

*Section 1717.658 Effect of Subpart on RUS Loan Contract and Mortgage*

Section 1717.656 of the existing rule lists several specific provisions of the RUS mortgage that are not affected by the rule, as well as the fact that a supplemental lender's rights under the RUS mortgage regarding control of investments also are not affected by the rule. These specific provisions were listed for emphasis only; there being no intent to imply that other provisions of the mortgage are somehow affected by the rule on investment controls. Furthermore, section 1717.657 of the existing rule provides that the rule does not affect a supplemental lender's rights under its own loan documentation to control borrower investments.

Proposed § 1717.658 would combine and simplify the two existing sections. Rather than list, for emphasis, specific provisions of the RUS mortgage that are not affected by the rule, the proposed rule would make it clear that it does not affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval of investments, loans, and guarantees made by the borrower. Also, the proposed section would combine the provisions of the two existing sections regarding a supplemental lender's rights to control investments not being affected by the proposed rule.

**Appendix A**

Existing Appendix A to subpart N provides several examples of how certain types of investments, loans, and guarantees should be reported. In light of the clarification and additional guidance that would be provided in the main body of this proposed rule, as well as that provided annually in RUS Bulletins 1717B-2 and 1717B-3, it is proposed that Appendix A be dropped.

In summary, RUS believes the proposed changes to subpart N will clarify RUS's policies and requirements on investments, loans and guarantees, improve compliance, provide better service to our borrowers by reducing uncertainty as to what is expected of them, and improve the utilization of RUS staff resources.

**List of Subject in 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 stated, subpart N of 7 CFR 1717 is proposed to be revised as follows:

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

**Subpart N—Investments, Loans, and Guarantees by Electric Borrowers**

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**Subpart N—Investments, Loans, and Guarantees by Electric Borrowers**

**Authority:** 7 U.S.C. 901–950b; Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100–203, 101 stat. 1330.

**§ 1717.650 Purpose.**

This subpart contains the general regulations of the Rural Utilities Service (RUS) for implementing and interpreting the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that borrowers of insured or guaranteed electric loans under the RE Act may, without restriction or prior approval of the Administrator of RUS, invest their own funds and make loans or guarantees.

**§ 1717.651 Policy.**

RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection

services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, RUS believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

**§ 1717.652 Definitions.**

As used in this subpart:

*Borrower* means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification.

*Cash-construction fund-trustee account* means the account described in the Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

*Guarantee* means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of subsidiaries. Some examples of such guarantees include guarantees of payment or collection on a note or other debt instrument (assuring returns on investments); issuing performance bonds or completion bonds; or cosigning leases or other obligations of third parties.

*Equity* means the Margins and Equities of the borrower as defined in the Uniform System of Accounts, less regulatory created assets.

*Invest* means to commit money in order to earn a financial return on assets, including, without limitation, all investments properly recorded on the borrower's books and records in investment accounts as those accounts are used in the Uniform System of Accounts for RUS Borrowers. Borrowers may submit any proposed transaction to RUS for an interpretation of whether the action is an investment for the purposes of this definition.

*Make loans* means to lend out money for temporary use on condition of repayment, usually with interest.

*Mortgaged property* means any asset of the borrower which is pledged in the RUS mortgage.

*Natural gas distribution system* means any system of community infrastructure that distributes natural gas and whose services are available by design to all or a substantial portion of the members of the community.

*Operating DSC* means Operating Debt Service Coverage (ODSC) calculated as: