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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, and 1718

RIN 0572–AB51

Reduction in Minimum TIER Requirements

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby reduces the minimum TIER (Times Interest Earned Ratio) requirement to be met by Distribution Borrowers from 1.50 to 1.25. Reducing TIER to 1.25, while retaining the existing Debt Service Coverage (DSC), Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC) standards, will provide the borrowers with the flexibility to develop new and unique rate structures in an increasingly competitive retail marketplace, yet not jeopardize loan security. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure, and mortgage and loan agreements, are also contained herein.

EFFECTIVE DATE: This rule is effective September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeals procedure, if any are required must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the rule are approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 0572–0032.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of 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.

Catalog of Federal Domestic Assistance

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, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with state and local offices. See the final rule related notice entitled ''Department Programs and Activities Excluded From Executive Order 12372,'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Background

On March 10, 2000, at 65 FR 12952, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Parts 1710, 1717, and 1718—Reduction in Minimum TIER Requirements, which proposed the agency reduce the minimum TIER (Times Interest Earned Ratio) requirement to be met by distribution borrowers from 1.50 to 1.25. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure, and mortgage and loan agreements, were also contained therein.

Written comments on the proposed rule were received from 11 different sources, including one statewide cooperative organization. All of the comments were taken into consideration in preparing this final rule. The comments are discussed below.

Ten (10) comments strongly supported the proposed reduction in TIER. One (1) borrower submitted a comment questioning why RUS used the TIER ratio as part of its loan security review process. The borrower stated that Debt Service Coverage (DSC) and Operating Debt Service Coverage (ODSC) ratios are more meaningful and are more inline with what other financial institutions review for loan security.

RUS believes it is important to retain TIER and DSC as coverage tests and not rely solely on DSC. Given the fact that the amortization of principal for virtually all debt owed by borrowers is heavily back-end loaded and that depreciation charges substantially exceed principal payments now and the foreseeable future, relying solely on DSC and ODSC would allow many distribution borrowers to operate at a loss and still meet the coverage ratio. TIER, on the other hand, provided that it is set at least at 1.0, requires a borrower to at least break even, either for its overall operations in the case of standard TIER, or its electric utility operations in the case of operating TIER. RUS dos not believe it would be in the best interests of the rural electrification program, either from the standpoint of loan security and financial soundness or public support, to rely on a standard that would allow a large number of borrowers to operate at a loss.

RUS recognizes the importance of establishing appropriate and meaningful financial ratios in an effort to measure a borrower's financial stability. RUS believes that a thorough review of TIER (as reduced), DSC, OTIER and ODSC ratios, combined with an in-depth study of a borrower's Annual Financial and Statistical Report, provides sufficient information to evaluate a borrower's credit worthiness and help insure that the borrower's overall operations are financially sound.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

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

7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR Chapter XVII as follows:

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

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

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Revise § 1710.7(c)(13)(vi)(B) and § 1710.7(c)(14)(ii) to read as follows:

§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

* * * * *

(c) * * *

(13) * * *

(vi) * * *

(B) Having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two proceeding calendar years; and

* * * * *

(14) * * *

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

3. Revise § 1710.114(b)(1) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) *Coverage ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis, are a TIER of 1.25, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved on or after January 29, 1996.

* * * * *

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

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

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

5. Revise § 1717.615(f)(2) to read as follows:

§ 1717.615 Consolidations and mergers.

* * * * *

(f) * * *

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than for each of the two preceding calendar years; and

* * * * *

6. Revise § 1717.616(b) to read as follows:

§ 1717.616 Sale, lease, or transfer of capital assets.

* * * * *

(b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years;

* * * * *

7. Revise § 1717.854(c)(1) to read as follows:

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(c) * * *

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

* * * * *

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

8. The authority citation for part 1718 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Mortgage for Distribution Borrowers

9. In appendix A to subpart B to part 1718, Article II, section 2.01(a)(1)(i) and Article III, section 3.10(6)(B) are revised to read as follows:

Appendix A to Subpart B to Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

* * * * *

Article II—Additional Notes

* * * * *

Section 2.01 * * *

(a) * * *

(1) * * *

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;

* * * * *

Article III—Particular Covenants of the Mortgagor

* * * * *

Section 3.10 * * *

(6) * * *

(B) having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and

* * * * *

Subpart C—Loan Contracts With Distribution Borrowers

10. The definition of ''Coverage Ratios'' in Article I, Definitions, and Article V, section 5.4(b) of Appendix A to subpart C to part 1718, are revised to read as follows:

Appendix A to Subpart C to Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

* * * * *

Article I—Definitions

* * * * *

''Coverage Ratios'' shall mean, collectively, the following financial ratios: (i) TIER of 1.25; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

* * * * *

Article V—Affirmative Covenants

* * * * *

Section 5.4 * * *

(b) The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.25

DSC=1.25

OTIER=1.1

ODSC=1.1

* * * * *

Dated: August 17, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–21772 Filed 8–24–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RIN 0572–AB35

RUS Form 397, Special Equipment Contract (Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulation on RUS Telecommunications Standards and Specifications for Material, Equipment and Construction to revise RUS Form 397, Special Equipment Contract (including installation). This contract incorporates amendments currently attached to the RUS Form 397, Special Equipment Contract, and updates contract terms and format.

EFFECTIVE DATE: September 25, 2000.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Inside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250–1598, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effort will be given to this rule; and, (3) in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), administrative appeal procedures, if any, must be exhausted prior to initiating litigaton against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0059 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35).

National Environmental Policy Act Certification

RUS has determined that this final 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.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.851, Rural Telephone Loans and Loan Guarantees, and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not