DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1775, 1777, 1778, 1780, and 1781

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1901, 1940, 1942, 1951, and 1956

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0572–AB20

Streamlining the Rural Utilities Service Water and Waste Program Regulations

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency; USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends the regulations utilized to administer the water and waste loan and grant programs. The final rule will combine the water and waste loan and grant regulations into one regulation. Unnecessary and burdensome requirements for entities seeking water and waste loan and grant financial assistance under the program are eliminated. The streamlining of the water and waste loan and grant regulation will allow RUS to provide better service to rural entities needing assistance in correcting and alleviating health and sanitary problems in their communities, and in general improve the quality of life in rural areas. This rule incorporates changes in the water and waste loan and grant program, the emergency community water assistance grant program, and the resource conversation and watershed loan programs mandated by the 1996 Farm Bill.

This rule also amends the regulations originally published by the former Farmers Home Administration (FmHA) and the former Rural Development Administration (RDA). These amendments implement legislation directing the Secretary of Agriculture to establish the Rural Utilities Service (RUS) with responsibility for the water and waste programs formerly administered by FmHA and RDA. The amendments published in this document consist solely of nomenclature changes required by law and of amendments necessary to conform to these nomenclature changes. The substance of the regulations is not affected by these amendments.

This rule could impact the amount of water and waste loan and grant funds an applicant could receive. Therefore, RUS will honor all written commitments of water and waste loan and grant amounts issued prior to the effective date of this rule.

EFFECTIVE DATE: June 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, USDA, South Agriculture Building, Room 2229, STOP 1570, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866 and the Office of Management and Budget has determined that it is a ''significant regulatory action''.

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under numbers 10.760, Water and Waste Disposal Systems For Rural Communities; 10.763, Emergency Community Water Assistance Grants; 10.764, Resource Conversation and Development Loans; 10.765, Watershed Protection and Flood Preventation Loans; and 10.770, Water and Waste Disposal Loans and Grants (Section 306C) and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 11 must be exhausted prior to filing suit.

Information Collection and Paperwork Requirements

The recordkeeping and reporting burden in this rule, under OMB control number 0575–0015, is not fully effective until approved by OMB.

For further information contact Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1570, Washington, DC 20250–1548, telephone: (202) 720–9589.

National Performance Review

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

Unfunded Mandate Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

Cross References of Regulations

The Rural Utilities Service is an Agency resulting from a reorganization of programs administered by the former Farmers Home Administration, the former Rural Development Administration, and the former Rural Electrification Administration. Dual-references or cross-references to former Farmers Home Administration regulations and forms are provided for by the Department of Agriculture Reorganization Act of 1994.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5. U.S.C. 601 *et seq.*) does not apply to this rule.

Background

The water and waste loan and grant programs are authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1921 *et seq.*), as amended. The regulations for these programs, particularly the loan program, have not been completely reviewed for many years. The recent streamlining and reorganization of the Department of Agriculture provided an opportunity to review and rewrite the

water and waste loan and grant regulations. A task force was formed to review and rewrite the regulations. The aim of the task force was to make the regulations easier to understand, eliminate unnecessary requirements, and continue to protect the interest of the U.S. taxpayer.

The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less.

The final rule will divide the regulation into four subparts: A, B, C, and D. Subpart A contains the general policies and requirements of the loan and grant program. Subpart B contains the loan and grant application processing requirements. Subpart C contains all the requirements for planning, designing, bidding, contracting, constructing, and inspections. Subpart D has information required in the preparation of notes or bonds and bond transcript documents for public body applicants.

Major changes are:

1. Redirects additional grant funds to communities that truly need the assistance in order to construct a project. Communities with incomes over 100 percent of the State nonmetropolitan median household income will not qualify for any grant funds as in the current regulations.

2. Stretches the grant dollars appropriated by Congress to help more communities by changing the maximum percentage of grant funds that a higher income community can receive from 55 percent to 45 percent of RUS's share of the project costs. This change could have an indirect effect of having an incentive for development of regional projects.

3. The process used to select projects for funding has been revised to direct funds to low income, small communities that need to correct health problems. Also, the priority points awarded for regional systems have been increased.

4. The application process has been streamlined to reduce unnecessary paperwork and improve service to the rural communities. There will be less regulations and the number of pages will be greatly reduced.

5. The application process has been shortened by eliminating the preapplication process. However, an applicant will have the option of requesting an Agency eligibility review before submitting a complete application.

6. A preliminary engineering report (PER) must be submitted earlier in the application process. The requirement of submitting a PER earlier in the process will assist the staff in making better decisions. Also, applicants have to have this type of document to help them determine what, where, and how they are going to build needed facilities. This change will force applicants to have a clear picture of what they want to construct prior to applying for assistance. A majority of applicants have a PER at the preapplication stage now, therefore the change will tend to put all applicants on a level field.

7. The functions of former Farmers Home Administration (FmHA) and the Rural Development Administration (RDA) relating to the water and waste loan and grant programs authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended have been transferred to RUS. Therefore in order to enhance the delivery of customer services and better assist the public, RUS is amending regulations originally published by FmHA and RDA. These amendments will replace references to FmHA and RDA and its officials with references to RUS and to appropriate officials. This action will also separate the regulation now utilized by RUS and Rural Housing Service (RHS) to administering the water and waste loan and community facilities loan programs, respectively. All parts pertaining to the water and waste loan program will be moved into 7 CFR part 1780. This action will have no effect on RHS's community facilities loan program as this action makes no changes in the regulation. The following programs are affected by these amendments: (1) Water and Waste Loans and Grants, (2) Technical Assistance and Planning Grants, (3) Emergency Community Water Assistance Grants, (4) Section 306C WWD Loans and Grants, and (5) Resource Conservation and Development Loans and Watershed Loans and Advances.

8. The criteria utilized to allocate water and waste program funds has been moved from 7 CFR part 1940, subpart L to 7 CFR part 1780.

The major 1996 Farm Bill changes are:

1. Funds made available for these programs may be made available for a water system that is making significant progress toward meeting the Safe Drinking Water Act standards.

2. Funds made available for water treatment discharge or waste disposal system must meet applicable Federal and State water pollution control standards.

3. Within 60 days of filing an application for loan or grant assistance, a notice of intent shall be published in a general circulation newspaper.

4. When applicants hire outside engineers, the applicant shall publicly announce all requirements for engineering and architectural services, and negotiate contracts for such services on the basis of demonstrated competence and qualifications for the type professional service required and at a fair and reasonable price. When project design services are procured separately, the selection of the engineer or architect shall be done by a request for proposal.

5. Assistance under any rural development program administered by the Secretary or any agency of the Department of Agriculture shall not be conditioned on any requirement that the recipient of the assistance accept or receive electric service from any particular utility, supplier, or cooperative. This is being implemented for the water and waste loan and grant programs.

6. Section 306B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926b) was repealed. References to section 306B were deleted from the regulations and the amendments to section 306A are included.

7. The interest rate formula for Resource Conversation and Development Loans, and Watershed Protection and Flood Preventation Loans was amended to establish the interest rate on these loans based on current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest 1/8 of 1 percent.

Comments on the Proposed Rule

RUS published a proposed rule in the **Federal Register** on September 12, 1996, (61 FR 48075) and asked for written comments on or before October 15, 1996. The Agency received seventy-nine comments from the public review process. All comments were considered when preparing the final rule; however, all comments have not been addressed separately since many could be addressed collectively. Responses to comments received are grouped according to corresponding sections of the rule and are as follows:

Subpart A—General Policies and Requirements

Sec.

1780.1 General.

1. § 1780.1(k)—Include the Brooks Architect-Engineer Act, Title 40 of the U.S. Code subchapter VI, Sections 541, 542, 543, and 544 as the federal statute applicants should be aware of and comply with relative to the procurement of engineering services.

Agency response: The Agency has not implemented this suggested change. The Brooks Architect-Engineer Act only applies to Federal procurement and would not be applicable to non-profit organizations and units of local and State government who are the recipients of the financial assistance.

1780.3 Definitions and grammatical rules of construction.

1. Add a definition of Agency Identified Target Areas referred to in § 1780.17.

Agency response: The Agency agrees and has added a definition.

2. § 1780.3(a)—Similar System Cost—Recommend establishment of similar system cost based on a comparison of rate structure for the same amount of water usage.

Agency response: The Agency does not agree with this recommendation. While this might be possible for a water system, the Agency funds other types of projects where this type information would not be available. The proposed language would be broad enough to cover all types of projects funded by the Agency, including similar usage levels.

3. § 1780.3(a)—Equivalent Dwelling Unit—Add after ''typical rural residential dwelling'' add the following, ''or users whose total water needs could be met by a single residential sized water meter.'' A property with a permanent residence and a stop gap housing structure should only be considered as one connection.

Agency response: The Agency made no change in the definition. Number of individual meters or residential dwellings are not what determines an equivalent dwelling unit (EDU). An EDU is based on the average consumption of a typical rural residential household.

4. § 1780.3(a)—Rural and rural areas—Should be written as broadly as possible to avoid defining a rural area as a local government unit.

Agency response: The Agency made no change in the definition of rural and rural areas. The Agency does not define a rural area outside a city or town by the type of local governmental unit.

1780.7 Eligibility.

1. § 1780.7(c)(2)—Delete last sentence. The capacity for fire protection is repeated in § 1780.57(d) and should not be in this section.

Agency response: The Agency agrees and made the change.

2. § 1780.7(d)—Place a period after the word ''terms'' and delete ''or other funding sources.''

Agency response: The Agency agreed and made the change.

3. § 1780.7(e)—What is meant by ''reasonable rates and terms?''

Agency response: The words ''and terms'' should have not been included in that sentence. The applicant would be responsible for providing continued availability and use of the proposed facility at reasonable rates. The Agency has made the change.

1780.9 Eligible loan and grant purposes.

1. § 1780.9(e)(1)(iv)—Change to specify that only ''hired'' applicant labor be reimbursable and not for people already on payroll.

Agency response: The Agency agrees and limited the use of funds to ''additional'' applicant labor necessary to install and extend service.

2. § 1780.9(f)(1)—After the word ''obligations for'' add ''engineering and other services used to prepare the application or.''

Agency response: The Agency agrees and changed the word ''construction'' to ''eligible project costs.'' This would cover all project costs incurred before loan or grant approval.

3. § 1780.9(e)(1)(v)—2 commenters—Should provide clearer guidance on what circumstances may warrant using funds for connecting users to the system.

Agency response: The Agency made no change. The wording ''unusual cases'' means that using loan and grant funds to connect users to the main service line would be the exception rather than the rule. This should only be considered in situations where the users cannot pay the cost or from an engineering standpoint that it is the logical thing to do.

4. § 1780.9(e)(1)(i)—Revise to include training as an eligible cost. Would assure that equipment and processes will function as intended. The lack of technical expertise to properly operate and maintain new equipment or treatment processes can be a major problem with small systems.

Agency response: The Agency made no change. The proposed language is broad enough to allow the use of funds to provide necessary training to operators to assure proper operation and maintenance of equipment.

1780.10 Limitations.

1. § 1780.10(c)(2)—13 commenters—Do not change the formula from 55 percent grant to 45 percent grant.

Agency response: The Agency made no change. The Agency has a limited amount of grant funds available for rural communities. The Agency is directing these funds to the communities that have the greatest need for these funds. The reduction from 55 percent to 45 percent will make additional grant funds available to low income communities that have the greatest need for the limited grant funds.

2. § 1780.10(c)—2 commenters—Revise the requirement that restricts the amount of grant to RUS's share of project costs. Change the wording ''RUS funded project development costs'' to ''RUS eligible project development costs.''

Agency response: The Agency agrees and has made the change.

3. § 1780.10(c)(2)—Allow grants up to 75 percent to all existing borrowers where funding is considered servicing action.

Agency response: The Agency does not agree with this recommendation. The amount of grant funds an applicant can receive should be based on eligibility and not if they are an existing RUS borrower.

4. § 1780.10(a)(6)—Recommend that the limitation on allowing rental of applicant owned equipment be deleted. Should allow for community owned equipment to be rented for the project if it is the most cost effective option.

Agency response: This recommendation was not adopted. Program funds should not be used to rent equipment an applicant owns. Program funds should be used to cover services and equipment not available to the applicant.

5. § 1780.10(c)(1)—2 commenters—Recommend removing the requirement regarding health or sanitary problem. If not removed, need to clarify that if there is no health or sanitary problem, the amount of grant that could be obtained is based on income only.

Agency response: The Agency made no change. The eligibility for the maximum 75 percent grant should be based on need as well as income. The addition of health or sanitary problems makes eligibility for the 75 percent grant consistent with the eligibility for the poverty interest rate.

6. § 1780.10(c)(2)—Recommend changing 45 percent grant to 50 percent grant.

Agency response: The Agency made no change. The 45 percent grant amount will make more grant funds available to communities with a median household income of less than 80 percent of the nonmetropolitan median household income of the State. This will allow the Agency to target grant funds to more low income communities.

7. § 1780.10(c)(1)—Recommend increasing maximum grant percentage to 85 percent.

Agency response: Agency made no change. The maximum grant is limited by law to 75 percent.

8. § 1780.10(b)(3)—As written, this section is confusing. Should rephrase to read: ''Pay project costs when other loan funding for the project is available at reasonable rates and terms.''

Agency response: The Agency made no change. This is a limitation on when grant funds can be used. The proposed language would prohibit a grant being made when the interest rate or length of repayment are not in line with those received by other communities with similar economic conditions.

1780.11 Service area requirements.

1. § 1780.11(a)(2)—Recommend that this paragraph be deleted. System officials should make decisions regarding areas to serve based on financial, environmental, and design factors.

Agency response: The Agency made no change. The Agency agrees that in installing a facility the decisions regarding areas to be served should be based on financial, environmental, and design factors. This paragraph allows the decisions regarding areas to be served to be based on these factors.

1780.13 Rates and terms.

1. § 1780.13(d)—There are currently four weekly Bond Buyer indices used to measure interest rates. This section needs to specifically identify which index is used.

Agency response: The Agency agrees and has made the change.

2. § 1780.13(e) Add a new paragraph (4) to read as follows: ''Principal and interest may be deferred in whole or in part for a period not to exceed 36 months prior to the date of the first installment due. This would be only in those cases where the development of the water source and treatment facility or sanitary treatment facilities are needed prior to the water or sewer being available to the rural users.''

Agency response: The Agency has not made this change. The regulations allow for deferment of principal and loan funds can be used to pay interest. By putting these together the same purpose can be accomplished as the suggested change.

1780.14 Security.

1. § 1780.14(c)—Recommend that the parity security requirement be deleted.

Agency response: The Agency did not make this change. Eliminating the parity security requirement would not adequately protect the security interest of the Government. The Agency should be in a ''parity'' security position with other lenders when jointly financing a project. If the project is financially sound, there is no problem with the parity requirement. The government should not guarantee other lenders loans by taking junior lien positions when jointly funded projects are developed.

1780.17 Selection priorities and process.

1. § 1780.17(a)(1)—Reduce population from 1,000 to 500 and add 5 points.

Agency response: The Agency agrees to make part of the suggested change. The Agency agrees to change the population points for communities with a population not in excess of 1,000 to 25 points. The Agency did not reduce the population to 500. Leaving the breaking point at 1,000 or less will give balance between financial feasibility and population priority.

2. § 1780.17(b)—The points for ''health'' should equal those for ''income.'' Recommend increasing points in § 1780.17(b) (1) and (2) to 30 points and increasing points in § 1780.17(b)(3) to 20.

Agency response: The Agency did not make this change. The Agency agrees that the protection of public health is a high priority. However, low income communities can least afford to construct the infrastructure that is needed to improve their health. By giving more priority to income and equal priority to small populations and health, funds can be directed to communities with the greatest need.

3. § 1780.17(b)—Recommends that there be a gradation within the 25 points allowed for health priorities for severity of health hazard. This would give more points to the greatest health hazards and less points to ''lesser'' health issues.

Agency response: The Agency did not make this change. The health priority pertaining to a water system are required by the Federal statute that authorizes the program. This would make it difficult to develop an equitable graduation scale within the health priority points for each category.

4. § 1780.17(b)—Should there be health priority points for storm drainage?

Agency response: The Agency did not make a change. There could be measurable health problems associated with a storm drainage project, the majority are safety related. Storm drainage would receive priority points under other categories, but would not rank as high as a drinking water or sewer project that directly corrects a health problem.

5. § 1780.17(c)—Change heading to ''Median Household Income.'' Also, word ''household'' should be in (c)(1).

Agency response: Agency made the change.

6. § 1780.17(f)—Delete the phase ''exceeding 20% of the development cost at time of loan or grant approval or.'' Placing an arbitrary limit would further compound the problem at hand and would hinder the resolution of the funding problem.

Agency response: The Agency made no change. Project cost overruns that exceed 20 percent should not be given priority for receiving additional funding from the Agency. The Agency is trying to reduce funds that go into project cost overruns and by reducing the funding priority is one way this can be accomplished.

1780.18 Public information.

1. § 1780.18(a)—The publishing of a notice of intent to file an application is nothing but extra cost to the applicant.

Agency response: The Agency made no change. This is a requirement of the 1996 Farm Bill.

2. § 1780.18(a)—Should increase the notice of intent from 60 days to 180 days.

Agency response: The Agency made no change. This 60 day requirement was part of the 1996 Farm Bill.

3. § 1780.18(a)—Recommend allowing alternative means of notifying public such as fliers or mailers in small communities.

Agency response: The Agency has not made the changed. The 1996 Farm Bill requires that the notice of intent to file a application be published in a general circulation newspaper.

4. § 1780.18(b)—Recommend giving applicant's the option to hold the public meeting prior to the application submittal. Delete ''after the application is filed and'' add ''The public meeting must be held not later than loan or grant approval.''

Agency response: The Agency agrees to this change.

5. § 1780.18(b)—2 commenters—Eliminate the requirement for a public meeting.

Agency response: The Agency made no change. It is extremely important that applicants keep the general public

informed about the development of a proposed project. Support from the general public for a water or waste project is one of the most important ingredients for success.

Subpart B—Loan and Grant Application Processing

1780.31 General.

1. § 1780.31(d)—Change ''State Environmental Coordinator'' to State Environmental Coordinator or designee.''

Agency response: The Agency made no change. The State Environmental Coordinator should be involved in the application process to assure that important environmental issues are properly addressed.

1780.32 Timeframes for application processing.

1. § 1780.32(a)—2 commenters—Revise to 15 working days or delete the 15 day requirement for notifying applicants that application is incomplete.

Agency response: The Agency agrees and has made this change.

1780.33 Application requirements.

1. Should continue with preapplication process—14 commenters—The preapplication allows determination if a project is workable in RUS's view before spending time and money on formal application. This makes the overall funding process more workable and gives time needed to explore options before an application is formally filed.

Agency response: The Agency has considered this recommendation and has given communities another option. If a community wishes to know if they are eligible for financial assistance they can make a written request to the Agency.

2. Eliminate requiring a PER and 1940–20 at initial stage of application process.

Agency response: The Agency did not make this change. The Preliminary Engineering Report contains information on the proposed project that the Agency must have at this stage of the application process. Form RD 1940–20 provides the information necessary for the Agency to start the environmental review process and is needed at this stage of the application process.

