

(4) Paragraphs 1710.250(b), 1710.251(a), and 1710.252(a)—with respect to the requirement that improvements, replacements, and retirements of generation plant be included in a Construction Work Plan; and

(5) Paragraph 1710.300(d)(5)—with respect to the requirement that a borrower's financial forecast include a sensitivity analysis of a reasonable range of assumptions for each of the major variables in the forecast.

(b) Certain provisions of this part apply only to loans made on or after February 10, 1992. These provisions are identified in the individual sections of this part.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 58 FR 66263, Dec. 20, 1993]

§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

(a) *General policy.* (1) Section 306E of the RE Act directs the Administrator to issue interim final regulations to minimize approval rights, requirements, restrictions, and prohibitions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of the outstanding loans made or guaranteed to the borrower by RUS. The section also directs the Administrator, when requested by a private lender providing financing for capital investments by such borrowers, to offer, without delay, to share the government's lien on the borrowers' systems or subordinate the government's lien on the property financed by the private lender.

(2) In issuing the regulations, the Administrator is authorized to establish requirements, guided by the practices of private lenders with respect to similar credit risks, to ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. If the regulations are not issued within 180 days of enactment of section 306E, the Administrator may not, until the regulations are issued, require prior approval of, or establish any requirement, restriction, or prohibition, with respect to the operations of any electric borrower that meets the 110 percent ratio.

(3) Nothing in section 306E limits the authority of the Administrator to establish terms and conditions on the use of funds from loans made or guaranteed by RUS, to establish loan feasibility criteria and other requirements for the approval of RUS loans or loan guarantees, such as those set forth in this part, or to take any other action specifically authorized by law.

(4) This section addresses the application of section 306E of the RE Act to RUS operational controls and other requirements that apply in general to RUS borrowers. The application of section 306E to lien accommodations and subordinations is set forth in 7 CFR 1717.860 and 1717.904.

(5) The exemptions granted by this section, 7 CFR 1717.860, and 7 CFR 1717.904 apply only to RUS controls and approval rights. They do not affect the controls and approval rights of other co-mortgagees under the RUS mortgage.

(6) For purposes of this section, the terms "default," "financed or funded by RUS," "interchange agreement," "interconnection agreement," "loan documents," "pooling agreement," "power supply contract," and "wheeling agreement" have the meanings as set forth in 7 CFR 1717.602.

(b) *Determination of ratio.* The following principles and procedures will apply to the calculation of net worth as a ratio, expressed as a percent, to the outstanding balance of all loans made or guaranteed to the borrower by RUS, hereinafter called the borrower's "net worth to RUS debt ratio", or simply "the ratio":

(1) For purposes of determining whether a borrower is exempt from approvals, requirements, restrictions, or prohibitions imposed by RUS with respect to borrower operations, i.e., "operational controls," the ratio normally will be based on data as of December 31. Net worth will be based on the year-end financial and statistical reports submitted by borrowers to RUS, and outstanding loans made or guaranteed by RUS will be based on RUS's records. The financial and statistical reports (Form 7 for distribution

borrowers and Form 12a for power supply borrowers) are subject to RUS review and revision, and they must comply with RUS's system of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under 7 CFR part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation;

(2) Net worth will be calculated by taking total margins and equities (from Part C of RUS Form 7 for distribution borrowers, or Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767; and

(3) By no later than July 1 of each year, RUS will notify each borrower in writing of its exemption status. If the borrower's net worth to RUS debt ratio exceeds 110 percent based on the most recent year-end data, the borrower will be exempt from the operational controls exempted under paragraph (c) of this section until subsequently notified in writing by RUS that it is no longer exempt.

