

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 30th day after publication of this notice in the **Federal Register**. The comment period is limited to 30 days due to the request for immediate action by the proponent of this proposed action.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs during regular business hours (7 CFR 1.27(b)).

#### Statement of Consideration

The proposed rule would suspend 11 counties from the marketing area definition of the Nebraska-Western Iowa Federal milk marketing order. The counties, which are located in the western panhandle of Nebraska, include Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

The July 1996 population estimate, which represents the most recent population statistics, shows that the total population for the Order 65 marketing area is 2,000,529 (i.e., 412,167 for Iowa counties and 1,588,362 for Nebraska counties). The population estimate for the entire State of Nebraska is 1,652,093, while the population for the 11 Nebraska counties is 91,194. In addition, the *December 1992 Federal Milk Order Statistics Report* (Per Capita Sales of Fluid Milk Products in Federal Order Markets) indicates that the Nebraska fluid milk per capita consumption is about 20 pounds per person per month. It is estimated that the fluid milk consumption per month within the 11 Nebraska counties is 1,823,880 (20 lbs. \* 91,194).

The July 1996 population estimate and the December 1992 fluid milk per capita consumption data show that the 11 Nebraska counties represent a small amount of the population and fluid milk consumption in the State of Nebraska and in the entire Order 65 marketing area. The 11 counties represent about 6% of the population and fluid milk consumption in the State of Nebraska and about 5% of the population and fluid milk consumption in the Order 65 marketing area.

Gillette was a fully regulated handler under the Black Hills, South Dakota, Federal milk marketing order prior to its termination at the request of the Black Hills Milk Producers. After termination of the Black Hills order, Gillette for some time was a partially regulated

handler under three Federal milk marketing orders: Eastern South Dakota (Order 76), Eastern Colorado (Order 137), and Order 65. From January 1998 through May 1998, Gillette was a fully regulated handler under Order 65 because its fluid milk sales in the marketing area represented more than 15 percent of its receipts.

When Gillette was a partially regulated handler, it paid to the producers supplying its plant at least the full Class use value of its milk each month. Thus, Gillette had no further obligation to the producer settlement funds of the orders under which it was a partially regulated handler. However, as a fully regulated handler, Gillette is required to pay the difference between its Class use value and the marketwide Class use value to the Order 65 producer settlement fund. This payment, Gillette contends, increases its cost for milk and reduces the amount it can pay its producers.

According to Gillette, marketing conditions in Order 65 have changed significantly since the order was promulgated. Gillette estimates that its sales in the 11 counties represent 65% to 70% of total fluid milk sales in the counties. Gillette explains that a loss of sales in an unregulated marketing area has resulted in its regulation under Order 65 because such sales represented at least 15 percent of its receipts, but without any appreciable increase in sales in the Order's marketing area. Furthermore, the handler states that since its milk supply comes from the Black Hills Milk Producers there is no balancing of milk supply for the plant from Order 65 or any other Federal milk marketing order.

Black Hills Milk Producers also requested that the counties be removed from the Order 65 marketing area definition. The cooperative representing the producers explained that it is dependent on Gillette's survival. It states that the regulation of Gillette under Order 65 has caused its producers hardship by costing them as much as \$1.00 per hundredweight during some months. According to the cooperative, this cost results from an agreement that it has with Gillette in which it refunds to Gillette an amount equal to half of the handler's obligation to the producer settlement fund when Gillette is fully regulated. Although the producers pay this amount to Gillette, Order 65 price data for the February through May 1998 period indicates that their monthly pay prices were above the Order 65 uniform price.

The Federal Order Reform Proposed Rule, which was issued on January 21, 1998 (63 FR 4802), recommended

excluding the 11 Nebraska counties from the consolidated Central order. The recommendation currently is under consideration. However, Gillette has requested that the proposed action be considered immediately.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the period of November 1, 1998, through December 31, 1999.

#### List of Subjects in 7 CFR Part 1065

Milk marketing orders.

