§ 1138.7 [Suspended in part]

2. In § 1138.7, paragraph (a)(1), the words ''including producer milk diverted from the plant,'' are suspended;

3. In § 1138.7, paragraph (c), the words ''35 percent or more of the producer'' are suspended; and

§ 1138.13 [Suspended in part]

4. In § 1138.13, paragraphs (d) (1), (2), and (5) are suspended.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25620 Filed 9–25–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB26

Settlement of Debt Owed by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Administrator of the Rural Utilities Service (RUS) hereby establishes policies and standards for the settlement of debts and claims owed by rural electric borrowers. In addition to establishing policies and standards for debt settlement, the rule establishes RUS policy on subsequent loans to borrowers whose debt has been restructured.

DATES: This rule is effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–720–9545.

SUPPLEMENTARY INFORMATION: 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 the Rural Utilities Service (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). Therefore, the Regulatory Flexibility Act 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 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 0572–0116.

Background

On April 4, 1996, Public Law 104–127 (110 Stat. 888) amended section 331(b) of the Consolidated Farm and Rural Development Act (Con Act) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement). The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents. The Secretary of Agriculture, in 7 CFR 2.47, has delegated authority under section 331(b) to the Administrator of RUS, with respect to loans made or guaranteed by RUS.

The proposed rule to implement this new authority was published in the **Federal Register** on March 3, 1997 at 62 FR 9382. Comments were received from 42 different individuals or organizations, including the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), the Edison Electric Institute (EEI), the Office of Inspector General of the U.S. Department of Agriculture, an ad hoc group of 6 investor-owned utilities (IOUs), 9 power supply borrowers, 16 distribution borrowers, and 12 other individuals or organizations. Two of the power supply borrowers submitted identical comments, which were supported by identical or supporting comments from 9 of their members. Five other distribution borrowers and one state-wide borrower association submitted comments identical to their power supplier's comments.

In general, comments from NRECA, CFC, and most borrowers supported a more expansive use of debt relief under section 331(b) of the Con Act, more flexibility and discretion for the Administrator to grant debt relief, no limitation on the debt relief measures, such as the proposed 5 percent floor on interest rates, and other changes in support of more generous terms and conditions for defaulting borrowers and other borrowers facing financial or competitive problems. In contrast, 2 distribution borrowers opposed settlement of borrowers' debts, stating that debt forgiveness is unfair to the majority of cooperatives who exercise fiscal responsibility and presents an undesirable public image for all electric cooperatives. EEI, the ad hoc group of 6 IOUs, and 2 individual IOUs generally favored strict limitation of the Administrator's debt settlement authority to borrowers in default or where default is imminent; more specific and more restrictive standards for determining eligibility for relief and the amount of relief provided; referral of most cases to the Department of Justice for settlement under the Attorney General's settlement authority; more extensive documentation of the need for relief, the amount of relief provided, and the underlying justification; and greater congressional and public oversight of RUS' debt settlement activities.

All comments received were considered in drafting this final regulation. The more common and more significant comments are discussed below.

Information Collection and Recordkeeping Requirements

Several commenters expressed concern that the estimate of 2 responses per year from the public, in the from of borrowers seeking debt settlement, was too low and might impose an artificial limit on the number of applications for

debt relief RUS would consider. The estimate is nothing more than an estimate of the average number of responses over a period of several years. More applications may be received in some years than in others. This estimate does not place any limit on the number of legitimate applications RUS would consider.

Expansion of Use of Debt Settlement Authority

As indicated above, NRECA and several borrowers urged that the rule be expanded to authorize the use of debt relief to lower the costs of borrowers that, although not in default and not expected to face default within the foreseeable future, nevertheless face serious financial or competitive problems. They argued that Congress intended the new debt settlement authority to be used in this expansive way. EEI and the ad hoc group of 6 IOUs argued just the opposite. They argued that Congress intended the authority to be used only in cases where a borrower has defaulted or where default is imminent. They further argued that providing debt relief to non-defaulting borrowers would give an unfair competitive advantage to cooperatives at the expense of IOUs and other utilities, which they and other taxpayers would be required to pay for. They also said that such expanded use of debt relief would constitute a federal program of stranded cost recovery (avoidance) for cooperatives, at taxpayer expense, without any direction from Congress on stranded cost recovery for the electric industry as a whole.

RUS does not believe that the language of section 331(b) or the legislative history of the section supports the expansive use of debt settlement to lower the costs and improve the competitive positions of borrowers that are not in default nor expected to default in the foreseeable future. Furthermore, RUS does not believe it would be good policy to accept applications with respect to defaults projected far into the future. There would be too many uncertainties with respect to a borrower's particular circumstances and the competitive and regulatory environment within the industry as a whole. It would be too difficult to accurately assess the borrower's problems, the likelihood of default, effective remedial actions, and the actual need for and appropriateness of debt settlement.

NRECA and several borrowers also urged that debt relief be used to encourage mergers between borrowers, regardless of whether or not any of the parties to the merger are in default or are expected to default in the foreseeable future. RUS agrees that our policies and programs ought to support mergers and consolidations between borrowers that will likely result in economies of scale and lower operating costs, better management, and improved opportunities for innovation, technological development, market expansion, and better customer service. This past December, with publication of 7 CFR 1717 subpart D, RUS instituted several new forms of transitional assistance for borrowers entering into economically beneficial mergers and consolidations. While such assistance is appropriate and strongly supported by RUS, RUS does not believe it is appropriate to use debt relief under section 331(b) of the Con Act to encourage mergers or consolidations in the absence of default or the likelihood of default in the foreseeable future.

