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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 651

Acquisition of Real Property Regulations

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) is removing obsolete regulations from the Code of Federal Regulations. This action removes the regulations found at 7 CFR part 651 concerning the acquisition of real property under federally-assisted programs.

EFFECTIVE DATE: December 19, 1996.

FOR FURTHER INFORMATION CONTACT: Peter Zeck (202) 690-4860.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

This final rule will have no significant effect on the human environment, and therefore an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

Background

Pursuant to the Administration effort to review existing agency regulations and remove unnecessary regulations from the Code of Federal Regulations, the NRCS has determined that the regulations found at 7 CFR part 651, "Acquisition of Real Property Under Federally-Assisted Programs," are unnecessary because the regulations address matters of internal agency policy and duplicate, in part, regulations found elsewhere in the Code of Federal Regulations. The removal of this part will not have any effect on the public, any private enterprise, or any Government agency. This action will result in the removal of obsolete regulations from the CFR.

List of Subjects in 7 CFR Part 651

Real Property, Technical Assistance.

PART 651—[REMOVED]

In consideration of the above under the authority of 7 U.S.C. 4601-4655, 7 CFR part 651 is removed.

Signed at Washington, D.C. on December 5, 1996.

Paul Johnson,

Chief, Natural Resources Conservation Service.

[FR Doc. 96-32193 Filed 12-18-96; 8:45 am]

BILLING CODE 3410-16-M

Rural Utilities Service

7 CFR Parts 1710, 1714, 1717, and 1786

RIN 0572-AB24

RUS Policies on Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is streamlining its regulations through amendments that are intended to encourage electric borrowers to merge, consolidate, or enter into similar arrangements that benefit borrowers and rural communities and are consistent with the interests of the Government as a secured lender. These amendments are part of an ongoing RUS project to modernize agency policies and procedures in order to provide borrowers with the flexibility they need to continue providing reliable electric service at reasonable cost in rural areas,

while maintaining the integrity of Government loans.

DATES: This rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 2230-S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522. Telephone: 202-720-0736. FAX: 202-720-4120. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) is taking this regulatory action as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law. Therefore, the Regulatory Flexibility Act does not apply to this proposed 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 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

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 number 0572-0114.

Background

In response to rapid changes in the regulatory and business environment of the electric industry, many electric borrowers are exploring the possibility of mergers. It is clear that the success of the RUS electric program in supporting rural infrastructure and economic development is directly tied to the ability of borrowers to respond rapidly to new business challenges, including opportunities to merge.

On August 7, 1996, at 61 FR 41025, RUS published proposed rules to update RUS policies on mergers. (The term "merger" as used in this rule refers generically to mergers, consolidations, and similar actions.) The intention of this action is to encourage borrowers to merge, consolidate, or enter into similar agreements that benefit borrowers and are consistent with the interests of RUS as a secured lender. The rules proposed: (1) Transitional assistance measures to assist borrowers during the transition period before long-term merger benefits can be realized; (2) A streamlined application process for mergers that require RUS approval; and (3) Documentation that RUS as a secured lender needs in order to conduct business with any newly merged entity.

RUS received a total of eight comments on the proposed rule. Three comments are from individual electric distribution borrowers. Two of these borrowers said in their comments that they are negotiating a merger with each other.

Other commenters include a three-state association of distribution borrowers; a group of three power supply (G&T) borrowers in Texas; an individual G&T borrower in Indiana; the National Rural Electric Cooperative Association (NRECA), a national organization representing RUS electric borrowers; and the National Rural Utilities Cooperative Finance Corporation (CFC), a private sector supplemental lender to RUS borrowers.

Commenters generally supported the proposed rules.

Transitional Assistance

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates during this period, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before long-term efficiencies and economies can be realized, the rules proposed new policies for transitional assistance following mergers.

RUS will consider requests for transitional assistance after each merger. For example, if three borrowers form a single successor through two consecutive mergers, transitional assistance may be available, subject to RUS regulations, following each of the mergers. For transitional assistance available for a closed-ended period after a merger, the availability period in some cases will begin tolling on the effective date of the most recent merger even if that date is prior to the effective date of this rule.

The proposed rule included several types of transitional assistance, and all commenters offered suggestions.

Organization of the Rule

To avoid any confusion about borrower eligibility for transitional assistance, RUS has redrafted 7 CFR Part 1717 in the final rule slightly. The section designated as § 1717.154 in the proposed rule has been split into three sections: §§ 1717.154, 1717.155, and 1717.156, and language has been added clearly stating which borrowers are eligible for which types of transitional assistance. Sections 1717.155-1717.159 of the proposed rule are redesignated accordingly in the final rule.