The authority citation for 7 CFR Part 1065 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

Dated: September 23, 1998.

**Richard M. McKee,**

*Deputy Administrator, Dairy Programs.*

[FR Doc. 98-27179 Filed 10-8-98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1788

RIN 0572-AA86

#### RUS Fidelity and Insurance Requirements for Electric and Telecommunications Borrowers

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to streamline its fidelity and insurance requirements for electric and telecommunications systems. The rule was last revised in 1986, and the proposed revisions are intended to update requirements. The rule proposes a flexible approach to insurance that protects the government's security interest in mortgaged assets and conforms to today's business practices.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent by December 8, 1998.

**ADDRESSES:** Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue, SW., Washington, DC 20250-1522. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.4).

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Avenue, SW., Washington, DC 20250-1522.

Telephone: 202-720-0736. FAX: 202-720-4120. E-mail: fheppe@rus.usda.gov  
**SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12372**

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

#### **Executive Order 12866**

This proposed rule has been determined to be not significant for the 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 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 effort will be given to this rule, and, in accordance with section 212 (c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

#### **Regulatory Flexibility Act Certification**

RUS had determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric and telecommunications programs provide loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. 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. Moreover, this action offers borrowers increased flexibility in determining the appropriate insurance coverage for their organizations which further offsets economic costs.

#### **National Environmental Policy Act Certification**

The Administrator of RUS has determined that this proposed 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 proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

#### **National Performance Review**

The regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

#### **Information Collection and Recordkeeping Requirements**

The recordkeeping and reporting requirements contained in this proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control numbers 0572-0032 and 0572-0031. Send questions or comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250-1522.

#### **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 proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### **Background**

The Rural Utilities Service (RUS) makes and guarantees loans to furnish and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act). The

security for these loans is generally a first mortgage on the borrower's electric or telecommunications system. In order to maintain the security for government loans, the RUS debt covenants require borrowers to maintain adequate levels of fidelity and insurance coverage. Such coverage is generally carried by any prudent business and required by any prudent lender.

RUS regulations implementing these fidelity and insurance requirements, 7 CFR part 1788, were last issued in 1986. Since that time, the business and regulatory environment of electric and telecommunications utilities have undergone rapid change, and the experience and sophistication of RUS financed systems have increased. RUS has published a number of regulations updating and streamlining various requirements. The proposed regulation is part of this overall effort to modernize requirements in order to improve the delivery of customer service.

On April 29, 1993, at 58 FR 25786, the Rural Electrification Administration (REA), the predecessor agency to RUS, published an advance notice of proposed rulemaking (ANPR) requesting comments on 7 CFR part 1788. The ANPR requested comments on any issue covered by the rule, especially on whether agency requirements are compatible with general industry practice. Thirteen comments were received.

Most commenters strongly recommended replacing specific requirements and levels of coverage with a more flexible standard that would allow borrowers to employ prudent risk management practices or take out insurance in accordance with generally accepted utility industry practice appropriate to utilities of similar size and character.

Consequently, RUS proposes to reduce the specific requirements to a level consistent with loan security and provide borrowers with maximum flexibility by adopting this recommendation. Electric distribution borrowers having the form of mortgage found in 7 CFR part 1718 are currently subject to provisions similar to subpart A of this part. It is proposed that all other borrowers will be required to make the first certification under subpart A of this rule at the end of the first complete calendar year after the effective date of this rule. It is contemplated that an insurance provision similar to the proposed subpart A of this rule will be included in all telecommunications mortgages executed by RUS after the effective date of this rule and that all borrowers receiving a telecommunications loan or loan

guarantee after such effective date will be required to execute such a mortgage. A provision has been included in subpart A that proposes to place a requirement on borrowers concerning the reporting of irregularities that is similar to the requirement on Certified Public Accountants in 7 CFR part 1773.

Subparts B and C of this rule will apply to the first contracts covered by the rule that borrowers enter into after the effective date of this rule.