(c) *Borrower operations exempted from RUS controls.* Borrowers who are notified by RUS in writing that their net worth to RUS debt ratio exceeds 110 percent are exempted from the operational controls of the RUS mortgage and loan contract listed in this paragraph. These controls, which are implemented through RUS regulations and other documents, are as follows:

(1) *RUS approval of extensions and additions.* RUS approval of extensions and additions to borrowers' electric systems, except for the following:

(i) Extensions and additions financed by RUS;

(ii) Construction, procurement, or leasing of generating facilities, regardless of the source of funding, if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed 25 megawatts in the case of power supply borrowers, or the lesser of 5 megawatts

or 30 percent of the borrower's equity in the case of distribution borrowers;

(iii) Acquisition or leasing of existing electric facilities or systems in service, regardless of the source of funding, whose purchase price, or capitalized value in the case of a lease, exceeds 10 percent of the borrower's net utility plant; and

(iv) Construction, procurement, or leasing of electric facilities, regardless of the source of funding, to serve a customer whose annual kWh purchases or maximum annual kW demand in the foreseeable future is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction;

(2) *Long-range engineering plans and construction work plans.* RUS approval of long-range engineering plans and CWP's if the borrower does not intend to seek RUS financing for any of the facilities, equipment or other purposes included in those plans. However, if requested by RUS, a borrower must provide an informational copy of such plans to RUS;

(3) *Plans and specifications.* RUS approval of plans and specifications for construction not financed by RUS;

(4) *Standard forms of construction contracts, and engineering and architectural services contracts.* RUS requirements to use standard forms of contracts for construction, procurement, engineering services, and architectural services, if the construction, procurement or services are not financed by RUS. To be eligible for this waiver the contracts used must not contain any provisions that prohibit or restrict the assignment of the contracts to the government upon the exercise by RUS of its remedies under security instruments securing loans made or guaranteed by RUS;

(5) *Contract bidding requirements.* RUS requirements regarding the competitive bidding of construction contracts, if the construction is not financed by RUS;

(6) *RUS approval of contracts.* (i) Construction contracts and architectural and engineering contracts. RUS approval of contracts for construction and procurement and for architectural

and engineering services, if such construction, procurement or services are not financed by RUS.

(ii) *Large retail power contracts.* RUS approval of contracts to sell electric power to retail customers except when the contract is for longer than 2 years and the kWh sales or kW demand for any year covered by the contract exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract. This exemption applies regardless of the source of funding of any plant extensions, additions or improvements that may be involved in connection with the contract.

(iii) *Power supply arrangements.* (A) RUS approval of power supply contracts (including but not limited to economy energy sales and emergency power and energy sales), interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar power supply arrangements subject to approval by RUS, if they have a term of 2 years or less. Amendments to said power supply arrangements are also exempted from RUS approval provided that the amendment does not extend the term of the arrangement for more than 2 years beyond the date of the amendment.

(B) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval that merely has the effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula itself) contained in a formulary rate or charge.

(C) The exemptions under this paragraph (c)(6)(iii) apply regardless of whether the borrower is a seller or purchaser of the services furnished by the contracts or arrangements, and regardless of whether or not a Federal power marketing agency is a party to any of them.

(iv) *System management and maintenance contracts.* RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system, if such contracts do not cover all or substantially all of the electric system.

(v) *Other contracts.* [Reserved];

(7) *RUS approval of general manager.* RUS approval of the selection of a borrower's manager and employment contract, provided that the borrower is not in default under its loan documents or any other agreement with RUS. Nothing herein shall limit the right of RUS under the loan documents to request termination of the employment of a manager in the event of a default by the borrower;

(8) *Board of directors.* RUS approval of compensation of a borrower's board of directors;

(9) *Certain expenditures.* (i) RUS approval of expenditures for legal, accounting, and supervisory services by a borrower. However, while expenditures for accounting do not require RUS approval, the selection of a certified public accountant by the borrower to prepare audited reports required by RUS remains subject to RUS approval.

(ii) RUS approval of expenditures for engineering services by a borrower, if such engineering services will not be financed by RUS;

(10) *Banks.* RUS approval of banks or other depositories used by a borrower. However, without the prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, or in any account not so insured.

