

# Proposed Rules

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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

### Agricultural Marketing Service

#### 7 CFR Part 201

[Docket No. LS-00-05-610 REVIEW]

#### Federal Seed Act Regulations; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This action announces the Agricultural Marketing Service (AMS) review of the Federal Seed Act Regulations, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice of review must be received by May 9, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC-E., Beltsville, Maryland 20705-2325; Telephone (301) 504-9430; Fax (301) 504-8098; or E-mail Richard.Payne2@usda.gov. All comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Seed Regulatory and Testing Branch during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20725-2325; telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: Richard.Payne2@usda.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Seed Act Regulations (7 CFR

part 201) regulate the labeling of agricultural and vegetable seed in interstate commerce. The regulations are effective under the Federal Seed Act of 1939 (FSA), as amended (7 U.S.C. 1551 *et seq.*). The regulations were last amended by a final rule published in the **Federal Register** on January 11, 2000 (64 FR 1704).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including the Federal Seed Act Regulations, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for the Federal Seed Act Regulations.

The purpose of the review will be to determine whether the Federal Seed Act Regulations should be continued without change, amended, or rescinded (consistent with the objectives of the FSA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the regulations has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, view, opinions, and other information regarding the Federal Seed Act Regulations's impact on small businesses are invited.

Dated: March 7, 2000.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00-5911 Filed 3-9-00; 8:45 am]

**BILLING CODE 3410-02-P**

## 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, Agriculture.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend its regulations, reducing the minimum Times Interest Earned Ratio (TIER) required 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.

**DATES:** Written comments must be received by RUS on or before April 10, 2000.

**ADDRESSES:** Written comments should be addressed to Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250-1560. Telephone 202-720-95457. 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:**

Robert O. Ellinger, Management/ Industry Analyst, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250-1560, Telephone: 202-720-0424.

**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 12988**

This proposed rule has been reviewed in accordance with 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 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 a rule relating to RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. 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 and Recordkeeping Requirements**

The reporting and recordkeeping requirements contained in the proposed 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 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 section 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 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 proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State, local, and tribal governments or the private sector. See the final rule related notice entitled "Department Programs and Activities Excluded From Executive Order 12372" (50 FR 47034).

**Background**

A Times Interest Earned Ratio (TIER) is a financial measurement relating to the borrower's ability, on an annual basis, to earn margins sufficient to cover the interest charges on its total outstanding indebtedness (long-term and short-term). As originally used in RUS loan documentation, the borrower was required to set rates designed to produce annual margins equal to one and one-half times its annual interest cost on total indebtedness for two of the previous three years. The TIER requirement was first established in RUS mortgages in 1971 to facilitate the ability of the then new National Rural Utilities Cooperative Finance Corporation (CFC) to raise lending capital by issuing bonds secured by the pledge of electric distribution system mortgages requiring a TIER of 1.5 or more. CFC no longer imposes this requirement. However, many older RUS mortgages on which CFC is a co-

mortgagee still contain a TIER requirement substantially unchanged since 1971. As discussed below, most electric distribution mortgages used by RUS after 1995 require a 1.5 TIER only as a prerequisite to issuing additional secured indebtedness under such mortgages without the need for obtaining the consent of the mortgagees.

As part of the 1995 revision to 7 CFR Part 1718, Loan Security Documents for Electric Borrowers (July 18, 1995), RUS shifted the covenant to design rates to achieve TIER from the mortgage to the new RUS loan contract for distribution borrowers. RUS also retained the existing standard TIER and DSC ratios set at the existing minimum levels of 1.5 and 1.25 respectively, while adding an Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC), both set at a minimum of 1.1 for the borrower's electric utility operations. Adding OTIER and ODSC achieved the RUS objective of excluding major "non-cash" margins from the coverage tests, requiring that borrowers at least break even, with a small margin for error, on their primary business. The borrower's electric utility business accounts for most of the financing assistance provided by RUS, is the main source of revenue for repaying the loans and provides the primary security for the loans. Therefore, RUS believes it is reasonable to expect the core business to be financially viable and not dependent on other sources of income to cover expenses. The addition of OTIER and ODSC as coverage ratios has made TIER (specifically at the 1.5 level) less critical in determining financial stability.

As the electric utility industry continues to move toward a more competitive retail marketplace, RUS is reviewing and updating its policies and procedures relating to electric borrowers. This new competitive environment brings with it the need to provide borrowers greater flexibility in establishing competitive rates. To this end, RUS believes that a reduction in reducing the minimum TIER level to 1.25 is now appropriate. Such a reduction will provide borrowers with additional flexibility to structure competitive rates in the marketplace without jeopardizing loan security. RUS believes that a thorough review of the 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 to judge loan repayment ability.

In reducing the minimum TIER requirement RUS does not expect a rush

by borrowers to implement this minimum in their financial planning. RUS recognizes that most borrowers manage their systems in such a fashion as to provide for a financial cushion with respect to operating ratios. In many cases this makes good business sense. However, RUS does expect that such a reduction will provide the flexibility required by borrowers facing severe competitive pressure on retail rates to act accordingly.