Transitional Assistance in General

One commenter believes that "successful mergers create their own benefits." The commenter expressed concerns that offering transitional assistance to newly merged entities implies that bigger is automatically better and is unfair to cooperatives whose members choose not to merge.

As stated in 7 CFR 1717.150(b), RUS encourages electric borrowers to consider mergers when such action is likely to contribute to greater operating efficiency and financial soundness. RUS does not intend to convey the impression that bigger is always better. RUS emphasizes that transitional assistance is not intended to reward borrowers simply for growing. It is intended, rather, to ease the transition period before long-term merger benefits can be realized.

Other commenters noted that agreements short of merger, such as shared services initiatives, may provide benefits similar to those of a merger. They asked that RUS consider transitional assistance following such agreements. RUS agrees that shared services agreements can offer substantial benefits. However, transitional assistance is intended to help mitigate the short term financial stresses associated with mergers. Such stresses are not generally associated with shared service agreements, and RUS cannot, therefore, justify providing transitional assistance in these cases.

CFC suggested that RUS make loan funds available for "soft costs" of mergers, such as studies and consultant fees. RUS believes that prudent borrowers should analyze various business opportunities as a matter of course. RUS does not believe that such studies are an appropriate use of loan funds.

NRECA suggested that RUS offer "more aggressive incentives" to merger candidates in appropriate situations. These more aggressive incentives could include a write down of principal and interest on RUS loans and loan guarantees as an incentive to mergers between a financially strong borrower and a financially weak borrower pursuant to Section 748 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub.L. 104-127), which amended Section 331(b)(4) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)(4)). RUS is developing a separate rulemaking to implement this new law. Addressing write downs in today's final rule without an extended period for public comment would be premature.

NRECA also suggested that, as a counterpart to offering priority loan processing, RUS also offer priority processing of lien accommodations. Existing regulations at 7 CFR 1717.859 establish timeframes for RUS action on lien accommodations. Priority loan processing is intended to address situations where loan approval is delayed because requests for loan funds from eligible borrowers temporarily exceed the amount of loan funds appropriated. This situation does not exist for lien accommodations. RUS believes that no change to existing rules for lien accommodations is needed.

Loan Processing Priority

RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. The rule proposed, in 7 CFR 1710.119 and 1717.154(a)(1), to alter this policy to

offer priority processing on loans to newly merged borrowers. RUS would, at the borrower's request, offer loan processing priority for the first loan following a merger if the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority, under certain conditions.

One commenter wondered about the exact meaning of the term "loan processing priority." Loan processing priority means simply that a loan application will be moved as close to the front of the processing queue as the Administrator determines to be appropriate, considering such factors as the urgency of applications in hand and the loan authority for the fiscal year.

Another commenter supported the proposal provided "that this loan processing priority should not have a detrimental effect on other borrowers." RUS believes that loan processing priority under the limited conditions in the rule can be implemented in a way that is fair and equitable to all borrowers.

Supplemental Financing Requirements

RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. The rule proposed in 7 CFR 1710.110 and 1717.154(b) to waive the supplemental financing requirement for the first RUS loan following a merger between active distribution borrowers if the loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, or if the loan period is longer than 2 years, RUS may reduce or waive supplemental financing under the conditions set out in the rule.

Most commenters support this amendment. One commenter requested that waiver of supplemental financing apply automatically if the loan period is as long as 4 years. The limit of 2 years for automatic waiver is to avoid undue processing delays for all borrowers during periods when the demand for loan funds is high and funding levels are uncertain. RUS will consider waiver of supplemental financing on a case-by-case basis if the loan period is longer than 2 years as set forth in § 1717.154(b) of the final rule.

Two distribution borrowers that are considering merging with each other asked for a clarification of RUS policy on supplemental financing in connection with future loans, after the

complete waiver on the first loan. Under long-standing RUS policy, borrowers who in 1980 had either extremely low consumer density or a very high adjusted plant revenue ratio are now required to obtain only 10 percent of their debt financing from a supplemental source. For most borrowers the required supplemental financing portion is determined at the time of loan approval and may be as high as 30 percent. See existing rules at 7 CFR 1710.110(c). One of these two commenters is now grandfathered as a "90/10" borrower, and the commenters wonder whether they will lose this benefit by merging.

