

Proposed Rules

Federal Register

Vol. 67, No. 101

Friday, May 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710 and 1717

RIN 0572-AB68

Exceptions of RUS Operational Controls Under Section 306E of the RE Act

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: In an effort to continually look for ways to streamline requirements of borrowers and make regulations simple and direct, the Rural Utilities Service (RUS) proposes to eliminate regulations on Exceptions of RUS Operational Controls under Section 306E of the RE Act in its entirety. Because borrowers are now afforded the same exemptions from RUS operational controls by way of other provisions, RUS has determined that the regulations can now be removed.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than June 24, 2002.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250-1560, Telephone: 202-690-2992, FAX: 202-690-0717, E-mail: psarver@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

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

Regulatory Flexibility Act Certification

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

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This proposed 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 proposed 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 proposed 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 proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 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.

Background

RUS currently treats the general subject of operational controls for recipients of electric loans and guarantees in three separate places, namely in RUS loan documents, in 7 CFR part 1717, subpart M, and in 7 CFR 1710.7. In the interests of eliminating confusion and to continue in its ongoing program to streamline RUS regulations, RUS is proposing to remove 7 CFR 1710.7. An understanding of how RUS treatment of operational controls evolved in the 1990's is essential to understanding this action.

In November of 1993, Congress enacted sec. 306e of the Rural

Electrification Act of 1936 (RE Act)(7 U.S.C. 936e), directing RUS to be “guided by the practices of private lenders” to “minimize the approval rights, requirements and restrictions, and prohibitions that the Secretary otherwise may establish with respect to the operations” of any electric borrower whose net worth exceeds 110 percent of the outstanding principal balance on loans made or guaranteed by RUS (Pub. L. 103–129 2(c)(7)). In December 1993, Congress made technical corrections to the act and effectively directed the Administrator to issue “interim final regulations” to implement sec. 306e within 180 days (Pub. L. 103–201). RUS did so on January 28, 1994 (59 FR 3982), thereby creating 7 CFR 1710.7. Members of the class of electric borrowers subject to this regulation are commonly referred to as “110 percent borrowers.”

On December 29, 1995 (60 FR 67395), RUS published a final rule substantially revising the forms of its loan documents to extend the benefits of the treatment of 110 percent borrowers to virtually all RUS borrowers. That exercise made the most comprehensive changes to RUS loan documents in over 20 years and was guided by the practices of private lenders. Consequently, regardless of whether they were entitled to treatment as 110 percent borrowers, all borrowers using the updated forms of loan documents enjoyed their more contemporary treatment of the subject of operational controls. That treatment closely followed the treatment of 110 percent borrowers in 7 CFR 1710.7. In the same rulemaking, RUS promulgated 7 CFR part 1717, subpart M, which also treated the subject of operational controls. Subpart M was intended to manage the transition from old style loan documents to the more contemporary new forms in an orderly and equitable way. RUS was concerned that all of its borrowers would simultaneously request replacement of their existing loan documentation with the new forms. Constraints on RUS resources necessitated the phasing in of the new loan documents. RUS managed its concerns by promulgating subpart M to conform the requirements for existing loan documents to those being used in the new forms. Borrowers who have not yet replaced their loan documents with the new forms are referred to as “legacy” borrowers.

In the preamble to that 1995 rulemaking, RUS explained the relationship between these three separate treatments of the subject of operational controls: “The provisions of the new mortgage and loan contract and 7 CFR part 1717, subpart M, in many cases provide greater latitude to

borrowers than established originally in 7 CFR 1710.7 for 110 percent borrowers. Therefore, § 1710.7 has been revised to reflect the greater latitude provided in the new loan documents and Subpart M.”

RUS also concluded that in its “judgement” and citing “prudent private lending practices,” the further relaxation of operational controls for 110 percent borrowers was not justified beyond what was provided for every borrower in the new loan documents and in subpart M for “legacy” borrowers. In other words, by changing 7 CFR 1710.7 only so far as necessary to avoid the anomaly of 110 percent borrowers being subjected to more restrictive covenants under 7 CFR 1710.7 then they otherwise would have been as a typical borrower operating under the new documents and regulations, RUS made operational controls for 110 percent borrowers coextensive with the relaxed operational controls in the new loan documents and subpart M. Thus, for all intents and purposes, on December 29, 1995, the treatment of operational controls for all three categories of electric borrowers converged around the less intrusive approach adopted by the new loan documents reflecting private lending practices.

Since 1995, almost all RUS electric borrowers have executed the new loan documents. About 100 electric borrowers still have the old forms, but the distinctions in operational controls have been eliminated by subpart M. It should also be noted that every 110 percent electric borrower either now has the new form of loan documents or has “legacy” loan documents, which have been modified by the promulgation of subpart M. Accordingly, the subject of operational controls is now treated essentially the same way for all distribution borrowers regardless of their 110 percent borrower status. In all instances, that treatment has been guided by the practices of private lenders. Since that treatment of operational controls conforms to the requirements of sec. 306e of the RE Act, 7 CFR 1710.7 now appears to be an anachronism that no longer serves any useful purpose.

RUS notes that sec. 306e of the RE Act also treats the subject of lien accommodations and subordinations for 110 percent borrowers. Although this remains important, the subject of lien accommodations and subordinations for 110 percent borrowers is separately treated in 7 CFR 1717.860 and 7 CFR 1717.904. Although 7 CFR 1717.904 contains some cross-references to 7 CFR 1710.7(c), these appear to be merely

reader’s aids. Accordingly, RUS proposes to amend 7 CFR 1717.904 by eliminating paragraphs (c) and (d) thereof and redesignating the existing paragraph (e) as paragraph (c). RUS considers these changes in 7 CFR 1717.904 to be of a conforming nature and no substantive change in the existing treatment of requests for lien accommodations or subordinations by 110 percent borrowers is intended. No changes in 7 CFR 1717.860 are necessitated by the proposed action and so none are being made.

For all of the above reasons, it appears that 7 CFR 1710.7 has become an anachronism because the subsequent promulgation of new loan documents and subpart M effectively conferred the benefits of 7 CFR 1710.7 to all borrowers. Borrowers who are relying on subpart M are encouraged to switch to the new forms of loan documents so that subpart M itself can eventually be removed at a later date once the universe of legacy borrowers has sufficiently contracted to the point that any remaining legacy borrowers could be dealt with either informally or on a case-by-case basis. RUS does not believe this proposed action will diminish or abrogate any rights or privileges conferred upon 110 percent borrowers by sec. 306e of the RE Act, and no such consequences are intended.

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.

For the reasons set forth in the preamble, chapter X of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

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

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

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

Subpart A—General**§ 1710.7 [Removed and Reserved]**

2. Section 1710.7 is removed and reserved.

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

3. The authority citation for part 1717 continues to read as follows:

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

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110**§ 1717.904 [Amended]**

4. Section 1717.904 is amended by removing paragraphs (c) and (d) and redesignating paragraph (e) as paragraph (c).

Dated: May 20, 2002.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–13102 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM**12 CFR Part 201****Regulation A; Docket No. R–1123****Extensions of Credit by Federal Reserve Banks**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors is publishing for comment a proposed amendment to Regulation A that would replace the existing adjustment and extended credit programs with new discount window programs called primary credit and secondary credit, respectively. This proposed restructuring of Federal Reserve credit programs is designed to improve the functioning of the discount window and does not represent a change in the stance of monetary policy. The proposed rule also would reorganize and streamline existing provisions of Regulation A. The Board solicits comment on all aspects of the proposal.

DATES: Comments on the proposed rule must be received not later than August 22, 2002.

ADDRESSES: Comments should refer to docket number R–1123 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the

Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC, 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered between 8:45 a.m. and 5:15 p.m. to the Board's mail facility in the west courtyard of the Eccles Building, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in accordance with the Board's Rules Regarding the Availability of Information (12 CFR part 261) in Room MP–500 of the Martin Building on weekdays between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Brian Madigan, Deputy Director (202/452–3828) or William Nelson, Senior Economist (202/452–3579), Division of Monetary Affairs; or Stephanie Martin, Assistant General Counsel (202/452–3198) or Adrienne Threatt, Senior Attorney (202/452–3554), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:**Background**

Current Credit Programs of Reserve Banks and Their Relationship to Monetary Policy and Open Market Operations

Under existing Regulation A, the Reserve Banks may make credit available to depository institutions at the discount window by making advances secured by acceptable collateral or by discounting paper that meets the requirements of the Federal Reserve Act. Reserve Bank credit usually takes the form of an advance.

Reserve Banks make credit available at the discount window through three credit programs: adjustment credit, seasonal credit, and extended credit. Adjustment credit is available for short periods of time at a basic discount rate that, over the past decade, typically has been 25 to 50 basis points below the market rates that apply to overnight loans, as indexed by the federal funds rate. Reserve Banks also extend seasonal credit for longer periods than permitted under the adjustment credit program to help smaller depository institutions meet funding needs that result from expected patterns in their deposits and loans. Finally, Reserve Banks may provide extended credit to depository institutions where similar assistance is not reasonably available from other sources. The rates applied to seasonal and extended credit are at or above the basic discount rate.

When implementing monetary policy, the Federal Reserve relies primarily on open market operations to supply reserves to the banking system and currency to the public and to make short-run adjustments in reserves. However, lending to depository institutions through the discount window aids the Federal Reserve's open market operations in two important ways. First, discount window lending provides additional reserves to the overall banking system when the supply of reserves provided through open market operations falls short of demand. Second, discount window lending provides a temporary source of reserves and funding to financially sound individual depository institutions that have experienced an unexpected shortfall in reserves or funding. Discount window credit permits such an institution to make payments without incurring an overdraft in its Federal Reserve account or failing to meet its reserve requirements. Historically the Federal Reserve System has relied on the adjustment credit program to accomplish these two objectives.

The discount window also can, at times, serve as a useful tool for promoting financial stability by providing temporary funding to depository institutions that are experiencing significant financial difficulties. The provision of credit to a troubled depository institution can help to prevent the sudden collapse of the institution by easing liquidity strains while the institution is making a transition to more sound footing, or by facilitating an orderly closure of the institution. An institution obtaining credit in such a situation must be monitored appropriately to ensure that it does not take excessive risks in an attempt to return to profitability and does not use central bank credit in a manner that would increase costs to the deposit insurance fund of resolving the institution if resolution were to become necessary. Historically, the Federal Reserve System has relied on extended credit to aid depository institutions experiencing significant financial difficulties.

The Rationale for Changing the Basic Framework Through Which Reserve Banks Extend Credit

A below-market discount rate creates incentives for institutions to obtain adjustment credit to exploit the spread between the discount rate and the market rates for short-term loans. Regulation A therefore provides that a Reserve Bank cannot extend adjustment credit to a depository institution until