Some borrowers also argued that, in support of the objectives of the RE Act, mergers between borrowers in connection with debt settlement should be given preference to mergers with or acquisitions by nonborrowers. While as a general proposition, RUS is very supportive of economically beneficial mergers that will strengthen both loan security and service to rural electric consumers, and is happy to provide transitional assistance for such mergers under 7 CFR part 1717 subpart D, RUS does not believe it is appropriate to give preference to mergers between borrowers in connection with debt settlements if granting such preference would in any material way reduce debt recovery by the government in comparison with any other debt settlement alternative.

Reports to Congress and the Public

The ad hoc group of 6 IOUs recommended that the findings of the in-depth analysis used to determine the need for and amount of debt settlement be published in the **Federal Register** in each case, with notice and comment from the public; that RUS be required to report periodically to Congress (also supported by EEI) on borrowers seeking settlement, the amount of money at risk, the timetable for acting on requests, and the status of settlements under consideration, with the information being made available to the public; and that RUS publish written orders in the **Federal Register** on final debt settlements, detailing the basis for the debt settlement decision, and providing opportunity for public comment. The commenters argued that these procedures would keep Congress better informed; improve the information available to the Administrator in making debt settlement decisions; and give interested taxpayers and competitors of co-ops a chance to provide input on the co-ops' financial and competitive positions and their need for debt settlement, and explain how alternative workout solutions would affect them.

Regarding the recommendation that RUS be required to report periodically to Congress, it should be noted that RUS does report to Congress on its debt settlement activities as part of the budget process, in testifying before congressional oversight committees, and in responding to special requests from Congress. Since Congress always has the prerogative to request status reports and hearings, RUS does not believe it is necessary to require such reporting in this regulation.

Publishing the findings of the in-depth analyses of borrowers' needs for debt settlement and the justification for the amount of settlement provided, and providing opportunity for public comment, presents several problems. It could risk divulging the government's strategy and internal deliberations on debt settlements, thus damaging the government's ability to achieve maximum recovery in other debt settlement cases. In addition, much of the information about a borrower and alternative workout scenarios contained in an in-depth analysis could be used by the borrower's competitors, other creditors or other parties, to the disadvantage of both the borrower and the government. Such information should not be made routinely available to the public at large. Also, allowing the normal 30 to 60 days for public comment on the in-depth analyses could cause delays in some cases, such that certain opportunities with a limited timeframe could be missed, to the detriment of both the borrower and the government.

Moreover, development of the in-depth analyses, whether supervised by RUS or an independent consultant, would include the gathering of all relevant information from sources likely to have information bearing on the question of a borrower's need for debt settlement and the alternatives that will likely maximize the government's debt recovery. For example, in many cases, RUS will require that a competitive bid be conducted for the borrower's system to determine its value. Relevant information would be expected to be obtained from bidders and other parties as part of that process and other information collection efforts. To ask for public comments on what would have to be, for reasons of confidentiality, rather heavily summarized versions of the in-depth analyses, after the analyses

have been completed, is not likely to produce much additional useful information in most cases.

As to the last point, on publishing written orders in the **Federal Register** on final debt settlements and providing opportunity for public comment, the purpose of such a procedure isn't clear. If the main purpose is to inform the public of decisions reached on debt settlements, it would be more efficient and timely to continue to rely on the trade press and general media. If the primary purpose is to provide evaluation and supervision of RUS' debt settlement activities, that function is more appropriately and effectively provided by the traditional program planning, evaluation, and budgeting processes at the RUS, USDA, Office of Management and Budget, and congressional levels.

Confidentiality of Information and the Deliberative Process

NRECA and several borrowers expressed concerns that privileged or confidential information about borrowers gathered by RUS be held in strict confidence. They expressed concerns that such information, if not held in strict confidence, could be used by competitors, other creditors, or litigants to gain financial or competitive advantage over them. RUS agrees that privileged or confidential information should be held in strictest confidence and should not be released beyond RUS and its consultants and advisors except when release of the information is necessary to determine the value of a borrower's system and the need for and appropriate type of debt settlement. For example, it would be necessary to provide certain information about a borrower when conducting a competitive bid for the borrower's system.

RUS also believes that commercial or financial information obtained from borrowers that is privileged or confidential, as well as agency documents and other information, such as inter-agency or intra-agency memoranda, letters, or papers, that are predecisional or deliberative in nature, should be withheld from the public under the exemptions in the Freedom of Information Act, such as Exemption 4. Disclosure of this information would allow other financially troubled borrowers to learn the general strategic and tactical approaches of RUS and DOJ in dealing with financially troubled borrowers. Disclosure would harm the deliberative process of RUS and DOJ in negotiating, settling, and compromising debts.

Section 1717.1201 Definitions

One commenter suggested that the definition of debt (outstanding debt) be augmented by adding several specific items, such as deferred principal and deferred interest. RUS believes that deferred principal and deferred interest ordinarily would be considered as being included as part of ''principal'' and ''accrued interest,'' which are listed as elements of outstanding debt. It was not RUS' intention that the specific items listed in the definition be all inclusive of every conceivable element and variation of nomenclature that may make up the outstanding debt of a borrower. Rather than trying to list every conceivable element, the definition has been amended to indicate that the items listed are not necessarily the only elements included in outstanding debt.