RUS will grandfather 90/10 status for that portion of the system that enjoyed this benefit prior to the merger. In other words, the portion of a loan that is for facilities to serve consumers in territory that were served by the 90/10 borrower immediately prior to the merger will be eligible for 90 percent RUS financing; the supplemental financing portion on loans to serve the rest of the system will be determined at the time of loan approval pursuant to 7 CFR 1710.110(c)(1)(ii). The final rule adds this provision to 7 CFR 1710.110(c)(1).

Coverage Ratios

RUS, as a secured lender, requires that borrowers maintain adequate levels of coverage ratios, including times interest earned ratio (TIER); operating times interest earned ratio (OTIER); debt service coverage (DSC); and operating debt service coverage (ODSC). Under the proposed rule in 7 CFR 1710.114 and 1717.154(b)(2), RUS could approve, on a case-by-case basis, a phase-in plan allowing a distribution borrower to project and achieve lower levels for up to 5 years following a merger, provided that a minimum TIER level of 1.00 is maintained, and that trends are generally favorable.

NRECA believes that a cash DSC, similar, but not identical to ODSC is a better measure of the borrower's ability to meet its debt service payments than TIER. NRECA urged RUS to replace the minimum TIER requirement with a minimum cash DSC requirement in any phase-in plan for coverage ratios.

As stated in 7 CFR 1717.155 of the final rule, RUS will require any borrower requesting a phase-in plan to submit a financial forecast demonstrating the borrower's ability to meet its debt service payments. In addition, the rule leaves RUS the option of requiring a minimum level of DSC and other coverage ratios in an individual phase in plan. RUS believes that a minimum TIER level of 1.00 is the

appropriate across the board rule of thumb for a phase-in plan.

Advance of Funds From Insured Loans

The fund advance period, which is the period during which funds from an insured loan may be advanced to a borrower, generally terminates automatically after 4 or 5 years. See 7 CFR 1714.56. However, the execution and filing of legal documents after a merger often takes some time, and RUS cannot advance funds to a successor until the documents are executed and filed. Therefore, the rule proposed in 7 CFR 1714.56(c) and 7 CFR 1717.154(c), to generically extend this period for preexisting loans with unadvanced funds on the effective date of a merger.

One commenter wondered whether the automatic termination date would be generically extended after a merger if the period had been extended once already. The answer is yes. This extension is granted because of the time requirements for legal completion of a merger. Section 7 CFR 1717.156 of the final rule clarifies this point.

Other commenters requested that the fund advance period be generically extended by 5 years instead of the 2 years proposed. RUS believes that the 2-year extension provides adequate time for preparation and filing of merger documents. In cases where more time is needed, the borrower may request an additional extension pursuant to 7 CFR 1714.56(c).

Finally, one commenter requested that a longer fund advance period be available to all borrowers, regardless of whether the borrower has merged. As already noted, any borrower may apply for an extension under 7 CFR 1714.56(c).

Applicability of Transitional Assistance to Power Supply (G&T) Borrowers

Under the proposed rule, certain types of transitional assistance would be available only to distribution borrowers. The G&T borrowers who commented and NRECA believe that mergers involving G&T's can offer many of the same benefits as mergers between distribution borrowers.

Two of the types of transitional assistance limited to distribution borrowers are waiver of supplemental financing and a longer period for reimbursement of general funds and interim financing. Since loans to G&T's are generally much larger than loans to distribution systems, RUS cannot offer these types of incentives to power supply borrowers without sharply reducing the funds available for smaller distribution systems.

These commenters also requested that a phase-in period for coverage ratios also be available to G&T's. Required minimum levels of TIER and DSC for G&T's are 1.05 and 1.00, respectively. RUS rules do not establish required minimum levels for OTIER or ODSO for G&T's. See 7 CFR 1710.114(b)(2). It would not be prudent for RUS to allow lower levels of TIER or DSC.

Borrowers Who Prepaid RUS Loans Pursuant to 7 CFR Part 1786

Pursuant to 7 CFR part 1786, subparts C, E and F, borrowers may use private financing or internally generated funds to prepay RUS direct or insured loans at a discounted present value. Borrowers who prepay under this rule may not apply for or receive any new direct or insured loans from RUS for a period after the prepayment, except at the Administrator's discretion. Questions arise about the eligibility of a newly merged system where one of the merging entities had "bought out" of RUS, and the other is still an active borrower.