With respect to the TIER reduction proposal and its relationship to § 1710.7—Exemptions of RUS operational controls under section 306E of the RE Act; § 1717.615—Consolidations and mergers; § 1717.616—Sale, lease or transfer of capital assets; and § 1717.854—Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure; RUS is also proposing to reduce the TIER ratio level to 1.25 in an effort to maintain uniformity throughout the regulations. RUS believes it would be unwise to propose a TIER level different than 1.25. Establishing different TIER levels for different borrower actions and RUS approvals will only serve to add confusion causing administrative and communication problems. RUS believes that a borrower's strong financial condition can be supported by the reduced TIER and current DSC, OTIER and ODSC operation ratios will support the waivers granted in these provisions.

The proposed rule affects existing loan documents. Most electrical distribution borrower mortgages used by RUS contain the provision found in Section 2.03 of the model mortgage (RUS Information Publication 1718B). Generally speaking, Section 2.03 allows the mortgagor to issue additional secured notes under the mortgage even if it does not satisfy the requirements for issuing additional secured debt specified in section 2.01, *provided that the prior written consent of each mortgagee is obtained*. RUS is proposing that the final rule serve as its written consent to the issuance of additional secured notes under Section 2.03 of such mortgage in cases where the borrower would otherwise satisfy all requirements of section 2.01 of its mortgage if the minimum TIER as contained in section 2.01(1) of the mortgage were 1.25, instead of 1.5. Similarly, mortgages following the model mortgage contain a section 3.10 that imposes limitations on the borrower's ability to merge or consolidate without the prior written consent of the mortgagees. RUS is proposing that the final rule serve as its

written consent to such mergers or consolidations under section 3.10 of such a mortgage in cases where the borrower would otherwise satisfy all the requirements of section 3.10(6)(B) of its mortgage if the minimum TIER as contained in such section were 1.25 instead of 1.5.

In other words, in most instances it would not be necessary for borrowers who have already used mortgages following the model mortgage to go through the expense and burden of issuing new mortgages or mortgage supplements to take advantage of the proposed change in TIER. Of course, the written consent of any other mortgagees would still have to be obtained and all requirements in the RUS loan contract would need to be observed. RUS is also proposing that future mortgages use the 1.25 TIER instead of the 1.5 TIER contained in sections 2.01 and 3.10 of the model mortgage and it invites the comments of supplemental lenders on such an approach. RUS expects that RUS Information Publication 1718B (the model mortgage) will be conformed to the proposed 1.25 TIER whenever the rule becomes effective.

Similarly, RUS is proposing to substitute a 1.25 TIER for the 1.5 TIER wherever it appears in the model loan contract 7 CFR part 1718, subpart C, appendix A). Loan contracts entered into after the effective date of the proposed rule will use the new standard. In order to eliminate the expense and burden of amending existing loan contracts to implement the change, RUS is proposing that the final rule operate as a self executing amendment to all provisions contained in any existing electric distribution loan contract with RUS that uses a 1.5 TIER provision. It is not expected that any borrower will object to such an amendment of its existing loan contract but any borrower who does should promptly notify RUS to that effect and RUS will maintain the existing provision as to any such objecting borrower.

**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, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended to read 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 preceding 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. Article II, section 2.01(a)(1)(i) and Article III, section 3.10(6)(B) of Appendix A to Subpart B to Part 1718 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

\* \* \* \* \*

Date: March 3, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00-5852 Filed 3-9-00; 8:45 am]

**BILLING CODE 3410-15-P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 124**

**8(a) Business Development/Small Disadvantaged Business Status Determinations**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** SBA proposes to amend its regulations governing the Small Disadvantaged Business (SDB) program. This proposed rule would grant applicants seeking certification as an SDB a 45-day period to request that SBA reconsider its decision finding the applicant ineligible for SDB certification.

**DATES:** Submit comments on or before April 10, 2000.

**ADDRESSES:** Written comments should be addressed to Linda Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Terri Dickerson, Acting Associate Administrator, Office of Small Disadvantaged Business Certification and Eligibility, at (202) 619-1727.

**SUPPLEMENTARY INFORMATION:** On June 30, 1998, in response to and in conjunction with the Department of Justice and the Federal Acquisition Regulation reform proposals to implement a government-wide SDB program, SBA issued a final rule establishing the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB. *See* 63 FR 35767. Under existing regulations, firms seeking SDB certification must meet certain citizenship, size, ownership, control and social and economic disadvantaged status requirements. Although SBA is responsible for determining an applicant's eligibility for SDB certification, the Agency has approved certain organizations or business concerns (called Private Certifiers) to perform ownership and control determinations.

When an applicant submits an SDB application to SBA, however, SBA's Assistant Administrator for Small Disadvantaged Business Certification and Eligibility (AA/SDBCE) determines whether the applicant satisfies all of the requirements for certification, and issues a single written decision as to whether the applicant qualifies as an