Section 1717.1202 General Policy

Several comments were received regarding paragraph (d) of this section, which sets forth several general factors (but not an exclusive list of factors) the Administrator will consider in structuring debt settlements and determining the amount of debt recovery that is possible. NRECA and several borrowers recommended that regulatory and legislative actions by states be added to the list since such actions can affect a borrower's ability to meet its financial obligations. EEI and the ad hoc group of 6 IOUs criticized paragraph (d) for failing to list, as one of the factors, the ability of the borrower to repay its debts.

Paragraph (d) is intended to set out some of the more important general factors the Administrator will consider in structuring debt settlements and determining the amount of debt a borrower can repay. These general factors relate either to public policy or the competitive positions of borrowers and their ability to meet their financial obligations. They are not intended to have priority over other factors that affect a borrower's ability to repay debt. Nor are they intended in any way to modify or diminish the policy set forth in paragraph (a) of this section that ''wherever possible, all debt owed shall be collected in full in accordance with the terms of the borrower's loan documents,'' or the policy in paragraph (c) that the Administrator's authority to settle debts will be limited to cases where ''settlement will maximize the recovery of debts and claims owed to the government.'' This fact is particularly relevant with respect to one IOU's comment that listing market and nonmarket forces that affect competition in the electric utility industry introduces a vague and overbroad provision that could result in RUS providing borrowers an unfair advantage in competitive electric markets. That is not the intent. Market and nonmarket forces are included in simple recognition of the fact that they do affect a borrower's ability to generate revenue to meet its financial obligations to the government and other creditors.

Paragraph (d) has been amended to try to allay concerns that the factors listed might somehow override the central consideration of a borrower's ability to repay debt. Also, whereas legislative and regulatory actions by the states was assumed to be included under ''other market and nonmarket forces as to their effects on competition * * *,'' they are now explicitly listed as one of the general factors that will be considered. While explicitly recognizing that state regulatory and legislative actions may affect the ability of borrowers to meet their financial obligations, RUS believes state legislators and regulators should give due consideration to the effects of their actions on the ability of rural electric systems to recover their costs and meet their financial obligations to the federal government and other creditors.

In related comments, EEI and the ad hoc group of 6 IOUs criticized the proposed rule for failing to set out detailed standards for deciding when a borrower is unable to meet its financial obligations and the amount of debt relief that is appropriate. These commenters also suggested several specific changes and additions to the analyses to be conducted in determining the need for and the appropriate amount of debt settlement. Several of these suggestions have been adopted, as discussed elsewhere.

As for more detailed standards for deciding when debt settlement is needed and the amount of debt settlement, RUS believes that, with the changes made, the rule provides reasonably detailed standards. Sections 1717.1202 and 1717.1204(b)(1) clearly establish that, wherever possible, all debt will be collected in full in accordance to its terms and that settlement will be used only when it will maximize the recovery of debts and claims. The remainder of § 1717.1204 sets out in substantial detail the information and actions required for the Administrator to make a determination that debt settlement is necessary and the appropriate amount and form of the settlement. Given the tremendous variation from case to case in the numerous factors that affect a borrower's ability to meet its financial

obligations (e.g., economic, financial, competitive, engineering, technological, and regulatory factors) RUS does not believe that it is possible to develop a more detailed, immutable set of decision criteria that would work well in most cases.

Section 1717.1203 Relationship Between RUS and Department of Justice

NRECA, CFC, and several borrowers asked for clarification of several aspects of this section. First, if a claim has been referred in writing to the Attorney General for settlement under the Attorney General's authority, can the claim be referred back to the Administrator for action? Yes, it can, at the discretion of the Attorney General. Second, if a claim has been referred in writing to the Attorney General, is there a formal mechanism by which the borrower or the Administrator could request that the claim be referred back to the Administrator? No, there is no formal mechanism. A claim could be referred back to the Administrator at the discretion of the Attorney General. Third, if a borrower has previously had its debt settled under the authority of the Attorney General and the borrower applies for additional relief on any outstanding debt to the government, can the Administrator use his or her authority to consider the request from the borrower? The Administrator could consider the borrower's request after promptly notifying the Attorney General that the request has been received. These points have been clarified in the changes made to § 1717.1203.

Section 1717.204(b) Need for Debt Settlement

The Office of Inspector General (OIG) of the U.S. Department of Agriculture recommended that a borrower's application for debt settlement include a certification by the borrower that it is unable to meet its financial obligations. RUS agrees with the recommendation and has revised § 1717.204(b) to require a resolution to that effect by the borrower's board of directors.

OIG also recommended the borrower be required to certify that all the information provided to RUS in connection with the application for debt settlement is true and accurate in all material respects. RUS has adopted this recommendation and has added a new paragraph (m) to § 1717.1204.