(11) *Certain equipment.* RUS approval of the purchase of data processing equipment and system control equipment by a borrower, if the equipment is not financed by RUS;

(12) *Notification of rate changes.* Requirement that distribution borrowers notify RUS in writing of proposed changes in electric rates 90 days prior to the effective date of such rates. Instead, the required notification period shall be 30 days, and such notification shall be required only if requested by RUS;

(13) *Consolidations and mergers.* RUS approval of mergers and consolidations, and conveyances or transfers of the mortgaged property substantially as an entirety, if the following conditions are met:

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(i) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security of the mortgage and the rights and powers of the mortgagees;

(ii) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall execute and deliver to the mortgagees a mortgage supplemental in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the outstanding notes and the performance and observance of every covenant and condition of the mortgage;

(iii) Immediately after giving effect to such transaction, no default under the mortgage shall have occurred and be continuing;

(iv) The borrower shall have delivered to the mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this section and that all conditions precedent herein provided for relating to such transaction have been complied with;

(v) The borrower shall have delivered to the mortgagees an opinion of counsel in form and substance satisfactory to each of the mortgagees; and

(vi) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall be an entity:

(A) Having equity equal to at least 27% of its total assets on a pro forma basis after giving effect to such transaction;

(B) Having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years; and

(C) Having net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis;

(14) *Sale, lease, or transfer of capital assets.* RUS approval for a distribution

borrower to sell, lease, or transfer capital assets, if the following conditions are met:

(i) The borrower is not in default;

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years.

(iii) The sale, lease, or transfer of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(iv) Fair market value is obtained for the assets;

(v) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;

(vi) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:

(A) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(B) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(C) Applied to the acquisition of construction of utility plant; and

(vii) If the borrower has an RUS-approved wholesale power contract with a power supply borrower (seller), the circumstances of the sale, lease or transfer of capital assets conform with the conditions in such contract under which the seller may not withhold its consent to the sale, lease or transfer;

(15) *Limitations on distributions.* RUS approval for a borrower to declare or pay dividends, pay or determine to pay patronage refunds, retire patronage capital, or make any other cash distributions, if the following conditions are met:

(i) After giving effect to the distribution, the borrower's equity will be greater than or equal to 30 percent of its total assets;

(ii) The borrower is current on all payments due on all notes secured under the mortgage;

(iii) The borrower is not otherwise in default under its loan documents; and

(iv) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

(d) *RUS requirements and operational controls not exempted.* All requirements and operational controls contained in the RUS mortgage and loan contract, or otherwise imposed on borrowers pursuant to statute or regulation, that are not specifically listed in paragraph (c) of this section are not exempted and shall continue to apply according to their terms. Examples of such requirements and controls not exempted are listed in this paragraph for the convenience of the public. This list is not exhaustive, and the absence of a requirement or control from this list in no way means that the requirement or control has been exempted:

(1) Requirements and operational controls contained in the RUS mortgage or loan contract that are necessary to ensure that the security for loans made or guaranteed by RUS is reasonably adequate and that the loans will be repaid, or to accomplish other fundamental purposes of the RE Act. Some of these also represent terms and conditions with respect to the use by borrowers of the proceeds of loans made or guaranteed by RUS. Together, these controls include, but are not limited to, the following:

(i) Area coverage requirements set forth in the loan contract and in §1710.103;

(ii) Requirement that certain borrowers maintain, on an ongoing basis, a power requirements study and a power requirements study work plan, as set forth in §§ 1710.201 and 1710.202;

(iii) Requirement that borrowers follow RUS construction standards and use RUS accepted materials, as set forth in §1710.41, §1710.45, and 7 CFR part 1728;

(iv) Requirement that borrowers maintain, on an ongoing basis, a long-range engineering plan and a construction work plan, as set forth in §1710.250(b);

(v) Requirement that borrowers set rates for electric service sufficient to maintain certain coverage ratios, as set forth in §1710.114;

(vi) Certain RUS approvals of retirements of capital credits in excess of amounts specifically authorized in the mortgage;