Under the proposed rule at 7 CFR 1717.156 and 1786.167(a), the Administrator would exercise discretionary authority to approve insured loans to finance facilities to serve only consumers that were, immediately prior to the merger, served by the active borrower; that is, the borrower that did not prepay. Several commenters questioned this policy, noting, among other things the administrative burden involved in separating facilities eligible for RUS financing from facilities that are not.

RUS believes that the administrative burden of separating facilities eligible for RUS financing from those not eligible is not as great as it appears. Locations of new facilities and consumers should be part of the borrower's construction work plans and should be clear in the loan application documents. If there are questions, in cases where, for example, a single distribution line will serve some consumers that are located in territory formerly served by the borrower that was active immediately prior to the merger, and other consumers in territory that was served by the former borrower that prepaid, RUS will consider any reasonable method for allocating funds.

However, RUS has redrafted other portions of the final rule in order to encourage beneficial mergers between active borrowers and former borrowers. According to the proposed rule, certain types of transitional assistance (waiver of supplemental financing, longer period for reimbursement of general funds, and phase in plan for coverage

ratios, 7 CFR 1717.154(a)(2) and 1717.154(3)(b)(2), respectively) would be available only if all parties to the merger are active distribution borrowers. The final rule at 7 CFR 1717.154(b) and 1717.154(c), and 1717.155(b), extends availability for this assistance to mergers where at least one of the parties is a former distribution borrower and all other parties are active distribution borrowers if the merger is effective after December 19, 1996.

RUS Procedures

The requirement that RUS, as a secured lender, generally approve mergers is in the loan documents and RUS regulations. Under certain conditions, set out in 7 CFR 1717.615 and 1710.7(c), as published December 29, 1995, at 60 FR 67395, borrowers may enter into such mergers without RUS approval.

One commenter addressed the timeframe for RUS processing. This commenter urged RUS "to require action by RUS within a certain designated time period." According to the proposed rule at 7 CFR 1717.157 (final rule at section 1717.159), borrowers must submit applications for RUS approval of mergers no later than 90 days prior to the proposed effective date. RUS understands that mergers are time sensitive and intends to make every effort to act on these applications in timely fashion.

Another commenter questioned the need for rate information in 7 CFR 1717.158(e) of the proposed rule, in cases where rates schedules will not change after the merger. RUS agrees, and section 1717.160(e) of the final rule now notes that a statement that no change to rate schedules is planned will suffice, if such is the case.

Rescission of Obsolete Directive

Effective January 21, 1997, REA Bulletin 115-2, Merger and Consolidation of Electric Borrowers, is rescinded. RUS has determined that this bulletin, issued November 9, 1972, is obsolete.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1714

Electric Power, Loan programs—energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien

subordinations, Loan programs—energy, Reporting and recordkeeping requirements, Rural development.

7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 et seq., RUS amends 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 et seq.).

2. Section 1710.109 is amended by redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(1)(iii), respectively, and by adding a new paragraph (c)(2) to read as follows:

§ 1710.109 Reimbursement of general funds and interim financing.

* * * * *

(c) * * *

(2) Policies for reimbursement of general funds and interim financing following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.154.

* * * * *

3. Section 1710.110 is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c)(1)(iii):

§ 1710.110 Supplemental financing.

(a) Except in the case of financial hardship as determined by the Administrator, and following certain mergers, consolidations, and transfers of systems substantially in their entirety as set forth in 7 CFR 1717.154, applicants for a municipal rate loan will be required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee, in the amounts set forth in paragraph (c) of this section. * * *

* * * * *

(c) * * *

(1) * * *

(iii) If a distribution borrower enters into a merger, consolidation, or transfer of system substantially in its entirety, and the provisions of 7 CFR 1717.154(b) do not apply, required supplemental financing will be determined as follows for loans approved by RUS after

December 19, 1996. If one of the merging parties met the criteria in paragraph (c)(1)(i) of this section prior to the effective date of the merger consolidation or transfer, the borrower will be required to obtain supplemental financing equal to 10 percent of any loan funds requested for facilities to serve consumers located in the territory formerly served by the "paragraph (c)(1)(i)" borrower. The required amount of supplemental financing for the rest of the loan will be determined according to the provisions of paragraph (c)(1)(ii) of this section.

* * * * *

4. Section 1710.114 is amended by adding a sentence at the end of paragraph (b)(3) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) * * *
(3) * * * Policies for coverage ratios following certain mergers, consolidations, and transfers of systems substantially in their entirety are in 7 CFR 1717.155.