NRECA and several borrowers criticized the provision in paragraph (b)(1) that would limit the use of debt settlement to borrowers that have defaulted or are likely to default within 24 months of the borrower's application for debt settlement. They felt that either there should be no limit on the forecast period within which a borrower is likely to default, or that the forecast period should be longer. Some of them felt that limiting the forecast period to 24 months would limit the use of debt settlement to essentially crisis situations, where it would be too late to help the borrower in dealing with its serious problems and too late to avoid bankruptcy. EEI and the *ad hoc* group of 6 IOUs argued that debt settlement should be used only when a borrower has in fact defaulted, and that use of a 24 month forecast period for when a borrower is likely to default would amount to an extraordinary grace period and would result in borrowers receiving an unfair subsidy from RUS at the expense of taxpayers and the borrowers' competitors.

RUS continues to believe that its middle ground position is the right one on this issue. It does not believe that debt settlement should be used only when a borrower has already defaulted. Debt settlement should be one of the tools available to assist borrowers in addressing their own problems when it is reasonably clear that the borrower will default without some debt relief. RUS believes, however, that a specific, defined time period within which a borrower is likely to default is needed to discourage unmerited or wildly speculative applications for relief, and to focus government resources on problems that can be defined and resolved with some degree of certainty, as opposed to distant potential problems that may not materialize or may change greatly in the rapidly changing industry environment. This approach is an important element in maximizing debt recovery by the government.

The forecast period is an aid for identifying cases where default is relatively imminent. It does not establish the time period during which RUS will consider the borrower's application for relief. Nor does the forecast period limit in any way discussions between RUS and borrowers regarding their financial and economic problems, possible actions by the borrowers to address their problems, and any assistance that RUS may be able to offer, short of debt settlement, such as deferral of principal and interest payments under section 12 of the RE Act, merger incentives under 7 CFR 1717 subpart D, or waiver of certain requirements and controls under §§ 1710.4 or 1717.600(c). Eliminating the forecast period and accepting applications from borrowers who assert that they may default at some distant point in the future would not provide greater incentive for borrowers to take advantage of all available opportunities to address their problems themselves or to work with RUS in fashioning workable solutions short of debt settlement. RUS continues to believe that a forecast period of 24 months is reasonable and will enable RUS to assist borrowers in dealing with serious problems before they become insurmountable.

Some borrowers argued that requiring a borrower to demonstrate to RUS that it will likely default within a certain period of time in order to be considered for possible debt settlement would ruin the borrower's credit rating and make it extremely difficult for the borrower to obtain credit from other sources. Since debt settlement will be used only when a borrower has already defaulted or will likely default in the relatively near future, RUS believes that the act of applying for debt settlement will probably have the same effect on the borrower's relationship with other creditors whether or not the borrower is required to demonstrate to RUS that it will likely default within the forecast period. No change has been made in the requirement that borrowers must demonstrate to RUS that they will probably be unable to meet their financial obligations sometime during the forecast period.

NRECA, CFC, and some borrowers argued that requiring the borrower to perform an in-depth analysis of the opportunities available to the member-owners of a power supply borrower to reduce costs or otherwise improve their financial and competitive positions could cause too much delay and should be optional. RUS believes that determination of the need for debt settlement for a power supply borrower normally should not be based only on the condition and potential remedial actions of the power supply borrower, since the efficiency and effectiveness of the borrower's member-owners will often have a major bearing on the health of the power supply borrower. If there is a serious financial problem warranting consideration of debt settlement, there appears to be no reason why a credible analysis of the member-owner's operations cannot be completed in a timely manner. However, since there could be some instances where it may be in the government's interest to waive this requirement, the provision has been amended to allow for a waiver by the Administrator.

EEI and an investment banker recommended that the in-depth analysis required to demonstrate the need for debt settlement include the possibility of raising rates in order to generate more

revenue to meet the borrower's obligations. It was assumed by RUS that such analysis would be included, and that has now been made explicit. EEI also recommended that the in-depth analysis of the need for debt settlement include a review of the borrower's contracts for services and supplies; a thorough analysis of the borrower's management structure, system operations, and financial and operating statements for possible cost reductions; and comparisons of the borrower with one or more ''benchmark'' electric utilities to help identify areas for efficiency gains. RUS agrees with the substance of these recommendations and notes that certain elements, such as including a thorough analysis of the borrower's management structure, system operations, and financial and operating statements, are already included in one form or another. Changes have been made to paragraphs (b)(2) and (b)(3) of § 1717.1204 to include analytical elements contained in EEI's recommendations that were not explicitly included in the proposed rule.

With respect to the use by RUS of independent consultants to advise on debt settlements (see paragraph (b)(3) of § 1717.1204), a borrower suggested that RUS have a pre-qualified list of consultants for borrowers to choose among, in order to eliminate the need for independent consultants. RUS disagrees with this suggestion. The choice of an independent consultant must reside entirely with RUS in order to ensure that the consultant has the expertise needed for a particular case, and is in fact independent and capable of rendering impartial and objective analysis and advice to RUS. NRECA, in its comments, recognized the need for the consultant to be completely independent of the borrower, but suggested that RUS should consider consulting with the borrower before making a selection. RUS does not believe it should be under any obligation to consult with the borrower, and would view any such obligation as compromising its ability to select a truly independent consultant.

The *ad hoc* group of 6 IOUs stated that use of independent consultants and other neutral third parties to determine the value of the borrower's system should be mandatory rather than optional. RUS agrees that independent consultants should be used in most cases to help RUS determine the value of a borrower's system, but does not believe that this should be mandatory in all cases. The additional time and cost of obtaining an independent consultant's assessment may not be worthwhile in all cases, such as when the amount of debt involved is small, or when only very limited relief is being considered, such as reamortization or extension of maturities.