3. § 1780.33(c)—2 commenters—Should delete last sentence as the completion of a PER is covered in § 1780.55 or insert ''PER guidelines for water, sanitary sewer, solid waste, and storm drainage are available from the agency.''

Agency response: The Agency agrees and has deleted the sentence.

4. § 1780.33(c)—Recommend that RUS provide up front funds in form of a loan to cover cost of preliminary engineering report for poorest communities.

Agency response: The Agency made no change. The Agency has a limited amount of loan funds available and uses these funds toward the total project costs rather than partial up front costs. The Agency believes that it is important to utilize its limited funds to build projects, rather than funding a preliminary engineering report for a project that may never be built.

5. § 1780.33(f)—Delete reference to Form RD 1940–20, insert ''The applicant will consult with the processing office to determine the appropriate environmental information that should be provided.''

Agency response: The Agency revised to allow applicant to provide comparable information without using Form RD 1940–20.

6. § 1780.33(h)—2 commenters—Combine all certifications into one form called ''General Borrower Certification.'' or include a statement and check off on the application indicating that these requirements will apply and allowing the applicant to complete such certificates if and when the loan actually closes.

Agency response: The Agency made no change. However, this is a issue that will be reviewed in the future to determine what can be done in this area.

1780.35 Processing office review.

1. § 1780.35(b)(2)—Recommends that a actual monthly rate ceilings for the poverty and intermediate categories be established.

Agency response: The Agency made no change. While an actual monthly rate ceiling might work for a small geographic area it would be impossible to establish one for the entire United States that would be fair to all areas. When the debt service portion of the annual user costs exceeds the appropriate percentage of median household income, the Agency can determine the grant amount based on similar system cost.

2. § 1780.35(b)(2)—Recommend that the relationship to total debt service and the project O&M cost be considered in determining grant eligibility.

Agency response: The Agency made no change. The relationship between median household income and debt service is used because grant funds can only be used to reduce the debt. However, the similar system cost method used in (b)(3) does take into consideration other user costs in determining the grant amount.

1780.39 Application processing.

1. § 1780.39(a)—In first sentence remove ''and after the applicant selects its professional and technical representative.''

Agency response: The Agency agrees and made the change.

2. § 1780.39(b)(1)—27 commenters—Request for proposals should be deleted. Could cause potential conflicts and drive cost up. Applicants should be allowed to choose the engineer based on knowledge and experience.

Agency response: The Agency has not deleted this requirement. This is a requirement of the 1996 Farm Bill and must be complied with. However, the Agency has revised to make it clear that the selection of the engineer to develop the preliminary engineering report is not subject to this requirement. Also, clarified is that the selection of engineering services should be on the basis of all relevant factors.

3. § 1780.39(b)(1)—4 commenters—When applicants hire outside engineers, the selection of an engineer for a project design shall be conducted pursuant to state procurement laws or in the absence thereof, pursuant to the Federal Brooks Act, Public Law 92–582.

Agency response: The Agency revised the paragraph to reflect state statutes or local requirements. The Brooks Act only applies to Federal procurement and construction. This act would not apply because the Federal government is not selecting the engineer. Revised rule to reflect that the owner may procure engineering services in accordance with applicable state laws providing the procurement meets the intent of this section.

4. § 1780.39(b)(1)—4 commenters—Request for proposals should be required for all engineering services not only project design. Delete phase ''for project design.''

Agency response: The Agency revised to make this optional, but not a requirement. It should be left up to the applicant to make this decision and not made mandatory by the Agency.

5. § 1780.39(b)(1)—Change all references to request for proposal to ''Request For Qualifications and/or Request for Proposal or add a definition for Request For Proposal that includes qualification and request for engineering services.

Agency response: The Agency has revised the selection of engineering services to reflect all relevant factors.

6. § 1780.39(b)(1)—Consider moving to § 1780.54 and clarify how engineers are to be selected in (1).

Agency response: The Agency did not make this change. The section was revised to clarify how engineers are to be selected. This section pertains to all professional services and contracts related to the facility and the Agency believes that this is the best place to address engineering services.

7. § 1780.39(b)(1)—Suggest that the regulation make provision to allow an ''ongoing'' contract or relationship with a community to continue without a new selection procedure.

Agency response: The Agency made no change. The 1996 Farm Bill requires that when project design is procured separately, the selection of the engineer shall be done by a request for proposal.

8. § 1780.39(b)(1)—The rule is silent on the procurement of engineering services for the planning phase of a project.

Agency response: The Agency has revised the rule to require applicants to publicly announce all requirements for engineering services.

9. § 1780.39(b)(1)—2 commenters—Should be made clear that if engineer has already been selected through an RFP then the process does not have to be repeated for design phase.

Agency response: The Agency agrees that only one public announcement covering requirements for engineering services is necessary for a project. The revision will allow for this situation.

10. § 1780.39(b)(1)—If a project is funded in phases, would an RFP have to be done for each phase? When can noncompetitive negotiations be utilized for engineering services?

Agency response: If a project has been divided into phases and the procurement of engineering services covering all phases has been done in accordance with Agency requirements, the process would not have to be repeated as each phase is constructed. Noncompetitive negotiations could be utilized for the planning and preliminary engineering work done on a project after the applicant publicly announces all requirements for engineering services.

11. § 1780.39(b)(1)—Honor agreements for engineering services entered into prior to submitting an application.

Agency response: The Agency made no change. If engineering services were selected in accordance with Agency requirements, then the process would not have to be repeated.

12. § 1780.39(c)(2)—What is ''meaningful user cash contributions?''

Agency response: To clarify the intent of this paragraph, the Agency has changed the word ''meaningful'' to ''new.'' This should make it clear that only users not presently receiving service will be required to make an up front cash payment to indicate interest in receiving service when it becomes available.

13. § 1780.39(e)(2)—Divide into two paragraphs by adding a (e)(3) to read as follows and deleting reference to maintenance, extensions, etc. in (e)(2): Facility Maintenance Reserve. Additional reserves will need to be established for emergency maintenance, improvements to facilities, replacement of short-lived assets and other restricted reserves as deemed necessary by the governing body and lender.

Agency response: The Agency made no change. The rule would allow for the establishment of debt service reserve and a facility maintenance reserve. The amount of funds that would be placed in the reserve accounts would be determined by the applicant and the Agency. The one-tenth of an average annual loan installment is the minimum requirement and the requirement could be larger.

14. § 1780.39(e)(2)—2 commenters—Recommend that the reserve be fully funded over the first 10 years of the loan and not over the life of the loan.

Agency response: Agency made no change. It is important that borrowers maintain adequate reserves to cover unexpected short-falls of revenue and to adequately maintain their systems.

15. § 1780.39(f)—Delete last sentence in (f), and all of (1) and (2).

Agency response: The Agency has made a revision to clarify, but did not delete the sentence.

16. § 1780.39(g)(3)—Should require fidelity bond coverage be specifically for RUS funded project.

Agency response: It is not necessary that a fidelity or employee dishonesty bond cover only the RUS funded project. However, the amount of fidelity or employee dishonesty bond coverage must be enough to cover not only RUS requirements, but other claims that could be made on the bond.

17. § 1780.39(i)—Should be allowed to issue a Letter of Conditions when funds are not available or at least some percentage.

Agency response: The Agency made no change. Letter of Conditions are taken by the general public to mean a commitment has been made by the Agency to fund a project. By not issuing a Letter of Conditions until funds are available for a project, problems associated with an applicant thinking that funds are available when in fact they are not can be avoided.

1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.

1. § 1780.44(e)—Allow deobligation of funds in the same percentage as funds were obligated.

Agency response: The Agency did not make this change. The amount of deobligated funds is based on an reassessment of the need for grant funds to achieve a reasonable user rate. Deobligation of funds based on percentage of funds obligated could result in an applicant receiving more grant funds than needed to have reasonable user rates. With the limited amount of grant funds that the Agency has available, the funds must be stretched as far as possible in order to serve the maximum number of communities who need funds to construct projects.

2. § 1780.44(e)—Provide an incentive for communities to save money by applying savings against the loan first rather than grant.

Agency response: The Agency made no change. The Agency believes that the best approach is to work with communities early in the process to reduce the project costs. Once the Agency has committed funds to a community to construct a project, both parties have agreed on an amount of loan that can be repaid. Any reduction in the loan amount at this point could result in the community receiving more grant funds than needed in order to have reasonable user rates.

3. § 1780.44(e)—Recommend waiting until completion of construction before deobligating any unused funds.

Agency response: The Agency made no change. All construction projects have contingency funds set aside to cover unanticipated expenses during construction. Therefore, funds that are not needed for project costs should be deobligated and made available to another community.

1780.45 Loan and grant closing and delivery of funds.

1. § 1780.45(f)(1)—Revise to allow remaining funds to be used by a community to improve its existing system.

Agency response: The Agency made a change. The language was broadened to allow use of Agency funds not needed for the project to be used for the facility being financed. Any improvements must not result in major changes to the applicant's facility. For example, if RUS funds were used to construct a water project, then RUS funds that remain after completion could be used for any RUS eligible purpose on the applicant's whole water system.

2. § 1780.45(f)(3)—Delete the requirement to notify the attorney and engineer when funds are deobligated.

Agency response: The Agency did not make this change. Many of the engineer's or attorney's are helping the applicant with completion of a project. It is important that all interested parties be notified before funds are canceled.

1780.49 Rural or Native Alaskan villages.

1. § 1780.49(c)(4)—Revise to allow use of federal and non-federal sources of funds.

Agency response: The Agency made no change. The law that authorizes the funds for rural or native Alaskan villages requires that the matching funds be non-federal funds.

2. § 1780.49(f)(1)—Revise to authorize projects of Alaska Area Native Health Service.

Agency response: The Agency made no change. In order to assure that the projects are properly constructed the Agency will continue to restrict the waiver of construction requirements contained in this subpart to projects that are jointly funded with the State of Alaska.

3. Should contain a specific reference that solid waste disposal projects are eligible grant purposes.

Agency Response: The Agency made no change. The Agency considers solid waste disposal to be included in waste disposal services authorized by this paragraph.

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

1780.54 Technical services.

1. Consider including Architects in this section as they are sometimes involved in water and waste projects.

Agency response: The Agency agrees and made change.

2. Does ''in house'' mean one on the applicant's staff or one under previous contract with applicant or both?

Agency response: ''in house'' means one on the applicant's staff.

1780.57 Design policies.

1. § 1780.57(c)—Recommend encouraging the procurement of environmentally preferable products and services.

Agency response: The Agency revised to reflect both energy-efficient and environmentally-sound products and services.

2. § 1780.57(b)—Delete words ''or reside.'' Do not construct occupied dwellings.

Agency response: The Agency made the change.

3. § 1780.57(h)—Delete the wording ''Agency determines.''

Agency response: The Agency made no change. This language is required by the 1996 Farm Bill.

1780.67 Performing construction.

1. Recommend design build and construction management that is in existing regulations be added as an option.

Agency response: Agency has made no change. The proposed language would not exclude design build and construction management.

2. Strengthen language by inserting ''using their own personnel or designated, qualified, and supervised volunteers.''

Agency response: The Agency did not make this change. This section does not prohibit use of volunteers in addition to an applicant's own personnel.

1780.70 Owner's procurement regulations.

1. § 1780.70(b)—Recommend deleting the word ''comprehensive'' or the entire last two sentences.

Agency response: The Agency made no change. The Agency cannot make this change as it is required by law.

1780.72 Procurement methods.

1. § 1780.72—2 commenters—Recommend that design/build be added to section as an option for procurement.

Agency response: The Agency made no change. The proposed language would allow design build as a construction option.

2. § 1780.72(a)—The requirements in 1780.75(b) and (d) should be included for any small purchase over $10,000.

Agency response: The Agency made no change. The provision for termination and equal employment opportunity would apply to any contract exceeding $10,000. The type of procurement would not influence this requirement.

3. § 1780.72(a)—What does the phrase ''costing in the aggregate not more than $100,000'' mean?

Agency response: The phrase ''costing in the aggregate not more than $100,000'' means the total dollar amount of an item or product that is being purchased for a project. For example, a water system could utilize the small purchase procedures to procure $90,000 for water meters and $20,000 for equipment. In this example, each item procured was under $100,000, but the total was over $100,000.

4. § 1780.72(a) and § 1780.72(d)(6)—Recommend deleting small purchase and using noncompetitive negotiation in its place.

Agency response: The Agency did not make this change. While these two procurement methods are similar each has its place in the construction of water and waste projects.

5. § 1780.72(c)—6 commenters—Delete the competitive negotiation for engineering services.

Agency response: The Agency has not deleted this requirement. This is a requirement of the 1996 Farm Bill and must be complied with. The requirement has been clarified to reflect that the selection of engineering services should be on the basis of all relative factors. The Agency moved the selection of engineering services to § 1780.39(b)(1).

6. § 1780.72(c)—2 commenters—Certain States have enacted legislation that specifically prohibits State and Local Agencies from seeking formal or informal submission of verbal or written estimates of costs or price proposals. The rule should be amended to delete any and all provisions that require or allow the use of cost or price as a consideration in the selection of a design professional.

Agency response: The Agency made a change by revising § 1780.39(b)(1) and deleting engineering procurement from this section.

7. § 1780.72(c)—2 commenters—Should revise to require only one competitive negotiation procedure which should be at the ''Step I'' phase and not wait until the design phase. Allow credit to those applicants that can properly document that their engineer selection in Step I of a project was in conformance with competitive negotiation and would not have to be repeated at the ''design phase.''

Agency response: The Agency agrees that only one public announcement covering requirements for engineering services is necessary for a project. The revision to § 1780.39(b)(1) will allow for this situation.

8. § 1780.72(c)—Revise by removing reference to obtaining proposals from other sources.

Agency response: Agency made no change. The procurement of engineering services was moved to § 1780.39(b)(1).

9. § 1780.72(c)—Delete reference to engineering services, implies competitive negotiations can only be used for engineering services.

Agency response: Agency made the change. The procurement of engineering services was moved to § 1780.39(b)(1).

10. § 1780.72(c)—Should clarify that the applicant could select an engineer through the noncompetitive process to perform the PER and assist in the production of the application.

Agency response: Agency revised the procurement of engineering services in § 1780.39(b)(1) to clarify this issue.

11. § 1780.72(c)(2)—3 commenters—Modify by deleting references to price or cost for obtaining engineering services. The significant evaluation factors to be based on a firm's professional qualifications, specialized experience, technical competence and so forth.

Agency response: The Agency made a change by removing reference to cost or price as a consideration in § 1780.39(b)(1).

12. § 1780.72(c)(5)—Delete the word ''other'' before ''professional services.'' This will clarify that competitive negotiations is an acceptable method of procurement for any professional service.

Agency response: Agency removed all references to procurement of professional service from § 1780.72(c) and moved to § 1780.39(b)(1). § 1780.39(b)(1) contains all procurement requirements for engineering and architectural services.

13. § 1780.72(d)(5)—Delete word ''design'' so that it covers all engineering services.

Agency response: Agency removed all references to procurement of professional service from § 1780.72(c) and moved to § 1780.39(b)(1).

§ 1780.39(b)(1) contains all procurement requirements for engineering and architectural services.

1780.75 Contract provisions.

1. § 1780.75(a)—Should be made clear that liquidated damages only applies to construction contracts.

Agency response: The Agency made the change.

2. § 1780.75(c)—Change ''be legally doing business in the State where the facility is located'' to ''the surety must be listed in the Treasury Circular 570 as amended as having a license to do business in the State where the facility is located.''

Agency response: The Agency made the change.

3. § 1780.75 (b) and (f)—Recommend raising the $10,000 to $100,000.

Agency response: The Agency did not make this change. It is important to have a termination clause in contracts. The $10,000 cut off point for this requirement is as high as it should be to adequately protect the owner. The equal employment provision is required by other Federal regulations.

4. § 1780.75(c)—Recommend retaining U.S. Government as co-obligee on payment and performance bonds.

Agency response: The Agency made no change. The Agency is not a party to the contract and should not be included on any payment or performance bond.

5. § 1780.75(j)—Recommend adding the ability to modify the retainage amount to match other funding source requirements on jointly funded projects.

Agency response: The Agency made no change. Five percent retainage is the minimum amount that should be withheld to assure that construction is completed in a satisfactorily and timely manner. The regulations would allow for more than 5 percent, if required by other funding sources.

6. § 1780.75(j)—Five percent retainage on approved partial pay estimates is too low. Leave at 10 percent.

Agency response: The Agency made no change. The 5 percent retainage is in line with the industry standard. Also, the funds retained will be held until the project is substantially completed and accepted by the owner.

1780.76 Contract administration.

1. § 1780.76(c)—Should be clearly stated that the Agency, not the project engineer, have sole authority to grant or refuse the owner's request for a particular independent resident inspector.

Agency response: The Agency agrees and has revised.

2. § 1780.76(d)—Add at end of last sentence ''or similar form approved by the Agency.''

Agency response: The Agency made the change.

List of Subjects

7 CFR Parts 1775, 1777, 1778, 1780 and 1781

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1901

Civil rights, Fair housing, Rural areas.

7 CFR Part 1940

Agriculture, Grant programs—housing and community development, Loan programs—agriculture, Rural areas.

7 CFR Parts 1942 and 4284

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Waste treatment and disposal, Water supply.

7 CFR Part 1951

Accounting, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—agriculture, Rural areas.

Therefore, RUS amends chapters XVII, XVIII and XLII, title 7, Code of Federal Regulations as follows:

Part 1942, Subpart J—[Redesignated as Part 1775 and Revised]

1. Subpart J of 7 CFR part 1942 is redesignated as 7 CFR part 1775 and is revised to read as follows:

PART 1775—TECHNICAL ASSISTANCE AND TRAINING GRANTS

Sec.

1775.1 General.
1775.2 [Reserved]
1775.3 Objectives.
1775.4 Definitions.
1775.5 Source of funds.
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1775.7 Eligibility.
1775.8 Purpose.
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1775.13 Preapplications.
1775.14 Priority.
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1775.18 Grant approval and obligation of funds.
1775.19 Fidelity bond.
1775.20–11775.21 [Reserved]
1775.22 Fund disbursement.
1775.23 Grant cancellation or major changes.
1775.24 Reporting.
1775.25 Audit.
1775.26 Grant Agreement.
1775.27 Grant servicing.
1775.28 Delegation of authority.
1775.29–1775.99 [Reserved]
1775.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

§ 1775.1 General.

This part sets forth the policies and procedures for making Technical Assistance grants. Grants for technical assistance and training for water and waste disposal facilities are authorized under section 306(a)(16)(A) of the Consolidated Farm and Rural Development Act, (CONACT), (7 U.S.C. 1926(a)), as amended. Grants for solid waste management are authorized under Section 310B of the CONACT, (7 U.S.C. 1932), as amended. Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Agency employees, members of their

families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

§ 1775.2 [Reserved]

§ 1775.3 Objectives.

(a) The objectives of the Technical Assistance and Training Grant Program are to:

(1) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(2) Assist applicants in preparing applications for water and waste grants made in accordance with part 1780 of this chapter.

(3) Improve operation and maintenance of existing water and waste disposal facilities in rural areas.

(b) The objectives of the Solid Waste Management Grant Program are to:

(1) Reduce or eliminate pollution of water resources.

(2) Improve planning and management of solid waste sites.

§ 1775.4 Definitions.

Association. An entity, including a small city or town, that is eligible for Rural Utilities Service (RUS) water and waste financial assistance in accordance with § 1780.7 of this chapter.

