

Such approval requirement will not be included in new mortgages or in the proposed loan contract, and proposed § 1717.610 would waive this requirement for existing mortgages and loan contracts.

RUS approval of expenditures for legal, engineering, and supervisory services. Most existing mortgages or loan contracts require borrowers to obtain RUS approval before making expenditures for legal, engineering, and supervisory services, other than "routine" expenditures. Proposed § 1717.611 would grant RUS approval of expenditures for legal and supervisory services regardless of the source of funding, and for engineering services if they are not funded by RUS. Approval requirements for engineering services financed by RUS are set forth in other RUS regulations.

RUS approval of borrower's bank or other depository. Most existing mortgages or loan contracts give RUS the right to approve the bank or other depositories used by a borrower. Proposed § 1717.612 would grant RUS approval of the borrower's bank or other depositories provided that they are insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS. Proposed new loan contracts would not grant RUS such authority, but would require that funds from loans made or guaranteed by RUS be deposited in a bank or other depository insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, unless prior written approval is obtained from RUS.

110 Percent Borrowers. It is recognized that the proposed changes in operational controls applicable to borrowers in general will, if adopted, require some changes in the exceptions to RUS controls applicable to borrowers with a net worth of at least 110 percent of the outstanding debt owed to RUS. The interim final rule on such exceptions was published in the **Federal Register** on January 28, 1994 at 59 FR 3982. After comments are received on the proposed rule published today, RUS will review those comments as well as those received on the interim final rule (7 CFR 1710.7, 7 CFR 1717.860, and 7 CFR 1717.904) and then publish both rules in final form.

7 CFR Part 1717, Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

Changes are proposed to 7 CFR part 1717, subpart R, to adapt RUS policies and requirements for lien accommodations and subordinations to the new distribution mortgage. Most of

these changes are conforming technical changes, a few are substantive in nature.

Section 1717.850 General

Under new mortgages for distribution borrowers, borrowers will be able to issue additional secured debt without the approval of RUS or the other mortgagees if the borrowers meet the criteria in section 2.01 of their mortgages. Also, if they meet the criteria in section 2.02 of their mortgages, borrowers will be able to issue secured debt to refinance existing secured debt without approval of the mortgagees.

If borrowers meet the criteria in section 2.01 or 2.02, debt issued under those sections will automatically be secured under the mortgage and will not require a lien accommodation from RUS or other mortgagees. Thus the lien accommodation regulation, 7 CFR 1717 subpart R, would not apply to such financing. This is true even if approval from RUS is required under the RUS loan contract due to criteria or restrictions included in the loan contract. While the borrower would be required to obtain prior RUS approval in such cases, a lien accommodation would not be required if the financing met the requirements of section 2.01 or 2.02 of the new mortgage.

Several technical amendments are proposed to 1717.850. Paragraph (a) would be revised to indicate, as discussed above, that Subpart R applies only to the issuance of secured debt that does not meet the criteria of section 2.01 or 2.02 of the new mortgage. Paragraph (b) would be revised to include the four community infrastructure purposes eligible under section 2.01 of the new mortgage as also being eligible for a lien accommodation under Subpart R.

Paragraph (f) would be substantially revised to eliminate the requirement that the borrower provide RUS with a written agreement that it will: comply with the National Electric Safety Code; use only RUS accepted materials where applicable; comply with RUS construction standards; follow a CWP approved by RUS; and provide an engineer's certification after completion of construction that the construction was done in compliance with RUS requirements. While this certification would no longer be required, the borrower would continue to be required to comply with RUS standards regarding facility and system planning and design, construction, procurement, and the use of materials accepted and listed by RUS. Elimination of the certification would reduce the administrative burden on borrowers.

A minor technical change would be made to paragraph (g)(1) to conform

with proposed changes to 7 CFR part 1710, subpart F, (discussed later) to the effect that construction work plans would not have to be approved by RUS unless the borrower intends to seek RUS financing for facilities or other purposes covered by the plan. Also, a technical change is proposed to paragraph (h)(2) to eliminate references to sections of the mortgage and loan contract with respect to prior approval or waiver of approval of certain borrower actions granted by paragraphs (g)(1) and (h)(1) of this section. Such references to the loan documents will be confusing as new mortgages and loan contracts are executed with some borrowers, while other borrowers are still operating under the old loan documents. Moreover, as RUS continues to codify more and more of its regulations relating to RUS approvals and controls, references to specific provisions of the loan documents relating to prior approval and waivers granted by such regulations will become less meaningful.

Finally, changes are proposed to paragraph (m) of this section to broaden the requirements and conditions under Subpart R that may be waived by the Administrator of RUS if it's in the financial interests of the government. Also, the meaning of the financial interests of the government would be clarified.

Section 1717.852 Financing Purposes

With two exceptions, all of the proposed changes to § 1717.852 are basically technical changes to conform the section with the new mortgage. A new paragraph (a)(3) would be added to add to eligible lien accommodation purposes the four community infrastructure purposes eligible for financing without mortgagee approval under section 2.01 of the new mortgage. The four purposes are water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communication systems, and natural gas distribution systems. Other infrastructure and other rural development projects would continue to be eligible for a lien accommodation if the Administrator determines its in the government's financial interests. They would also continue to be eligible for a lien subordination under the terms of § 1717.858, to which no changes are being proposed.

Paragraph (a)(1) would be amended by adding steam power to electric power as an eligible purpose for lien accommodations. RUS has received lien accommodation requests from borrowers where the financing was needed to supply both electric power and steam power to the customer. The