Section 1717.1204(c) Debt Settlement Measures

Several commenters argued that extension of debt maturities should not be limited to the weighted average of the expected remaining useful lives of the assets pledged as security. RUS agrees that the language in the proposed rule is suitable primarily when the only assets involved are plant and other real estate. In many cases there may to other ''assets'' pledged as security for the debt, such as wholesale power contracts, irrevocable trusts, or other assured streams of revenues pledged as security, which don't fit the normal concept of an asset's useful life. Given these considerations, RUS has concluded that because of the unusual complexity of the loan security issues when debt is restructured, it is not possible to impose a fixed generic limit on debt maturity tied to specific assets or other forms of security that would serve the government's interests in all cases. The limitation in § 717.1204(c) on debt maturity has been revised such that the maturity of the restructured debt shall not extend more than 10 years beyond the latest maturity date prior to settlement. This is an outside limit, only. The actual maturity approved in each case will depend on specific consideration of quality and longevity of the collateral and other evidence or guarantees that the debt will be repaid and is reasonably secured.

Proposed paragraph (c) included reducing the interest rate on debt as one of the settlement measures, but imposed a floor of 5 percent interest, below which rates could not be reduced. NRECA and several borrowers argued that limiting the amount that interest rates could be reduced would limit the Administrator's flexibility in negotiating terms favorable to the government. RUS does not believe the 5 percent interest floor would be a problem in most cases, but recognizes that the Administrator should be able to waive the limitation if he or she determines that that would facilitate the maximization of debt recovery by the government. The paragraph has been amended accordingly.

Section 1717.1204(d) Debt Owed to Other Creditors

CFC stated that it was unfair to expect similar debt relief on a pro rata basis to be provided by other secured lenders, and said that pro rata implied equal methodology in determining the fair contribution of each secured lender. RUS disagrees that it would be unfair to expect each of the secured lenders to provide similar relief on a pro rata basis, or ''other benefits or value to the restructuring.'' RUS recognizes that a given structure of debt relief that may be suitable to one lender may not be entirely suitable to another. RUS is not trying to impose the same structure or methodology on all lenders involved, but does want to ensure that each lender provides it fair share of relief. RUS believes that the proposed language, retained herein, adequately expresses the intended objective and is not unfair to other lenders.

NRECA suggested substituting the words ''comparable concessions'' for ''similar relief on a pro rata basis . . . or other benefits or value.'' RUS does not believe that this change would result in greater assurance that each lender will provide its fair share of debt relief.

Section 1717.1204(e) Competitive Bids for System Assets

Paragraph (e) provides that RUS may ask the borrower or an independent consultant to solicit competitive bids from potential buyers of the borrower's system. One commenter asked how conflicts of interest could be avoided if the borrower, rather than an independent consultant, solicits the bids. RUS believes that any conflicts of interest can be prevented or minimized by the provisions in paragraph (e) which require the bidding process to be conducted in consultation with RUS and using standards and procedures acceptable to RUS.

A borrower stated that preference should always be given to a co-op acquiring or merging with a troubled borrower, and that competitive bids should not be required when acquisition by or merger with another RUS-financed co-op is possible. As discussed above, RUS strongly supports mergers and consolidations between borrowers that are economically beneficial to the parties and, as a result, strengthen RUS loan security. RUS provides incentives for such mergers and consolidations under 7 CFR 1717 subpart D. A merger or consolidation among two or more borrowers may represent one of the elements of a debt settlement, but should not be given preference at the expense of reducing the government's recovery of debt.

Another borrower commented that requiring competitive bids for a borrower's system and using the bids to sell the system is not a mortgage requirement for non-defaulting borrowers, and may damage the credit

worthiness of solvent borrowers. RUS notes that soliciting of competitive bids applies only to borrowers that have requested debt settlement, and in that situation is appropriate whether or not the borrower has defaulted. It is not a requirement imposed on all borrowers, but simply an option available to the Administrator for determining the value of assets of borrowers that have requested debt settlement.

The *ad hoc* group of 6 IOUs stated that the value to the Treasury of selling all or part of the borrower's assets should be considered in every case, and should not be optional. RUS does not believe it is necessary to actually solicit competitive bids in every case to determine the value of a borrower's system. Various appraisal techniques other than actual competitive bids may be more cost-effective, more timely, or otherwise more appropriate in some circumstances to determine a system's value.

Section 1717.1204(i) Regulatory Approvals

A borrower stated that RUS should be able to conditionally approve a settlement before all regulatory approvals are obtained so that the borrower could proceed to implement an action plan. NRECA stated that regulatory approvals should be required in advance of RUS approval of a debt settlement only ''insofar as possible,'' since it may not be possible to obtain the regulatory approvals in some cases. RUS would note that most remedial actions available to borrowers do not hinge on RUS approval of debt relief, and that borrowers should aggressively implement such actions without delay. However, the point is well taken that RUS could approve or preliminarily approve a debt settlement or parts of a settlement before all regulatory approvals have been obtained. The paragraph has been amended to clarify that only those regulatory approvals deemed necessary by the Administrator must be obtained before a settlement will be approved.