Grantee. An entity with whom The Agency has entered into a grant agreement under this program to provide technical assistance and/or training to associations as defined in this section.

Low income. Median household income below the poverty line for a family of four as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

Regional. For purposes of the Solid Waste Management grant program, as implemented through this part, regional is defined as any multi-jurisdictional area including multi-State or any multi-jurisdictional area within a State.

Rural area. For water and waste disposal facilities the terms ''rural'' or ''rural area'' will not include any area in a city or town with population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§ 1775.5 Source of funds.

Technical Assistance and Training grants awarded will be made from not less than one (1) percent or, at the discretion of the Agency Administrator, not more than three (3) percent of any appropriations for grants under Section 306(a)(2) of the CONACT, (7 U.S.C. 1926(a)). Technical Assistance and Training grant funds not obligated by September 1 of each fiscal year will be used for water and waste grants made in accordance with part 1780 of this chapter. This section does not apply to Solid Waste Management grants.

§ 1775.6 Allocation of funds.

Control of Technical Assistance and Training grant and Solid Waste Management grant funds will be retained in the National office and allocated on a project case basis. These funds are not available for obligation by States.

§ 1775.7 Eligibility.

(a) Entities eligible for Technical Assistance and Training (TAT) grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service (IRS) of the United States.

(b) Entities eligible for Solid Waste Management (SWM) grants are nonprofit organizations, including:

(1) Private nonprofit organizations that have been granted tax exempt status by the IRS; and

(2) Public bodies including local governmental-based multi-jurisdictional organizations.

(c) Applicants for either TAT or SWM grants must also have the proven ability, background, experience, legal authority, and actual capacity to provide technical assistance and/or training on a regional basis to associations as provided in § 1775.3.

§ 1775.8 Purpose.

(a) Technical Assistance and/or Training Grants may be used to:

(1) Identify and evaluate solutions to water problems of associations in rural areas relating to:

(i) Source.

(ii) Storage.

(iii) Treatment.

(iv) Distribution.

(2) Identify and evaluate solutions to waste problems of associations in rural areas relating to:

(i) Collection.

(ii) Treatment.

(iii) Disposal.

(3) Assist associations that have filed a preapplication with the Agency in the preparation of water and/or waste loan and/or grant applications.

(4) Provide training to association personnel that will improve the management, operation and maintenance of water and waste disposal facilities.

(5) To pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a) (1) through (4) of this section.

(b) Solid Waste Management grants may be used to:

(1) Evaluate current landfill conditions to determine threats to water resources.

(2) Provide technical assistance and/or training to enhance operator skills in the maintenance and operation of active landfills.

(3) Provide technical assistance and/or training to help communities reduce the solid waste stream.

(4) Provide technical assistance and/or training for operators of landfills which are closed or will be closed in the near future with the development/implementation of closure plans, future land use plans, safety and maintenance planning, and closure scheduling within permit requirements.

§ 1775.9 [Reserved]

§ 1775.10 Limitations.

Grant funds may not be used to:

(a) Recruit applications for the Agency's water and waste loan and/or any loan and/or grant program.

(b) Duplicate current services, replacement or substitution of support previously provided such as those performed by an association's consultant in developing a project.

(c) Fund political activities.

(d) Pay for capital assets, the purchase of real estate or vehicles, improve and renovate office space, or repair and maintain privately-owned property.

(e) Pay for construction or operation and maintenance costs.

(f) Pay costs incurred prior to the effective date of grants made under this part.

(g) Pay for technical assistance as defined in this part which duplicates assistance provided to implement an action plan funded by Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act (7 U.S.C. 6601 note) for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with the FS and RUS to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide

documentation to FS and RUS regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

§ 1775.11 Equal opportunity requirements.

The policies and regulations contained in subpart E of part 1901 of this title apply to grants made under this part.

§ 1775.12 Environmental requirements.

The policies and regulations contained in subpart G of part 1940 of this title apply to grants made for the purposes in § 1775.8.

§ 1775.13 Preapplications.

(a) Applicants will file an original and one copy of SF–424.1, ''Application for Federal Assistance (For Non-construction),'' with the appropriate Agency office between October 1 and December 31 each fiscal year. This form is available in all Agency offices. Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate State Office. The State Office will review and forward preapplications, with their recommendations, within seven working days to the National Office, Attention: Water and Waste Disposal. Applicants providing technical assistance and/or training in more than one State will forward the preapplication to the Assistant Administrator, Water and Waste, Rural Utilities Service, Washington, DC 20250. Preapplications for Solid Waste Management grants that cannot be funded in the fiscal year received will not be retained for consideration for funding in the following fiscal year and will be handled as outlined in paragraph (g) of this section.

(b) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence and authority in the form of certified copies of organizational documents and a certified list of directors and officers with their respective terms.

(2) Evidence tax exempt status from the Internal Revenue Service.

(3) Brief written narrative which includes items such as:

(i) The proposed service(s) to be provided, including the benefits of the technical assistance and/or training.

(ii) Area to be served.

(iii) Name of association(s) or type of association(s) that will be served.

(iv) Median household income of the population to be served by each association(s).

(v) Grantee's experience, including experience of key staff members and person(s) providing the technical assistance and/or training.

(vi) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(vii) Method used to select the association(s) that will receive the service.

(viii) Brief description of how the service will be provided, such as, through currently employed personnel or some other method.

(ix) Method to be used for delivery of the service, including personnel to be utilized and tasks to be contracted, if any.

(4) Latest financial information to show the organization's financial capacity to carry out the proposed work. As a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred.

(5) Estimated breakdown of costs including those to be funded by grantee as well as other sources.

(6) Budget and accounting system in place or proposed.

(7) Evaluation method to determine if objective(s) of the proposed activity is being accomplished.

(c) Upon receipt of a preapplication, the National Office will:

(1) Review and evaluate the preapplication and accompanying documents;

(2) Request from the Office of General Counsel (OGC), a legal determination of applicant's legal existence and authority to provide technical assistance and/or training. The legal opinion will be obtained from the Regional Attorney servicing the area where the applicant's headquarters is located; and

(3) Normally, respond to the applicant within 45 days after December 31 of each year using Form AD–622, ''Notice of Preapplication Review Action,'' indicating the action taken on the preapplication.

(d) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD–622 and advised of their appeal rights under subpart B of part 1900 of this title.

(e) Applicants who are eligible, but do not have the priority necessary for further consideration will be notified with Form AD–622, which includes the following statements:

''Your proposal cannot be funded within the available funds.''

''You are advised against incurring obligations which cannot be fulfilled without Agency funds.''

(f) Applicants that are eligible for funding within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without Agency funds.

(g) Applicants who have filed preapplications for solid waste management grant funds that cannot be funded within the available funds will be notified, using Form AD–622, that their preapplication will not be retained. They will also be notified that they may file a new preapplication when funds again become available using the following statement:

''If the Agency receives funding for the program in FY __, you may file a new preapplication on or after October 1, 19__.''

§ 1775.14 Priority.

(a) The preapplication and supporting information will be used to determine the applicant's priority for available funds for the Technical Assistance and Training Grant program. The following specific criteria will be considered in the competitive selection of Technical Assistance and Training Grant recipients:

(1) Applicant's demonstrated capability and past performance in providing technical assistance and/or training to rural associations.

(2) The extent to which the population of the associations served have low income.

(3) Applicant's financial and if applicable, in-kind resource that will maximize use of technical assistance and/or training funds for direct staffing of activities that are delivered to the associations.

(4) The extent to which the project will be cost effective, including but not limited to the ratio of proposed personnel to the cost of the project, the cost per associations served by the project, and the expected benefits from the project.

(5) How well the proposal coincides with the objectives of the Agency's Water and Waste Disposal program authorized in part 1780 of this chapter.

(6) Applicants proposing to serve multi-state, regional, or nationwide areas.

(7) Applicants whose timeframe for completion of the technical assistance and/or training grant project is 12 months or less.

(b) Preapplications received from local governmental-based, multi-

jurisdictional organizations for the SWM grant program will be given priority within the available funds.

§ 1775.15 [Reserved]

§ 1775.16 Application processing.

(a) Upon notification on Form AD–622 that the applicant is eligible for funding, the following will be submitted to the National Office by the applicant:

(1) SF–424.1.

(2) Proposed scope of work detailing the training and/or technical assistance to be accomplished and timeframes for completion of each task.

(3) Proposed budget.

(4) Other requested information needed by the Agency to make a grant award determination.

(b) The following forms and documents will be part of the grant docket:

(1) Form RD 400–1, ''Equal Opportunity Agreement.''

(2) Form RD 400–4, ''Assurance Agreement.''

(3) Grant Agreement signed by the applicant.

(4) Scope of work prepared by the applicant.

(5) Form RD 1940–1, ''Request for Obligation of Funds.''

(c) If the applicant fails to submit the application and related material by the date shown on Form AD–622 (normally 30 days from the date of Form AD–622), the Agency may discontinue consideration of the application.

§ 1775.17 [Reserved]

§ 1775.18 Grant approval and obligation of funds.

(a) The National Office will review the application and other documents to determine whether the proposal complies with this part.

(b) All grants made under this part will be approved and obligated by the Agency Administrator or designee.

(c) The obligation of funds will be handled in accordance with part 1780 of this chapter.

(d) An executed copy of the Grant Agreement and scope of work will be sent to the applicant on the obligation date, along with a copy of Form RD 1940–1. The Agency will retain the executed original of the Grant Agreement. The grant will be considered closed on the obligation date.

(e) If the grant is not approved, the applicant will be notified in writing of the reason(s) for rejection. The notification to the applicant will state that a review of this decision by the Agency may be requested by the applicant under subpart B of part 1900 of this title.

§ 1775.19 Fidelity bond.

Prior to the advancing of funds, the grantee will provide fidelity bond coverage for the positions of persons entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of monies that the grantee will have on hand at any one time for technical assistance and/or training provided in accordance with the Grant Agreement. Unless prohibited by State Law, the United States, acting through the Agency, will be named as co-obligee in the bond. The bond must be obtained from a company listed in Department of Treasury Circular 570, as amended. Form RD 440–24, ''Position Fidelity Schedule Bond Declarations,'' may be used. A certified power-of-attorney with effective date will be attached to the bond.

§§ 1775.20–1775.21 [Reserved]

§ 1775.22 Fund disbursement.

Grantees will be reimbursed as follows:

(a) Standard Form (SF) 270, ''Request for Advance or Reimbursement,'' will be completed by the applicant and submitted to the National Office not more frequently than monthly.

(b) Upon receipt of a properly completed SF 270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230.

§ 1775.23 Grant cancellation or major changes.

If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director of Legislative Affairs and Public Information Staff (LAPIS) giving the reasons for such action. In the case of a grant cancellation, Form RD 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' will not be submitted to the Finance Office until 5 working days after notifying the Director of LAPIS, and grant obligation cancellations will not be submitted to the National Office until 5 working days after notifying the Director of LAPIS.

§ 1775.24 Reporting.

Standard Form (SF) 269, ''Financial Status Report,'' SF 272, ''Federal Cash Transactions Report,'' and a project performance activity report will be required of all grantees on a quarterly basis. A final project performance report will be required with the last SF 269. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All multi-state, regional, and nationwide grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Program Official. The State Program Official will review and forward to the National Office the report with comments. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§ 1775.25 Audit.

The grantee will provide an audit report prepared in accordance with § 1780.47 of this chapter within 90 days after project completion.

§ 1775.26 Grant Agreement.

RUS Bulletin 1775–1 is a Grant Agreement which sets forth the procedures for making and servicing grants made under this part. Bulletins, instructions and forms referenced are for use in administering grants made under this part and are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, D.C. 20250–1500.

§ 1775.27 Grant servicing.

Grants will be serviced in accordance with the grant agreement and subpart E

of part 1951 of this title. Subpart B of part 1900 of this title will be followed when grants are terminated for cause.

§ 1775.28 Delegation of authority.

The authority under this part is redelegated to the Assistant Administrator, Water and Waste, except for the discretionary authority contained in § 1775.5. The Assistant Administrator, Water and Waste may redelegate the authority in this section.

§§ 1775.29–1775.99 [Reserved]

§ 1775.100 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0123. Public reporting for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB 0575–0123), Washington, DC 20503.

Part 4284, Subpart E [Redesignated as Part 1777 and Revised]

2. Subpart E of 7 CFR part 4284 is redesignated as 7 CFR part 1777 and is revised to read as follows:

PART 1777—SECTION 306C WWD LOANS AND GRANTS

Sec.
1777.1 General.
1777.2 [Reserved]
1777.3 Objective.
1777.4 Definitions.
1777.5–1777.10 [Reserved]
1777.11 Making, processing, and servicing loans and grants.
1777.12 Eligibility.
1777.13 Project priority.
1777.14–1777.20 [Reserved]
1777.21 Use of funds.
1777.22–1777.30 [Reserved]
1777.31 Rates.
1777.32–1777.40 [Reserved]
1777.41 Individual loans and grants.
1777.42 Delegation of authority.
1777.43 Bulletins.
1777.44–1777.99 [Reserved]
1777.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

§ 1777.1 General.

(a) This part outlines Rural Utilities Service (RUS) policies and procedures for making Water and Waste Disposal (WWD) loans and grants authorized under section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(c)), as amended.

(b) Agency officials will maintain liaison with officials of other Federal, State, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) Agency officials shall cooperate with appropriate State agencies in making loans and/or grants that support State strategies for rural area development.

(d) Funds allocated in accordance with this part will be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity to participate in this program.

(e) Federal statutes provide for extending the Agency's financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1777.2 [Reserved]

§ 1777.3 Objective.

The objective of the Section 306C WWD Loans and Grants program is to provide water and waste disposal facilities and services to low-income rural communities whose residents face significant health risks.

§ 1777.4 Definitions.

Applicant. Entity that receives the Agency loan or grant under this part. The entities can be public bodies such as municipalities, counties, districts, authorities, or other political subdivisions of a State, and organizations operated on a not-for-profit basis such as associations, cooperatives, private corporations, or Indian tribes on Federal and State reservations, and other Federally recognized Indian tribes.

Colonia. Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

Cooperative. A cooperative formed specifically for the purpose of the installation, expansion, improvement, or operation of water supply or waste disposal facilities or systems.

Individual. Recipient of a loan or grant through the applicant to facilitate use of the applicant's water and/or waste disposal system.

Rural areas. Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States. They can be located in any of the 50 States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§§ 1777.5–1777.10 [Reserved]

§ 1777.11 Making, processing, and servicing loans and grants.

Unless specifically modified by this part, loans and/or grants will be made, processed, and serviced in accordance with part 1780 of this chapter.

§ 1777.12 Eligibility.

(a) The provisions of paragraphs (a)(1) and (2) of this section do not apply to a rural area recognized as a colonia. Otherwise, the facility financed under this part must provide water and/or waste disposal services to rural areas of a county where, on the date preapplication is received by the Agency, the:

(1) Per capita income of the residents is not more than 70 percent of the most recent national average per capita income, as determined by the Department of Commerce; and

(2) Unemployment rate of the residents is not less than 125 percent of the most recent national average unemployment rate, as determined by the Bureau of Labor Statistics.

(b) Residents of the rural area to be served must face significant health risks due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water and/or waste disposal systems. The file should contain documentation to support this determination.

§ 1777.13 Project priority.

Paragraphs (a) through (d) of this section indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, Agency officials must consider the priority items met by each

preapplication and the degree to which those priorities are met.

(a) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine applicant eligibility and the proposed project's priority for available funds. Applicants determined ineligible will be advised of their appeal rights in accordance with 7 CFR part 11.

(b) *State Office review.* All preapplications will be reviewed and scored for funding priority at each State Office using RUS Bulletin 1777–2. Funds will be requested from the National Office, Attention: Water and Waste Processing, using RUS Bulletin 1777–3. Eligible applicants that cannot be funded should be advised that funds are not available and advised of their appeal rights as set forth in 7 CFR part 11.

(c) *National Office.* The National Office will allocate funds on a project-by-project basis as requests are received. If the amount of funds requested exceeds the amount of funds available, the total project score will be used to select projects for funding. The RUS Administrator may assign up to 35 additional points that will be considered in the total points for items such as geographic distribution of funds, severity of health risks, etc.

(d) *Selection priorities.* The priorities described below will be used to rate preapplications and in selecting projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(5) of this section and will be used in selecting projects for funding. A copy of RUS Bulletin 1777–2, used to rate applications, should be placed in the case file for future reference.

(1) *Population.* The proposed project will serve an area with a rural population:

(i) Not in excess of 1,500—30 points.

(ii) More than 1,500 and not in excess of 3,000—20 points.

(iii) More than 3,000 and not in excess of 5,500—10 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the statewide nonmetropolitan median household income—40 points.

(ii) More than 50 percent and not in excess of 60 percent of the statewide nonmetropolitan median household income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the statewide nonmetropolitan median household income—10 points.

(3) *Joint financing.* The amount of joint financing committed to the proposed project is:

(i) Twenty percent or more private, local, or State funds except Federal funds channeled through a State agency—10 points.

(ii) Five to 19 percent private, local, or State funds except Federal funds channeled through a State agency—5 points.

(4) *Colonia.* (See definition in § 1777.4). The proposed project will provide water and/or waste disposal services to the residents of a colonia—50 points.

(5) *Discretionary.* In certain cases, the State Program Official may assign up to 15 points for items such as natural disaster, to improve compatibility/coordination between the Agency's and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc. A written justification must be prepared and attached to RUS Bulletin 1777–2 each time these points are assigned.

§§ 1777.14–1777.20 [Reserved]

§ 1777.21 Use of funds.

(a) *Applicant.* Funds may be used to:

(1) Construct, enlarge, extend, or otherwise improve community water and/or waste disposal systems. Otherwise improve would include extending service lines to and/or connecting residence's plumbing to the system.

(2) Make loans and grants to individuals for extending service lines to and/or connecting residences to the applicant's system. The approval official must determine that this is a practical and economical method of connecting individuals to the community water and/or waste disposal system. Loan funds can only be used for loans, and grant funds can only be used for grants.

(3) Make improvements to individual's residence when needed to allow use of the water and/or waste disposal system.

(4) Grants can be made up to 100 percent of eligible project costs.

(b) *Individuals.* Funds may be used to:

(1) Extend service lines to residence.

(2) Connect service lines to residence's plumbing.

(3) Pay reasonable charges or fees for connecting to a community water and/or waste disposal system.

(4) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(5) Construction and/or partitioning off a portion of dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

(6) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs (b)(1) or (b)(2) of this section and is required by local or State law.

§§ 1777.22–1777.30 [Reserved]

§ 1777.31 Rates.

(a) Applicant loans will bear interest at the rate of 5 percent per annum.

(b) Individual loans will bear interest at the rate of:

(1) Five percent per annum; or

(2) The Federal Financing Bank rate for loans of a similar term at the time of Agency loan approval, whichever is less.

§§ 1777.32–1777.40 [Reserved]

§ 1777.41 Individual loans and grants.

(a) The amount of loan and grant funds approved by the Agency will be based on the need shown in the application and an implementation plan submitted by the applicant. The implementation plan will include such things as: purpose, how funds will be used, proposed application process, construction requirements, control and disbursement of funds, etc. The implementation plan will be attached to RUS Bulletin 1777–1.

