

(2) At the request of the borrower, the Administrator in his or her sole discretion may decide to exclude up to the amount of net profits or margins earned on the borrower's investments, loans and guarantees during the past 10 calendar years, if the Administrator determines that such exclusion will not increase loan security risks. The borrower must provide documentation satisfactory to the Administrator as to the current status of its investments, loans and guarantees and the net profits earned during the past 10 years. Any exclusion approved by the Administrator may or may not reduce the level of investments, loans and guarantees to or below the 15 percent level. If such exclusion does not reduce the level to or below the 15 percent level, RUS will notify the borrower in writing that it must reduce or restructure its investments, loans and guarantees to a level of not more than 15 percent of total utility plant. If the borrower does not come within the 15 percent level within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.658 Records, reports and audits.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable RUS to readily determine:

(1) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments;

(2) The location, identity and lien priority of any loan collateral resulting from activities permitted by this subpart; and

(3) The effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by RUS.

(b) In determining the aggregate amount of investments, loans and guarantees made by a borrower, the borrower shall use the recorded value of each investment, loan or guarantee as reflected on its books and records

for the next preceding end-of-month, except for the end-of-year report which shall be based on December 31 information. Every borrower shall also report annually to RUS, in the manner and on the form specified by the Administrator, the current status of each investment, outstanding loan and outstanding guarantee which it has made pursuant to this subpart.

(c) The records of borrowers shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the financial records of any subsidiaries of the borrower to determine if the borrower is in compliance with this subpart, and to ascertain if the debts, guarantees (as defined in this subpart), or other obligations of the subsidiaries could adversely affect the ability of the borrower to repay its debts to the Government.

(d) RUS will monitor borrower compliance with this subpart based primarily on the annual financial and statistical report submitted by the borrower to RUS and the annual auditor's report on the borrower's operations. However, RUS may inspect the borrower's records at any time during the year to determine borrower compliance. If a borrower's most recent annual financial and statistical report shows the aggregate of the borrower's investments, loans and guarantees to be below the 15 percent level, that in no way relieves the borrower of its obligation to comply with its RUS mortgage, RUS loan contract, and this subpart with respect to Administrator approval of any additional investment, loan or guarantee that would cause the aggregate to exceed the 15 percent level.

§ 1717.659 Effect of this subpart on RUS loan contract and mortgage.

(a) Nothing in this subpart shall affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval by RUS of investments, loans, and guarantees by the borrower, such matters including, without limitation, extensions, additions, and modifications of the borrower's electric