirements

The information collection burden associated with this rulemaking is approved under OMB control number 0572-0140. This proposed rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0140 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

### National Environmental Policy Act Certification

The Agency has determined that this proposed 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.

### Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since RUS is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

### 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 for the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

### Executive Order 12988

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

### Background

The Agency published a final rule on October 12, 2004, at 69 FR 60541 requiring all borrowers to maintain an Emergency Response Plan (ERP) that details how the borrower will restore its system in the event of a system-wide outage resulting from a major natural or manmade disaster or other causes. This ERP requirement was not entirely new to the borrowers, as RUS had recommended similar "plans" in the past. However, the need for an ERP requirement at that time was catalyzed by increased sensitivities relating to homeland security. It has subsequently come to the Agency's attention that audits by FEMA performed in recent years for FEMA's public assistance grant program have shown that our borrowers have not always followed the policies and procedures set forth by FEMA for

disaster related repairs and restoration. FEMA recently created a draft document titled "FEMA Disaster Assistance Fact Sheet 9580.6 (Electric Utility Repair (Public and Private Nonprofit)). This document contains sections on contracting, conductor replacement, hazard mitigation, and repair of collateral damage that outline FEMA requirements in these areas. When FEMA denies grant relief there is an adverse impact on the financial health of RUS borrowers and increased costs to the rural ratepayer. Accordingly, the Agency proposes to amend the ERP regulatory requirements to add that the ERP reflect compliance with all requirements imposed by FEMA for reimbursement of the cost of repairs and restoration of the borrower's electric system incurred as the result of a declared disaster.

#### List of Subjects

Electric power; Loan program—energy; Reporting and recordkeeping requirements; Rural areas.

For reasons set forth in the preamble, the Agency proposes to amend 7 CFR, Chapter XVII, part 1730 as follows:

#### PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

1. The authority citation for part 1730 continues to read as follows:

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

2. Amend § 1730.28 by adding a new paragraph (k) to read as follows:

#### § 1730.28 Emergency Restoration Plan (ERP).

\* \* \* \* \*

(k) The ERP must comply with all requirements imposed by FEMA for reimbursement by FEMA of repairs and restoration of electrical systems in cases where the service territory falls within a declared disaster area.

Dated: January 15, 2010.

**Jonathan Adelstein,**  
Administrator, Rural Utilities Service.  
[FR Doc. 2010-1401 Filed 1-25-10; 8:45 am]

**BILLING CODE P**

#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Part 240

[Release No. 34-61379; File No. S7-03-10]

RIN 3235-AK53

#### Risk Management Controls for Brokers or Dealers With Market Access

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission" or "SEC") is proposing for comment new Rule 15c3-5 under the Securities Exchange Act of 1934 ("Exchange Act") that would require brokers or dealers with access to trading directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Given the increased speed and automation of trading on securities exchanges and ATSs today, and the growing popularity of sponsored or direct market access arrangements where broker-dealers allow customers to trade in those markets electronically using the broker-dealers' market participant identifiers, the Commission is concerned that the various financial and regulatory risks that arise in connection with such access may not be appropriately and effectively controlled by all broker-dealers. The Commission believes it is critical that broker-dealers, which under the current regulatory structure are the only entities that may be members of exchanges and, as a practical matter, constitute the majority of subscribers to ATSs, appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.

**DATES:** Comments should be received on or before March 29, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. S7-03-10 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. S7-03-10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### FOR FURTHER INFORMATION CONTACT:

Marc F. McKayle, Special Counsel, at (202) 551-5633; Theodore S. Venuti, Special Counsel, at (202) 551-5658; and Daniel Gien, Attorney, at (202) 551-5747, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-7010.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. SRO Rules and Guidance
- III. Proposed Rule 15c3-5
- IV. Request for Comments
- V. Paperwork Reduction Act
- VI. Consideration of Costs and Benefits
- VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation
- VIII. Consideration of Impact on the Economy
- IX. Initial Regulatory Flexibility Analysis
- X. Statutory Authority
- XI. Text of Proposed Rule
- Appendix

#### I. Introduction

The Commission has long recognized that beneficial innovations in trading and technology can significantly improve the efficiency and quality of our nation's securities markets. At the same time, the Commission must ensure that the regulatory framework keeps pace with market developments and effectively addresses any emerging risks. In recent years, the development and