(b) RUS Bulletin 1777–1 is a Memorandum of Agreement which sets forth the procedures and regulations for making and servicing loans and grants made by applicants to individuals. The State Program Official is authorized to enter into a Memorandum of Agreement with any applicant providing loans and/or grants to individuals. The Memorandum of Agreement can be amended to comply with State law and recommendations by the Office of General Counsel. It may also be amended to eliminate references to loans and/or grants if no loan and/or grant is involved. The State Program Official is responsible for:

(1) Ensuring that all provisions of the Agreement are understood.

(2) Determining that the applicant has the ability to make and service loans and/or grants in the manner outlined in the Agreement.

(c) Agency funds remaining after providing individual loans and/or grants will be returned to the Agency. The funds should be disbursed to individuals within 1 year from the date water and/or waste disposal service is available to the individuals. The State Program Official can make an exception to this 1 year requirement if written justification is provided by the applicant.

§ 1777.42 Delegation of authority.

The State Program Official is responsible for the overall implementation of the authorities contained in this part and may redelegate any such authority to appropriate Agency employees.

§ 1777.43 Bulletins.

RUS Bulletin 1780–12 referenced in part 1780 of this chapter and RUS Bulletin 1777–1, 1777–2 and 1777–3 are for use in administering loans and/or grants made under this part. Bulletins, instructions and forms are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§§ 1777.44–1777.99 [Reserved]

§ 1777.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0570–0001. Public reporting burden for this collection of information is estimated to vary from 5 to 30 hours per response with an average of 17.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Part 1942, Subpart K [Redesignated as Part 1778 and Revised]

3. Subpart K of 7 CFR part 1942 is redesignated as 7 CFR part 1778 and is revised to read as follows:

PART 1778—EMERGENCY COMMUNITY WATER ASSISTANCE GRANTS

Sec.

1778.1 General.
1778.2 [Reserved]
1778.3 Objective.
1778.4 Definitions.
1778.5 [Reserved]
1778.6 Eligibility.
1778.7 Project priority.
1778.8 [Reserved]
1778.9 Uses.
1778.10 Restrictions.
1778.11 Maximum grants.
1778.12 [Reserved]
1778.13 Set-aside.
1778.14 Other considerations.
1778.15–1778.20 [Reserved]
1778.21 Application processing.
1778.22 Planning development and procurement.
1778.23 Grant closing and disbursement of funds.
1778.24–1778.30 [Reserved].
1778.31 Performing development.
1778.32 Grant cancellation.
1778.33 [Reserved]
1778.34 Grant servicing.
1778.35 Subsequent grants.
1778.36 [Reserved]
1778.37 Forms, Instructions and Bulletins.
1778.38–1778.99 [Reserved]
1778.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

§ 1778.1 General.

(a) This part outlines policies and procedures for making Emergency Community Water Assistance Grants authorized under Section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended. Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

(b) Agency officials will maintain liaison with officials of other Federal, State, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) Agency officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this part are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity along with other rural residents to participate in the benefits of this program. This includes equal application of outreach activities of Field Offices.

(e) Federal statutes provide for extending the Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1778.2 [Reserved]

§ 1778.3 Objective.

The objective of the Emergency Community Water Assistance Grant Program is to assist the residents of rural areas that have experienced a significant decline in quantity or quality of water to obtain adequate quantities of water that meet the standards set by the Safe Drinking Water Act (42 U.S.C. 300f et seq.) (SDWA).

§ 1778.4 Definitions.

Emergency. Occurrence of an incident such as, but not limited to, a drought, earthquake, flood, hurricane, disease outbreak, or chemical spill.

Rural areas. Includes any area in any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States, located in any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

Significant decline in quality. A significant decline in quality of potable water is where the present community source or delivery system does not meet, as a result of an emergency, the current SDWA requirements. For a private source or delivery system a significant decline in quality is where the water is no longer potable as a result of an emergency.

Significant decline in quantity. A significant decline in the quantity is caused by a disruption of the potable water supply by an emergency. The disruption in quantity of water prevents the present source or delivery system from supplying potable water needs to rural residents. This would not include a decline in excess water capacity.

§ 1778.5 [Reserved]

§ 1778.6 Eligibility.

(a) Grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include counties, cities, townships, incorporated towns and villages, boroughs, authorities, districts, and other political subdivisions of a State. Public bodies also includes Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(b) In the case of grants made to alleviate a significant decline in quantity or quality of water available from the water supplies of rural residents, the applicant must demonstrate that the decline occurred within two years of the date the application was filed with the Agency.

This would not apply to grants made for repairs, partial replacement, or significant maintenance on an established water system.

§ 1778.7 Project priority.

Paragraphs (a) through (d) of this section indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications*. The application and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(b) *State Office review*. All applications will be reviewed and scored for funding priority using RUS Bulletin 1778–1. The State Program Official will request funds from the National Office, Attention: Assistant Administrator, Water and Waste, using RUS Bulletins 1778–1 and 1778–2. If an application cannot be funded, the State Program Official will be notified. Eligible applicants that cannot be funded should be advised that funds are not available.

(c) *National Office review*. Each year all funding requests will be reviewed by the National Office starting November 1 and will continue as long as funds are available except for the first year in which funds are made available for this grant program. A review of funding requests the first year will start 30 days after funds are made available. Projects selected for funding will be considered based on the priority criteria and available funds. Projects must compete on a national basis for available funds, and the National Office will allocate funds to State offices on a project by project basis.

(d) *Selection priorities*. The priorities described below will be used by the State Program Official to rate applications and by the Assistant Administrator of Water and Waste to select projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(5) of this section and will be considered in selecting projects for funding. A copy of RUS Bulletins 1778–1 and 1778–2 used to rate applications, should be placed in the case file for future reference.

(1) *Population*. The proposed project will serve an area with a rural population:

(i) Not in excess of 1,500—30 points.

(ii) More than 1,500 and not in excess of 3,000—20 points.

(iii) More than 3,000 and not in excess of 5,000—15 points.

(2) *Income*. The median household income of population to be served by the proposed project is:

(i) Not in excess of 70% of the statewide nonmetropolitan median household income—30 points.

(ii) More than 70% and not in excess of 80% of the statewide nonmetropolitan median household income—20 points.

(iii) More than 80% and not in excess of 90% of the statewide nonmetropolitan median household income—10 points.

(iv) Over 90% of the statewide nonmetropolitan median household income—0 points.

(3) *Significant decline*. Points will only be assigned for one of the following paragraphs when the primary purpose of the proposed project is to correct a significant decline in the:

(i) Quantity of water available from private individually owned wells or other individual sources of water—30 points; or

(ii) Quantity of water available from an established system's source of water—20 points; or

(iii) Quality of water available from private individually owned wells or other individual sources of water—30 points; or

(iv) Quality of water available from an established system's source of water—20 points.

(4) *Acute shortage*. Grants made in accordance with § 1778.11(b) to assist an established water system remedy an acute shortage of quality water or correct a significant decline in the quantity or quality of water that is available—10 points.

(5) *Discretionary*. In certain cases the Administrator may assign up to 30 points for items such as geographic distribution of funds, rural residents hauling water, severe contamination levels, etc.

§ 1778.8 [Reserved]

§ 1778.9 Uses.

Grant funds may be used for the following purposes:

(a) Waterline extensions from existing systems.

(b) Construction of new waterlines.

(c) Repairs to an existing system.

(d) Significant maintenance to an existing system.

(e) Construction of new wells, reservoirs, transmission lines, treatment plants, and other sources of water.

(f) Equipment replacement.

(g) Connection and/or tap fees.

(h) Pay costs that were incurred within six months of the date an application was filed with the Agency to correct an emergency situation that would have been eligible for funding under this part.

(i) Any other appropriate purpose such as legal fees, engineering fees, recording costs, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights associated with developing sources of, treating, storing, or distributing water.

(j) Assist rural water systems to comply with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) (FWPCA) or the SDWA when such failure to comply is directly related to a recent decline in quality of potable water. This would not apply to changes in the requirements of FWPCA or SDWA.

§ 1778.10 Restrictions.

(a) Grant funds may not be used to:

(1) Assist any city or town with a population in excess of 10,000 inhabitants according to the most recent decennial census of the United States.

(2) Assist a rural area that has a median household income in excess of the statewide nonmetropolitan median household income according to the most recent decennial census of the United States.

(3) Finance facilities which are not modest in size, design, cost, and are not directly related to correcting the potable water quantity or quality problem.

(4) Pay loan or grant finder's fees.

(5) Pay any annual recurring costs that are considered to be operational expenses.

(6) Pay rental for the use of equipment or machinery owned by the rural community.

(7) Purchase existing systems.

(8) Refinance existing indebtedness, except for short-term debt incurred in accordance with § 1778.9(h).

(9) Make reimbursement for projects developed with other grant funds.

(10) Finance facilities that are not for public use.

(b) Nothing in paragraph (a)(1) of this section shall preclude rural areas from submitting joint proposals for assistance under this part. Each entity applying for financial assistance under this part to fund their share of a joint project will be considered individually.

§ 1778.11 Maximum grants.

(a) Grants made to alleviate a significant decline in quantity or quality of water available from the water supplies in rural areas that occurred within two years of filing an application with the Agency cannot exceed $500,000.

(b) Grants made for repairs, partial replacement, or significant maintenance on an established system to remedy an acute shortage or significant decline in the quality or quantity of potable water cannot exceed $75,000.

(c) Grants under this part, subject to paragraphs (a) and (b) of this section, shall be made for 100 percent of eligible project costs.

§ 1778.12 [Reserved]

§ 1778.13 Set-aside.

(a) At least 70 percent of all grants made under these grant programs shall be for projects funded in accordance with § 1778.11(a).

(b) At least 50 percent of the funds appropriated for this grant program shall be allocated to rural areas with populations not in excess of 3,000 inhabitants according to the most recent decennial census of the United States.

§ 1778.14 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this part are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), as outlined in subpart E of part 1901 of this title.

(b) *Environmental requirements.* All projects must have appropriate environmental reviews in accordance with RUS requirements.

(c) *Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.*). All projects must comply with the requirements set forth in 7 CFR part 21.

(d) *Flood and mudslide hazard area precautions.* If the project is located in a flood or mudslide area, then flood or mudslide insurance must be provided as required in subpart A of part 1806 of this title (RD Instruction 426.2).

(e) *Governmentwide debarment and suspension* (nonprocurement) and requirements for drug-free work place. All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 7 CFR part 3017 and RD Instruction 1940–M.

(f) *Intergovernmental review.* All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V, and RD Instruction 1940–J.

§§ 1778.15–1778.20 [Reserved]

§ 1778.21 Application processing.

(a) To the extent possible, an application under this part will be approved or disapproved within 60 days of the date that a complete application and all related material is submitted to the Agency.

(b) The material submitted with the application should include the Preliminary Engineer Report, population and median household income of the area to be served, description of project, and nature of emergency that caused the problem(s) being addressed by the project. The documentation must clearly show that the applicant has had a significant decline in the quantity and/or quality of potable water or an acute shortage of potable water and the proposed project will eliminate the problem. For projects to be funded in accordance with § 1778.11(a), evidence must be furnished that a significant decline in quantity or quality occurred within two years of filing the application with the Agency.

(c) The processing office should assist the applicant in application assembly and processing.

(d) Appropriate application review and approval procedures outlined in subpart B of part 1780 of this chapter.

(e) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1778.7. A priority rating will be assigned to each application by the State Program Official.

(f) When the National Office has allocated funds to the State for a project, applicable provisions outlined in subpart B of part 1780 of this chapter will be followed in preparation of the grant docket. This would include development of an operating budget showing that the applicant can meet all its obligations and provide the intended services.

(g) When favorable action will not be taken on an application, the applicant will be notified in writing by the State Program Official of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by the Agency may be requested by the applicant in accordance with 7 CFR part 11.

(h) State Program Officials are authorized to approve grants made in accordance with this part and RUS Staff Instruction 1780–1.

(i) Funds will be obligated and approval announcement made in accordance with the provisions of subpart B of part 1780 of this chapter.

§ 1778.22 Planning development and procurement.

Planning development and procurement for grants made under this part will be in accordance with subpart C of part 1780 of this chapter. A certification should be obtained from the State agency or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will be in compliance with requirements of the SDWA.

§ 1778.23 Grant closing and disbursement of funds.

(a) Grants will be closed in accordance with § 1780.45 of this chapter.

(b) RUS Bulletin 1780–12, ''Water or Waste Grant Agreement,'' will be executed by all applicants. State Program Officials are authorized to execute the agreement on behalf of the Agency.

(c) The grant will be considered closed on the date RUS Bulletin 1780–12 is signed by the Agency. The Finance Office will be notified of the grant closing date. The Agency will retain the original of the Grant Agreement.

(d) The Agency's policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Grant funds will be disbursed by using multiple advances.

§§ 1778.24–1778.30 [Reserved]

§ 1778.31 Performing development.

(a) Applicable provisions of subpart C of part 1780 of this chapter will be followed in performing development for grants made under this part.

(b) After filing an application in accordance with § 1778.21 and when immediate action is necessary, the State Program Official may concur in an applicant's request to proceed with construction before funds are obligated provided the RUS environmental requirements are complied with. The applicant must be advised in writing that:

(1) Any authorization to proceed or any concurrence in bid awards, contract concurrence, or other project development activity, is not a commitment by the Agency to provide grant funds under this part.

(2) The Agency is not liable for any debt incurred by the applicant in the event that funds are not provided under this part.

§ 1778.32 Grant cancellation.

The State Program Official may prepare and execute Form RD 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office should receive a copy of Form RD 1940–10. The applicant's attorney and engineer may be provided a copy of

Form RD 1940–10. A copy should also be sent to the National Office, Attention: Water and Waste Processing.

§ 1778.33 [Reserved]

§ 1778.34 Grant servicing.

(a) Grants will be serviced in accordance with § 1951.215 of subpart E of part 1951 of this title and subpart O of part 1951 of this title.

(b) The grantee will provide an audit report in accordance with § 1780.47 of this chapter.

§ 1778.35 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this part. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in § 1778.11.

§ 1778.36 [Reserved]

§ 1778.37 Forms, Instructions and Bulletins.

Bulletins, instructions and forms referenced are for use in administering grants made under this part and are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§§ 1778.38–1778.99 [Reserved]

§ 1778.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0575–0074. Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

4. Part 1780, is added to read as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

Subpart A—General Policies and Requirements

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1780.1 General.
1780.2 Purpose.
1780.3 Definitions and grammatical rules of construction.
1780.4 Availability of forms and regulations.
1780.5 [Reserved]
1780.6 Application information.
1780.7 Eligibility.
1780.8 [Reserved]
1780.9 Eligible loan and grant purposes.
1780.10 Limitations.
1780.11 Service area requirements.
1780.12 [Reserved]
1780.13 Rates and terms.
1780.14 Security.
1780.15 Other Federal, State, and local requirements.
1780.16 [Reserved]
1780.17 Selection priorities and process.
1780.18 Allocation of program funds.
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Subpart B—Loan and Grant Application Processing

1780.31 General.
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1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.
1780.45 Loan and grant closing and delivery of funds.
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1780.75 Contract provisions.
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Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

1780.80 General.
1780.81 Policies related to use of bond counsel.
1780.82 [Reserved]
1780.83 Bond transcript documents.
1780.84–1780.86 [Reserved]
1780.87 Permanent instruments for Agency loans.
1780.88 [Reserved]
1780.89 Multiple advances of Agency funds using permanent instruments.
1780.90 Multiple advances of Agency funds using temporary debt instruments.
1780.91–1780.93 [Reserved]
1780.94 Minimum bond specifications.
1780.95 Public bidding on bonds.
1780.96–1780.100 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

§ 1780.1 General.

(a) This part outlines the policies and procedures for making and processing direct loans and grants for water and waste projects. The Rural Utilities Service (RUS) shall cooperate fully with State and local agencies in making loans and grants to assure maximum support to the State strategy for rural development. Agency officials and their staffs shall maintain coordination and liaison with State agency and substate planning districts.

(b) The income data used in this part to determine median household income must be that which most accurately reflects the income of the service area. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable

impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the RUS National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(c) RUS debt instruments will require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness to the Government then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(d) Funds allocated for use under this part are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Native Americans residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this part that affect applicant eligibility, the adequacy of RUS's security, or the adequacy of service to users of the facility and all other requirements of this part must be met.

(e) RUS financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

(f) Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for assistance are required to identify any known relationship or association with a RUS employee.

(g) Water and waste facilities will be designed, installed, and operated in accordance with applicable laws which include but are not limited to the Safe Drinking Water Act, Clean Water Act and the Resource Conservation and Recovery Act.

(h) RUS financed facilities will be consistent with any current development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(i) Each RUS financed facility will be in compliance with appropriate State or Federal agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water.

(j) Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements. In developing water and waste systems, applicants must consider alternatives of ownership, system design, and the sharing of services.

(k) Applicants should be aware of and comply with other Federal statute requirements including but not limited to:

(1) *Section 504 of the Rehabilitation Act of 1973.* Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RUS financial assistance;

(2) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and subpart E of part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of this title;

(3) *The Americans with Disabilities Act (ADA) of 1990.* This Act (42 U.S.C. 12101 *et seq.*) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public; and

(4) *Age Discrimination Act of 1975.* This Act (42 U.S.C. 6101 *et seq.*) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 1780.2 Purpose.

Provide loan and grant funds for water and waste projects serving the most financially needy communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users.

§ 1780.3 Definitions and grammatical rules of construction.

(a) *Definitions.* For the purposes of this part:

Agency means the Rural Utilities Service and any United States Department of Agriculture (USDA) employee acting on behalf of the Rural Utilities Service in accordance with appropriate delegations of authority.

Agency identified target areas means an identified area in the State strategic plan or other plans developed by the Rural Development State Director.

Approval official means the USDA official at the State level who has been delegated the authority to approve loans or grants.

Equivalent Dwelling Unit (EDU) means the level of service provided to a typical rural residential dwelling.

Parity bonds means bonds which have equal standing with other bonds of the same Issuer.

Poverty line means the level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Processing office means the office designated by the State program official to accept and process applications for water and waste disposal assistance.

Project means all activity that an applicant is currently undertaking to be financed in whole or part with RUS assistance.

Protective advances are payments made by a lender for items such as insurance or taxes in order to preserve and protect the security or the lien or priority of the lien securing the loan.

Rural and rural areas means any area not in a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

Rural Development means the mission area of the Under Secretary for Rural Development. Rural Development State and local offices will administer this water and waste program on behalf of the Rural Utilities Service.

RUS means the Rural Utilities Service, an agency of the United States

Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Farmer's Home Administration and the Rural Development Administration with respect to certain water and waste disposal loan and grant programs.

Service area means the area reasonably expected to be served by the project.

Servicing office means the office designated by the State program official to service water and waste disposal loans and grants.

Similar system cost means the average annual EDU user cost of a system within a community having similar economic conditions and being served by the same type of established system. Similar system cost shall include all charges, taxes, and assessments attributable to the system including debt service, reserves and operation and maintenance costs.

State program official means the USDA official at the State level who has been delegated the responsibility of administering the water and waste disposal programs under this regulation for a particular State or States.

Statewide nonmetropolitan median household income means the median household income of all rural areas of a state.

