

# 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

### Rural Utilities Service

#### 7 CFR Part 1717

RIN 0572-AB97

#### Elimination of Operational Controls

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development utilities programs, proposes to amend 7 CFR Part 1717, Subpart M, Operational Controls (Subpart M), by eliminating the provisions thereof.

Subpart M was promulgated as a compliment to the "new" distribution borrower loan documents established in 1995, and was intended to cut back the broad reach of certain of the operational controls contained in the loan documents executed prior to 1995. Since 1995, approximately 88 percent of distribution borrowers have transitioned to the new forms of mortgage and loan contract, either by receiving new loans from RUS or by executing new documents for existing loans. Operational controls for these borrowers are contained in the new forms of loan contract and mortgage, and in other RUS regulations. Operational controls for the remaining distribution borrowers are contained in the pre-1995 loan documents, Subpart M, and other RUS regulations.

This amendment will eliminate the provisions of Subpart M, thereby removing a confusing and cumbersome dual system of operational controls. Distribution borrowers subject to the pre-1995 documents may transition to the new loan documents. For those borrowers that do not transition, operational control decision making will be made on a case-by-case basis, using, to the extent possible, the level of control contained in the new loan contract and mortgage.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent no later than January 7, 2005.

**ADDRESSES:** Submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instruction for submitting comments.
- Agency Web site: <http://www.usda.gov/rus/index2.Comments.htm>. Follow the instructions for submitting comments.
- E-mail: [RUSComments@usda.gov](mailto:RUSComments@usda.gov). Include in the subject line of the message "7 CFR 1717."

- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250-1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4).

- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

- All comments received will be made available for public inspection at room 5168, South Building, Washington, DC, between the 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Doris A. Nolte, Chief, Policy Analysis and Loan Management Staff, Rural Utilities Service, Electric Program, Room 5155 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250-1560, Telephone: 202-720-0424, FAX: 202-690-0717, E-mail: [doris.nolte@usda.gov](mailto:doris.nolte@usda.gov).

#### 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 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 were not covered by Executive Order 12372.

##### Executive Order 12988

This 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 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 an action against the Department or its agencies may be initiated.

##### Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a)(2), this proposed rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, including the requirement to provide prior notice and an opportunity for public comment. Because this proposed rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

##### Information Collection and Recordkeeping Requirements

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

##### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) 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 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 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.

### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

*Background:* On July 18, 1995, RUS published a final rule (60 FR 36882) establishing new RUS policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The final rule became effective on August 17, 1995. On December 29, 1995, RUS published a final rule (60 FR 67396) to establish new RUS policies and requirements for loan contracts ordinarily required for loans made to electric distribution borrowers; this rule became effective on January 29, 1995. These new policies and requirements reduced RUS oversight of borrowers' operational decisions, allowing RUS to tailor its operational control to a borrower's individual lending circumstances and credit risks.

The "new" forms of mortgages and loan contracts (Current Documents) used by RUS for distribution loans and loan guarantees made after January 29, 1996 reflect these policies and requirements. Distribution borrowers (Legacy Borrowers) with loans and loan guarantees made prior to January 29, 1996 under the "old" forms of mortgages and loan contracts (Legacy Documents) have been encouraged to execute the Current Documents, and to

date approximately 88% of Legacy Borrowers have replaced their Legacy Documents with Current Documents, either by obtaining a new loan or loan guarantee from RUS or by substituting New Documents for Legacy Documents.

The December 29, 1995 rulemaking also established Subpart M. The purpose of Subpart M was to cut back the broad reach of certain operational controls contained in the Legacy Documents through waivers and exemptions, thereby bringing the operational controls applicable to Legacy Borrowers more in line with those applicable to distribution borrowers under the Current Documents.

RUS believes that maintaining two sources of operational controls (i.e. the Current Documents, and the Legacy Documents supplemented by Subpart M) creates a confusing dual system that is no longer necessary to provide RUS with an appropriate level of operational control over its distribution loans and loan guarantees. As stated above, the vast majority of RUS electric borrowers have transitioned to the Current Documents, and all future loans and loan guarantees to Legacy Borrowers will be made using the Current Documents. Legacy Borrowers who do not anticipate new RUS loans may, by request, execute the Current Documents for their existing loans, and are encouraged to do so. For those Legacy Borrowers who chose to retain the Legacy Documents, RUS will conduct operational control decision making on a case-by-case basis, taking into consideration the unique characteristics of each Legacy Borrower and, in most cases, applying that level of operational controls contemplated in the Current Documents. For these reasons, RUS proposes to eliminate the provisions of, and reserve, Subpart M.

### List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Intergovernmental relations, Investments, Loan programs—energy, 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 as follows:

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

1. 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 M—Operational Controls

2. Subpart M is removed and reserved.

Dated: October 29, 2004.

**Curtis M. Anderson,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 04-24789 Filed 11-5-04; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

[Docket No. PRM-73-12]

### Committee To Bridge the Gap, Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 23, 2004, which was filed with the Commission by Daniel Hirsch, President, Committee to Bridge the Gap (CBG). The petition was docketed by the NRC on September 29, 2004, and has been assigned Docket No. PRM-73-12. The petitioner requests that the NRC amend its regulations to upgrade the "design basis threat" regulations ((DBT), or the magnitude of threat that the facility's security systems must be capable of defeating) and associated requirements for protection of domestic reactors from nuclear terrorism to a level that encompasses, with a sufficient margin of safety, the terrorist capabilities evidenced by the attacks of September 11, 2001.

**DATES:** Submit comments by January 24, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number PRM-73-12 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.