

in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements

of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program under § 273.7;

(iii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) an employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(f)(1). Using the criteria in § 273.7(f)(1), State agencies shall make the determinations as to whether or not the programs qualify.

§ 273.8 [Amended]

6. In § 273.8, paragraph (e)(11)(vi) is removed, and paragraphs (e)(11)(vii) through (e)(11)(xi) are redesignated as paragraphs (e)(11)(vi) through (e)(11)(x).

Dated: September 15, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-23404 Filed 9-21-95; 8:45 am]

BILLING CODE 3410-30-P

Rural Utilities Service

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its policies and requirements governing restrictions on investments, loans and guarantees made by electric borrowers. This rule is intended to clarify RUS's policies and requirements, reduce uncertainty by borrowers, and improve compliance.

EFFECTIVE DATE: This rule is effective October 23, 1995.

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 existing 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 1980 (44 U.S.C. 3501 et seq.), under control number 0572-0032.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 10102, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On December 22, 1987, section 312 was added to the Rural Electrification Act of 1936. This section allows electric borrowers to invest their own funds or make loans or guarantees, not in excess

of 15 percent of their total utility plant, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS). On June 29, 1989, RUS issued a final rule codifying this provision in 7 CFR part 1717, subpart N (at 54 FR 27325). Mortgages executed prior to that date contained a provision granting the Administrator the right to approve investments, loans and guarantees by the borrower once the aggregate of such investments, loans and guarantees reached 3 percent of total utility plant.

On February 16, 1995, at 60 FR 8981, RUS published a proposed rule to clarify RUS's policies and requirements regarding restrictions on borrower investments, loans and guarantees. Over the years borrowers had raised a number of questions about such issues as: which investments, loans or guarantees are subject to RUS approval and which are excluded; the criteria used by RUS in approving an investment, loan or guarantee; whether RUS approval of an investment, loan or guarantee means that it is no longer counted in determining the ratio to total utility plant; whether RUS will approve an investment, loan or guarantee if the borrower is under the 15 percent limit; whether a borrower will be in default under its mortgage because net profits earned on its investments pushed its total above the 15 percent limit. This final rule resolves such questions.

RUS is also in the process of updating its mortgage and loan contract used with electric borrowers. RUS published a proposed mortgage for electric distribution borrowers on September 29, 1994 at 59 FR 49594. In that rule it was proposed that RUS controls over borrower investments, loans and guarantees be moved from the mortgage to the RUS loan contract. Such a move would have no effect on RUS's controls or their enforceability under the RUS mortgage. On July 18, 1995 RUS published the final rule for the distribution mortgage and a proposed rule for the distribution loan contract, at FR 36882 and FR 36904, respectively.

Comments on the proposed changes to RUS investment controls contained in 7 CFR part 1717, subpart N were received from 26 commenters, including the National Rural Electric Cooperative Association, the National Rural Utilities Cooperative Finance Corporation (CFC), the Saint Paul Bank for Cooperatives, and 23 borrowers or regional borrower associations. All comments were considered in preparing this final rule. The more significant or more frequently made comments are discussed below.

Section 1717.651 Policy

Questions were raised about the second part of the statement: "RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders." RUS did not propose any change in this statement, which is contained in the existing rule.

It was suggested that this policy is unworkable since any investment involves some risk. RUS recognizes that most investments involve some risk, but continues to believe that it is only prudent that borrowers avoid those investments having risks of a magnitude that would in any way put government funds at risk or impair loan repayment. We continue to believe that this is the correct interpretation of the intent of section 312.

Section 1717.652 Definitions

The term "own funds" was defined as "money belonging to the borrower other than the proceeds of loans made or guaranteed by RUS." Such proceeds include, but are not limited to, all funds on deposit in the cash-construction fund-trustee account. A commenter pointed out that requests for loan advances commonly occur after general funds have already been expended for loan purposes, and that it would be difficult to separate general funds into cash generated by operations and that derived from loan advances. This was not the agency's intent, nor is such separation required under the existing rule. To make this clear, the definition has been revised as follows: "Own funds means money belonging to the borrower other than funds on deposit in the cash-construction fund-trustee account."

One commenter stated that Operating TIER and Operating DSC, used as part of the criteria in proposed § 1717.655 to determine eligibility for an exemption from controls, appeared to be the same as standard TIER and DSC. They are not, since they measure interest and debt coverage only for the borrower's electric utility operations. Margins used in the calculation are operating margins rather than total margins. A few technical changes have been made to the definitions in this final rule to make it clearer that Operating TIER and Operating DSC apply only to the borrower's electric system and do not apply to any other utility operations of the borrower, such as a water and waste disposal system owned by the borrower.

One commenter asked whether margins earned by subsidiaries controlled by a borrower would be included in operating margins used in calculating Operating TIER and DSC. Since such subsidiaries are separate business entities outside the borrower's core electric utility business, as indicated above their profits or losses will not be included in calculating Operating TIER and DSC. They are, however, included in the calculation of standard TIER and DSC contained in the rate covenant of the typical mortgage or loan contract.

A question was asked about whether "telecommunication and other electronic communication system" includes satellite and direct broadcast television service. The answer is yes, provided that "the service" includes providing a continuing service to customers, such as television programming, rather than just a one-time sale of equipment, and as set forth in the definition, such services "are available by design to all or a substantial portion of the members of the community."

Section 1717.653 Borrowers in Default

This section has been added to clarify the point that if a borrower is not in compliance with all provisions of its mortgage, loan contract, or any other agreements with RUS, the borrower must obtain prior written approval from the Administrator to invest its own funds or to make loans or guarantees, unless such loan document or other agreement specifically provides otherwise. This was implicit in proposed section 1717.653(a) (renumbered 1717.654(a)), and is now spelled out for greater clarity.

Section 1717.654 (Proposed 1717.653) Transactions Below the 15 Percent Level

Clarification was requested of the statement that "funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls. * * *" The purpose of this statement is to make it clear that while RUS controls on investments, loans and guarantees by the borrower do not ordinarily apply below the 15 percent level, RUS may impose such controls case-by-case in those circumstances where they are necessary to ensure reasonably adequate loan security or to ensure the repayment of loans secured under the mortgage. Such instances presumably would be relatively rare, and the borrower would be notified in advance that the controls were being imposed.