(b) *Rules of grammatical construction.* Unless the context otherwise indicates, ''includes'' and ''including'' are not limiting, and ''or'' is not exclusive. The terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1780.4 Availability of forms and regulations.

Information about the availability of forms, instructions, regulations, bulletins, OMB Circulars, Treasury Circulars, standards, documents and publications cited in this part is available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§ 1780.5 [Reserved]

§ 1780.6 Application information.

(a) The Rural Development State Director in each State will determine the office and staff that will be responsible for delivery of the program (processing office) and designate an approving office. Applications will be accepted by the processing office.

(b) The applicant's governing body should designate one person to act as contact person with the Agency during loan and grant processing. Agency personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants or agents.

§ 1780.7 Eligibility.

Facilities financed by water and waste disposal loans or grants must serve rural areas.

(a) *Eligible applicant.* An applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a state, territory or commonwealth;

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(b) *Eligible facilities.* Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(c) *Eligible projects.* (1) Projects must serve a rural area which, if such project is completed, is not likely to decline in population below that for which the project was designed.

(2) Projects must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable.

(3) Projects must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(d) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(e) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for owning, constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable user rates and charges. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. Guidance for preparing a management agreement is available from the Agency. Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(f) *Economic feasibility.* All projects financed under the provisions of this section must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(g) *Federal Debt Collection Act of 1990 (28 U.S.C. 3001 et seq.).* An outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

(h) *Expanded eligibility for timber-dependent communities in Pacific Northwest.* In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993, the population limits contained in § 1780.3(a) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(1) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and

(2) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

§ 1780.8 [Reserved]

§ 1780.9 Eligible loan and grant purposes.

Loan and grant funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) For payment of other utility connection charges as provided in service contracts between utility systems.

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b),(c) or (d) of this section the following may be considered:

(1) Loan or grant funds may be used for:

(i) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(iii) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(iv) Cost of additional applicant labor and other expenses necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(2) Only loan funds may be used for:

(i) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(ii) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(iii) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service;

(iv) Refinancing debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts were incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan; and

(v) Prepayment of costs for which RUS grant funds were obligated.

(3) Grant funds may be used to restore loan funds used to prepay grant obligated costs.

(f) Construction incurred before loan or grant approval.

(1) Funds may be used to pay obligations for eligible project costs incurred before loan or grant approval if such requests are made in writing by the applicant and the Agency determines that:

(i) Compelling reasons exist for incurring obligations before loan or grant approval;

(ii) The obligations will be incurred for authorized loan or grant purposes; and

(iii) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the loan or grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan or grant approval requirements, including environmental and contracting requirements.

(2) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(g) Water or sewer service may be provided through individual installations or small clusters of users within an applicant's service area. The approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(1) Applicants providing service through individual facilities must meet the eligibility requirements in § 1780.7.

(2) The Agency must approve the form of agreement between the applicant and individual users for the installation, operation, maintenance and payment for individual facilities.

(3) If taxes or assessments are not pledged as security, applicants providing service through individual facilities must obtain security necessary to assure collection of any sum the individual user is obligated to pay the applicant.

(4) Notes representing indebtedness owed the applicant by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the RUS loan, whichever is shorter. The interest rate will not exceed the interest rate charged the applicant on the RUS indebtedness.

(5) Applicants providing service through individual or cluster facilities must obtain:

(i) Easements for the installation and ingress to and egress from the facility if determined necessary by RUS; and

(ii) An adequate method for denying service in the event of nonpayment of user fees.

§ 1780.10 Limitations.

(a) Loan and grant funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility which does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) Rental for the use of equipment or machinery owned by the applicant;

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved; and

(8) A judgment which would disqualify an applicant for a loan or grant as provided for in § 1780.7(g).

(b) Grant funds may not be used to:

(1) Reduce EDU costs to a level less than similar system cost;

(2) Pay any costs of a project when the median household income of the service area is and more than 100 percent of the nonmetropolitan median household income of the State;

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms; and

(4) Pay project costs when other funding is a guaranteed loan obtained in accordance with subpart I of part 1980 of this title.

(c) Grants may not be made in excess of the following percentages of the RUS eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) 75 percent when the median household income of the service area is below the higher of the poverty line or 80% of the state nonmetropolitan median income and the project is

necessary to alleviate a health or sanitary problem.

(2) 45 percent when the median household income of the service area exceeds the 80 percent requirements described in paragraph (c)(1) of this section but is not more than 100 percent of the statewide nonmetropolitan median household income.

(3) Applicants are advised that the percentages contained in paragraphs (c)(1) and (c)(2) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in § 1780.35 (b).

§ 1780.11 Service area requirements.

(a) All facilities financed under the provisions of this part shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(b) Should the Agency determine that inequities exist within the applicants service area for the same type service proposed (i.e., water or waste disposal) such inequities will be remedied by the applicant prior to loan or grant approval or included as part of the project. Inequities are defined as unjustified variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions do not necessarily constitute inequities.

(c) Developers are normally expected to provide utility-type facilities in new or developing areas in compliance with appropriate State statutes. RUS financing will be considered to an eligible applicant only in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of a current area development plan; and loan repayment can be assured by:

(1) The applicant already having sufficient assured revenues to repay the loan; or

(2) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in § 1780.39(c)(4)(ii); or

(3) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(4) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(5) The loan is to a public body evidenced by a pledge of tax revenue or assessments; or

(6) The user charges can become a lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

§ 1780.12 [Reserved]

§ 1780.13 Rates and terms.

(a) *General.* (1) Each loan will bear interest at the rate prescribed in RD Instruction 440.1, exhibit B. The interest rates will be set by the Agency for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. The rate will be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing unless the applicant otherwise chooses.

(2) If the interest rate is to be that in effect at loan closing on a loan involving multiple advances of RUS funds using temporary debt instruments, the interest rate charged shall be that in effect on the date when the first temporary debt instrument is issued.

(b) *Poverty rate.* The poverty interest rate will not exceed 5 per centum per annum. All poverty rate loans must comply with the following conditions:

(1) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards; and

(2) The median household income of the service area is below the higher of the poverty line, or 80 percent of the Statewide nonmetropolitan median household income.

(c) *Intermediate rate.* The intermediate interest rate will be set at the poverty rate plus one-half of the difference between the poverty rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State.

(d) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer (11–GO Bond) Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (b) or (c) of this section.

(e) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note or bond, whichever is less. Where RUS grant funds are used in connection with an RUS loan, the loan will be for the maximum term permitted by this part, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an RUS loan for less than the maximum term permitted. In such cases, the reasons must be fully documented.

(1) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the Agency may authorize such deferment. Deferments of principal will not be used to:

(i) Postpone the levying of taxes or assessments;

(ii) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as those services become available;

(iii) Create reserves for normal operation and maintenance;

(iv) Make any capital improvements except those approved by the Agency which are determined to be essential to the repayment of the loan or to maintain adequate security; and

(v) Make payment on other debt.

(2) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively,

following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(3) In all cases, including those in which RUS is jointly financing with another lender, the RUS payments of principal and interest should approximate amortized installments.

§ 1780.14 Security.

Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of RUS during the repayment period of the loan. Specific security requirements for each loan will be included in a letter of conditions.

(a) *Public bodies.* Loans to such borrowers, including Federally recognized Indian tribes as appropriate, will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant laws and by borrower's documents, resolutions, and ordinances. Security, in the following order of preference, will consist of:

(1) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(2) Pledges of taxes or assessments; and/or

(3) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interests, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds.

(b) *Other-than-public bodies.* Loans to other-than-public body applicants and Federally recognized Indian tribes, as appropriate, will be secured in the following order of preference:

(1) Assignments of borrower income will be taken and perfected by filing, if legally permissible; and

(2) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not legally permissible or feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the approval official determines that the interest of RUS is otherwise adequately secured, the lien requirement may be omitted as to such land rights. For existing borrowers where the Agency already has a security position on real property, the approval official may determine that the interest of the Government is adequately secured and not require additional liens on such land rights. When the subsequent loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the approval official determines that the loan is adequately secured.

(c) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with RUS taking another type. For projects utilizing joint financing with the same security to be shared by RUS and another lender, RUS will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the approval official:

(1) It is not necessary for loans to have the same repayment terms. Loans made by other lenders involved in joint financing with RUS should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(2) The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to RUS. A trustee or other similar paying agent will not normally be used for the RUS portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include RUS funds must be clearly specified by written agreement and approved by the State program official and the Office of the General Counsel (OGC). RUS must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(3) In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(4) Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount outstanding; provided, however, funds obtained from such sale or liquidation for a project that included RUS grant funds will be apportioned as required by the grant agreement.

(5) Protective advances must be charged to the borrower's account and be secured by a lien on the security property. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

§ 1780.15 Other Federal, State, and local requirements.

Proposals for facilities financed in whole or in part with RUS funds will be coordinated with appropriate Federal, State and local agencies. If there are conflicts between this part and State or local laws or regulatory commission regulations, the provisions of this part will control. Applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(a) Organization of the applicant and its authority to own, construct, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(c) Land use zoning; and

(d) Health and sanitation standards and design and installation standards unless an exception is granted by RUS.

§ 1780.16 [Reserved]

§ 1780.17 Selection priorities and process.

When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met. Points will be awarded as follows:

(a) Population priorities. (1) The proposed project will primarily serve a rural area having a population not in excess of 1,000—25 points;

(2) The proposed project primarily serves a rural area having a population between 1,001 and 2,500—15 points;

(3) The proposed project primarily serves a rural area having a population between 2,501 and 5,500—5 points.

(b) Health priorities. The proposed project is:

(1) Needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water

Act requirements which pertain to a water system—25 points;

(2) Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system—25 points;

(3) Required to meet administrative orders issued to correct local, State, or Federal solid waste violations—15 points.

(c) Median household income priorities. The median household income of the population to be served by the proposed project is:

(1) Less than the poverty line if the poverty line is less than 80% of the statewide nonmetropolitan median household income—30 points;

(2) Less than 80 percent of the statewide nonmetropolitan median household income—20 points;

(3) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—15 points.

(d) Other priorities. (1) The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service—15 points;

(2) The proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas—10 points;

(3) Applicant is a public body or Indian tribe—5 points;

(4) Amount of other than RUS funds committed to the project is:

(i) 50% or more—15 points;

(ii) 20% to 49%—10 points;

(iii) 5%—19%—5 points;

(5) Projects that will serve Agency identified target areas—10 points;

(6) Projects that primarily recycle solid waste products thereby limiting the need for solid waste disposal—5 points;

(7) The proposed project will serve an area that has an unreliable quality or supply of drinking water—10 points.

(e) In certain cases the State program official may assign up to 15 points to a project. The points may be awarded to projects in order to improve compatibility and coordination between RUS's and other agencies' selection systems, to ensure effective RUS fund utilization, and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time these points are assigned.

(f) Cost overruns. An application may receive consideration for funding before others at the State or National Office level when it is a subsequent request for a previously approved project which has encountered construction cost overruns. The cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will not be considered under this paragraph.

(g) National office priorities. In selecting projects for funding at the National Office level State program official points may or may not be considered. The Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds, the highest priority projects within a state, and emergency conditions caused by economic problems or natural disasters. The Administrator may delegate the authority to assign the 15 points to appropriate National Office staff.

§ 1780.18 Allocation of program funds.

(a) *General.* (1) The purpose of this part is to set forth the methodology and formulas by which the Administrator of the RUS allocates program funds to the States. (The term ''State'' means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Areas.)

(2) The formulas in this part are used to allocate program loan and grant funds to Rural Development State offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(3) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period, are distributed to each State office. The allocated amounts are available for review in any Rural Development State office.

(b) *Definitions.*—(1) *Amount available for allocations.* Funds appropriated or otherwise made available to the Agency for use in authorized programs. On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(2) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic State factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State factor (SF). The data sources used for each criteria are believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(3) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

BFA=(Amount available for allocation − NO reserve − total base and administrative allocations) × SF.

(4) *Transition formula.* (i) A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (plus or minus 20 percentage points of the proportional amount of the previous year's BFA). The formula follows:

$$\text{Transition Range} = 1.0 + \frac{\text{maximum } 20\%}{100} \times \frac{(\text{Amount available for allocation this year} \times \text{State previous year BFA})}{(\text{Amount available for allocation previous year})}$$

(ii) If the current year's State BFA is not within the transition range in paragraph (b)(4)(i) of this section, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having

performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not exceed 40% (plus or minus 20%), but when a smaller range is used it will be stated in the individual program section.

(5) *Base allocation*. An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each Rural Development State office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as Agency historic data.

(6) *Administrative allocations*. Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(7) *Reserve*. An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it is determined necessary to meet a program need or Agency objective. The Administrator may retain additional amounts to fund authorized demonstration programs.

(8) *Pooling of funds*. A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligated by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(i) Mid-year: Mid-year pooling occurs near the midpoint of the fiscal year.

(ii) Year-end: Year-end pooling usually occurs near the first of August.

(iii) Emergency: The Administrator may pool funds at any time that it is determined the conditions upon the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(9) *Availability of the allocation*. Program funds are made available to the Agency on a quarterly basis.

(10) *Suballocation by the Rural Development State Director*. The State Director may be directed or given the option of suballocating the State allocation to processing offices. When suballocating the State Director may retain a portion of the funds in a State office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(c) *Water and Waste Disposal loans and grants*.—(1) *Amount available for allocations*. See paragraph (b)(1) of this section.

(2) *Basic formula criteria, data source and weight*. See paragraph (b)(2) of this section.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population will be 50 percent.

(B) State's percentage of national rural population with incomes below the poverty level will be 25 percent.

(C) State's percentage of national nonmetropolitan unemployment will be 25 percent.

(ii) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05, as follows:

SF = (criterion in paragraph (b)(1)(i) of this section × 50 percent) + (criterion in paragraph(b)(1)(ii) of this section × 25 percent) + (criterion in paragraph(b)(1)(iii) of this section × 25 percent)

(3) *Basic formula allocation*. See paragraph (b)(3) of this section. States receiving administrative allocations do not receive formula allocations.

(4) *Transition formula*. See paragraph (b)(4) of this section. The percentage range for the transition formula equals 30 percent (plus or minus 15%).

(5) *Base allocation*. See paragraph (b)(5) of this section. States receiving administrative allocations do not receive base allocations.

(6) *Administrative allocation*. See paragraph (b)(6) of this section. States participating in the formula and base allocation procedures do not receive administrative allocations.

(7) *Reserve*. See paragraph (b)(7) of this section. Any State may request reserve funds by forwarding a request to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(8) *Pooling of funds*. See paragraph (b)(8) of this section. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(9) *Availability of the allocation*. See paragraph (b)(9) of this section. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(10) *Suballocation by the State Director*. See paragraph (b)(10) of this section. The State Director has the option to suballocate funds to processing offices.

§ 1780.19 Public information.

(a) Public notice of intent to file an application with the Agency. Within 60 days of filing an application with the Agency the applicant must publish a notice of intent to apply for a RUS loan or grant. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(b) General public meeting. Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, must hold at least one public information meeting. The public meeting must be held not later than loan or grant approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by Agency. To the extent possible, this meeting should cover items necessary to satisfy all public information meeting requirements for the proposed project. To minimize duplication of public notices and public involvement, the applicant shall, where possible, coordinate and integrate the public involvement activities of the environmental review process into this requirement. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify the Agency. The applicant will provide the

Agency a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans or grants which are needed to complete the financing of a project.

§§ 1780.20–1780.23 [Reserved]

§ 1780.24 Approval authorities.

Appropriate reviews, concurrence, and authorization must be obtained for all loans or grants in excess of the amounts indicated in RUS Staff Instruction 1780–1.

(a) *Redelegation of authority by State Directors.* Unless restricted by memorandum from the RUS Administrator, State Directors can redelegate their approval authorities to State employees by memorandum.

(b) *Restriction of approval authority by the RUS Administrator.* The RUS Administrator can make written restrictions or revocations of the authority given to any approval official.

§ 1780.25 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1780.26–1780.30 [Reserved]

Subpart B—Loan and Grant Application Processing

§ 1780.31 General.

(a) Applicants are encouraged to contact the Agency processing office early in the planning stages of their project. Agency personnel are available to provide general advice and assistance regarding RUS programs, other funding sources, and types of systems or improvements appropriate for the applicants needs. The Agency can also provide access to technical assistance and other information resources for other project development issues such as public information, income surveys, developing rate schedules, system operation and maintenance, and environmental compliance requirements. Throughout the planning, application processing and construction of the project, Agency personnel will work closely and cooperatively with the applicant and their representatives, other State and Federal agencies and technical assistance providers.

(b) The processing office will handle initial inquiries and provide basic information about the program. They are to provide the application, SF 424.2, ''Application for Federal Assistance (For Construction),'' assist applicants as needed in completing SF 424.2, and in filing a request for intergovernmental review. Federally recognized Indian tribes are exempt from intergovernmental review. The processing office will explain eligibility requirements and meet with the applicant whenever necessary to discuss application processing.

(c) Applicants can make a written request for an eligibility determination in lieu of filing an SF 424.2 along with the information required by § 1780.33. Applicants seeking only an eligibility determination, should contact the processing office to obtain a list of the items needed to make this determination. An eligibility determination for loan or grant assistance will not give an applicant priority for funding as set forth in § 1780.17.

(d) Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(e) Starting with the earliest discussions with prospective applicants or review of applications and continuing throughout application processing, environmental issues must be considered. Throughout the application process the State Environmental Coordinator will discuss with the applicant and their engineer, environmental review requirements for evaluating a project's potential for environment impacts. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. The environmental review requirements shall be performed simultaneously and concurrently with the project's engineering design and mitigation measures integrated into the design to minimize any adverse environmental impacts.

§ 1780.32 Timeframes for application processing.

(a) The processing office will determine if the application is properly assembled. If not, the applicant will be notified within fifteen federal working days as to what additional submittal items are needed.

(b) The processing and approval offices will coordinate their reviews to ensure that the applicant is advised about eligibility and anticipated fund availability within 45 days of the receipt of a completed application.

§ 1780.33 Application requirements.

An initial application consists of the following:

(a) One copy of a completed SF 424.2;

(b) A copy of the State intergovernmental comments or one copy of the filed application for State intergovernmental review; and

(c) Two copies of the preliminary engineering report (PER) for the project.

(1) The PER may be submitted to the processing office prior to the rest of the application material if the applicant desires a preliminary review.

(2) The processing office will forward one copy of the PER with comments and recommendations to the State staff engineer for review upon receipt from the applicant.

(3) The State staff will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER and any environmental concerns. Written comments will be provided by the State staff engineer and State Environmental Coordinator to the processing office to meet eligibility determination time lines.

(d) Written certification that other credit is not available.

(e) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, organizational documents, or existing debt instruments. The processing office will advise applicants regarding the required documents. Applicants that are indebted to RUS will not need to submit documents already on file with the processing office.

(f) Form RD 1940–20, ''Request for Environmental Information'' or comparable information. The applicant should consult with the processing office to determine what information should be included with this form.

(g) The applicants Internal Revenue Service Taxpayer Identification Number (TIN). The TIN will be used by the Agency to assign a case number which will be the applicant's or transferee's TIN preceded by State and County Code numbers. Only one case number will be assigned to each applicant regardless of the number of loans or grants or number of separate facilities, unless an exception is authorized by the National Office.