Section 1717.1204(j) Conditions Regarding Management and Operations

NRECA objected to the possibility of RUS imposing additional controls on the members of a power supply borrower regarding general funds and investments, based on the argument that such decisions by members impacted little on their power supplier and because bankruptcy would be an alternative for the power supply borrower. The additional controls identified in § 1717.1204(j)(3) ordinarily would not be imposed on the members of a power supply borrower that is seeking debt settlement. However, such controls on members may be appropriate in some cases, such as when the members have agreed to guarantee the debt of a power supply borrower as a condition of settling the latter's debt.

Section 1717.1206 Loans Subsequent to Settlement

One commenter stated that the paragraph is unclear and subject to various interpretations, but did not indicate what is unclear. Perhaps one area needing some clarification is whether the section would grant some right to subsequent loans to a borrower that as agreed as part of its debt settlement not to seek subsequent loans from RUS. The section does not grant any such right.

Perhaps the commenter thought that a ''presumption'' that credit support will be needed for any subsequent loans is not clear. ''Presumption'' means that credit support will be required for any subsequent loans, unless the Administrator, for good reason, determines that credit support is not needed.

The ad hoc group of 6 IOUs stated that RUS should establish a presumption that new loans will not be made to borrowers whose debts have been settled unless they can prove that they are now creditworthy. Demonstration of creditworthiness is a requirement which applies to all loans made by RUS, as set forth in 7 CFR 1710.112, 1710.113, and elsewhere in RUS regulations.

A borrower stated that if a healthy borrower acquires or merges with a borrower whose debt has been settled by RUS, the surviving entity should be exempt from the presumption that credit support will be needed for any subsequent loans. RUS does not agree that an exemption should be granted for all such cases, since the surviving entity may nevertheless be a high risk that would warrant credit support.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Claims, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons explained in the preamble, RUS hereby amends 7 CFR chapter XVII, part 1717, as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901–950b, 1981; Pub. L. 99–591, 100 Stat. 3341–16; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

2. Subparts T through X are added and reserved and subpart Y is added to part 1717 to read as follows:

Subpart T—[Reserved]

Sec.
1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

1717.1200 Purpose and scope.
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1717.1206 Loans subsequent to settlement.
1717.1207 RUS obligations under loan guarantees.
1717.1208 Government's rights under loan documents.

Subpart T—[Reserved]

§§ 1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

§§ 1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

§§ 1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

§§ 1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

§§ 1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

§ 1717.1200 Purpose and scope.

(a) Section 331(b) of the Consolidated Farm and Rural Development Act (Con Act), as amended on April 4, 1996 by Public Law 104–127, 110 Stat. 888 (7 U.S.C. 1981), grants authority to the Secretary of Agriculture to compromise,

adjust, reduce, or charge-off debts or claims arising from loans made or guaranteed under the Rural Electrification Act of 1936, as amended (RE Act). Section 331(b) of the Con Act also authorizes the Secretary of Agriculture to adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Rural Utilities Service (RUS). The Secretary, in 7 CFR 2.47, has delegated authority under section 331(b) of the Con Act to the Administrator of the RUS, with respect to loans made or guaranteed by RUS.

(b) This subpart sets forth the policy and standards of the Administrator of RUS with respect to the settlement of debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. Nothing in this subpart limits the Administrator's authority under section 12 of the RE Act.

§ 1717.1201 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Application for debt settlement means a written application containing all of the information required by § 1717.1204(b)(2), in form and substance satisfactory to RUS.

Attorney General means the Attorney General of the United States of America.

Claim means any claim of the government arising from loans made or guaranteed under the RE Act to a rural electric borrower.

Con Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Debt means outstanding debt of a rural electric borrower (including, but not necessarily limited to, principal, accrued interest, penalties, and the government's costs of debt collection) arising from loans made or guaranteed under the RE Act.

Enforced collection procedures means any procedures available to the Administrator for the collection of debt that are authorized by law, in equity, or under the borrower's loan documents or other agreements with RUS.

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

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b).

Restructure means to settle a debt or claim.

Settle means to reamortize, adjust, compromise, reduce, or charge-off a debt or claim.

§ 1717.1202 General policy.

(a) It is the policy of the Administrator that, wherever possible, all debt owed to the government, including but not limited to principal and interest, shall be collected in full in accordance with the terms of the borrower's loan documents.

(b) Nothing in this subpart by itself modifies, reduces, waives, or eliminates any obligation of a borrower under its loan documents. Any such modifications regarding the debt owed by a borrower may be granted under the authority of the Administrator only by means of the explicit written approval of the Administrator in each case.

(c) The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, as further defined in § 1717.1204(b)(1), and where settlement will maximize, on a present value basis, the recovery of debts and claims owed to the government.

(d) In structuring settlements and determining the capability of the borrower to repay debt and the amount of debt recovery that is possible, the Administrator will consider, among other factors, the RE Act, the National Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), the policies and regulations of the Federal Energy Regulatory Commission, state legislative and regulatory actions, and other market and nonmarket forces as to their effects on competition in the electric utility industry and on rural electric systems in particular. Other factors the Administrator will consider are set forth in more detail in § 1717.1204.

§ 1717.1203 Relationship between RUS and Department of Justice.

(a) The Attorney General will be notified by the Administrator whenever the Administrator intends to use his or her authority under section 331(b)of the Con Act to settle a debt or claim.

(b) If an outstanding claim has been referred in writing to the Attorney General, the Administrator will not use his or her own authority to settle the claim without the approval of the Attorney General.

