

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****7 CFR Parts 1710, 1717 and 1718****RIN 0572-AB06****Loan Policies and Security Documents for Electric Borrowers****AGENCY:** Rural Utilities Service.**ACTION:** Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby establishes new policies and requirements for loan contracts ordinarily required for loans made to electric distribution borrowers. The rule updates and clarifies the framework for loan contract provisions, conforms loan contract provisions with the new form of mortgage recently approved, and provides greater flexibility in addressing the financial needs of individual borrowers and the credit risks involved with individual lending situations. Conforming amendments to RUS lien accommodation requirements and to regulations regarding 110 percent borrowers, and changes to RUS operational controls, are also set forth.

EFFECTIVE DATE: This rule is effective January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037-S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This

rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), under control numbers 0572-0032 and 0572-0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250-1500.

Background

On September 29, 1994, at 59 FR 49594, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR part 1718 Loan Security Documents for Electric Borrowers, Subpart B Mortgage for Distribution Borrowers, which proposed the agency's policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The final rule for the mortgage was published in the Federal Register on July 18, 1995 at 60 FR 36882. On that same day, at 60 FR 36904, RUS published a proposed rule on a model form of a new loan contract for distribution borrowers, 7 CFR part 1718 Loan Security Documents for Electric Borrowers, Subpart C Loan Contracts with Distribution Borrowers. The proposed rule also included proposed amendments to 7 CFR part 1710 and 7 CFR part 1717 Subpart R, to ensure consistency between these regulations and the new mortgage and proposed loan contract. It was also proposed that a new Subpart M Operational Controls be added to 7 CFR part 1717, which would cut back the reach of certain

operational controls contained in existing mortgages and loan contracts.

A total of 29 separate comments, representing 33 different organizations, were received on the proposed new loan contract for distribution borrowers and the associated proposed regulations. Comments were received from the National Rural Electric Cooperative Association (NRECA), CoBank, 3 state-wide and one multi-state borrower association, 17 distribution borrowers, and 10 generation and transmission borrowers (G&Ts). The individual distribution borrowers that commented were concentrated in the plains and Rocky Mountain states, with 8 in North Dakota, 3 in Colorado, 2 in Wyoming, and one each in South Dakota, Montana, Minnesota, and Iowa.

Operational Controls

Comments by the NRECA and one state-wide association focused primarily on the extent of operational controls retained in the loan contract and the general approach taken in the loan contract and 7 CFR part 1717 subpart M for defining RUS' rights with respect to operational controls. In the proposed loan contract some operational controls were stated in specific terms while others were stated in broad terms, with the agency relying on 7 CFR part 1717 subpart M and other regulations to define the controls in more specific terms and to narrow their reach.

NRECA and the one state-wide association recommended that (a) further cuts be made in operational controls, (b) all operational controls be stated in appropriately narrow and specific terms in the loan contract itself, rather than relying on regulations to further define and limit the controls, and (c) criteria be developed to exempt "creditworthy" borrowers from most of the remaining operational controls. Relatively few comments on operational controls were received from other commenters. Several commenters indicated their support either for individual changes in operational controls proposed by RUS or for the proposed changes in general, as well as for changes that have been made in RUS regulations over the past several years.

RUS agrees that further cuts can be made in operational controls and that some operational controls can and should be stated in more specific, narrower terms in the loan contract itself. Such changes have been made wherever possible in the final model loan contract. They are as follows:

- Section 5.15 of the proposed loan contract requiring the borrower to acquire and construct the electric system in conformance with RUS