#### List of Subjects in 7 CFR Part 1788

Electric power, Insurance, Loan programs—communications, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, RUS proposes to amend 7 CFR Chapter XVII by revising part 1788 to read as follows:

### PART 1788—RUS FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELECOMMUNICATIONS BORROWERS

#### Subpart A—Borrower Insurance Requirements

Sec.

- 1788.1 General and definitions.
- 1788.2 General insurance requirements.
- 1788.3 Flood insurance.
- 1788.4 Disclosure of irregularities and illegal acts.
- 1788.5 RUS endorsement required.
- 1788.6 RUS right to place insurance.
- 1788.7–1788.10 [Reserved]

#### Subpart B—Insurance for Contractors, Engineers, and Architects, Electric Borrowers

- 1788.11 Minimum insurance requirements for contractors, engineers, and architects.
- 1788.12 Contractors' bonds.

#### Subpart C—Insurance for Contractors, Engineers, and Architects, Telecommunications Borrowers

- 1788.46 General.
- 1788.47 Policy requirements.
- 1788.48 Contract insurance requirements.
- 1788.49 Contractors' bond requirements.
- 1788.50 Acceptable sureties.
- 1788.51–1788.53 [Reserved].
- 1788.54 Compliance with contracts.
- 1788.55 Providing RUS evidence.

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

#### Subpart A—Borrower Insurance Requirements

##### § 1788.1 General and definitions.

(a) The standard forms of documents covering loans made or guaranteed by the Rural Utilities Service contain provisions regarding insurance and fidelity coverage to be maintained by

each borrower. This part implements those provisions by setting forth the requirements to be met by all borrowers.

(b) As used in this part:

*Borrower* means any entity with any outstanding loan made or guaranteed by RUS.

*Irregularity* has the meaning found in § 1773.2.

*Loan documents* means the loan agreement, notes, and mortgage evidencing or used in conjunction with an RUS loan.

*Mortgage* means the mortgage, deed of trust, security agreement, or other security document securing an RUS loan.

*Mortgaged property* means any property subject to the lien of a mortgage.

*RUS* means the Rural Utilities Service and includes the Rural Telephone Bank.

*RUS loan* means a loan made or guaranteed by RUS.

(c) RUS may revise these requirements on a case by case basis for borrowers with unusual circumstances.

##### § 1788.2 General insurance requirements.

(a) Borrowers will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverage for utilities of the size and character of the borrower and consistent with Prudent Utility Practice. Prudent Utility Practice shall mean any of the practices, methods, and acts which, in the exercise of reasonable judgment, in light of the facts, including but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the case of an electric borrower or of the telecommunications industry in the case of a telecommunications borrowers prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety, and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or act which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety, and expedition.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part

of the mortgaged property securing an RUS loan, shall provide that the insurance shall be payable to the mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each mortgagee of suspension, cancellation, or termination.

(c) In the event of damage to or the destruction or loss of any portion of the mortgaged property which is used or useful in the borrower's business and which shall be covered by insurance, unless each mortgagee shall otherwise agree, the borrower shall replace or restore such damaged, destroyed, or lost portion so that such mortgaged property shall be in substantially the same condition as it was in prior to such damage, destruction, or loss and shall apply the proceeds of the insurance for that purpose. The borrower shall replace the lost portion of such mortgaged property or shall commence such restoration promptly after such damage, destruction, or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance form all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the borrower for a loss of funds advanced under a note secured by a mortgage or recovered by any mortgagee or holder of any note secured by the mortgage for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used as directed by the borrower's mortgage.

(e) Borrowers shall furnish evidence annually that the required insurance and fidelity coverage has been in force for the entire year, and that the borrower has taken all steps currently necessary and will continue to take all steps necessary to ensure that the coverage will remain in force until all loans made or guaranteed by RUS are paid in full. Such evidence shall be in a form satisfactory to RUS. Generally a certification included as part of the RUS Financial and Statistical Report filed by the borrower annually (RUS Form 7 or Form 12 for electric borrowers, RUS Form 479 for telecommunications borrowers, or the successors to these forms) is sufficient evidence of this coverage.