(vii) RUS approval of borrower investments, loans, guarantees, and other obligations under 7 CFR part 1717, subpart N;

(viii) RUS requirements on accounting, auditing, irregularities, financial reporting, and access to books and records;

(ix) Requirement that borrowers record the mortgage and mortgage amendments;

(x) Requirement that the mortgagor maintain and preserve the priority lien of the mortgage and defend title to the mortgaged property;

(xi) Requirements on maintenance and repair of the mortgaged property;

(xii) Requirements on insurance of the mortgaged property; and

(xiii) Certain RUS approvals of borrower mergers and consolidations; and

(2) Requirements imposed on borrowers pursuant to statute or regulation and not specifically exempted by paragraph (c) of this section. See, for example, §§ 1710.122 through 1710.127.

(e) *Rescission of exemptions if borrower defaults.* If a borrower is in default with respect to any requirement of its mortgage, loan contract with RUS, or any other agreement with RUS that has not been exempted pursuant to paragraph (c) of this section or other RUS regulations, upon written notice to the borrower RUS may rescind all or any part of the exemptions granted pursuant to paragraph (c) of this section or other RUS regulations. The reinstated requirements and controls will remain in effect until RUS determines that they are no longer needed to help ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate.

(f) *Reinstated controls.* If RUS controls are reinstated because the borrower defaults or its net worth falls below 110 percent of RUS debt, such controls and

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approval rights will apply to all applicable subsequent actions of the borrower, including without limitation the amendment of contracts that the borrower entered into while eligible for an exemption under this section.

[60 FR 67401, Dec. 29, 1995, as amended at 62 FR 27930, May 22, 1997; 65 FR 51748, Aug. 25, 2000]

§§ 1710.8–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

§ 1710.50 Insured loans.

RUS makes insured loans under section 305 of the RE Act.

(a) *Municipal rate loans.* The standard interest rate on an insured loan made on or after November 1, 1993, is the municipal rate, which is the rate determined by the Administrator to be equal to the current market yield on outstanding municipal obligations with remaining periods to maturity, up to 35 years, similar to the interest rate term selected by the borrower. In certain cases, an interest rate cap of 7 percent may apply. The interest rate term and rollover maturity date for a municipal rate loan will be determined pursuant to 7 CFR part 1714, and the borrower may elect to include in the loan documents a prepayment option (call provision).

(b) *Hardship rate loans.* RUS makes hardship rate loans at the 5 percent hardship rate to qualified borrowers meeting the criteria set forth in 7 CFR 1714.8

[58 FR 66263, Dec. 20, 1993]

§ 1710.51 Loan guarantees.

RUS provides financing through 100 percent loan guarantees made under sections 306 and 306A of the RE Act. RUS also provides 90 percent loan guarantees under section 311 of the RE Act to enable borrowers to secure financing from certain private lenders. The loan guarantees are made for a term of up to 35 years, and the interest rate is established at a rate agreed to by the borrower and the lender, with RUS concurrence. The guarantee applies to

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the repayment of both principal and interest.

[58 FR 66264, Dec. 20, 1993]

§§ 1710.52–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 General.

RUS makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities, including system improvements and replacements required to furnish and improve electric service in rural areas, and for demand side management, energy conservation programs, and on grid and off grid renewable energy systems. In some circumstances, RUS may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator of RUS will be made in conformance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. RUS provides certain technical assistance to borrowers when necessary to aid the development of rural electric service and to protect loan security.

[58 FR 66264, Dec. 20, 1993]

§ 1710.101 Types of eligible borrowers.

(a) RUS makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

(1) The retail electric service needs of rural areas, or

(2) The power supply needs of distribution borrowers under the terms of power supply arrangements satisfactory to RUS.

(b) In making loans, RUS gives preference to states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. RUS does not make loans to individual consumers.

(c) For the purpose of determining eligibility of a distribution borrower not in default on the repayment of a loan made or guaranteed under the RE