(c) If an application for additional debt relief is received from a borrower whose debt has been settled in the past under the authority of the Attorney General, the Administrator will promptly notify the Attorney General before proceeding to consider the application.

§ 1717.1204 Policies and conditions applicable to settlements.

(a) *General.* Settlement of debts and claims shall be subject to the policies, requirements, and conditions set forth in this section and in § 1717.1202.

(b) *Need for debt settlement.* (1) The Administrator will not settle any debt or claim unless the Administrator has determined that the borrower is unable to meet its financial obligations under its loan documents according to the terms of those documents, or that the borrower will not be able to meet said obligations sometime within the period of 24 months following the month the borrower submits its application for debt settlement to RUS, and, in either case, such default is likely to continue indefinitely. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, opportunities to reduce costs and/or increase revenues, and other factors that may be relevant on a case by case basis.

(2) In its application to RUS for debt settlement, the borrower must provide, in form and substance satisfactory to RUS, an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations as described in paragraph (b)(1) of this section. The analysis must include:

(i) An explanation and analysis of the causes of the borrower's inability to meet its financial obligations;

(ii) A thorough review and analysis of the opportunities available or potentially available to the borrower to reduce administrative overhead and other costs, improve efficiency and effectiveness, and expand markets and revenues, including but not limited to opportunities for sharing services, merging, and/or consolidating, raising rates when appropriate, and renegotiating supplier and service contracts. In the case of a power supply borrower, the study shall include such opportunities among the members of the borrower, unless the Administrator waives this requirement;

(iii) Documentation of the actions taken, in progress, or planned by the borrower (and its member systems, if applicable) to take advantage of the opportunities cited in paragraph (b)(2)(ii) of this section; and

(iv) Other analyses and documentation prescribed by RUS on a case by case basis.

(3) RUS may require that an independent consultant provide an analysis of the efficiency and

effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The following conditions will apply:

(i) RUS will select the independent consultant taking into account, among other matters, the consultant's experience and expertise in matters relating to electric utility operations, finance, and restructuring;

(ii) The contract with the consultant shall be to provide services to RUS on such terms and conditions as RUS deems appropriate. The consultant's scope of work may include, but shall not be limited to, an analysis of the following:

(A) How to maximize the value of the government's collateral, such as through mergers, consolidations, or sales of all or part of the collateral;

(B) The viability of the borrower's system, taking into account such matters as system size, service territory and markets, asset base, physical condition of the plant, operating efficiency, competitive pressures, industry trends, and opportunities to expand markets and improve efficiency and effectiveness;

(C) The feasibility and the potential benefits and risks to the borrower and the government of corporate restructuring, including aggregation and disaggregation;

(D) In the case of a power supply borrower, the retail rate mark-up by member systems and the potential benefits to be achieved by member restructuring through mergers, consolidations, shared services, and other alliances;

(E) The quality of the borrower's management, management advisors, consultants, and staff;

(F) Opportunities for reducing overhead and other costs, for expanding markets and revenues, and for improving the borrower's existing and prospective contractual arrangements for the purchase and sale of power, procurement of supplies and services, and the operation of plant and facilities;

(G) Opportunities to achieve efficiency gains and increased revenues based on comparisons with benchmark electric utilities; and

(H) The accuracy and completeness of the borrower's analysis provided under paragraph (b)(2) of this section;

(iii) RUS and, as appropriate, other creditors, will determine the extent to which the borrower and third parties (including the members of a power supply borrower) will be required to participate in funding the costs of the independent consultant;

(iv) The borrower will be required to make available to the consultant all corporate documents, files, and records, and to provide the consultant with access to key employees. The borrower will also normally be required to provide the consultant with office space convenient to the borrower's operations and records; and

(v) All analyses, studies, opinions, memoranda, and other documents and information produced by the independent consultant shall be provided to RUS on a confidential basis for consideration in evaluating the borrower's application for debt settlement. Such documents and information may be made available to the borrower and other appropriate parties if authorized in writing by RUS.

(4) The borrower may be required to employ a temporary or permanent manager acceptable to the Administrator, to manage the borrower's operations to ensure that all actions are taken to avoid or minimize the need for debt settlement. The employment could be on a temporary basis to manage the system during the time the debt settlement is being considered, and possibly for some time after any debt settlement, or it could be on a permanent basis.

(5) The borrower must submit, at a time determined by RUS, a resolution of its board of directors requesting debt settlement and stating that the borrower is either currently unable to meet its financial obligations to the government or will not be able to meet said obligations sometime within the next 24 months, and that, in either case, the default is likely to continue indefinitely.

(c) *Debt settlement measures.* (1) If the Administrator determines that debt settlement is appropriate, the debt settlement measures the Administrator will consider under this subpart with respect to direct, insured, or guaranteed loans include, but are not limited to, the following:

(i) Reamortization of debt;

(ii) Extension of debt maturity, provided that the maturity of the borrower's outstanding debt after settlement shall not extend more than 10 years beyond the latest maturity date prior to settlement;

(iii) Reduction of the interest rate charged on the borrower's debt, provided that the interest rate on any portion of the restructured debt shall not be reduced to less than 5 percent, unless the Administrator determines that reducing the rate below 5 percent would maximize debt recovery by the government;

(iv) Forgiveness of interest accrued, penalties, and costs incurred by the government to collect the debt; and

(v) With the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal.