**§ 1788.3 Flood insurance.**

(a) Borrowers shall purchase and maintain flood insurance for buildings in flood hazard areas to the extent available and required under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) The insurance should cover, in addition to the building, any machinery, equipment, fixtures, and furnishings contained in the building.

(b) The National Flood Insurance Program (see 44 CFR part 59 *et seq.*) provides for a standard flood insurance policy; however, other existing insurance policies which provide flood coverage may be used where flood insurance is available in lieu of the standard flood insurance policy. Such policies must be endorsed to provide:

(1) That the insurer give 30 days written notice of cancellation or nonrenewal to the insured with respect to the flood insurance coverage. To be effective, such notice must be mailed to both the insured and RUS and other mortgagees if any and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(2) That the flood insurance coverage is at least as broad as the coverage offered by the Standard Flood Insurance Policy.

**§ 1788.4 Disclosure of irregularities and illegal acts.**

(a) Borrowers must immediately report, in writing, all irregularities and all indications or instances of illegal acts in its operations, whether material or not, to RUS and the Office of the Inspector General (OIG). See 7 CFR 1773.9(c)(3) for OIG addresses. The reporting requirements for borrowers are the same as those for CPA's set forth in § 1773.9

(b) Borrowers are required to make full disclosure to the bonding company of the dishonest or fraudulent acts.

**§ 1788.5 RUS endorsement required.**

In the case of a cooperative or mutual organization, RUS requires that the following:

"Endorsement Waiving Immunity From Tort Liability" be included as a part of each public liability, owned, non-owned, hired automobile, and aircraft liability, employers' liability policy, and boiler policy:

The Insurer agrees with the Rural Utilities Service that such insurance as is afforded by the policy applies subject to the following provisions:

1. The Insurer agrees that it will not use, either in the adjustment of claims or in the defense of suits against the Insured, the immunity of the Insured from tort liability, unless requested by the Insured to interpose such defense.

2. The Insured agrees that the waiver of the defense of immunity shall not subject the Insurer to liability of any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.

3. The Insurer agrees that if the Insured is relieved of liability because of its immunity, either by interposition of such defense at the request of the Insured or by voluntary action of a court, the insurance applicable to the injuries on which such suit is based, to the extent to which it would otherwise have been available to the Insured, shall apply to officers and employees of the Insured in their capacity as such; provided that all defenses other than immunity from tort liability which would be available to the Insurer but for said immunity in suits against the Insured or against the Insurer under the policy shall be available to the Insurer with respect to such officers and employees in suits against such officers and employees or against the Insurer under the policy.

**§ 1788.6 RUS right to place insurance.**

If a borrower fails to purchase or maintain the required insurance and fidelity coverage, the mortgagees may place required insurance and fidelity coverage on behalf and in the name of the borrower. The borrower shall pay the cost of this coverage, as provided in the loan documents.

**§ 1788.6–1788.10 [Reserved]****Subpart B—Insurance for Contractors, Engineers, and Architects, Electric Borrowers****§ 1788.11 Minimum insurance requirements for contractors, engineers, and architects.**

(a) Each electric borrower shall include the provisions in this paragraph in its agreements with contractors, engineers, and architects, said agreements that are wholly or partially financed by RUS loans or guarantees. The borrower should replace "Contractor" with "Engineer" or "Architect" as appropriate.

1. The Contractor shall take out and maintain throughout the period of this Agreement insurance of the following minimum types and amounts:

a. Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for

accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

2. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in paragraphs (a)(1)(b) and (a)(1)(c) of this section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

3. The Owner shall be named as Additional Insured on all policies of insurance required in (a)(1)(b) and (a)(1)(c) of this section.

4. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Contractor shall furnish the Owner a certificate evidencing compliance with the foregoing requirements that shall provide not less than 30 days prior written notice to the Owner of any cancellation or material change in the insurance.

(b) Electric borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than \$500,000.

(c) The borrower may increase the limits of insurance if desired.

