

(2) *Retrospective requirement.* The average coverage ratios achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to achieve these average levels, it must promptly notify RUS in writing. Within 30 days of such notification or of the borrower being notified in writing by RUS, whichever is earlier, the borrower, in consultation with RUS, must provide a written plan satisfactory to RUS setting forth the actions that will be taken to achieve the required coverage ratios on a timely basis. Failure to develop and implement a plan satisfactory to RUS shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(3) *Fixed and variable expenses,* as used in this section, include but are not limited to: all taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the coverage ratios required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or if any of the borrower's average coverage ratios for the 2 best years out of the most recent 3 calendar years were below the levels required in paragraph (b) of this section, RUS may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to RUS and taken such other action as RUS may require to demonstrate that the required coverage ratios will be maintained in the future and that the loan will be repaid with interest within the time agreed. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required coverage ratios, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to achieve the coverage ratios is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this

paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan made on or after February 10, 1992, if, based on actual or projected financial performance of the borrower, RUS determines that the borrower may not achieve its required coverage ratios in the current or future years, RUS may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to RUS.

5. Section 1710.250 is amended by revising paragraphs (b) and (e) and adding a new paragraph (k) to read as follows:

**§ 1710.250 General.**

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(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors. Current CWP's approved by the borrower's board must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such distribution, transmission or generation facilities must be included in the respective CWP's regardless of the source of financing.

\* \* \* \* \*

(e) Applications for a loan or loan guarantee from RUS (new loans or budget reclassifications) must be supported by a current CWP approved by both the borrower's board of directors and RUS. RUS approval of these plans relates only to the facilities, equipment, and other purposes to be financed by RUS, and means that the plans provide an adequate basis from a planning and engineering standpoint to support RUS financing. RUS approval of the plans does not mean that RUS approves of the facilities, equipment, or other purposes for which the borrower is not seeking RUS financing. If RUS disagrees with a borrower's estimate of the cost of one or more facilities for which RUS financing is sought, RUS may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

\* \* \* \* \*

(k) Upon written request from a borrower, RUS may waive in writing certain requirements with respect to long-range engineering plans and CWP's if RUS determines that such requirements impose a substantial burden on the borrower and that waiving the requirements will not significantly affect the accomplishment of the objectives of this subpart. For example, if a borrower's load is forecast to remain constant or decline during the

planning period, RUS may waive those portions of the plans that relate to load growth.

**§ 1710.251 [Amended]**

6. Section 1710.251 is amended by removing the words "and RUS" from the first sentence of paragraph (a).

**§ 1710.252 [Amended]**

7. Section 1710.252 is amended by removing the words "and RUS" from the first sentence of paragraph (a).

**PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

8. The authority citation for part 1717 continues to read as follows:

**Authority:** 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

9. Subpart M is added to part 1717 to read as follows:

**Subpart M—Operational Controls**

Sec.

- 1717.600 General.
- 1717.601 Applicability.
- 1717.602 Definitions.
- 1717.603 RUS approval of extensions and additions.
- 1717.604 Long-range engineering plans and construction work plans.
- 1717.605 Design standards, plans and specifications, construction standards, and RUS accepted materials.
- 1717.606 Standard forms of construction contracts, and engineering and architectural services contracts.
- 1717.607 Contract bidding requirements.
- 1717.608 RUS approval of contracts.
- 1717.609 RUS approval of general manager.
- 1717.610 RUS approval of compensation of the board of directors.
- 1717.611 RUS approval of expenditures for legal, accounting, engineering, and supervisory services.
- 1717.612 RUS approval of borrower's bank or other depository.

**Subpart M—Operational Controls**

**§ 1717.600 General.**

(a) *General.* The loan contract and mortgage between the Rural Utilities Service (RUS) and electric borrowers imposes certain restrictions and controls on the borrowers and gives RUS (and other co-mortgagees in the case of the mortgage) the right to approve or disapprove certain actions contemplated by the borrowers. Certain of these controls and approval rights are referred to informally as "operational controls" because they pertain to decisions or actions with respect to the operation of the borrowers' electric systems. The approval authority granted to RUS by the loan contract or mortgage regarding