One commenter stated that the apparent effect of paragraph (b) of this section is to restrict the limitations on investments contained in the rule to loan contracts or mortgages executed after the effect date of the final rule. That is not correct. Proposed paragraph (b) described language to be included in the loan contract or mortgage regarding investment controls, and proposed certain changes in the prescribed language for these documents contained in § 1717.654(b) of the existing rule. In the final rule, this prescribed language has been further revised to conform with the approach used in the new mortgage and proposed loan contract for distribution borrowers: namely, the provision is expressed in more general terms, relying on RUS regulations to flesh out the interpretation and specific requirements of the provision. Revised paragraph (b) has been moved to § 1717.659.

The provisions of existing subpart N have applied to all borrowers since the date it became effective, July 31, 1989, regardless of when their loan contracts or mortgages were executed. Changes to subpart N contained in this final rule will also apply to all borrowers regardless of when their loan documents were executed. This has been clarified in § 1717.650. RUS believes that borrowers who qualify for an outright exemption from investment controls should not have to wait until new loan documents are executed before becoming eligible. Nor should other reforms be delayed, such as excluding rural community infrastructure from the 15 percent calculation.

*Section 1717.655 (Proposed 1717.654)
Exclusion of Certain Investments, Loans,
and Guarantees*

The Saint Paul Bank for Cooperatives recommended that investments in it be excluded, as are investments in CFC and CoBank. This has been done.

A commenter pointed out that investments made in a trust fund dedicated to pay the decommissioning costs of nuclear generating facilities was not listed in this section as an excluded investment, but is excluded under RUS Bulletin 1717B-3. Failure to list such investments as excluded under this section was inadvertent, and this has been corrected.

One commenter noted that several generation and transmission borrowers (G&Ts) have invested in fuel supply subsidiaries in an effort to control fuel costs, and argued that such investments should be excluded. This recommendation has not been adopted.

Such subsidiaries often have other lines of business and often provide

services to other utilities or other companies, making it difficult to determine to what extent the subsidiary is involved in providing services in direct support of the borrower's electric utility business. If fuel supply subsidiaries were excluded, then there would be pressure to exclude other subsidiaries that might provide some services to the borrower, such as warehousing, barge service, railroad or truck service, insurance, engineering services, etc. Moreover, the property of a subsidiary generally is not subject to the lien of the government's mortgage, and the property and operations of the subsidiary are not subject to RUS operational controls and approval rights. This often can present serious problems with respect to the agency's programmatic and security interests.

A commenter recommended that patronage capital allocated to a G&T by its distribution members be excluded. Such allocations often occur when a G&T buys power from its members for headquarters, warehouses, and metering points located in the members' territory. This recommendation has been adopted.

Another commenter stated that the exclusion of community infrastructure in paragraph (c)(3) should not be based on whether the infrastructure is located within the borrower's service territory, but whether the infrastructure serves consumers located in rural areas. RUS agrees with the recommendation for the purposes of this rule, and has so revised the paragraph.

Proposed paragraph (c)(1) excluded investments or loans made by a borrower derived from funds obtained from grants or loans received from a USDA agency. Such grants and loans from a USDA agency normally would be for purposes supporting rural economic development. A commenter recommended that the source of the grant or loan be expanded to include any Federal, State or local government agency. RUS agrees with this recommendation provided that such loan funds are designated to promote rural economic development and the borrower uses the funds for that purpose. Grant funds that the borrower is not obligated to repay may be for any purpose since there would be little or no risk to RUS loan security. In reality, most such grants likely would be for rural economic development.

A co-mortgagee suggested that it be granted what it described as the same preapproval of credit enhancement in paragraph (d) as granted USDA agencies in cases where a borrower is required to make an investment, loan, or guarantee, for example, as a condition of obtaining financial assistance from the agency.

The intent of this provision is to support rural economic development, for example, in instances where a borrower is required to invest some of its own funds in order to qualify for a rural development grant or loan, which usually will be on subsidized terms. Investments in the co-mortgagee in question are excluded under paragraph (b) of this section.

*Section 1717.656 (Proposed 1717.655)
Exemption of Certain Borrowers From
Controls*

A number of comments were received about the criteria for qualifying for an exemption from investment controls set forth in paragraph (a).

One borrower asked whether patronage capital earned or refunded would be subtracted from the average residential rate of borrowers in making the comparison with the average residential rate for all utilities serving a state. The answer is, no. This adjustment would not be significant enough to make a difference among borrowers or to justify the additional complexity. Borrowers are reminded that if they fail to qualify for an exemption based solely on the rate disparity criterion, upon request the Administrator may grant the exemption if he or she determines that the borrowers' strengths in the other criteria outweigh their weakness on rate disparity.

Several borrowers suggested that it would be more "prudent" to use a standard TIER of 1.05 for G&Ts rather than the proposed Operating TIER and Operating DSC of 1.0. RUS disagrees that that would be more "prudent" from the standpoint of loan security. In addition to Operating TIER and DSC, a borrower would have to meet the TIER and DSC requirements in its mortgage (the first criterion under paragraph (a)), which for most G&Ts is a standard DSC of 1.0 and standard TIER of 1.0 or 1.05. The advantage of requiring a minimum Operating TIER and DSC of 1.0 is that it will ensure that a borrower is at least breaking even on its main business, its electric operations, and does not need to rely on income from investments and other non-core activities to meet its debt service and other expenses of its core business.

Several G&Ts argued that the minimum equity required to qualify for an exemption should be set lower for G&Ts than for distribution systems. RUS disagrees since it is not apparent that giving G&T's wider latitude to make investments without RUS approval would involve less risk to loan security than in the case of distribution borrowers.

Several borrowers opposed the netting out of regulatory created assets when calculating equity as a percent of total assets. RUS disagrees since these assets represent current period expenses that should have been expensed, rather than capitalized, in order to reflect the true operating performance of the borrower. Deferring these expenses overstates both equity and total assets. RUS has followed this practice for the past several years, codifying it in the lien accommodation rule (7 CFR part 1717, subparts R and S), the 110 percent rule (7 CFR 1710.7 and 7 CFR 1717.860), and the distribution mortgage (7 CFR part 1718, subpart B).