(h) Other Forms and certifications. Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application:

(1) Form RD 442–7, ''Operating Budget'';

(2) Form RD 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts'';

(3) Form RD 400–1, ''Equal Opportunity Agreement'';

(4) Form RD 400–4, ''Assurance Agreement'';

(5) Form AD–1047, ''Certification Regarding Debarment, Suspension and other Responsibility Matters'';

(6) Form AD–1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;

(7) Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(8) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

§ 1780.34 [Reserved]

§ 1780.35 Processing office review.

Review of the application will usually include the following:

(a) *Nondiscrimination.* Boundaries for the proposed service area must not be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin. This does not preclude construction of the project in phases as noted in § 1780.11 as long as it is not done in a discriminatory manner.

(b) *Grant determination.* Grants will be determined by the processing office in accordance with the following provisions and will not result in EDU costs below similar system user cost.

(1) *Maximum grant.* Grants may not exceed the percentages in § 1780.10(c) of the eligible RUS project development costs listed in § 1780.9.

(2) *Debt service.* Applicants will be considered for grant assistance when the debt service portion of the average annual EDU cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) 0.5 percent when the median household income of the service area is equal to or below 80% of the statewide nonmetropolitan median income.

(ii) 1.0 percent when the median household income of the service area exceeds the 0.5 percent requirement but is not more than 100 percent the statewide nonmetropolitan household income.

(3) *Similar system cost.* If the grant determined in paragraph (b)(2) of this section results in an annual EDU cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs.

(4) *Wholesale service.* When an applicant provides wholesale sales or services on a contract basis to another system or entity, similar wholesale system cost will be used in determining the amount of grant needed to achieve a reasonable wholesale user cost.

(5) *Subsidized cost.* When annual cost to the applicant for delivery of service is subsidized by either the state, commonwealth, or territory, and uniform flat user charges regardless of usage are imposed for similar classes of service throughout the service area, the Agency may proceed with a grant in an amount necessary to reduce such delivery cost to a reasonable level.

(c) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance and, if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total debt reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

§ 1780.36 Approving official review.

Projects may be obligated as their applications are completed and approved.

(a) *Selection of applications for further processing.* The application and supporting information submitted will be used to determine the applications selected for further development and funding. After completing the review, the approval official will normally select those eligible applications with the highest priority scores for further processing. When authorizing the development of an application for funding, the following will be considered:

(1) Funds available in State allocation;

(2) Anticipated allocation of funds for the next fiscal year; and

(3) Time necessary for applicant to complete the application.

(b) *Lower scoring projects.* (1) In cases where preliminary cost estimates indicate that an eligible, high scoring application is unfeasible or would require an amount of funding from RUS that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower scoring application for further processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it.

(2) If it is found that there is no effective way to reduce costs or no other funding sources, the approval official, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file.

§ 1780.37 Applications determined ineligible.

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The notification to the applicant will state that an appeal of this decision may be made by the applicant under 7 CFR part 11.

§ 1780.38 [Reserved]

§ 1780.39 Application processing.

(a) *Processing conference.* Before starting to assemble the full application, the applicant should arrange through the processing office an application conference to provide a basis for orderly application assembly. The processing office will explain program requirements, public information requirements and provide guidance on preparation of items necessary for approval.

(b) *Professional services and contracts related to the facility.* Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and

technical representatives are required and are subject to RUS concurrence.

(1) *Engineering and architectural services.* (i) Applicants shall publicly announce all requirements for engineering and architectural services, and negotiate contracts for engineering and architectural services on the basis of demonstrated competence and qualifications for the type of professional services required and at a fair and reasonable price.

(ii) When project design services are procured separately, the selection of the engineer or architect shall be done by requesting qualification-based proposals and in accordance with this section.

(iii) Applicants may procure engineering and architectural services in accordance with applicable State statutes or local requirements provided the State Director determines that such procurement meets the intent of this section.

(2) *Other professional services.* Professional services of the following may be necessary: Attorney, bond counsel, accountant, auditor, appraiser, environmental professionals, and financial advisory or fiscal agent (if desired by applicant). Guidance on entering into an agreement for legal services is available from the Agency.

(3) *Bond counsel.* Unless otherwise provided by subpart D of this part, public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(4) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and concurrence. Guidance on entering into a management agreement is available from the Agency.

(c) *User estimates.* Applicants dependent on users fees for debt payment or operation and maintenance expenses shall base their income and expense forecast on realistic user estimates. For users presently not receiving service, consideration must be given to the following:

(1) An estimated number of maximum users should not be used when setting user fees and rates since it may be several years before all residents will need service by the system. In establishing rates a realistic number of users should be employed.

(2) New user cash contributions. The amount of cash contributions required will be set by the applicant and concurred in by the approval official. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a loan requirement under this section. A new user cash contribution is not required when:

(i) The Agency determines that the potential users as a whole in the applicant's service area cannot make cash contributions; or

(ii) State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(3) An enforceable user agreement with a penalty clause is required (RUS Bulletin 1780–9 can be used) except:

(i) For users presently receiving service; or

(ii) Where mandatory use of the system is required.

(4) Individual vacant property owners will not be considered when determining project feasibility unless:

(i) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(ii) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the United States of America.

(5) Applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and concurrence by the processing office before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(i) An aggressive information program to be carried out during the construction period. The applicant should send written notification to all signed users in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin;

(ii) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors;

(iii) Aggressive action to see that all signed users can finance their connections.

(d) *Interim financing.* For all loans exceeding $500,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing may be obtained so as to preclude the necessity for multiple advances of RUS loan funds. However, the approval official may make an exception when interim financing is cost prohibitive or unavailable. Guidance on informing the private lender of RUS's commitment is available from the Agency. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the RUS loan would normally be closed, that is immediately prior to the start of construction. The RUS loan should be closed as soon as possible after the disbursal of all interim funds.

(e) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. Borrowers issuing bonds or other evidences of debt pledging facility revenues as security will plan their reserve to provide for at least an annual reserve equal to one-tenth of an average

annual loan installment each year for the life of the loan unless prohibited by state law.

(f) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing. Form RD 1942–8, ''Resolution of Members or Stockholders'' may be used for this authorization. The approval official may, with the concurrence of OGC, accept Form RD 1942–9, ''Loan Resolution (Security Agreement)'' without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and:

(1) The organization is well established and is operating with a sound financial base; or

(2) The members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution.

(g) *Insurance.* The purpose of RUS's insurance requirements is to protect the government's financial interest based on the facility financed with loan funds. It is the responsibility of the applicant and not that of RUS to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained. The requirements below apply to all types of coverage determined necessary. The approval official may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant and will not adversely affect the government's interest.

(1) Insurance requirements proposed by the applicant will be accepted if the processing office determines that proposed coverage is adequate to protect the government's financial interest. Applicants are encouraged to have their attorney, consulting engineer, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions.

(2) The use of deductibles may be allowed by RUS providing the applicant has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(3) Fidelity or employee dishonesty bonds. Applicants will provide coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees. An exception may be granted by the approval official when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected. The amount of coverage required by RUS will normally approximate the total annual debt service requirements for the RUS loans.

(4) Property insurance. Fire and extended coverage will normally be maintained on all structures except as noted below. Ordinarily, RUS should be listed as mortgagee on the policy when RUS has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(i) Reservoirs, pipelines and other structures if such structures are not normally insured;

(ii) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(5) General liability insurance, including vehicular coverage.

(6) Flood insurance required for facilities located in special flood-and mudslide-prone areas.

(7) Worker's compensation. The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(h) The processing office will conduct appropriate environmental reviews in accordance with RUS requirements.

(i) The processing office will assure that appropriate forms and documents listed in RUS Bulletin 1780–6 are complete. Letters of conditions will not be issued unless funds are available.

§ 1780.40 [Reserved]

§ 1780.41 Loan or grant approval.

(a) The processing office will submit the following to the approval official:

(1) Form RD 1942–45, ''Project Summary'';

(2) Form RD 442–7, ''Operating Budget'';

(3) Form RD 442–3, ''Balance Sheet'' or a financial statement or audit that includes a balance sheet;

(4) Form RD 442–14, ''Association Project Fund Analysis'';

(5) ''Letter of Conditions'';

(6) Form RD 1942–46, ''Letter of Intent to Meet Conditions'';

(7) Form RD 1940–1, ''Request for Obligation of Funds'';

(8) Completed environmental review documents including copies of required publication evidence; and

(9) Grant determination, if applicable.

(b) Approval and applicant notification will be accomplished by mailing to the applicant on the obligation date a copy of Form RD 1940–1. The date the applicant is notified is also the date the interest rate at loan approval is established.

§ 1780.42 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant is eligible and has the authority to receive the assistance approved for the original applicant; and

(b) The need, purpose(s) and scope of the project for which RUS funds will be used remain substantially unchanged.

§ 1780.43 [Reserved]

§ 1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.

(a) Applicants must provide evidence of adequate insurance and fidelity or employee dishonesty bond coverage.

(b) Verification of users and other funds. In connection with a project that involves new users and will be secured by a pledge of user fees or revenues, the processing office will authenticate the number of users. Ordinarily each signed user agreement will be reviewed and checked for evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system.

(c) Initial compliance review. An initial compliance review should be completed under subpart E of part 1901 of this title.

(d) Applicant contribution. An applicant contributing funds toward the project cost shall deposit these funds in its project account before start of construction. Project costs paid with applicant funds prior to the required deposit time shall be appropriately accounted for.

(e) Excess RUS loan and grant funds. If there is a significant reduction in project cost, the applicant's funding needs will be reassessed. Decreases in RUS funds will be based on revised project costs and current number of users, however, other factors including RUS regulations used at the time of loan or grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to grant funds first. In such cases, applicable forms, the letter of conditions, and other items will be revised.

(f) Evidence of and disbursement of other funds. Applicants expecting funds from other sources for use in completing projects being partially financed with RUS funds will present evidence of the commitment of these funds from such other sources. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction. RUS funds will not be used to pre-finance funds committed to the project from other sources.

(g) Acquisition of land, easements, water rights, and existing facilities. Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. RUS may require an appraisal by an independent appraiser or Agency employee.

(1) *Rights-of-way and easements.* Applicants will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility.

(i) The applicant must provide a legal opinion relative to the title to rights-of-way and easements. Form RD 442–22, ''Opinion of Counsel Relative to Rights-of-Way,'' may be used. When a site is for major structures such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any.

(ii) For user connections funded by RUS, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the user's property. This right may be obtained through formal easement or user agreements.

(2) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Preliminary and final title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form RD 1927–9, ''Preliminary Title Opinion,'' and Form RD 1927–10, ''Final Title Opinion,'' may be used to provide the required title opinions.

(i) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the applicant must provide the Agency a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to the Agency prior to requesting closing instructions. The Agency will be provided a title insurance policy which will insure RUS's interest in the property without any title defects or restrictions which have not been waived by the Agency.

(ii) The approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility.

(3) *Water rights.* The following will be furnished as applicable:

(i) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(ii) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(4) *Lease agreements.* Where the right of use or control of real property not owned by the applicant is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner of the property and the applicant. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses. Lease agreements shall provide for the right to transfer, encumber, assign and sub-lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the approval official with the advice and counsel of OGC, as necessary.

(h) Obtaining loan closing instructions. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of closing instructions, the processing office will discuss with the applicant and its engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing. State program officials have the option to work with OGC to obtain waivers for closing instructions in certain cases. Closing instructions are not required for grants.

§ 1780.45 Loan and grant closing and delivery of funds.

(a) *Loan closing.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent RUS multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The amount of each bond will ordinarily be in multiples of not less than $1,000.

(1) Form RD 440–22, ''Promissory Note (Association or Organization),'' will ordinarily be used for loans to nonpublic bodies.

(2) Forms RD 1942–47, ''Loan Resolution (Public Bodies),'' or RD 1942–9, ''Loan Resolution (Security Agreement)'' will be adopted by public and other-than-public bodies. These resolutions supplement other provisions in this part.

(3) Subpart D of this part contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(b) *Loan disbursement.* (1) Multiple advances. Multiple advances will be used only for loans in excess of $100,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period.

(i) Subpart D of this part contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The borrower may use Form RD 440–11, ''Estimate of Funds Needed for 30 Day Period Commencing XXX,'' to show the amount of funds needed during the 30-day period.

(2) RUS loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under § 1780.9 (e)(2)(iv). If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(i) Deposited in an appropriate borrower account, such as debt service or construction accounts; or

(ii) Deposited in a joint bank account under paragraph (e)(3) of this section.

(c) *Grant closing.* RUS Bulletin 1780–12 ''Water or Waste System Grant

Agreement'' of this part will be completed and executed in accordance with the requirements of grant approval. The grant will be considered closed when RUS Bulletin 1780–12 has been properly executed. Processing or approval officials are authorized to sign the grant agreement on behalf of RUS. For grants that supplement RUS loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing, as provided in paragraph (d)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds.

(d) *Grant disbursements.* RUS policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Applicant funds will be disbursed before the disbursal of any RUS grant funds. RUS loan funds will be disbursed before the disbursal of any RUS grant funds except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged; and

(2) All interim funds have been disbursed; and

(3) RUS grant funds are needed before the RUS loan can be closed.

(e) *Use and accountability of funds.* (1) Arrangements will be agreed upon for the prior concurrence by the Agency of the bills or vouchers upon which warrants will be drawn. Form RD 402–2, ''Statement of Deposits and Withdrawals,'' or similar form will be used by the Agency to monitor funds. Periodic reviews of these accounts shall be made by the Agency.

(2) Pledge of collateral for grants to nonprofit organizations. Grant funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. Also, if the balance in the account containing grant funds exceeds the FDIC insurance coverage, the excess amount must be collaterally secured. The pledge of collateral for the excess will be in accordance with Treasury Circular 176.

(3) Joint RUS/borrower bank account. RUS funds and any funds furnished by the borrower including contributions to purchase major items of equipment, machinery, and furnishings will be deposited in a joint RUS/borrower bank account if determined necessary by the approval official. When RUS has a Memorandum of Understanding with another agency that provides for the use of joint RUS/borrower accounts, or when RUS is the primary source of funds for a project and has determined that the use of a joint RUS/borrower bank account is necessary, project funds from other sources may also be deposited in the joint bank account. RUS shall not be accountable to the source of the other funds nor shall RUS undertake responsibility to administer the funding program of the other entity. Joint RUS/borrower bank accounts should not be used for funds advanced by an interim lender. When funds exceeds the FDIC insurance coverage, the excess must have a pledge of collateral in accordance with Treasury Circular 176.

(4) Payment for project costs. Project costs will be monitored by the RUS processing office. Invoices will be approved by the borrower and their engineer, as appropriate, and submitted to the processing office for concurrence. The review and acceptance of project costs, including construction pay estimates, by RUS does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.

(f) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Funds remaining, may be considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(1) Remaining funds may be used for eligible loan or grant purposes, provided the use will not result in major changes to the facility(s) and the purpose of the loan and grant remains the same;

(2) RUS loan funds that are not needed will be applied as an extra payment on the RUS indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute; and

(3) Grant funds not expended under paragraph (f)(1) of this section will be canceled. Prior to the actual cancellation, the borrower, its attorney and its engineer will be notified of RUS's intent to cancel the remaining funds. The applicant will be given appropriate appeal rights.

(g) *Post review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by OGC. The State program official has the option to consult with OGC to obtain waivers of this review.

§ 1780.46 [Reserved]

§ 1780.47 Borrower accounting methods, management reporting and audits.

(a) Borrowers are required to provide RUS an annual audit or financial statements.

(b) Method of accounting and preparation of financial statements. Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with generally accepted accounting principles (GAAP), unless State statutes or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(c) Record retention. Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports. Upon request, this material will be made available to RUS, Office of the Inspector General (OIG), United States Department of Agriculture (USDA), the Comptroller General, or to their assignees.

(d) Audits. All audits are to be performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS), developed by the Comptroller General of the United States. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars. The type of audit each borrower is required to submit will be designated by RUS. Further guidance on preparing an acceptable audit can be obtained from RUS. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits shall be annual unless otherwise prohibited and supplied to the processing office as soon as possible but in no event later than 150 days following the period covered by the audit. OMB Circulars are available in any USDA/RUS office.

(e) Borrowers exempt from audits. All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the RUS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms RD 442–2, ''Statement of Budget, Income and Equity,'' and 442–3 may be used.

(f) Management reports. These reports will furnish management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. In those cases where revenues from multiple sources are pledged as security for an RUS loan, two reports will be required; one for the

project being financed by RUS and one combining the entire operation of the borrower. In those cases where RUS loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues is acceptable. The following management data will be submitted by the borrower to the processing office. These reports at a minimum will include a balance sheet and income and expense statement.

(1) Quarterly reports. A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports.

(2) Annual management reports. Prior to the beginning of each fiscal year the following will be submitted to the processing office. (If Form RD 442–2 is used as the annual management report, enter data in column three only of Schedule 1, and complete all of Schedule 2.)

(i) Two copies of the management reports and proposed ''Annual Budget''.

(ii) Financial information may be reported on Form RD 442–2 which includes Schedule 1, ''Statement of Budget, Income and Equity'' and Schedule 2, ''Projected Cash Flow'' or information in similar format.

(iii) A copy of the rate schedule in effect at the time of submission.

(g) Substitute for management reports. When RUS loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State program official may authorize an annual audit to substitute for other management reports if the audit is received within 150 days following the period covered by the audit.

§ 1780.48 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for RUS assistance. RUS has agreed to administer such funds in a manner similar to administering RUS assistance.

(a) When RUS has funds in the project, no charge will be made for administering regional commission funds.

(b) When RUS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535). A fee of 5 percent of the first $50,000 of a regional commission grant and 1 percent of any amount over $50,000 will be paid RUS by the commission.

(1) *Appalachian Regional Commission (ARC).* RUS Bulletin 1780–23 will be followed in determining the responsibilities of RUS. The ARC Federal Co-chairman and the State program official will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) authorizes other commissions similar to ARC. RUS Bulletin 1780–23 will be used to develop a separate project management agreement between RUS and the commission for each project. The agreement should be prepared by the State program official as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1780.41, except that the announcement procedure referred to in RUS Staff Instruction 1780–2 is not applicable. Regional commission grants will be disbursed from the Finance Office in the same manner as RUS funds.

§ 1780.49 Rural or Native Alaskan villages.

(a) *General.* (1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions*—(1) *Dire sanitation condition.* For the purpose of this section a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease have been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural or Native Alaskan village.* A rural or Native Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility.* (1) The applicant must be a rural or Native Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under this part.

(d) *Grant amount.* Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds.* Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural or Native Alaskan villages.

(f) *Construction.* (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with this part for part of the local contribution, all of the requirements of this part apply.

§§ 1780.50–1780.52 [Reserved]

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

§ 1780.53 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as an applicant, borrower, or grantee.

§ 1780.54 Technical services.

Owners are responsible for providing the engineering, architect and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's ''in house'' engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

§ 1780.55 Preliminary engineering reports.

Preliminary engineering reports (PER)s must conform with customary professional standards. PER guidelines for water, sanitary sewer, solid waste,

and storm sewer are available from the Agency.

§ 1780.56 [Reserved]

§ 1780.57 Design policies.

Facilities financed by the Agency will be designed and constructed in accordance with sound engineering practices, and must meet the requirements of Federal, State and local agencies.