* * * * *

5. Section 1710.119 is amended by revising paragraph (b)(3) to read as follows:

§ 1710.119 Loan processing priorities.

* * * * *

(b) * * *
(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154); or

* * * * *

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

6. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub.L. 99–591, 100 Stat. 3341; Pub.L. 103–353, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

7. Section 1714.56 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1714.56 Fund advance period.

* * * * *

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for

approved loan purposes (i.e., facilities included in an RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.156.

* * * * *

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

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

Subpart D—Mergers and Consolidations of Electric Borrowers

Sec.

- 1717.150 General.
- 1717.151 Definitions.
- 1717.152 Required documentation for all mergers.
- 1717.153 Transitional assistance.
- 1717.154 Transitional assistance in connection with new loans.
- 1717.155 Transitional assistance affecting new and preexisting loans.
- 1717.156 Transitional assistance affecting preexisting loans.
- 1717.157 Requests for transitional assistance.
- 1717.158 Mergers with borrowers who prepaid RUS loans.
- 1717.159 Applications for RUS approval of mergers.
- 1717.160 Application contents.
- 1717.161 Application process.

Subpart D—Mergers and Consolidations of Electric Borrowers

§ 1717.150 General.

(a) This subpart establishes RUS policies and procedures for mergers of electric borrowers. These policies and procedures are intended to provide borrowers with the flexibility to negotiate and enter into mergers that offer advantages to the borrowers and to rural communities, and adequately protect the integrity and credit quality of RUS loans and loan guarantees.

(b) Consistent with prudent lending practices, the maintenance of adequate security for RUS loans and loan guarantees, and the objectives of the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act), RUS encourages electric borrowers to consider mergers when such action is likely to contribute, in the long-term, to greater operating efficiency and financial soundness. Borrowers are

specifically encouraged to explore mergers that are likely to enhance the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries.

(c) Pursuant to the loan documents and RUS regulations, certain mergers are subject to RUS approval. See § 1717.615.

(d) Since RUS must take action in order to advance funds and otherwise conduct business with a successor, RUS encourages borrowers to consult RUS early in the process regardless of whether RUS approval of the merger is required. RUS will provide technical assistance and guidance to borrowers to help expedite the processing of their requests and to help resolve potential problems early in the process.

§ 1717.151 Definitions.

The definitions set forth in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated. In addition, for the purpose of this subpart, the following terms shall have the following meanings:

Active borrower means an electric borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Active distribution borrower means an electric distribution borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Consolidation see *merger*.

Coverage ratios means collectively TIER, OTIER, DSC and ODSC, as these terms are defined in 7 CFR 1710.2.

Effective date means the date a merger is effective pursuant to applicable state law.

Former distribution borrower means any organization that (1) sells or intends to sell electric power and energy at retail;

(2) at one time had an outstanding loan made or guaranteed by RUS, or its predecessor the Rural Electrification Administration (REA) for rural electrification; and

(3) either repaid such loans at face value or prepaid pursuant to 7 CFR part 1786.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note(s) entered into between the borrower and RUS.

Merger means: (1) A consolidation where two or more companies are

extinguished and a new successor is created, acquiring the assets, liabilities, franchises and powers of those passing out of existence;

(2) A merger where one company is absorbed by another, the former ceasing to exist as a separate business entity, and the latter retaining its own identity and acquiring the assets, liabilities, franchises and powers of the former; or

(3) A transfer of mortgaged property by one company to another where the transferee acquires substantially as an entirety the assets, liabilities, franchises, and powers of the transferor.

New loan means a loan to a successor approved by RUS on or after the effective date.

Preexisting loan means a loan to a borrower approved by RUS prior to, and outstanding on the effective date.

Successor means the entity that continues as the surviving business entity as of the effective date, and acquires all the assets, liabilities, franchises, and powers of the entity or entities ceasing to exist as of the effective date.

Transitional assistance means financial relief provided to borrowers by RUS during a limited period of time following a merger.

§ 1717.152 Required documentation for all mergers.

In order for RUS to advance funds, send bills, and otherwise conduct business with a successor, the documents listed in this section must be submitted to RUS regardless of the need for RUS approval of the merger. Borrowers are responsible for ensuring that these documents are received by RUS in timely fashion. In cases of mergers that require RUS approval, or cases where borrowers must submit requests for transitional assistance, the documents listed in this section may be combined with the documents required by §§ 1717.157 and/or 1717.160 where appropriate.