(d) The minimum requirement of \$1 million of public liability insurance does not apply to contractors performing maintenance work, janitorial-type services, meter reading services, rights-of-way mowing, and jobs of a similar nature. However, borrowers shall ensure that the contractor performing the work has public liability coverage at a level determined to be appropriate by the borrower.

(e) If requested by RUS, the borrower shall provide RUS with a certificate from the contractor, engineer, or architect evidencing compliance with the requirements of this section.

**§ 1788.12 Contractors' bonds.**

Electric borrowers shall require contractors to obtain contractors' bonds when required by part 1726, Electric System Construction Policies and

Procedures, of this chapter. Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of the Treasury's computer bulletin board at 202-874-6817.

### **Subpart C—Insurance for Contractors, Engineers, and Architects, Telecommunications Borrowers**

#### **§ 1788.46 General.**

This subpart sets forth RUS policies for minimum insurance requirements for contractors, engineers, and architects performing work under contracts which are wholly or partially financed by RUS loans or guarantees with telecommunications borrowers.

#### **§ 1788.47 Policy requirements.**

(a) Contractors, engineers, and architects performing work for borrowers under construction, engineering, and architectural service contracts shall obtain insurance coverage, as required in § 1788.48, and maintain it in effect until work under the contracts is completed.

(b) Contractors entering into construction contracts with borrowers shall furnish a contractors' bond, except as provided for in § 1788.49, covering all of the contractors' undertaking under the contract.

(c) Borrowers shall make sure that their contractors, engineers, and architects comply with the insurance and bond requirements of their contracts.

#### **§ 1788.48 Contract insurance requirements.**

Contracts entered into between borrowers and contractors, engineers, and architects shall provide that they take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) When a borrower contracts for the installation of major equipment by other than the supplier or for the moving of major equipment from one location to another, the contractor shall furnish the borrower with an installation floater policy. The policy shall cover all risks of damage to the equipment until completion of the installation contract.

#### **§ 1788.49 Contractors' bond requirements.**

Construction contracts in amounts in excess of \$250,000 for facilities shall require contractors to secure a contractors' bond, on a form approved by RUS, attached to the contract in a penal sum of not less than the contract price, which is the sum of all labor and materials including owner-furnished materials installed in the project. RUS Form 168b is for use when the contract exceeds \$250,000. RUS Form 168c is for use when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1,000,000 or less. For minor construction contracts under which work will be done in sections and no section will exceed a total cost of \$250,000, the borrower may waive the requirement for a contractors' bond.

#### **§ 1788.50 Acceptable sureties.**

Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of

the Treasury's computer bulletin board at 202-874-6817.

#### **§§ 1788.51—1788.53 [Reserved]**

#### **§ 1788.54 Compliance with contracts.**

It is the responsibility of the borrower to determine, before the commencement of work, that the engineer, architect, and the contractor have insurance that complies with their contract requirements.

#### **§ 1788.55 Providing RUS evidence.**

When RUS shall specifically so direct, the borrower shall also require the engineer, the architect, and the contractor, to forward to RUS evidence of compliance with their contract representative of the insurance company and include a provision that no change in or cancellation of any policy listed in the certificate will be made without the prior written notice to the borrower and to RUS.

Dated: October 2, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 98-27235 Filed 10-8-98; 8:45 am]

BILLING CODE 3410-15-P

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 50**

#### **Preliminary Criterion on the Use of Non-Owner Operating Companies**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed criterion for non-owner operating service companies.

**SUMMARY:** In anticipation of an expected increase in the use of non-owner operating companies, the NRC is seeking public comment on a proposed evaluation criterion concerning whether the use of contract service operating companies in connection with the operation of nuclear power reactors requires approval by the NRC under the regulations governing transfer of licenses. Comments on other criteria that should be considered concerning non-owner operators are also invited. Publication of draft regulatory guidance related to the screening criteria for the transfer of licenses is scheduled for June 1999.

**DATES:** Comments should be submitted by January 15, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.