Under paragraph (c), a borrower that has lost its exemption may regain it if it once again meets the exemption criteria. One commenter recommended that restoration of the exemption ought to be automatic, rather than contingent upon written notice from RUS. RUS believes that notice is required in order for the borrower and RUS to have the same understanding about the exemption status of the borrower. Without requiring notification, disputes and associated administrative costs and delays would likely occur. Requiring written notice to restore an exemption is consistent with the written notice required to terminate an exemption.

Under paragraph (d), a borrower that has lost its exemption and has exceeded the 15 percent limit would be required to reduce or restructure its investment portfolio to come within the 15 percent limit. If the borrower failed to come within the 15 percent limit within a reasonable period of time determined by the Administrator, the borrower could be given notice of default.

The proposed paragraph implicitly assumed the borrower was in compliance with all other provisions of its mortgage, loan contract, and any other agreements with RUS. This has now been made explicit, and it has been reiterated that if the borrower is not in compliance with such provisions it may be required to reduce its investment portfolio below the 15 percent level, if not prohibited by the explicit terms of the borrower's mortgage, loan contract, or other agreement with RUS.

One commenter argued that RUS should not be able to call a default if the investments that exceeded the 15 percent limit were made while the borrower was exempt. RUS disagrees, since without the right to call a default there would be less leverage to reduce loan security risks in cases where a borrower had a high-risk investment portfolio that substantially exceeded the 15 percent limit. There would also be less incentive for borrowers to maintain

the performance levels required for an exemption if there were no penalty for failing to maintain these levels.

However, it may not be necessary in all cases to require a formerly exempt borrower to reduce its investment portfolio to the 15 percent limit. Paragraph (d) has therefore been revised to give the Administrator the flexibility to allow a formerly exempt borrower not in default to remain above the 15 percent limit if the Administrator determines that reducing or restructuring the investment portfolio to come within the limit would not be in the financial interest of the government from the standpoint of loan security and/or repayment.

Section 1717.657 (Proposed 1717.656) Investments Above the 15 Percent Level by Certain Borrowers not Exempt Under § 1717.656(a)

A commenter recommended that G&Ts not meeting the minimum criteria in paragraph (c) for requesting RUS approval of investments above the 15 percent level should nevertheless be given a chance to have their requests considered. RUS disagrees. The criteria are very minimal: no default, no financial workout or restructured debt, and a minimum equity of 5 percent. G&Ts (as well as distribution borrowers) that are in default do not in the first place qualify under § 1717.654(a) to make investments, loans and guarantees up to the 15 percent level without RUS approval. Section 1717.657 does not apply to them. Other G&Ts that are not in default but have equity of less than 5 percent, or are in financial workout, or have had their debt restructured, ought to confine investments above the 15 percent level to excluded investments.

Another commenter recommended that distribution borrowers not meeting the criteria for an outright exemption from investment controls (§ 1717.656(a)) ought to be able to seek approval from RUS for investments above the 15 percent level. RUS believes such borrowers should restrict their investments above the 15 percent level to excluded investments. Some 84 percent of distribution borrowers qualify for an outright exemption. Many of the remaining borrowers could make changes in their operations and qualify for an exemption.

A co-mortgagee argued that it would be more prudent to relate the maximum limit on investments by G&Ts to equity, rather than 20 percent of total utility plant (see § 1717.657(c)). RUS agrees that it would be more logical to use equity, one of the criteria used to determine eligibility for an exemption

from investment controls. However, setting the maximum investment limit at even 100 percent of equity would result in a limit for most G&Ts lower than the 15 percent of total utility plant mandated by section 312 of the RE Act.

A commenter asked whether the 10-year look-back on net profits on investments in paragraph (d) is a rolling or one-time calculation. It is a rolling calculation done at the time RUS is asked by a borrower to exclude all or a portion of net profits that have resulted in investments exceeding the 15 percent limit.

Section 1717.658 (Proposed 1717.657) Records, Reports and Audits

One commenter recommended changing current practice which requires guarantees and lines of credit to be counted in full against the 15 percent limit whether or not there is a loan outstanding or any likelihood the guarantee will be called upon. RUS does not believe current practice should be changed. A line of credit could be drawn upon at any time and RUS would have no way of anticipating when that time might come. Presumably borrowers would not want their ability to make good on a line of credit commitment to another party to be subject to subsequent approval by RUS. As to excluding guarantee obligations of the borrower that are unlikely to be called upon, in most cases it would be very difficult and time-consuming for RUS to assess the probability that the borrower will be required to perform under the guarantee.

One commenter stated that the balance sheet method used by RUS to count investments is not consistent with section 312. RUS disagrees with that view, and notes that § 1717.657(d) of the rule addresses the main concern that has been raised over the years: namely, that net profits on investments may cause a borrower to exceed the 15 percent limit and possibly be in default. Section 1717.657(d) provides that such circumstances would not necessarily result in a default, and at a borrower's request, the Administrator could exclude up to the amount of net profit earned over the past 10 years if such exclusion would not increase loan security risks.

Section 1717.659 (Proposed 1717.658) Effect on RUS Loan Contract and Mortgage

Section 1717.656(c) of the existing regulation explicitly states that, "Nothing in this subpart authorizes a borrower to make extensions or improvements to its electric system without prior approval of RUS." That