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with RUS requirements. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental impacts of the proposed project. Facility designs shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

(b) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(c) *Energy/environment.* Facility design should consider cost effective energy-efficient and environmentally-sound products and services.

(d) *Fire protection.* Water facilities should have sufficient capacity to provide reasonable fire protection to the extent practicable.

(e) *Growth capacity.* Facilities should have sufficient capacity to provide for reasonable growth to the extent practicable.

(f) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(g) *Conformity with state drinking water standards.* No funds shall be made available under this part for a water system unless the Agency determines that the water system will make significant progress toward meeting the standards established under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f *et seq.*).

(h) *Conformity with federal and state water pollution control standards.* No funds shall be made available under this part for a water treatment discharge or waste disposal system unless the Agency determines that the effluent from the system conforms with applicable Federal and State water pollution control standards.

(i) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

(j) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, must comply with the provisions for dam safety as set forth in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041–001–00187–5, Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(k) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(l) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed limits set by either ASTM or AWWA whichever is the more stringent.

(m) *Metering devices.* Water facilities financed by the Agency will have metering devices for each connection. An exception to this requirement may be granted by the State program official when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental considerations would not be adversely affected by not installing such devices. Sanitary sewer projects should incorporate water system metering devices whenever practicable.

(n) *Economical service.* The facility's design must provide the most economical service practicable.

§§ 1780.58–1780.60 [Reserved]

§ 1780.61 Construction contracts.

Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(a) *Standard construction contract documents.* If the construction contract documents utilized are not in the format previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(b) *Contract review and concurrence.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

§ 1780.62 Utility purchase contracts.

Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and concurred in by the Agency. To the extent practical, the Agency review and concurrence of such contracts should take place prior to their execution by the owner. OGC advice and guidance may be requested. Form RD 442–30, ''Water Purchase Contract,'' may be used when appropriate. If the Agency loan will be repaid from system revenues, the contract will be pledged to the Agency as part of the security for the loan. Such contracts will:

(a) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages.

(b) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(c) Specify the initial rates and provide a type of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(d) Cover period of time which is at least equal to the repayment period of the loan. State program officials may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) The contract contains adequate provisions for renewal; or

(3) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(e) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless the Agency determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(f) Provide for a pledge of the contract to the Agency as part of the security for the loan.

(g) Not contain provisions for:

(1) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(2) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(h) If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and concurred in provided adequate evidence is furnished to enable the Agency to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and:

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(3) Concurrence in the proposed contract is obtained from the National Office.

§ 1780.63 Sewage treatment and bulk water sales contracts.

Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to the Agency concurrence. Section 1780.62 should be used as a guide to prepare such contracts.

§§ 1780.64–1780.66 [Reserved]

§ 1780.67 Performing construction.

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by § 1780.76. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under § 1780.76(e).

§ 1780.68 Owner's contractual responsibility.

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

§ 1780.69 [Reserved]

§ 1780.70 Owner's procurement regulations.

Owner's procurement requirements must comply with the following standards:

(a) Code of conduct. Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Agency funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Agency funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(1) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(b) Maximum open and free competition. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying materials, the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency shall consider fully any recommendation made by the owner concerning the technical design and choice of materials to be used for a facility. If the Agency determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, the Agency shall provide such owner with a comprehensive justification for such a determination. The justification will be documented in writing.

(c) Owner's review. Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more

economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(d) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific feature of the name brands which must be met by the offeror shall be clearly stated; and

(2) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) Affirmative steps should be taken to assure that small, minority, and women businesses are utilized when possible as sources of supplies, equipment, construction and services.

(f) Contract pricing. Cost plus a percentage of cost method of contracting shall not be used.

(g) Unacceptable bidders. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(1) An engineer as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(2) Any firm or corporation in which the owner's engineer is an officer, employee, or holds or controls a substantial interest;

(3) The governing body's officers, employees, or agents;

(4) Any member of the immediate family or partners in the entities referred to in paragraphs (g)(1), (g)(2) or (g)(3) of this section; or

(5) An organization which employs, or is about to employ, any person in the entities referred to in paragraphs (g)(1), (g)(2), (g)(3) or (g)(4) of this section.

(h) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by any Agency of the United States Government.

§ 1780.71 [Reserved]

§ 1780.72 Procurement methods.

Procurement shall be made by one of the following methods: Small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $100,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be requested from at least three qualified sources.

(b) *Competitive sealed bids.* In competitive sealed bids (formal advertising), an invitation for sealed bids is publicly advertised and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(1) The invitation for bids shall be publicly advertised at a sufficient time prior to the date set for opening of bids. The invitation shall comply with the requirements in § 1780.70(d). Bids shall be solicited from an adequate number of qualified sources;

(2) All bids shall be opened publicly at the time and place stated in the invitation for bids;

(3) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest; and

(4) Any or all bids may be rejected by the owner when it is in its best interest.

(c) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;

(2) The Request for Proposal shall identify all significant evaluation factors and their relative importance;

(3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner. Unsuccessful offerors should be promptly notified.

(d) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(1) The item is available only from a single source; or

(2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) No acceptable bids have been received after formal advertising; or

(5) The procurement is for professional services; or

(6) The aggregate amount does not exceed $100,000.

§ 1780.73 [Reserved]

§ 1780.74 Contracts awarded prior to applications.

Owners awarding construction or other procurement contracts prior to

filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) *Modifications.* The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (c) of this section.

(b) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

§ 1780.75 Contract provisions.

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should be included in all contracts for construction.

(b) *Termination.* All contracts exceeding $10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Surety.* In all contracts for construction or facility improvements exceeding $100,000, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924–10, ''Release by Claimants,'' and Form RD 1924–9, ''Certificate of Contractor's Release,'' may be used for this purpose. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and the surety must be listed as having a license to do business in the State where the facility is located.

(d) *Equal employment opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246 (3 CFR, 1966 Comp., p.339), entitled, ''Equal Employment Opportunity,'' as amended by Executive Order 11375 (3 CFR, 1968 Comp., p. 321), and as supplemented by Department of Labor regulations 41 CFR chapter 60.

(e) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

(f) *Records.* All negotiated contracts (except those of $10,000 or less) awarded by owners shall include a provision to the effect that the owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan or grant program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after making final payment and all other pending matters are closed.

(g) *State energy conservation plan.* Contracts shall incorporate mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(h) *Change orders.* The construction contract shall require that all contract change orders be concurred in by the Agency.

(i) *Agency concurrence.* All contracts must contain a provision that they shall not be effective unless and until the State program official or designee concurs in writing.

(j) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 5 percent of an approved partial payment estimate until the project is substantially complete and accepted by the owner, consulting engineer and Agency. The contract must provide that additional amounts may be retained if the job is not proceeding satisfactorily.

(k) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (3 CFR, 1974 Comp., p.209), and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the Agency and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR 15.4(c) as set forth in RUS Bulletin 1780–14.

§ 1780.76 Contract administration.

Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(a) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where the consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924–16, ''Record of Pre-construction Conference,'' and the discussions and agreements will be documented.

(b) *Monitoring reports.* The owner is required to monitor construction and

provide a report to the Agency giving a full explanation under the following circumstances:

(1) Reasons why approved construction schedules were not met;

(2) Analysis and explanation of cost overruns and how payment is to be made for the same; and

(3) If events occur which have a significant impact upon the project.

(c) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project engineer for comments and the Agency for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780–18 is available from the Agency for preparing daily inspection reports or the reports can be provided in other formats approved by the State staff engineer.

(e) *Payment for Construction.* Form RD 1924–18, ''Partial Payment Estimate,'' or other similar form may be used for construction payments. If Form 1924–18 is not used, prior concurrence by the State staff engineer must be obtained.

(1) Payment of contract retainage will not be made until such retainage is due and payable under the terms of the contact.

(2) Invoices for the payment of construction costs must be approved by the owner, project engineer and concurred in by the Agency.

(3) The review and acceptance of project costs, including construction payment estimates by the Agency shall not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(f) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project engineer, contractor, representatives of other agencies involved, and Agency representative (preferably the State staff engineer or designee). The inspection results will be recorded by the project engineer and a copy provided to all interested parties.

(g) *Final inspection.* A final inspection will be made by the Agency before final payment is made.

(h) *Changes in development plans.* (1) Changes in development plans shall be reviewed and approved by the Agency provided:

(i) Funds are available to cover any additional costs; and

(ii) The change is for an authorized loan or grant purpose; and

(iii) It will not adversely affect the soundness of the facility operation or the Agency's security; and

(iv) The change is within the scope of the contract,

(2) Changes will be recorded on Form RD 1924–7, ''Contract Change Order,'' or other similar form if approved by the State program official or designee. Regardless of the form, change orders must be approved by the State program official or designee.

(3) Changes should be accomplished only after Agency approval and shall be authorized only by means of contract change order. The change order will include items such as:

(i) Any changes in labor and material;

(ii) Changes in facility design;

(iii) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule; and

(iv) Any increase or decrease in the time to complete the project.

(4) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§§ 1780.77–1780.79 [Reserved]

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

§ 1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

§ 1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of $100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

(a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;

(b) It must be established that not using bond counsel will produce significant savings in total legal costs;

(c) The local attorney must be able and experienced in handling this type of legal work;

(d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;

(e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in § 1780.94; and

(f) Closing instructions must be issued by OGC.

§ 1780.82 [Reserved]

§ 1780.83 Bond transcript documents.

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

(a) Copies of all organizational documents;

(b) Copies of general incumbency certificate;

(c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;

(d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;

(e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;

(f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;

(g) Specimen bond, with any attached coupons;

(h) Attorney's no-litigation certificate;

(i) Certified copies of resolutions or other documents pertaining to the bond award;

(j) Any additional or supporting documents required by bond counsel;

(k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;

(l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of section 306 (a)(1) or to section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§ 1780.84 and 1780.86 [Reserved]

§ 1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) *First preference—Form RD 440–22, ''Promissory Note''.* Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) *Second preference—single instruments with amortized installments.* A single instrument providing for amortized installments which follows Form RD 440–22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that ''interest only'' is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the ''interest only'' installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) *Monthly payments.* Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) *Semiannual payments.* Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) *Annual payments.* Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) *Third preference—single instruments with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of § 1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) *Coupon bonds.* Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of § 1780.94.

§ 1780.88 [Reserved]

§ 1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an ''as needed by borrower'' basis in amounts not to exceed the amount needed during 30-day periods.

§ 1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in § 1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(a) The date from which each advance will bear interest;

(b) The interest rate as determined by § 1780.13;

(c) A payment schedule providing for interest on outstanding principal at least annually; and

(d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§ 1780.91–1780.93 [Reserved]

§ 1780.94 Minimum bond specifications.

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

(a) Type and denominations. Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.

(b) Bond registration. Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of ''United States of America'' and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

(c) Size and quality. Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) Date of bond. Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) Extra payments. Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (k) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) Redemptions. Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) Precautions. The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in Forms RD 1942–47 or RD 1942–9.

(4) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) Assessment bonds. When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) Multiple debt instruments. The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that

will be closed at the same interest rate may be combined in the same debt instrument.

§ 1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§ 1780.96–1780.100 [Reserved]

Part 1942, Subpart I [Redesignated as Part 1781 and Revised]

5. Subpart I of 7 CFR part 1942 is redesignated as 7 CFR part 1781 and is revised to read as follows:

PART 1781—RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND ADVANCES

Sec.

1781.1 Purpose.
1781.2 Policy.
1781.3 Authorities, responsibilities, and delegation of authority.
1781.4 Definitions.
1781.5 Eligibility.
1781.6 Loan purposes.
1781.7 Loan and advance limitations and obligations incurred before loan closing.
1781.8 Rates and terms—WS loans and WS advances and RCD loans.
1781.9 Security, feasibility, evidence of debt, title insurance, and other requirements.
1781.10 [Reserved]
1781.11 Other considerations.
1781.12 Preapplication and application processing.
1781.13 [Reserved]
1781.14 Planning, options, and appraisals.
1781.15 Planning and performing development.
1781.16 [Reserved]
1781.17 Docket preparation and processing.
1781.18 Feasibility.
1781.19 Approval, closing, and cancellation.
1781.20 Disbursement of WS and RCD loan funds and WS advance funds.
1781.21 Borrower accounting methods, management, reporting, and audits.
1781.22 Subsequent loans.
1781.23 Servicing.
1781.24 State supplements and availability of bulletins, instructions, forms, and memorandums.
1781.25–1781.100 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

§ 1781.1 Purpose.

This part prescribes the policies and procedures for making:

(a) Watershed (WS) loans and Watershed (WS) advances for works of improvement in a watershed project; and

(b) Resource Conservation and Development (RCD) loans for measures or projects needed to implement the RCD area plan to achieve objectives in an RCD area.

§ 1781.2 Policy.

(a) Rural Utilities Service (RUS), is an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Farmers's Home Administration. Natural Resources Conservation Service (NRCS), is an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Soil Conservation Service. RUS will make WS and RCD loans available to sponsoring local public bodies, agencies, and nonprofit organizations to assist them in obtaining the local cost of WS works of improvement and RCD measures. Any processing or servicing activity conducted pursuant to this part involving authorized assistance to RUS employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of Part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an RUS employee. RUS will assist the local sponsors and the NRCS in making loans from NRCS construction funds as WS advances when needed for the development of future water supplies or for site preservation.

(b) Rural Development State and local offices will administer these programs on behalf of RUS and will coordinate application processing with the NRCS and other appropriate State and Federal agencies.

§ 1781.3 Authorities, responsibilities and delegation of authority.

(a) NRCS provides technical and financial assistance to sponsoring local organizations for developing WS and RCD area plans and for individual RCD measures or projects and watershed works of improvement. The watershed work plan for developing, operating, and maintaining watershed works of improvement must be agreed upon by sponsoring local organizations and NRCS. When approved, it is the basis for extending technical and cost sharing assistance from watershed funds. The RCD area plan is prepared for the development of the RCD area by sponsoring local organizations with assistance from NRCS and other agencies, endorsed by the Governor or by the agency designated by the Governor, and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures or projects to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(b) RUS receives and processes applications for WS loans and NRCS WS advances and RCD loans and makes and services such loan and advances. WS loans are made by RUS from either Public Law 534 (78th Cong.) funds authorized in the Flood Control Act of 1944 (33 U.S.C. 701 *et seq.*) or Public Law 566 (83rd Cong.) funds authorized in the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666) to cover a part or all of the local cost for a watershed work of improvement.

(c) WS loans and WS advances may be made to project sponsors in watershed project areas for which:

(1) A watershed work plan has been approved administratively or by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and by the Committee on Agriculture of the House of Representatives; and

(2) Federal assistance has been authorized for the installation of works of improvement by the Administrator of NRCS.

(d) RCD loans may be made in areas authorized for RCD program assistance by the Secretary of Agriculture and for which an RCD plan design or area plan has been accepted by the State NRCS Conservationist.

(e) Delegation of authority. The Rural Development State Director is authorized to approve WS and RCD loans subject to limitations in RUS Staff Instruction 1780–1 and conditions of this part. The Rural Development State Director is authorized to relegate authority in accordance with this part to the Chief, Community Programs; or other members of the State Office staff.

(f) NRCS is responsible for providing technical and financial assistance to sponsoring local organizations for planning and developing WS and RCD areas. This includes development of WS and RCD plans and WS works of improvement and RCD measures or projects.

(g) RUS is responsible for making and servicing WS loans and advances and RCD loans.

(h) The NRCS–RUS Agreements in RUS Bulletin's 1781 and 1781–2 include further responsibilities and functions of NRCS and RUS in WS and RCD areas.

§ 1781.4 Definitions.

(a) *Watershed (WS) project.* An authorized area in which watershed assistance from NRCS and other U.S. Department of Agriculture (USDA) agencies including WS loans and advances may be provided. Watershed assistance is provided in two types of watershed projects identified by the Public Law under which they are authorized.

(1) *Public Law-534 Watershed.* One of the 11 watersheds authorized by Congress in the Flood Control Act of 1944 (33 U.S.C. 701 *et seq.*), Public Law 78–534 as amended.

(2) *Public Law-566 Watershed.* A small watershed of not more than 250,000 acres authorized in accordance with the Watershed Protection and Flood Prevention Act, August 4, 1954, Public Law 83–566 as amended.

(b) *Resource Conservation and Development (RCD) area.* An area in which RCD program assistance from NRCS and other USDA agencies has been authorized. It usually includes all or part of more than one county and may be coterminous with substate planning and development areas. RCD loans are authorized under Section 32 of Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011).

(c) *Watershed plan.* A plan agreed upon by sponsoring local organizations and the NRCS for developing, operating, and maintaining watershed works of improvement.

(d) *RC&D measure plan.* A plan document for a land area, directly controlled or under the jurisdiction of the sponsoring public bodies or public nonprofit organization. It involves one of the measure purposes eligible for RC&D cost sharing assistance. The document sets forth what will be done, how, when and by whom, and involves RC&D technical and/or financial assistance.

(e) *RCD area plan.* A plan prepared by sponsoring local organizations with assistance from NRCS and other agencies for the development of the RCD area which has been endorsed by the Governor or his designated agency and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(f) *Watershed works of improvement.* Structural, nonstructural, and land treatment measures included in a watershed plan which are to be installed in a watershed project.

(g) *RCD measure or project.* An activity or development indicated in the RCD area plan as being needed to achieve RCD area goals and objectives.

(h) *Cost sharing.* The WS and RCD legislative authorities provide for sharing certain costs of installing WS works of improvement or RCD measures by the Federal Government and by sponsoring local organizations. Federal cost sharing from WS and RCD funds is provided by NRCS for certain WS works of improvement and RCD measures. Information on amounts, purposes, and procedures for cost sharing is available from the NRCS.

(i) *Local cost.* The part of the cost of a WS work of improvement or a RCD measure or project that is to be paid by a sponsoring local organization.

(j) *Public agency or public body.* A State agency or department or instrumentality, county, municipality or other political subdivision or instrumentality of a State or agencies or districts created by or pursuant to State law for making improvements of a public nature or providing public services such as soil and water conservation districts, irrigation districts, drainage districts, flood prevention and control districts, school districts, other special purpose districts, municipal corporations or similar governmental units.

(k) *Non-profit corporation.* Mutual and other irrigation, water users, water supply, drainage, or waste disposal companies or associations, ditch companies, grazing, recreation and forestry associations and similar associations and organizations generally designated as private corporations operating on a non-profit basis. They may be organized and chartered under special law, general nonprofit corporation law, or general profit corporation law, if operated on a nonprofit basis under adequate charter, bylaw, mortgage or supplementary agreement provisions which will assure continued operation in that manner.

(l) *Sponsoring local organization.* A local public agency or body or a local nonprofit corporation having authority under State law to plan, develop, maintain and operate WS works of improvement or RCD measures or projects included in a WS or RCD area plan. The name of the sponsoring local organization must be included in the plan and sponsorship must be evidenced by execution of the plan.

(m) *Watershed loan.* A loan made by RUS from watershed funds to a sponsoring local organization to develop a WS work of improvement.

(n) *RCD loan.* A loan made by RUS from RCD funds to a local sponsoring organization to develop a RCD measure or project. RCD loans are made from RCD funds to enable sponsoring local organizations to provide a part or all of the local share of cost for an RCD measure.

(o) *Watershed advance.* A loan made from NRCS watershed construction funds to develop a future water supply or for the preservation of a site for a work of improvement authorized in a watershed plan.

