

calculation. In the proposed rule it was implicitly assumed that each issuance of debt would entail additions to plant. However, in the case of reimbursement of general funds or replacement of interim financing, there may be little or no plant actually added as a result of issuing the secured debt. In other cases, there would be uncertainty about whether the proposed plant additions would actually materialize in every instance. For these reasons, the pro forma net utility plant/long-term debt test has been changed and clarified. Namely, the principal amount of the additional debt would be added to the then outstanding long-term debt, but no adjustment would be made for any additional plant that may actually result from the debt issuance. For this reason, the required ratio was reduced from 1.1 to 1.0 to compensate for those instances where plant may be added as a result of the debt issuance.

Two other clarifications were made to section 2.01. The date of issuance of additional notes has been defined as the date the notes are executed. Also, for purposes of calculating the pro forma ratios, it has been specified that the most recently available end-of-month data preceding debt issuance shall be used for total long-term debt and total assets before debt issuance and for equity and net utility plant. The data used, however, may not be for a month ending more than 180 days prior to debt issuance.

Section 2.02 Refinancing Without Mortgage Approval

Unlike the existing mortgage where any refinancing loans to be secured under the mortgage must be approved in advance by RUS, section 2.02 of the proposed mortgage would authorize a borrower to issue secured refinancing notes without the approval of RUS or the other mortgagees if the following tests are met:

- The principal amount of the refinancing loan does not exceed 103.5 percent of the loan principal being refinanced.
- The weighted average life of the refinancing loan does not exceed the remaining weighted average life of the loan being refinanced.
- The present value of the cost of the refinancing, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the loan being refinanced.

CFC commented that none of the three tests are needed. NRECA argued that the net present value of cost test is sufficient by itself and thus the other two are not necessary. CoBank supported the net present value of costs

test, but did not comment on the other two tests. CoBank argued that documentation and certification of the tests to the mortgagees is needed, as well as explicit guidance on calculating net present value of costs. One borrower association indicated that it supported the changes proposed in section 2.02 in comparison with the present mortgage.

In view of these comments, RUS has decided to retain in section 2.02 the limitation on the principal amount of the refinancing loan, to shift the limitation on the weighted average life of the refinancing loan to the agency's proposed new loan contract, and to drop the net present value of costs test. Moreover, the limitation on the principal of the refinancing loan has been increased from 103.5 percent to 105 percent of the loan refinanced, which is the same limitation contained in recent 100 percent mortgages executed by CFC and CoBank.

RUS believes the limitations on the weighted average life and principal amount of the refinancing loan via-a-vis the loan refinanced are reasonable and provide important safeguards. The limitation on weighted average life will help ensure that refinancing, or repeated refinancings, will not extend the borrower's debt beyond the useful life and security value of the collateral used to secure the original loan. Limiting the principal of the refinancing loan to 105 percent of the loan principal refinanced is designed to prevent the accumulation of additional debt without the addition of additional collateral. The purpose of section 2.02 is to allow for existing secured debt to be refinanced, not to provide for the issuance of additional debt or extension of existing debt.

The net present value of costs test was intended to address the comparative costs of the refinancing loan and the loan to be refinanced, which is a different matter than that addressed by the other two tests. However, after reviewing the comments and discussing the question with co-mortgagees and other commenters, RUS has concluded that it would not be possible to define a methodology for calculating the net present value of costs that would be entirely routine and objective and not dependent on judgment calls on how to deal with unusual cases. For example, determining interest costs alone is difficult when the rate is variable, and certain assumptions must be made that may not be appropriate for all cases. While such judgments can be made for case-by-case approvals, the tests in section 2.02 need to be entirely generic and routine.

Section 2.05 Form of Supplemental Mortgage

The proposed mortgage indicated that a simple form of mortgage supplement needed to be added in order to extend the lien of the mortgage to new lenders. The form included in the final mortgage was drafted based, in part, on a form suggested by a co-mortgagee.

Section 3.04 Environmental Obligations; Indemnification of Mortgagees

CFC suggested that this provision be moved to the RUS loan contract, and that the 3 days to notify mortgagees of environmental liabilities was too short. CoBank recommended that the provision remain in the mortgage, that the mortgagees should be authorized to examine and test borrowers' premises at the borrowers' expense, and that indemnification of mortgagees against environmental liabilities should continue after satisfaction and release of the mortgage. NRECA stated that the provision was (1) unnecessary since the borrower is required in section 3.09 to comply with all laws, including environmental laws, (2) unworkable since it required compliance with all environmental laws rather than all "material" environmental laws, and (3) if not eliminated altogether, the provision should be moved to the RUS loan contract.

RUS believes the provision should remain in the mortgage itself given the importance of this issue to all lenders and the virtual explosion of environmental suits and potential liabilities in the past few years. RUS agrees that is reasonable to give borrowers more time to notify mortgagees of potential or actual environmental liabilities, and has increased the time allowed to 10 days. RUS agrees that the indemnification of mortgagees against environmental and other liabilities stemming from the mortgaged property should survive the lien of the mortgage, and has made this clear in the final language.

RUS does not agree that since section 3.09 requires borrowers to comply with all laws that section 3.04 is not needed. Section 3.09 does not address indemnification of mortgagees against environmental liabilities. RUS also does not agree that the requirement should be that borrowers need comply only with "material" environmental laws, since this might imply that RUS was advising borrowers that certain environmental laws are not themselves material.

RUS agrees that individual lenders in specific cases may want the right to test a borrower's property for environmental