provision was subsumed under a more comprehensive provision in proposed § 1717.658(a), which in the final rule has been clarified by adding the specific reference to RUS approval rights over system extensions and additions. Similar changes have been made to sections 1717.654 and 1717.656.	AR 23 AR 24 AR 26 AR 27 AR 28 AR 29 AR 33 CA 6 CA 16	GA 90 GA 91 GA 92 GA 94 GA 95 GA 96 GA 97 GA 98 GA 99
Borrowers Exempt From Investment Controls	CO 7 CO 14	GA 103 GA 108
The distribution and power supply borrowers listed below meet the criteria in § 1717.656(a) and are exempt from RUS approval of any investment, loan, or guarantee made on or after September 21, 1995. Borrowers are reminded that, under § 1717.656(c), if they subsequently cease to meet the exemption criteria, upon written notice from RUS they will no longer be exempt from RUS investment controls.	CO 15 CO 16 CO 18 CO 20 CO 22 CO 29 CO 31 CO 32 CO 33 CO 34 CO 37 CO 38	ID 4 ID 11 ID 16 ID 19 ID 23 IL 2 IL 7 IL 8 IL 18 IL 21 IL 23 IL 30
Borrowers that do not meet the criteria for exemption will be notified individually in writing by RUS and will be advised of the reasons they fail to qualify.	CO 39 CO 40 CO 42 DE 2	IL 31 IL 32 IL 33 IL 34
Borrowers Exempt From RUS Investment Controls	FL 14 FL 15 FL 16 FL 17	IL 37 IL 38 IL 41 IL 43
AL 9	FL 17	IL 44
AL 18	FL 22	IL 45
AL 19	FL 23	IL 46
AL 20	FL 24	IL 48
AL 21	FL 28	IL 54
AL 23	FL 29	IN 1
AL 25	FL 30	IN 6
AL 26	FL 33	IN 7
AL 27	FL 34	IN 8
AL 28	FL 35	IN 14
AL 29	GA 7	IN 18
AL 30	GA 8	IN 26
AL 32	GA 17	IN 27
AL 35	GA 20	IN 29
AL 36	GA 22	IN 32
AL 37	GA 31	IN 35
AL 39	GA 34	IN 37
AL 44	GA 35	IN 38
AL 46	GA 37	IN 40
AL 47	GA 39	IN 42
AL 48	GA 42	IN 46
AK 2	GA 45	IN 47
AK 5	GA 58	IN 52
AK 6	GA 65	IN 53
AK 11	GA 66	IN 55
AZ 13	GA 67	IN 60
AZ 20	GA 68	IN 70
AZ 23	GA 69	IN 80
AZ 27	GA 73	IN 81
AZ 30	GA 74	IN 83
AR 9	GA 75	IN 87
AR 10	GA 77	IN 88
AR 11	GA 78	IN 89
AR 12	GA 81	IN 92
AR 13	GA 83	IN 99
AR 15	GA 84	IN 100
AR 18	GA 86	IN 108
AR 21	GA 87	IN 109
AR 22	GA 88	

IA 2	KY 51	MS 1
IA 3	KY 52	MS 21
IA 5	KY 54	MS 22
IA 7	KY 55	MS 23
IA 9	KY 56	MS 24
IA 14	KY 57	MS 26
IA 15	KY 58	MS 28
IA 16	KY 61	MS 29
IA 23	LA 6	MS 30
IA 26	LA 7	MS 31
IA 30	LA 8	MS 34
IA 31	LA 9	MS 36
IA 32	LA 12	MS 39
IA 33	LA 17	MS 40
IA 34	LA 19	MS 41
IA 36	LA 20	MS 43
IA 39	MD 7	MS 45
IA 40	MI 5	MS 48
IA 41	MI 26	MS 49
IA 50	MI 33	MS 50
IA 51	MI 37	MO 12
IA 52	MI 40	MO 18
IA 53	MI 41	MO 19
IA 56	MI 43	MO 20
IA 57	MI 44	MO 22
IA 59	MI 45	MO 23
IA 62	MN 1	MO 24
IA 67	MN 3	MO 26
IA 69	MN 4	MO 27
IA 70	MN 9	MO 28
IA 71	MN 10	MO 30
IA 74	MN 12	MO 31
IA 75	MN 18	MO 32
IA 77	MN 25	MO 33
IA 82	MN 32	MO 34
IA 92	MN 34	MO 36
IA 93	MN 35	MO 37
KS 7	MN 37	MO 38
KS 13	MN 39	MO 40
KS 15	MN 48	MO 41
KS 18	MN 53	MO 42
KS 21	MN 55	MO 43
KS 22	MN 56	MO 44
KS 24	MN 57	MO 45
KS 27	MN 58	MO 46
KS 30	MN 59	MO 47
KS 31	MN 60	MO 48
KS 33	MN 61	MO 49
KS 41	MN 62	MO 50
KS 42	MN 63	MO 51
KS 47	MN 65	MO 53
KS 48	MN 66	MO 54
KS 56	MN 72	MO 55
KY 3	MN 73	MO 58
KY 18	MN 74	MO 66
KY 20	MN 75	MO 67
KY 21	MN 79	MO 68
KY 23	MN 80	MO 69
KY 26	MN 81	MO 70
KY 27	MN 82	MO 71
KY 30	MN 83	MO 72
KY 33	MN 84	MT 1
KY 34	MN 85	MT 2
KY 35	MN 87	MT 9
KY 37	MN 95	MT 10
KY 38	MN 96	MT 12
KY 40	MN 97	MT 13
KY 45	MN 101	MT 15
KY 50	MN 108	MT 17

MT 19	ND 21	PA 20
MT 21	ND 28	PA 21
MT 24	ND 31	PA 24
MT 25	ND 32	PA 25
MT 26	ND 33	PA 28
MT 27	ND 34	SC 14
MT 30	ND 35	SC 19
MT 31	ND 38	SC 21
MT 33	OH 1	SC 22
MT 36	OH 24	SC 23
NE 3	OH 30	SC 26
NE 4	OH 31	SC 27
NE 51	OH 33	SC 28
NE 59	OH 39	SC 29
NE 62	OH 42	SC 30
NE 63	OH 50	SC 31
NE 65	OH 55	SC 32
NE 66	OH 56	SC 33
NE 77	OH 59	SC 34
NE 78	OH 60	SC 35
NE 84	OH 65	SC 38
NE 85	OH 71	SC 40
NE 97	OH 74	SC 41
NE 98	OH 75	SD 3
NV 4	OH 83	SD 6
NV 15	OH 84	SD 7
NV 18	OH 85	SD 11
NJ 6	OH 86	SD 13
NM 4	OH 87	SD 16
NM 8	OH 88	SD 17
NM 9	OH 93	SD 18
NM 11	OH 94	SD 19
NM 20	OK 1	SD 21
NM 21	OK 6	SD 23
NM 22	OK 12	SD 25
NM 23	OK 14	SD 26
NM 28	OK 15	SD 27
NY 19	OK 18	SD 28
NY 20	OK 19	SD 29
NY 21	OK 20	SD 30
NY 24	OK 21	SD 31
NC 10	OK 22	SD 32
NC 14	OK 23	SD 33
NC 16	OK 24	SD 35
NC 21	OK 25	SD 36
NC 23	OK 27	SD 39
NC 25	OK 28	SD 40
NC 31	OK 29	SD 41
NC 32	OK 30	SD 42
NC 33	OK 31	TN 1
NC 34	OK 33	TN 9
NC 35	OK 34	TN 16
NC 36	OK 35	TN 17
NC 38	OK 37	TN 19
NC 39	OR 2	TN 20
NC 40	OR 4	TN 21
NC 43	OR 14	TN 23
NC 46	OR 18	TN 24
NC 49	OR 21	TN 25
NC 50	OR 25	TN 26
NC 51	OR 26	TN 31
NC 52	OR 39	TN 32
NC 55	OR 41	TN 34
NC 58	PA 4	TN 35
NC 59	PA 6	TN 36
NC 64	PA 12	TN 37
NC 66	PA 15	TN 38
NC 68	PA 17	TN 45
ND 8	PA 19	TN 46

