

**Subpart G—Federal Pre-emption
in Rate Making in Connection
With Power Supply Borrowers**

§ 1717.300 Purpose.

This subpart contains regulations of the Rural Utilities Service (RUS) implementing provisions of Section 4 of the RE Act (7 U.S.C. 904) which authorize the Administrator to establish terms and conditions of loans and implementing provisions of the RUS wholesale power contracts and other RUS documents which provide for the establishment of rates to be charged by power supply borrowers for the sale of electric power and energy. This subpart contains the general regulations of RUS for the pre-emption, under certain circumstances, which are not exclusive, of the regulation of a power supply borrower's rates by a state regulatory authority under state law and for the exercise of exclusive jurisdiction over rates by RUS pursuant to the RUS documents.

§ 1717.301 Policy.

(a) RUS makes and guarantees loans to borrowers to bring electric service to persons in rural areas. RUS requires, as a condition to making or guaranteeing any loans to power supply borrowers, that the borrower enter into RUS wholesale power contracts with its several members and assign and pledge such contracts as security for the repayment of loans made or guaranteed by RUS and for other loans which, pursuant to the RE Act, RUS has permitted to be secured pursuant to the RUS mortgage. The RUS wholesale power contract requires, among other matters, that the rates charged for power and energy sold thereunder produce revenues sufficient to enable the power supply borrower to make payments on account of all indebtedness of the power supply borrower. The Administrator relies upon the RUS wholesale power contracts together with other RUS documents to find and certify, as required in section 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) RUS requires power supply borrowers to take such actions as may be

necessary to charge rates for the sale of electric power and energy which are sufficient to pay the principal and interest on loans made or guaranteed by RUS in a timely manner and to meet the requirements of the RUS wholesale power contract and other RUS documents.

(c) With respect to power supply borrowers which are not subject to rate regulation by a state regulatory authority, RUS requires that such borrowers establish rates and obtain RUS approval of such rates as required by the terms of the RUS wholesale power contract and other RUS documents.

(d) With respect to power supply borrowers which are subject to regulation by a state regulatory authority, RUS does not make or guarantee a loan for the construction, operation or enlargement of any generating plant or transmission facility unless the consent of the state regulatory authority having jurisdiction in the premises is first obtained.

(e) Pursuant to applicable provisions of state law state regulatory authorities regulate many aspects of a power supply borrowers business activities, including such matters as the setting of wholesale electric rates, the borrowing of money, and the mortgaging of property. A state regulatory authority's jurisdiction over the rates charged by a power supply borrower shall be pre-empted where the Administrator has determined that such jurisdiction has compromised Federal interests, including without limitation, the ability of the borrower to repay its secured loans in accordance with the terms of the RUS documents. Thereupon, RUS shall, pursuant to the RUS documents, exercise exclusive jurisdiction over the rates charged by a power supply borrower.

[55 FR 38646, Sept. 19, 1990; 55 FR 53100, Dec. 26, 1990]

§ 1717.302 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of RUS.

Borrower means any organization which has an outstanding loan made or