(a) Prior to the effective date, borrowers must submit:

(1) A transmittal letter on corporate letterhead signed by the manager of each active borrower that is a party to the proposed merger indicating the borrower's intention to merge and tentative timeframes, including the proposed effective date;

(2) An original certified board resolution from each party to the proposed merger affirming the board's support of the merger;

(3) All documents necessary to evidence the merger pursuant to applicable law. Examples include plan of merger, articles of merger, amended articles of incorporation, bylaws, and

notices and filings required by law. These documents may be copies of documents filed elsewhere, unless otherwise specified by RUS; and

(4) A letter addressed to the Administrator from the counsel of at least one of the active borrowers briefly describing the merger and indicating the relevant statutes under which the merger will be consummated.

(b) On or after the effective date, borrowers must submit:

(1) An opinion of counsel from the successor addressing, among other things, any pending litigation, proper authorization and consummation of the merger, proper filing and perfection of RUS' security interest, and all approvals required by law. RUS will provide the form of the opinion of counsel to the successor;

(2) A letter signed by the manager of the successor advising RUS of the effective date of the merger; the corporate name, address, and phone number; the names of the officers of the successor; and the taxpayer identification number; and

(3) Evidence of proper filing and perfection of RUS' security interest, as instructed by RUS, and an executed loan contract.

§ 1717.153 Transitional assistance.

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before the long-term efficiencies and economies of a merger can be realized, RUS may approve one or more types of transitional assistance to a successor under the conditions set forth in this part.

§ 1717.154 Transitional assistance in connection with new loans.

Requests for transitional assistance in connection with new loans may be submitted to RUS no later than the loan application.

(a) *Loan processing priority.* (1) RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS will offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the

loan authority for the fiscal year, the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigating effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

(2) Loan processing priority is available following any merger where at least one of the merging parties is an active borrower.

(b) *Supplemental financing.* (1) RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. See 7 CFR 1710.110. RUS will, at the borrower's request, waive the requirement to obtain supplemental financing for the first RUS loan approved after the effective date if that first loan is a municipal rate loan whose loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date. For any subsequent loans approved during these 5 years, or if the borrower requests a loan period longer than 2 years, RUS may, subject to the availability of loan funds, waive or reduce the amount of supplemental financing required. In reviewing requests to reduce or waive supplemental financing on subsequent loans or on loans with a loan period longer than 2 years, RUS will consider the differences in interest rates between RUS and supplemental loans and the impacts of this difference on the borrower's projected cash flows and its electric rates and rate disparity. If significant differences would result, the waiver will be granted.

(2) Waiver of supplemental financing may be available if:

(i) All parties to the merger are active distribution borrowers, or

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers or former distribution borrowers, and the merger is effective after December 19, 1996.

(c) *Reimbursement of general funds and interim financing.* (1) Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. This reimbursement period is generally limited to 24 months. See 7 CFR 1710.109. RUS may, in connection with the first RUS loan approved after the effective date, approve a reimbursement period of up to 48 months prior to the current loan period if the loan is approved not later than 5 years after the

effective date. In reviewing requests for this longer reimbursement period, RUS will consider the stresses that the transaction and other costs of entering into the merger places on the borrower's rates and cash flows, and the mitigating effects of more generous reimbursement.

(2) A longer reimbursement period may be available if:

(i) All parties to the merger are active distribution borrowers, *or*

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers of former distribution borrowers, *and* the merger is effective after December 19, 1996.

§ 1717.155 Transitional assistance affecting new and preexisting loans.

Requests for transitional assistance affecting new and preexisting loans must be received by RUS no later than 2 years after the effective date.

(a) *Section 12 deferments.* (1) Section 12 of the RE Act (7 U.S.C. 912) allows RUS to extend the time of payment of interest or principal of RUS loans. Section 12 deferments do not extend the final maturity of the loan; lower payments during the deferment period result in higher payments later. Therefore, RUS may approve a Section 12 deferment of loan payments of up to 5 years only if such deferments will help to avoid substantial increases in retail electric rates during the transition period, without placing borrowers in financial stress after the deferment period.

(2) Section 12 deferment may be available following any merger where at least one of the merging parties is an active borrower.