TN 48	VA 31	1717.652	Definitions.
TN 49	VA 34	1717.653	Borrowers in default.
TN 51	VA 36	1717.654	Transactions below the 15 percent level.
TN 60	VA 37	1717.655	Exclusion of certain investments, loans, and guarantees.
TX 7	VA 39	1717.656	Exemption of certain borrowers from controls.
TX 11	VA 54	1717.657	Investments above the 15 percent level by certain borrowers not exempt under § 1717.656(a).
TX 21	VA 55	1717.658	Records, reports and audits.
TX 23	WA 8	1717.659	Effect of this subpart on RUS loan contract and mortgage.
TX 30	WA 17		
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TX 95	WY 10		
TX 96	WY 11		
TX 97	WY 12		
TX 99	WY 14		
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TX 106			
TX 108	List of Subjects in 7 CFR Part 1717		
TX 113	Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.		
TX 114	For the reasons stated, subpart N of 7 CFR part 1717 is revised to read as follows:		
TX 118	PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS		
TX 122	Subpart N—Investments, Loans, and Guarantees by Electric Borrowers		
TX 123	Sec.		
TX 124	1717.650 Purpose.		
TX 125	1717.651 General.		
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Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

Authority: 7 U.S.C. 901–950b; Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100–203, 101 Stat. 1330.

§ 1717.650 Purpose.

This subpart sets forth general regulations for implementing and interpreting provisions of the RUS mortgage and loan contract regarding investments, loans, and guarantees made by electric borrowers, as well as the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that electric borrowers under the RE Act may, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS), invest their own funds and make loans or guarantees.

§ 1717.651 General.

(a) *Policy.* RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, and managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, RUS believes that borrowers should continue to give primary consideration to safety and

liquidity in the management of their funds.

(b) *Applicability of this subpart.* This subpart applies to all distribution and power supply borrowers regardless of when their loan contract or mortgage was executed.

§ 1717.652 Definitions.

As used in this subpart:

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification.

Cash-construction fund-trustee account means the account described in the Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

Distribution borrower means a Distribution Borrower as defined in 7 CFR 1710.2.

Electric system means all of the borrower's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear, or other fuel or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the borrower's generating plants, including any interest or participation of the borrower in any such facilities or any rights to the output or capacity thereof, together with all lands, easements, rights-of-way, other works, property, structures, contract rights and other tangible and intangible assets of the borrower in each case used or useful in such electric system.

Equity means the Margins and Equities of the borrower as defined in the Uniform System of Accounts, less regulatory created assets.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of subsidiaries. Some examples of such guarantees include guarantees of payment or collection on a note or other debt instrument (assuring returns on investments); issuing performance bonds or completion bonds; or cosigning leases or other obligations of third parties.

Invest means to commit money in order to earn a financial return on assets, including, without limitation, all investments properly recorded on the borrower's books and records in investment accounts as those accounts

are used in the Uniform System of Accounts for RUS Borrowers. Borrowers may submit any proposed transaction to RUS for an interpretation of whether the action is an investment for the purposes of this definition.

Make loans means to lend out money for temporary use on condition of repayment, usually with interest.

Mortgaged property means any asset of the borrower which is pledged in the RUS mortgage.

Natural gas distribution system means any system of community infrastructure that distributes natural gas and whose services are available by design to all or a substantial portion of the members of the community.

Operating DSC means Operating Debt Service Coverage (ODSC) of the borrower's electric system calculated as:

$$\text{ODSC} = \frac{A + B + C}{D}$$

where:

All amounts are for the same year and are based on the RUS system of accounts;

A=Depreciation and Amortization Expense of the electric system;

B=Interest on Long-term Debt of the electric system, except that Interest on Long-term Debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities;

C=Patronage Capital & Operating Margins of the electric system (distribution borrowers) or Operating Margins of the electric system (power supply borrowers); and

D=Debt Service Billed (RUS + other) which equals all interest and principal billed or billable during the calendar year for long-term debt of the electric system plus 1/3 of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities. Unless otherwise indicated, all terms used in defining ODSC and OTIER are as defined in RUS Bulletin 1717B-2 Instructions for the Preparation of the Financial and Statistical Report for Electric Distribution Borrowers, and RUS Bulletin 1717B-3 Instructions for the Preparation of the Operating Report for Power Supply Borrowers and for Distribution Borrowers with Generating Facilities, or the successors to these bulletins.

Operating TIER means Operating Times Interest Earned Ratio (OTIER) of the borrower's electric system calculated as:

$$\text{OTIER} = \frac{A + B}{A}$$

where:

All amounts are for the same year and are based on the RUS system of accounts;

A=Interest on Long-term Debt of the electric system, except that Interest on Long-term Debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities; and

B=Patronage Capital & Operating Margins of the electric system (distribution borrowers) or Operating Margins of the electric system (power supply borrowers).

Own funds means money belonging to the borrower other than funds on deposit in the cash-construction fund-trustee account.

Power supply borrower means a Power Supply Borrower as defined in 7 CFR 1710.2.

