

# Proposed Rules

Federal Register

Vol. 66, No. 212

Thursday, November 1, 2001

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-AB63

#### Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service.

ACTION: Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend regulations to provide the Administrator with loan processing prioritization authority for recently merged companies. This change will allow the Administrator to grant or decline priority or grant priority for a limited amount of a loan application. This action is being proposed to allow lending priority to newly merged companies and provide greater opportunity to provide loans to as many borrowers as possible.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent no later than December 3, 2001.

**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](mailto: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 an 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

Pursuant to the Rural Utilities Service (RUS) effort to review and streamline regulations, amendments were made to regulations in 1996 that were intended to encourage electric borrowers to evaluate and complete mergers, consolidations, or enter into similar arrangements that benefited borrowers and the rural communities they serve, consistent with the interests of the Government as a secured lender. Since the inception of the new rules, 30 mergers or consolidations have taken place consolidating the efforts of 62 borrowers.

The 1996 amendments provided RUS with the option of granting transitional

assistance in connection with new municipal rate loans by providing loan processing priority. At the borrower's request, RUS offered priority for the first loan to a successor, provided that the loan was approved by RUS not later than five years after the subsequent date of the merger. RUS also offered, at the borrower's request, a waiver on the requirement to obtain supplemental financing and, upon borrower's request, extended the reimbursement period up to 48 months.

Unfortunately, the RUS municipal rate loan program has experienced several situations where large loans (48-month reimbursement period) were made to recently merged borrowers which received loan-processing priority under 7 CFR 1717.154. This activity severely limited the number of municipal rate loans that RUS was able to approve.

For example, in Fiscal Year 2000, loans from two recently merged systems totaling more than \$150 million were provided loan priority. The merger loans accounted for more than 50 percent of the total municipal rate funding authority.

In an effort to alleviate this funding level burden and provide a greater opportunity to provide direct loans to as many borrowers as possible, RUS is proposing to provide the Administrator the flexibility to limit the amount of a loan to a successor (surviving business entity) following a merger.

In response to rapid changes in the regulatory and business environment of the electric industry, RUS will continue to urge borrowers to explore any and all opportunities when such action is likely to contribute, in the long term, to greater operating efficiency, financial soundness, and enhance the ability of the successor to provide reliable electric service at reasonable cost to Rural Electrification Act beneficiaries. RUS believes that limiting the maximum loan amount for the first loan following a merger will not deter such activity.

#### List of Subjects 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 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 D—Mergers and Consolidations of Electric Borrowers

2. Section 1717.154 is amended by:
    - A. Revising paragraph (a)(1);
    - B. Redesignating paragraph (a)(2) to (a)(3), and
    - C. Adding a new paragraph (a)(2).
- This revision and addition are to read as follows:

##### § 1717.154 Transitional assistance in connection with new loans.

\* \* \* \* \*

(a) *Loan processing priority.* (1) RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS may offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. In considering the request, the Administrator will take into account, among other factors, the amount of the loan application, whether there is a significant backlog in pending loan applications, the impact that loan priority would have on the backlog, the savings and efficiencies to be realized from the merger and the relative importance of loan priority to facilitating the merger. The Administrator may, in his or her sole discretion, grant or decline to grant priority, or grant priority for a limited amount of the loan application while deferring for later consideration the remainder of the application.

(2) For any subsequent loans approved during those 5 years, RUS may offer loan processing priority. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the loan authority for the fiscal year, the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigation effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

\* \* \* \* \*

Dated: October 9, 2001.

**Roberta D. Purchell,**

*Acting Administrator, Rural Utilities Service.*  
[FR Doc. 01-27480 Filed 10-31-01; 8:45 am]

**BILLING CODE 3410-15-P**

#### DEPARTMENT OF THE TREASURY

##### Office of Thrift Supervision

##### 12 CFR Parts 559 and 560

[No. 2001-67]

RIN 1550-AB37

##### Lending and Investment

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision ("OTS") proposes to revise and clarify its lending and investment regulations to give savings associations greater flexibility in a changing marketplace. Today's proposed regulatory amendments are intended to help thrifts take better advantage of the flexibility available under the Home Owners' Loan Act ("HOLA"), to provide low-cost credit to their customers, and to invest in their communities while still operating safely and soundly.

**DATES:** Comments must be received on or before December 3, 2001.

##### ADDRESSES:

*Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001-67.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001-67.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906-6518, Attention Docket No. 2001-67.

*E-Mail:* Send e-mails to [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov), Attention Docket No. 2001-67, and include your name and telephone number.

*Public Inspection:* Comments and the related index will also be posted on the OTS Internet Site at [www.ots.treas.gov](http://www.ots.treas.gov). In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.