(b) *Coverage ratios.* Required levels for coverage ratios are set forth in 7 CFR 1710.114 and in the loan documents. RUS may approve a plan, on a case by case basis, that provides for a phase-in period for these coverage ratios of up to 5 years from the effective date. Under such a plan the successor would be permitted to project and achieve lower levels for one or more of these coverage ratios during the phase-in period.

(1) A phase-in plan for coverage ratios must provide a pro forma level for each ratio during each year of the phase-in period and be supported by a financial forecast covering a period of not less than 10 years from the effective date of the merger. The plan must demonstrate that a minimum TIER level of 1.00 will be achieved in each year, that trends will be generally favorable, that the borrower will achieve the levels required in its loan documents and RUS regulations by the end of the phase-in

period, and that these levels will be maintained in subsequent years.

(2) In reviewing phase-in plans for coverage ratios, RUS will review rates, rate disparity, and likely mitigating effects of the proposed phase-in plan.

(3) The borrower is responsible for obtaining approvals of supplemental lenders.

(4) Upon RUS approval of a phase-in plan, the levels in that plan will be substituted for the levels required in the borrower's preexisting loan documents and will be incorporated in any new loan or security documents.

(5) A phase in plan for coverage ratios may be available if:

(i) All parties to the merger are active distribution borrowers, *or*

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers or former distribution borrowers, *and* the merger is effective after December 19, 1996.

§ 1717.156 Transitional assistance affecting preexisting loans.

The fund advance period for an insured loan, which is the period during which RUS may advance loan funds to a borrower, terminates automatically after a specific period of time. See 7 CFR 1714.56. If, on the effective date the original fund advance period or the fund advance period as extended pursuant to 7 CFR 1714.56(c), on any preexisting RUS loan to any of the active borrowers involved in a merger has not terminated, such fund advance period shall be automatically lengthened by 2 years. On the borrower's request RUS will prepare documents necessary for the advance of loan funds. RUS will prepare documents for the borrower's execution that will reflect this extension and will provide the legal authority for RUS to advance funds to the successor.

§ 1717.157 Requests for transitional assistance.

(a) If the merger requires RUS approval, the borrower should, where possible, indicate that it desires transitional assistance at the time it requests approval of the merger. The formal request for transitional assistance must be received by RUS as specified in §§ 1717.155 and 171.156. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.160 where appropriate. If the request for transitional assistance is submitted at the same time as a loan application, documents listed in this section may be combined with the loan application documents where appropriate. See 7

CFR part 1710, subpart I. A request for transitional assistance must include:

(1) Transmittal letter(s) formally listing the types of transitional assistance requested. If the request is submitted before the effective date, a transmittal letter must be signed by the manager of each party to the transaction. If the request is submitted on or after the effective date, a transmittal letter must be signed by the manager of the successor. Transmittal letter(s) must be signed originals on corporate letterhead stationery;

(2) Board resolution(s). If the request is submitted before the effective date, a separate board resolution must be submitted from each entity involved in the merger. If the request is submitted on or after the effective date, a board resolution from the successor must be submitted. Each board resolution must be a certified original;

(3) A merger plan, financial forecasts, and any available studies such as net present value analyses showing the anticipated costs and benefits of the merger and likely timeframes for the merger. The merger plan must clearly identify those benefits that cannot be achieved without a merger, and those benefits that can be achieved through other means;

(4) If the transitional assistance requires RUS approval, the type and extent of the mitigation that the transitional assistance is expected to provide; and

(5) Other information that may be relevant.

(b) Borrowers are responsible for ensuring that requests for transitional assistance are complete and sound in form and substance when they are submitted to RUS. After submitting a request, borrowers shall promptly notify RUS of any changes or events that materially affect the request or any information in the request.

(c) In considering whether to approve requests for transitional assistance, RUS will evaluate the costs and benefits of the merger; the type and extent of the likely transitional stress; whether the transitional assistance requested is likely to materially mitigate such stress; and the likely impacts on electric rates and on the security of RUS loans. Review factors applicable to each type of transitional assistance are set forth in §§ 1717.154–1717.156.

§ 1717.158 Mergers with borrowers who prepaid RUS loans.

In some cases, an active distribution borrower may merge with a borrower that has prepaid RUS debt at a discount pursuant to 7 CFR part 1786, and whose eligibility for future RUS financing is

thereby restricted. During the period when the restrictions on future financing are in effect, the successor will be eligible for RUS loans to finance facilities to serve consumers located in the territory that was served by the active distribution borrower immediately prior to the effective date, provided that other requirements for loan eligibility are met.

§ 1717.159 Applications for RUS approvals of mergers.

If a proposed merger requires RUS approval according to RUS regulations and/or the loan documents executed by any of the active borrowers involved, the application must be submitted to RUS not later than 90 days prior to the effective date of the proposed borrower action. A distribution borrower should consult with its assigned RUS general field representative, and a power supply borrower with the Director, Power Supply Division for general information prior to submitting the request.

§ 1717.160 Application contents.

An application for RUS approval of a merger must include the documents listed in this section. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.157 where appropriate.

(a) *Transmittal letters* signed by the managers of all borrowers and non-borrowers who are parties to the proposed merger. These letters must include the actual corporate name, address, and taxpayer identification number of all parties to the proposed merger. The transmittal letters must be signed originally on corporate letterhead stationery.

(b) *Resolutions from the boards of directors* of all borrowers and non-borrowers who are parties to the proposed merger. This document is the formal request by each entity for RUS approval of the proposed merger. The board resolution must include a description of the proposed merger, including timeframes, and authorization for RUS to release appropriate information to supplemental or other lenders, and for these lenders to release appropriate information to RUS. Each board resolution must be a certified original.

(c) *Evidence* that the proposed merger will result in a viable entity, and that the security of outstanding RUS loans will not be adversely affected by the action. This evidence shall include financial forecasts, and any available studies such as net present value analyses covering a period of not less than 10 years from the effective date of the merger, as well as information about

any threatened actions by other parties that could adversely affect the financial condition of any of the parties to the proposed merger, or of the successor. Such threatened actions may include annexations or other actions affecting service territory, loads, rates or other such matters.

(d) *Regulatory information* about pending federal or state proceedings pertaining to any of the parties that could have material effects on the successor.

(e) *Rate information.* Distribution and power supply borrowers shall submit schedules of proposed rates after the merger, including the effects of the proposed action on rates and the status of any pending rate cases before a state regulatory authority. The rates of power supply borrowers are subject to RUS approval. If rates are not projected to change after the merger, a statement to that effect will suffice.

(f) *Area coverage and line extension policies:* If any distribution systems are parties to the proposed merger, a statement of proposed area coverage and line extension policies for the successor.

§ 1717.161 Application process.

(a) Borrowers are responsible for ensuring that their applications for RUS approval of a merger are complete and sound in form and substance when they are submitted to RUS. After submitting an application, borrowers shall promptly notify RUS of any changes or events that materially affect the application or any information in the application.

(b) In reviewing borrower requests for approval of mergers, RUS will consider the likely effects of the action on the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries and on the security of outstanding RUS loans. Among the factors RUS will consider are whether the proposed merger is likely to:

- (1) Contribute to greater operating efficiency and financial soundness;
- (2) Mitigate high electric rates and or rate disparity;
- (3) Help borrowers to diversify their loads or otherwise hedge risks;
- (4) Have beneficial effects on rural economic development in the community served by the borrower, such as diversifying the economic base or alleviating unemployment; and
- (5) Provide other benefits consistent with the purposes of the RE Act.

(c) RUS will not approve a merger if, in the sole judgment of the Administrator, such action is likely to have an adverse effect on the credit quality of outstanding loans made or

guaranteed by the Government. RUS will thoroughly review each request for approval of such action, including review of the feasibility and security of outstanding Government loans according to the standards in 7 CFR 1710.112 and 1710.113, respectively, and in other RUS regulations.

(d) RUS will keep the borrowers apprised of the progress of their applications.

PART 1786—PREPAYMENT OF RUS GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on RUS Electric Loans

10. The authority citation for subpart F continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Pub.L. 103-534, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

11. Section 1786.167 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1786.167 Restrictions to additional RUS financing.

(a) * * * Special provisions for mergers involving a borrower that has prepaid pursuant to this subpart are in 7 CFR 1717.158.

* * * * *

Dated: December 13, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96-32084 Filed 12-18-96; 8:45 am]

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THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1511

Resolution Funding Corporation; Book-Entry Procedure

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Final rule.

SUMMARY: The Thrift Depositor Protection Oversight Board is publishing final regulations to govern Resolution Funding Corporation book-entry securities. This action is being taken in conjunction with similar amendments being made by the Department of the Treasury to the regulations governing book-entry Treasury securities, and by other government-sponsored enterprises (GSEs) for securities that are maintained on the book-entry system operated by the Federal Reserve Banks. The rules incorporate recent and significant changes in commercial law addressing