Regulatory created assets means the sum of the amounts properly recordable in Account 182.2 Unrecovered Plant and Regulatory Study Costs, and Account 182.3 Other Regulatory Assets of the Uniform System of Accounts.

RUS means the Rural Utilities Service, an agency of the U.S.

Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178, 7 U.S.C. 6941 et seq.) and, for purposes of this subpart, includes its predecessor, the Rural Electrification Administration.

RUS loan contract means the loan contract between the borrower and RUS.

RUS mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

Solid waste disposal system means any system of community infrastructure that provides collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Subsidiary means a company which is controlled by the borrower through ownership of voting stock, and is further defined in 7 CFR 1767.10.

Supplemental lender means a lender that has provided a supplemental source of financing that is secured by the RUS mortgage.

Telecommunication and other electronic communication system means any community infrastructure that provides telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

Total assets means the total assets of the borrower as calculated according to

the Uniform System of Accounts, less regulatory created assets.

Total utility plant means the sum of the borrower's Electric Plant Accounts and Construction Work in Progress—Electric Accounts, as such terms are used in the Uniform System of Accounts.

Uniform System of Accounts means the system of accounts prescribed for RUS borrowers in 7 CFR part 1767.

Water and waste disposal system means any system of community infrastructure that supplies water and/or collects and treats waste water and whose services are available by design to all or a substantial portion of the members of the community.

§ 1717.653 Borrowers in default.

Any borrower not in compliance with all provisions of its mortgage, loan contract, or any other agreements with RUS must, unless the borrower's mortgage, loan contract, or other agreement with RUS specifically provides otherwise with respect to such a borrower:

(a) Obtain prior written approval from the Administrator to invest its own funds or to make loans or guarantees regardless of the aggregate amount of such investments, loans, or guarantees; and

(b) If requested by the Administrator, restructure or reduce the amount of its investments, loans, and guarantees to a level determined by the Administrator, in his or her sole discretion, to be in the financial interest of the government with respect to loan security and/or repayment. If the borrower does not so restructure or reduce its portfolio within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.654 Transactions below the 15 percent level.

(a) A borrower in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS may, without prior written approval of the Administrator, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant without regard to any provision contained in any RUS mortgage or RUS loan contract to the effect that the borrower must obtain prior approval from RUS, provided, however, that the borrower may not, without the prior written approval of the Administrator, make such investments, loans, and guarantees to

extend, add to, or modify its electric system. Moreover, funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls on borrower investments, loans and guarantees.

(b) RUS will not consider requests from borrowers to exclude investments, loans, or guarantees made below the 15 percent level. (Categorical exclusions are set forth in § 1717.655.)

§ 1717.655 Exclusion of certain investments, loans, and guarantees.

(a) In calculating the amount of investments, loans and guarantees permitted under this subpart, there is excluded from the computation any investment, loan or guarantee of the type which by the terms of the borrower's RUS mortgage or RUS loan contract the borrower may make in unlimited amounts without RUS approval.

(b) Furthermore, the borrower may make unlimited investments, without prior approval of the Administrator, in:

(1) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(2) Capital term certificates, bank stock, or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender, as well as any other investment made in, or loans made to, the National Rural Utilities Cooperative Finance Corporation, the Saint Paul Bank for Cooperatives, and CoBank, ACB;

(3) Patronage capital allocated from an electric power supply cooperative of which the borrower is a member; and

(4) Patronage capital allocated from an electric distribution cooperative to a power supply borrower.

(c) Without prior approval of the Administrator, the borrower may also:

(1) Invest or lend funds derived directly from:

(i) Grants which the borrower is not obligated to repay, regardless of the source or purpose of the grant; and

(ii) Loans received from or guaranteed by any Federal, State or local government program designed to promote rural economic development, provided that the borrower uses the loan proceeds for such purpose;

(2) Make loans guaranteed by an agency of USDA, up to the amount of principal whose repayment, with interest, is fully guaranteed; and

(3) (i) Make unlimited investments in and unlimited loans to finance the

following community infrastructure that serves primarily consumers located in rural areas as defined in 7 CFR 1710.2, and guarantee debt issued for the construction or acquisition of such infrastructure, up to an aggregate amount of such guarantees not to exceed 20 percent of the borrower's equity:

(A) Water and waste disposal systems;

(B) Solid waste disposal systems;

(C) Telecommunication and other electronic communication systems; and

(D) Natural gas distribution systems.

(ii) In each of the four cases in paragraph (c)(3)(i) of this section, if the system is a component of a larger organization other than the borrower itself (e.g., if it is a component of a subsidiary of the borrower or a corporation independent of the borrower), to be eligible for the exemption the borrower must certify annually that a majority of the gross revenues of the larger organization during the most recent fiscal year came from customers of said system who were located in a rural area.

(d) Also excluded from the calculation of investments, loans and guarantees made by the borrower are:

(1) Amounts properly recordable in Account 142 Customer Accounts Receivable, and Account 143 Other Accounts Receivable;

(2) Any investment, loan, or guarantee that the borrower is required to make by an agency of USDA, for example, as a condition of obtaining financial assistance for itself or any other person or organization;

(3) Investments included in an irrevocable trust for the purpose of funding post-retirement benefits of the borrower's employees;

(4) Reserves required by a reserve bond agreement or other agreement legally binding on the borrower, that are dedicated to making required payments on debt secured under the RUS mortgage, not to exceed the amount of reserves specifically required by such agreements; and

(5) Investments included in an irrevocable trust approved by RUS and dedicated to the payment of decommissioning costs of nuclear facilities of the borrower.

(e) Grandfathered exclusions. All amounts of individual investments, loans, and guarantees excluded by RUS as of February 16, 1995 shall remain excluded. Such exclusions must have been based on the RUS mortgage, RUS loan contract, regulations, bulletins, memoranda, or other written notice from RUS. Profits, interest, and other returns earned (regardless of whether or not they are reinvested) on such investments, loans and guarantees after

February 16, 1995 shall be excluded only if they are eligible for exclusion under paragraphs (a) through (d) of this section. Any new commitments of money to such investments, loans and guarantees shall likewise be excluded only if they are eligible under paragraphs (a) through (d) of this section.