(2) In the event that RUS has, under section 306 of the RE Act, guaranteed loans made by the Federal Financing Bank or other third parties, the Administrator may restructure the borrower's obligations by: acquiring and restructuring the guaranteed loan; restructuring the loan guarantee obligation; restructuring the borrower's reimbursement obligations; or by such means as the Administrator deems appropriate, subject to such consents and approvals, if any, that may be required by the third party lender.

(d) *Borrower's obligations to other creditors.* The Administrator will not grant relief on debt owed to the government unless similar relief, on a pro rata basis, is granted with respect to other secured obligations of the borrower, or the other secured creditors provide other benefits or value to the debt restructuring. Unsecured creditors will also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator may proceed to settle a borrower's debt if that will maximize recovery by the government and will not result in material benefits accruing to other creditors at the expense of the government.

(e) *Competitive bids for system assets.* If requested by RUS, the borrower or the independent consultant provided for in paragraph (b)(3) of this section shall solicit competitive bids from potential buyers of the borrower's system or parts thereof. The bidding process must be conducted in consultation with RUS and use standards and procedures acceptable to RUS. The Administrator may use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator may also consider the bids in evaluating alternative settlement measures.

(f) *Valuation of system.* (1) The Administrator will consider the value of the borrower's system, including, in the case of a power supply borrower, the wholesale power contracts between the borrower and its member systems. The valuation of the wholesale power contracts shall take into account, among other matters, the rights of the government and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service

provided under the contracts, and to otherwise enforce the contracts in accordance with their terms. In no case will the Administrator settle a debt or claim for less than the value (after considering the government's collection costs) of the borrower's system and other collateral securing the debt or claim.

(2) RUS may use such methods, analyses, and assessments as the Administrator deems appropriate to determine the value of the borrower's system.

(g) *Rates.* The Administrator will consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.

(h) *Collection action.* The Administrator will consider whether a settlement is favorable to the government in comparison with the amount that can be recovered by enforced collection procedures.

(i) *Regulatory approvals.* Before the Administrator will approve a settlement, the borrower must provide satisfactory evidence that it has obtained all approvals required of regulatory bodies that the Administrator determines are needed to implement rates or other provisions of the settlement, or that are needed in any other way for the borrower to fulfill its obligations under the settlement.

(j) *Conditions regarding management and operations.* As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, will be required to implement those changes in structure, management, operations, and performance deemed necessary by the Administrator. Those changes may include, but are not limited to, the following:

(1) The borrower may be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets

(2) The borrower may be required to replace senior management and/or hire outside experts acceptable to the Administrator. Such changes may include a commitment by the borrower's board of directors to restructure and/or obtain new membership to improve board oversight and leadership;

(3) The borrower may be required to agree to:

(i) Controls by RUS on the general funds of the borrower, as well as on any investments, loans or guarantees by the borrower, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations; and

(ii) Requirements deemed necessary by RUS to perfect and protect its lien on cash deposits, securities, equipment, vehicles, and other items of real or non-real property; and

(4) In the case of a power supply borrower, the borrower may be required to obtain credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure (e.g., shared services, mergers, or consolidations) in order to reduce operating costs, improve efficiency, and/or expand markets and revenues.

(k) *Conveyance of assets.* As a condition of a settlement, a borrower may be required to convey some or all its assets to the government.

(l) *Additional conditions.* The borrower will be required to warrant and agree that no bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. The Administrator may impose such other terms and conditions of debt settlement as the Administrator determines to be in the government's interests.

(m) *Certification of accuracy.* Before the Administrator will approve a debt settlement, the manager or other appropriate official of the borrower must certify that all information provided to the government by the borrower or by any agent of the borrower, in connection with the debt settlement, is true, correct, and complete in all material respects.

§ 1717.1205 Waiver of existing conditions on borrowers.

Pursuant to section 331(b) of the Con Act, the Administrator, at his or her sole discretion, may waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that such action will contribute to enhancement of the government's recovery of debt. Such waivers or reductions in conditions and requirements under this section shall not include the exercise of any of the debt settlement measures set forth in § 1717.1204(c), which are subject to all of the requirements of said § 1717.1204.

§ 1717.1206 Loans subsequent to settlement.

In considering any future loan requests from a borrower whose debt has been settled in whole or in part (including the surviving entity of merged or consolidated borrowers, where at least one of said borrowers had its debts settled), it will be presumed that credit support for the full amount of the requested loan will be required. Such support may be in a number of forms, provided that they are acceptable to the Administrator on a case by case basis. They may include, but need not be limited to, equity infusions and guarantees of debt repayment, either from the applicant's members (in the case of a power supply borrower), or from a third party.

§ 1717.1207 RUS obligations under loan guarantees.

Nothing in this subpart affects the obligations of RUS under loan guarantee commitments it has made to the Federal Financing Bank or other lenders.

§ 1717.1208 Government's rights under loan documents.

Nothing in this subpart limits, modifies, or otherwise affects the rights of the government under loan documents executed with borrowers, or under law or equity.

Dated: September 19, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–141; Special Conditions No. 25–ANM–132]

Special Conditions: Boeing Model 737–600/–700/–800; High Intensity Radiated Fields (HIRF)/Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 737–600/–700/–800 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level