

(1) For purposes of determining whether a borrower is exempt from approvals, requirements, restrictions, or prohibitions imposed by RUS with respect to borrower operations, i.e., "operational controls," the ratio normally will be based on data as of December 31. Net worth will be based on the year-end financial and statistical reports submitted by borrowers to RUS, and outstanding loans made or guaranteed by RUS will be based on RUS's records. The financial and statistical reports (Form 7 for distribution borrowers and Form 12a for power supply borrowers) are subject to RUS review and revision, and they must comply with RUS's system of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under 7 CFR part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation;

(2) Net worth will be calculated by taking total margins and equities (from Part C of RUS Form 7 for distribution borrowers, or Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767; and

(3) By no later than May 1 of each year, RUS will notify each borrower in writing of its ratio as of December 31 of the preceding year. If a borrower's net worth to RUS debt ratio exceeds 110 percent based on the year-end data, the borrower will be exempt from the operational controls exempted under paragraph (c) of this section until subsequently notified in writing by RUS that it is no longer exempt.

(c) *Borrower operations exempted from RUS controls.* Borrowers who are notified by RUS in writing that their net worth to RUS debt ratio exceeds 110 percent are exempted from the operational controls of the RUS mortgage and loan contract listed in this paragraph. These controls, which are implemented through RUS regulations and other documents, are as follows:

(1) *RUS approval of extensions and additions.* RUS approval of extensions and additions to borrowers' electric systems, except for the following:

(i) Extensions and additions financed by RUS;

(ii) Construction, procurement, or leasing of generating facilities, regardless of the source of funding, if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed 25

megawatts in the case of power supply borrowers, or the lesser of 5 megawatts or 30 percent of the borrower's equity in the case of distribution borrowers;

(iii) Acquisition or leasing of existing electric facilities or systems in service, regardless of the source of funding, whose purchase price, or capitalized value in the case of a lease, exceeds 10 percent of the borrower's net utility plant; and

(iv) Construction, procurement, or leasing of electric facilities, regardless of the source of funding, to serve a customer whose annual kWh purchases or maximum annual kW demand in the foreseeable future is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction;

(2) *Long-range engineering plans and construction work plans.* RUS approval of long-range engineering plans and CWP's if the borrower does not intend to seek RUS financing for any of the facilities, equipment or other purposes included in those plans. However, if requested by RUS, a borrower must provide an informational copy of such plans to RUS;

(3) *Plans and specifications.* RUS approval of plans and specifications for construction not financed by RUS;

(4) *Standard forms of construction contracts, and engineering and architectural services contracts.* RUS requirements to use standard forms of contracts for construction, procurement, engineering services, and architectural services, if the construction, procurement or services are not financed by RUS. To be eligible for this waiver the contracts used must not contain any provisions that prohibit or restrict the assignment of the contracts to the government upon the exercise by RUS of its remedies under security instruments securing loans made or guaranteed by RUS;

(5) *Contract bidding requirements.* RUS requirements regarding the competitive bidding of construction contracts, if the construction is not financed by RUS;

(6) *RUS approval of contracts.* (i) Construction contracts and architectural and engineering contracts. RUS approval of contracts for construction and procurement and for architectural and engineering services, if such construction, procurement or services are not financed by RUS.

(ii) *Large retail power contracts.* RUS approval of contracts to sell electric power to retail customers except when the contract is for longer than 2 years and the kWh sales or kW demand for any year covered by the contract

exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract. This exemption applies regardless of the source of funding of any plant extensions, additions or improvements that may be involved in connection with the contract.

(iii) *Power supply arrangements.* (A) RUS approval of power supply contracts (including but not limited to economy energy sales and emergency power and energy sales), interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar power supply arrangements subject to approval by RUS, if they have a term of 2 years or less. Amendments to said power supply arrangements are also exempted from RUS approval provided that the amendment does not extend the term of the arrangement for more than 2 years beyond the date of the amendment.

(B) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval that merely has the effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula itself) contained in a formula rate or charge.

(C) The exemptions under this paragraph (c)(6)(iii) apply regardless of whether the borrower is a seller or purchaser of the services furnished by the contracts or arrangements, and regardless of whether or not a Federal power marketing agency is a party to any of them.

(iv) *System management and maintenance contracts.* RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system, if such contracts do not cover all or substantially all of the electric system.

(v) *Other contracts.* [Reserved];

(7) *RUS approval of general manager.* RUS approval of the selection of a borrower's manager and employment contract, provided that the borrower is not in default under its loan documents or any other agreement with RUS. Nothing herein shall limit the right of RUS under the loan documents to request termination of the employment of a manager in the event of a default by the borrower;

(8) *Board of directors.* RUS approval of compensation of a borrower's board of directors;

(9) *Certain expenditures.* (i) RUS approval of expenditures for legal, accounting, and supervisory services by