(f) Any investment, loan or guarantee made by a borrower that is not excluded under this section or under § 1717.657(d) shall be included in the aggregate amount of investments, loans and guarantees made by the borrower, regardless of whether RUS has specifically approved the investment, loan or guarantee under § 1717.657(c), or has approved a related transaction (e.g., a lien accommodation).

§ 1717.656 Exemption of certain borrowers from controls.

(a) Any distribution or power supply borrower that meets all of the following criteria is exempted from the provisions of the RUS mortgage and loan contract that require RUS approval of investments, loans, and guarantees, except investments, loans, and guarantees made to extend, add to, or modify the borrower's electric system:

(1) The borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS;

(2) The average revenue per kWh for residential service received by the borrower during the two most recent calendar years does not exceed 130 percent of the average revenue per kWh for residential service during the same period for all residential consumers located in the state or states served by the borrower. This criterion applies only to distribution borrowers and does not apply to power supply borrowers. If a borrower serves customers in more than one state, the state average revenue per kWh will be based on a weighted average using the kWh sales by the borrower in each state as the weight. The calculation will be based on the two most recent calendar years for which both borrower and state-wide data are available. If a borrower fails to qualify for an exemption based solely on its failure to meet this criterion on rate disparity, at the borrower's request the Administrator may, at his or her sole discretion, exempt the borrower if he or she finds that the borrower's strengths with respect to the other criteria are sufficient to offset any weakness due to rate disparity;

(3) In the most recent calendar year for which data are available, the borrower achieved an operating TIER of at least 1.0 and an operating DSC of at

least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent calendar years;

(4) The borrower's ratio of net utility plant to long-term debt is at least 1.1, based on year-end data for the most recent calendar year for which data are available; and

(5) The borrower's equity is equal to at least 27 percent of its total assets, based on year-end data for the most recent calendar year for which data are available.

(b) While borrowers meeting the criteria in paragraph (a) of this section are exempt from RUS approval of investments, loans and guarantees, they are nevertheless subject to the record-keeping, reporting, and other requirements of § 1717.658.

(c) Any borrower exempt under paragraph (a) of this section that ceases to meet the criteria for exemption shall, upon written notice from RUS, no longer be exempt and shall be subject to the provisions of this subpart applicable to non-exempt borrowers. A borrower may regain its exemption if it subsequently meets the criteria in paragraph (a) of this section, and is so notified in writing by RUS.

(d)(1) A borrower that loses its exemption and is not in compliance with all provisions of its mortgage, loan contract, or any other agreement with RUS may be required to restructure or reduce its portfolio of investments, loans and guarantees as provided in § 1717.653(b). If the borrower's portfolio exceeds the 15 percent level, the borrower will be required to restructure or reduce its portfolio to the 15 percent level or below. For example, if the borrower's mortgage or loan contract has an approval threshold, the borrower may be required to reduce its portfolio to that level, which in many cases is 3 percent of total utility plant.

(2) A borrower that loses its exemption but is in compliance with all provisions of its mortgage, loan contract, and any other agreements with RUS will be required, if its investments, loans and guarantees exceed the 15 percent level, to restructure or reduce its portfolio to the 15 percent level, unless the Administrator, in his or her sole discretion, determines that such action would not be in the financial interest of the government with respect to loan security and/or repayment. (Such borrower is eligible to ask RUS to exclude a portion of its investments under the conditions set forth in § 1717.657(d).)

(3) If a borrower required to reduce or restructure its portfolio does not fully comply within a reasonable period of

time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of its loss of exemption, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and/or RUS mortgage.

(e) By no later than July 1 of each year, RUS will provide written notice to any borrowers whose exemption status has changed as a result of more recent data being available for the qualification criteria set forth in paragraph (a) of this section, or as a result of other reasons, such as corrections in the available data. An explanation of the reasons for any changes in exemption status will also be provided to the borrowers affected.

§ 1717.657 Investments above the 15 percent level by certain borrowers not exempt under § 1717.656(a).

(a) *General.* (1) This section applies only to borrowers that are in compliance with all provisions of their mortgage, loan contract, and any other agreements with RUS and that do not qualify for an exemption from RUS investment controls under § 1717.656(a).

(2) Nothing in this section shall in any way affect the Administrator's authority to exercise approval rights over investments, loans, and guarantees made by a borrower that is not in compliance with all provisions of its mortgage, loan contract and any other agreements with RUS.

(b) *Distribution borrowers.* Distribution borrowers not exempt from RUS investment controls under § 1717.656(a) may not make investments, loans and guarantees in an aggregate amount in excess of 15 percent of total utility plant. Above the 15 percent level, such borrowers will be restricted to excluded investments, loans and guarantees as defined in § 1717.655. (However, they are eligible to ask RUS to exclude a portion of their investments under the conditions set forth in paragraph (d) of this section.)

(c) *Power supply borrowers.* (1) Power supply borrowers not exempt from RUS investment controls under § 1717.656(a) may request approval to exceed the 15 percent level if all of the following criteria are met:

(i) Satisfactory evidence has been provided that the borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS;

(ii) The borrower is not in financial workout and has not had its government debt restructured;

(iii) The borrower has equity equal to at least 5 percent of its total assets; and

(iv) After approval of the investment, loan or guarantee, the aggregate of the

borrower's investments, loans and guarantees will not exceed 20 percent of the borrower's total utility plant.

(2) Borrower requests for approval to exceed the 15 percent level will be considered on a case by case basis. The requests must be made in writing.

(3) In considering borrower requests, the Administrator will take the following factors into consideration:

(i) The repayment of all loans secured under the RUS mortgage will continue to be assured, and loan security must continue to be reasonably adequate, even if the entire investment or loan is lost or the borrower is required to perform for the entire amount of the guarantee. These risks will be considered along with all other risks facing the borrower, whether or not related to the investment, loan or guarantee;

(ii) In the case of investments, the investment must be made in an entity separate from the borrower, such as a subsidiary, whereby the borrower is protected from any liabilities incurred by the separate entity, unless the borrower demonstrates to the satisfaction of the Administrator that making the investment directly rather than through a separate entity will present no substantial risk to the borrower in addition to the possibility of losing all or part of the original investment;

(iii) The borrower must be economically and financially sound as indicated by its costs of operation, competitiveness, operating TIER and operating DSC, physical condition of the plant, ratio of equity to total assets, ratio of net utility plant to long-term debt, and other factors; and

(iv) Other factors affecting the security and repayment of government debt, as determined by the Administrator on a case by case basis.

(4) If the Administrator approves an investment, loan or guarantee, such investment, loan or guarantee will continue to be included when calculating the borrower's ratio of aggregate investments, loans and guarantees to total utility plant.

(d) *Distribution and power supply borrowers.* If the aggregate of the investments, loans and guarantees of a distribution or power supply borrower exceeds 15 percent of the borrower's total utility plant as a result of the cumulative profits or margins, net of losses, earned on said transactions over the past 10 calendar years (i.e., the sum of all profits earned during the 10 years on all transactions—including interest earned on cash accounts, loans, and similar transactions—less the sum of all

losses experienced on all transactions during the 10 years) then:

(1) The borrower will not be in default of the RUS loan contract or RUS mortgage with respect to required approval of investments, loans and guarantees, provided that the borrower had not made additional net investments, loans or guarantees without approval after reaching the 15 percent level; and

(2) At the request of the borrower, the Administrator in his or her sole discretion may decide to exclude up to the amount of net profits or margins earned on the borrower's investments, loans and guarantees during the past 10 calendar years, if the Administrator determines that such exclusion will not increase loan security risks. The borrower must provide documentation satisfactory to the Administrator as to the current status of its investments, loans and guarantees and the net profits earned during the past 10 years. Any exclusion approved by the Administrator may or may not reduce the level of investments, loans and guarantees to or below the 15 percent level. If such exclusion does not reduce the level to or below the 15 percent level, RUS will notify the borrower in writing that it must reduce or restructure its investments, loans and guarantees to a level of not more than 15 percent of total utility plant. If the borrower does not come within the 15 percent level within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.658 Records, reports and audits.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable RUS to readily determine:

(1) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments;

(2) The location, identity and lien priority of any loan collateral resulting from activities permitted by this subpart; and

(3) The effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by RUS.

(b) In determining the aggregate amount of investments, loans and guarantees made by a borrower, the borrower shall use the recorded value of

each investment, loan or guarantee as reflected on its books and records for the next preceding end-of-month, except for the end-of-year report which shall be based on December 31 information.

Every borrower shall also report annually to RUS, in the manner and on the form specified by the Administrator, the current status of each investment, outstanding loan and outstanding guarantee which it has made pursuant to this subpart.

(c) The records of borrowers shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the financial records of any subsidiaries of the borrower to determine if the borrower is in compliance with this subpart, and to ascertain if the debts, guarantees (as defined in this subpart), or other obligations of the subsidiaries could adversely affect the ability of the borrower to repay its debts to the Government.

(d) RUS will monitor borrower compliance with this subpart based primarily on the annual financial and statistical report submitted by the borrower to RUS and the annual auditor's report on the borrower's operations. However, RUS may inspect the borrower's records at any time during the year to determine borrower compliance. If a borrower's most recent annual financial and statistical report shows the aggregate of the borrower's investments, loans and guarantees to be below the 15 percent level, that in no way relieves the borrower of its obligation to comply with its RUS mortgage, RUS loan contract, and this subpart with respect to Administrator approval of any additional investment, loan or guarantee that would cause the aggregate to exceed the 15 percent level.

§ 1717.659 Effect of this subpart on RUS loan contract and mortgage.

(a) Nothing in this subpart shall affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval by RUS of investments, loans, and guarantees by the borrower, such matters including, without limitation, extensions, additions, and modifications of the borrower's electric system. Also, nothing in this subpart shall affect any rights which supplemental lenders have under the RUS mortgage, or under their loan contracts or other agreements with their borrowers, to limit investments, loans and guarantees by their borrowers to levels below 15 percent of total utility plant.

(b) RUS will require that any electric loan made or guaranteed by RUS after October 23, 1995 shall be subject to a provision in the loan contract or mortgage restricting investments, loans and guarantees by the borrower substantially as follows: The borrower shall not make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the RE Act and RUS regulations.

(c) RUS reserves the right to change the provisions of the RUS mortgage and loan contract relating to RUS approval of investments, loans and guarantees made by the borrower, on a case-by-case basis, in connection with providing additional financial assistance to a borrower after October 23, 1995.

Dated: September 15, 1995.
 Jill Long Thompson,
Under Secretary, Rural Economic and Community Development.
 [FR Doc. 95-23380 Filed 9-20-95; 8:45 am]
BILLING CODE 3410-15-P

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 93-058-2]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Kansas from a modified accredited State to an accredited-free State. We have determined that Kansas meets the criteria for designation as an accredited-free State.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on June 27, 1995 (60 FR 33100-33101, Docket No. 93-058-1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Kansas from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before August 28, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 60 FR 33100-33101 on June 27, 1995.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 15th day of September 1995.

Terry L. Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-23478 Filed 9-20-95; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-20-AD; Amendment 39-9379; AD 95-19-18]

Airworthiness Directives; Twin Commander Aircraft Corporation 680, 681, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) 680, 681, 690, and 695 series airplanes. This action requires installing a placard warning the pilot to observe turbulent air penetration speeds. Two accidents involving Model 690 airplanes where the affected airplanes encountered turbulence while descending at high speeds prompted this action. The actions specified by this AD are intended to prevent structural damage to the airplane caused by excessive turbulence, which could result in loss of control of the airplane.

EFFECTIVE DATE: October 25, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19010 59th Drive, N.E., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-20-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David D. Swartz, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055-4056; telephone (206) 227-2624; facsimile (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Twin Commander 680, 681, 690, and 695 series airplanes was published in the Federal Register on April 11, 1995 (60 FR 18374). The action proposed to require incorporating a placard and Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) revisions that warn the airplane operator of the importance of observing the Turbulent Air Penetration and Maneuvering speeds. The following kits include the placard and AFM/POH revisions:

Kit No.	Model affected
SB220-1	680T.
SB220-2	680V.
SB220-3	680W.
SB220-4	681.
SB220-5	690.
SB220-6	690A.
SB220-7	690B.
SB220-8	690C.
SB220-9	690D.
SB220-10	695.