(p) *Future water supply.* Water storage capacity in a reservoir with related facilities for release or withdrawal of water to meet future needs for municipal or industrial use.

(q) *Preservation of sites.* Acquisition to assure their availability for planned developments. Land, easements, or rights-of-way essential to preserve sites for watershed works of improvement or RCD measures.

(r) *Processing office.* Means the office designated by the Rural Development State Director to accept and process applications for WS and RCD loans and advances.

§ 1781.5 Eligibility.

To be eligible for a WS loan, WS advance, or an RCD loan, the sponsoring local organization must meet the following requirements as applicable. Questions on eligibility will be referred to the Regional Attorney, OGC for legal advise prior to development of a loan docket.

(a) Be named in the WS or RCD plan as a sponsor of the development to be financed.

(b) Be legally organized and established in the WS or RCD area with legal authority, responsibility and capability to develop and operate the facility for which assistance is requested.

(c) Have authority under and comply with Federal, State and local laws on such matters as:

(1) Organizing, installing, operating, and maintaining proposed WS works of improvement or RCD measures or projects.

(2) Borrowing money, giving security, levying taxes, making assessments or raising revenues for operation and maintenance of the facility and repayment of loans.

(3) Land use zoning.

(4) Acquiring necessary property, lands, and rights.

(5) Obtaining approval of construction plans and specifications by appropriate Federal, State, and local agencies and construction facilities.

(6) Health and sanitation standards, water pollution control, and environmental regulations.

(7) Design and installation standards.

(8) Public service commission or similar State public body rules and regulations.

(d) Be financially sound and capable of providing service essential to the rural development needs of the area.

(e) If it is a nonprofit corporation.

(1) Membership should be broadly based and representative of the area benefiting from the facility. Membership on the governing board of the corporation will be limited to those living in the area to be benefited unless for justifiable reasons the Rural Development State Director gives prior approval for other than local residents to serve on the board of directors.

(2) The corporation must propose a facility which will primarily serve or generate other substantial, tangible benefits for farmers and other residents of the area. In the case of a recreational development at least two-thirds of the membership must be farmers and other residing in the area.

(3) Nonprofit corporations will not be formed to serve an area which could be served by a public agency which has adequate authority to provide the needed service unless prior approval of the National Office is obtained.

§ 1781.6 Loan purposes.

(a) *WS and RCD loans.* WS and RCD loans may be used for:

(1) Water development, storage, treatment and conveyance to farms for irrigation and other farm use, including farmstead, livestock, orchard, and crop spraying.

(2) Drainage systems and facilities in farm areas to sustain agricultural production or protect farmers and rural residents from water damage.

(3) Agricultural water management practices for annual streamflow stabilization, recharging ground water reservoirs, and conserving water supplies by management and control of vegetation along waterways and in drainage basins.

(4) Soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures needed to protect farms and rural residents from water damage, provided such facilities cannot be installed or improved under, or will not conflict with, other public programs such as those administered by the Corps of Engineers.

(5) Special treatment measures or equipment primarily, though not exclusively, for flood prevention such as:

(i) Facilities and equipment for fire prevention and control.

(ii) Tree planting and establishment of other vegetative cover for stabilizing critical runoff and sediment-producing areas.

(iii) Structural and vegetative measures to stabilize stream channels and gullies.

(iv) Basic farm conservation practices to control runoff, erosion, and sedimentation.

(6) Installing, repairing, and improving water storage facilities, including outlets for immediate and future domestic, municipal and industrial water supply and water quality management, and conveying water to treatment facilities or distribution systems. When payment of loans for such facilities are primarily dependent upon revenues from use of water stored the loan approval official must determine the adequacy of facility for use of the water before a loan is closed.

(7) Public water based recreation and fish and wildlife developer loans will only be made to public bodies for the local share of cost for such developments for which NRCS is providing technical or financial assistance from WS or RCD funds. Loans will not be made for developments larger or more elaborate than that which is included in the WS or RCD plan. Loans may include funds for:

(i) Construction of necessary water resource improvements such as storage capacity in multipurpose and single purpose reservoirs, water level control structures in reservoirs and streams, and stream channel improvements necessary for the development of the facilities. This may include practices for improvement of fish and wildlife habitat and environment and related areas and facilities for proper protection and management of the development.

(ii) Essential developments, improvements, equipment and facilities for access, public health and safety, and efficient operation management and maintenance; such as energy utilities, water supply and waste disposal systems, maintenance buildings, fences, cattle guards, roads and trails, parking, picnicking, camping, beaches, playgrounds, and related shelters and equipment.

(iii) Special areas and structures such as forest and other vegetative cover, marshes, pits, shelters and fish ladders to provide protected natural spawning, breeding, nesting, and feeding for fish and wildlife.

(8) Soil and Water Management for Agriculture-Related Pollutant Control. Measures to reduce agriculture-related pollutants that adversely affect the community and the general public. Measures may include, but are not limited to, holding ponds, debris basins, diversions, terraces, and community distribution systems.

(9) Acquiring fee simple title to lands or perpetual easements, or rights-of-way for sites for works of improvement or project measures and related costs for removal, relocation, or replacement of existing improvements including relocation payments for displaced persons, business enterprises and facilities, and other related purposes. Funds for land acquisition will be limited to costs necessary for WS works of improvement or RCD measures. Final construction plans will indicate minimum essential lands and rights-of-way to be acquired. In some cases, sponsoring local organizations may need to acquire lands in excess of actual needs when it is expedient for planned development. If the Rural Development State Director determines that the acquisition of excess land is necessary or expedient for the orderly development of a WS works of improvement, or RCD measure, he may authorize the action subject to the following conditions:

(i) The applicant must agree to sell excess land as soon as practicable and apply the proceeds, together with any income from excess land, on the debt to RUS.

(ii) The applicant must furnish legal evidence of authority to acquire additional land and dispose of it as agreed.

(iii) Evidence must be provided to justify acquisition of additional land.

(iv) Easements for land or water resource protection structures must be perpetual and must not include clauses that terminate the easement with the dissolution or abandonment of the applicant organization. Loan funds will not be used for an easement that deviates in any way from that provided in the standard NRCS form unless modifications of it are approved by both NRCS and RUS.

(10) Acquisition of water supply or water right by purchase or by appropriation under local, State, and Federal laws. The loan may include funds for the purchase of land on which the water supply or water right is presently being used when:

(i) The water supply or water right cannot be purchased without the land; and

(ii) The value of the land is not the major portion of the cost; and

(iii) Any excess land thus acquired will be sold as soon as possible and the proceeds applied on the loan.

(11) Purchase of equipment and machinery necessary for development and operation of planned WS works of improvement or RCD measures or projects including:

(i) *Special-purpose equipment.* Purchase or rent special-purpose equipment to install or maintain any community facility in categories in paragraph (a)(11) of this section or to establish on farms soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and removal of brush, scattered trees, and stumps, provided:

(A) Such equipment is not otherwise available when needed.

(B) There is sufficient need and local demand to justify ownership or rental.

(C) Rates to be charged include, among other things, an allowance for depreciation, obsolescence, and replacement based upon the recommendations of the equipment manufacturer or the experience of contractors engaged in providing services for similar types of work.

(ii) *Forestry equipment and services.* Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles or posts; providing that the forest program and forest practices benefiting from such services are in accordance with approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment may include such items as tractors, bull dozers, plows, planters, trucks, loaders, fire-fighting equipment, and sprayers. Facilities may include such items as ponds and reservoirs, pipelines, buildings for storage of equipment and supplies, nurseries, access roads, fire lanes, and lookout towers. Supplies may include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(A) Are not readily available when needed.

(B) Will be justified by local need and demand.

(C) Will be available to users at rates sufficient to cover loan amortization, obsolescence, replacement, operation, and cost of supplies.

(D) Will more efficiently serve the group through cooperative effort.

(12) Refinancing debt obligations of the sponsoring local organization that were incurred before application for a WS or RCD loan when that is not the primary purpose of the loan and:

(i) The debt being refinanced was for works of improvement or measures for which loan funds could be used; and

(ii) The debt is a valid obligation of the sponsor; and

(iii) Creditors will not modify payment terms on existing debts, and the organization cannot pay existing debts and a loan from RUS over the same period of time; and

(iv) Long-term debts will not be refinanced unless necessary to provide a sound basis for the loan or WS advance and concurrence is obtained from the National Office.

(13) If repayment is based on revenues, loan funds (not WS advances) can be used for payment of interest installments until the facility is generating enough revenue to make accrued interest payments. Loan funds for interest payments will not exceed the estimated amount that will accrue to the end of the third full calendar year after loan closing without prior approval from the National Office.

(14) Relocation payment to displaced persons, businesses, and farm operations and for relocation assistance advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646, 84 Stat. 1894), the Regulations issued by the Secretary of Agriculture under the Act (7 CFR part 21), and the Memorandum of Understanding Between NRCS and RUS.

(15) Services of engineers, architects, attorneys, auditors, construction foremen, managers, clerks, and others for organizing, planning, surveying, supervising, analyzing, developing, operating, managing, and accounting for activities related to loan processing and closing and development for which the loan is made.

(16) Buildings, fences, roads, utilities, facilities, and relocation:

(i) To construct buildings of modest design essential for the operation and maintenance of the works of improvement or measure.

(ii) To provide support facilities and utilities such as gas, electricity, water, sewer, and waste disposal.

(iii) To build or relocate roads, bridges, utilities, fences, and other improvements when necessary to acquire rights-of-ways or to construct or operate the facility.

(17) Services and fees. To pay costs for services for any purposes listed under this section such as:

(i) Fees or other legal expenses for establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Purchase of water stock or membership in an incorporated water users' association to acquire a water supply.

(iii) Costs of labor, technical or professional services, and fees to be incurred in obtaining the loan and in planning and completing the facilities or services to be financed with loan funds.

(iv) Services such as those listed in paragraph (a) (16) of this section.

(b) *RCD loans.* Purposes for which RCD loans may be made in addition to those included in paragraph (a) of this section are:

(1) *Solid waste management.* Lands, equipment and facilities to collect, transport, and dispose of solid waste in sanitary landfills for which NRCS is providing technical assistance.

(2) *Shifts-in-land use.* Lands for uses such as grazing, forestry, wildlife, natural areas and parks, greenbelts, and other open spaces.

(3) *Purchase existing facilities.* Purchase existing facilities for shift-in-land use, soil and water development, conservation, control and use when it is determined that purchase is necessary to provide efficient service through a facility owned and operated by a public agency (or a nonprofit corporation in a rural area), or the owner is either unwilling or unable to make improvements, enlargement, or extensions needed to provide significant additional or improved service for present users or for a new group of users at reasonable rates.

(c) *NRCS watershed advances.* NRCS watershed advances are loans that may be made from NRCS construction funds for the following purposes included in a watershed work plan agreement:

(1) To pay construction costs including cost of engineering and related services for increasing reservoir capacity (including intake and outlet structures) for a future water supply for municipal, domestic, industrial, or agricultural uses.

(2) To preserve sites for authorized watershed works of improvement by acquiring land, easements, and rights-of-ways or other property rights.

§ 1781.7 Loan and advance limitations and obligations incurred before loan closing.

(a) *WS and RCD loan limitations.* (1) Loans will not be used for:

(i) Land treatment measures on individual farms except as provided in § 1781.6(a)(5)(iv).

(ii) Buildings and facilities to be used for lodging, dining or entertainment purposes.

(iii) Building industrial parks or constructing facilities in them, or establishing private industrial or commercial enterprises, or purchasing land to be used primarily for industrial purposes.

(iv) Paying costs allocated to structural measures for flood prevention.

(v) Facilities for the production and harvesting of fish and wildlife such as hatcheries, rearing ponds, and related facilities other than those under natural conditions.

(vi) Facilities primary for treatment and distribution of water or for sewerage, collection and treatment for domestic or industrial use or for municipal or community systems.

(vii) Electric generating, transmission, and distribution facilities, except when provided as part of the minimum basic facilities for recreation and fish and wildlife developments authorized in § 1781.6(a)(7).

(viii) Storm and sanitary sewers and solid waste disposal facilities other than authorized in § 1781.6(b)(1).

(ix) Payment for a tract of land, easements, or rights-of-ways on which NRCS will share the cost if the amount to be paid with loan funds exceeds the difference between the NRCS share and the value on which the NRCS share is based.

(x) Purchasing tracts of land primarily for later resale to private developers or individuals for agricultural or nonagricultural use.

(xii) Buildings for residential, commercial, or industrial, use.

(xiii) Developments on private property primarily for the benefit of the individual property owner.

(xiv) Payment of that part of the cost of facilities, improvements, and practices that could be earned by participation in agricultural conservation programs unless such cost cannot be covered by purchase orders or assignments to material suppliers or contractors. If a loan is made for such purposes for which practice or cost share payments exceed $500, RUS will obtain an assignment on such payments to be paid on the loan.

(xv) Primarily for water and sewage treatment plants and distribution systems.

(xvi) Drainage facilities primarily for the benefit of other than rural areas.

(xvii) Any single RCD measure that requires a loan of more than $500,000.

(xviii) The total amount of principal outstanding for all WS loans made for one or more watershed works of improvement in a single watershed project, whether made to one or more sponsoring organizations, will not exceed $10,000,000.

(b) *Watershed advance limitations.* (1) A WS advance for future water supply will not be used for acquiring property rights including lands, easements, and rights-of-way; water rights; administration of contracts; storage capacity for immediate municipal use; pipelines from the reservoir to place of use; or for other uses such as irrigation, fish and wildlife, and recreation.

(2) A WS advance for increasing reservoir capacity for future water supply will not exceed 30 percent of the total installation cost of one structure.

(3) A WS advance for site preservation will not exceed that determined necessary by NRCS except to purchase land in excess of actual needs in accordance with the provisions of § 1781.6(a)(7).

(4) Before a project agreement is entered into, there must be satisfactory evidence that the borrower will develop the site to be acquired or will use the future water supply and that revenue will be sufficient to meet all scheduled installments.

(c) *Obligations incurred before loan closing.* (1) WS loans, WS advances, and RCD loans may be used for payment of obligations incurred before loan closing when the Rural Development State Director determines that:

(i) The obligations incurred are necessary for planned developments; and

(ii) The obligations are incurred for authorized loan purposes; and

(iii) Contracts and construction plans meet RUS and NRCS standards; and

(iv) The applicant has legal authority to incur the obligations at the time proposed; and

(v) The Rural Development State Director authorizes such action in a letter to the applicant.

(2) The Rural Development State Director's letter will specifically state that the permission is granted on the condition that RUS is not committed to make a loan and assumes no responsibility for any obligation incurred by the applicant because of the permission granted and that the loan will be closed subject to compliance with agency regulations including closing instructions of the Regional Attorney Office of the General Counsel.

§ 1781.8 Rates and terms—WS loans and WS advances and RCD loans.

(a) *Interest rates.* The interest rate for WS loans, WS advances and RCD loans will be at a rate not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest 1/8 of 1 percent.

(1) For loans, unless otherwise required by State law, interest will accrue from date of check delivery where Form RD 440–22, ''Promissory Note (Association Organization),'' is used. Where bonds are used interest will accrue from the applicable dates recorded on the bonds. Where multiple loan disbursements are used interest will accrue from date of check.

(2) Interest on an advance for future water supply will begin as required by State law, when water is first used from the future water storage capacity installed with advance, or ten years from the scheduled date of the completion of the facility, whichever date is the earlier.

(3) Interest on an advance for preservation of sites will begin on the date the advance is closed.

(b) *Length of repayment period.* The repayment period on loans may not exceed the shortest of the following periods:

(1) The statutory limitation on the sponsoring local organization's borrowing authority.

(2) Fifty (50) years for WS loans and WS advances and 30 years for RCD loans from the date when the principal benefits from the WS works of improvement or RCD measure being financed first become available.

(3) The useful life of the WS works of improvement or RCD measure being financed with loan or advance funds.

(c) *Deferred or partial payments.* Deferred or partial payments may be authorized in the following circumstances:

(1) Payments need to be delayed until the receipt of income from taxes or other revenues is enough to meet a regular installment but not exceed:

(i) The completion date of the facility; or

(ii) The date when benefits from the facility begins; but

(iii) In no case for more than 5 years for other than future water supply.

(2) Payments will depend on the increased returns expected from planned improvements, or from the installation on individual farms of land development or other soil and water improvements essential for obtaining benefits from the improvement to be installed with loan funds.

(3) They will not be used to permit the accelerated payment of other debts, to make capital improvements, or to create operating reserves.

(4) Where prohibited by State statutes; interest payments will not be deferred even though payments on principal may be deferred.

(5) Loans or advances for future water supply will be repaid within the life of the reservoir structure but in no event later than 50 years for WS and 30 years for RCD after the reservoir structure is built. Payments on the principal amount may be deferred one year after the water is first used from the storage capacity installed with the advance or for 10 years from the scheduled completion date of the structures, whichever occurs first.

(i) Interest will begin for a future water supply as required by State law, or when water is first used from the future storage capacity or 10 years from the scheduled date of completion of the facility, whichever occurs first.

(ii) If State law requires that interest be charged and repaid before water is first used or earlier than 10 years from completion date of the structure, interest payments will be scheduled to comply with State law even though payments of principal may be deferred.

(iii) The borrower should be encouraged to begin repayments as soon as practicable after the reservoir is built even though this liberal deferment policy exists.

(iv) WS advances for preservation of sites must be fully repaid before beginning construction of the works of improvement for which such sites were acquired.

(A) Unless a WS advance is to be repaid with a WS loan, installments will be scheduled at the earliest possible date following the date of closing the advance. The date and amount of each such installment will be fixed to coincide with the receipt of income from taxes or other revenues.

(B) Payments for both principal and interest on a WS advance for preservation of sites may be scheduled for payment in one installment to be paid on the date of the closing of a WS loan which includes funds for the repayment of the WS advance.

(C) Interest on a WS advance for preservation of sites will begin on the date the WS advance is closed.

(d) *Payment amortization and application.* (1) A borrower may make prepayments on WS loans, WS advances or RCD loans in any amount at any time.

(2) Payments will be applied first to interest accrued to the date of the receipt of payment, and second to the principal balance. If the regular payments plus any prepayments exceed the cumulative amount due, the excess payments will be applied on the next installment first to interest, then principal. Loan refunds and proceeds from the sale of security property, however, will be applied on the final unpaid installment.

(3) Payments will be scheduled annually beginning one year following the date of loan closing or one year following the end of any approved deferment period, unless another annual due date is required by State statute or upon prior written authorization from the National Office. In those cases where loans are being made under statutes requiring a repayment date other than this, the Rural Development State Director will send a copy of the Regional Attorney's opinion that such is required, to the Finance Office.

(4) When a single obligation instrument is used, amortized installments will be required. When this cannot be done because of state law, serial bonds or a single bond having installments of principal plus interest, stated separately, will be used. In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(5) In cases where the indebtedness will be represented by serial bonds or a single bond having installments of principal plus interest, stated separately, annual payments of principal and interest will be scheduled to permit them to be paid in amounts approximately equal to the amounts that would be required for annual amortized installments.

(6) If the borrower will be retiring other debts represented by bonds or notes, the payment on such bonds may be considered in developing the payment schedule for the RUS loan. In some cases, it may be desirable to reduce the amount of payments to RUS in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such payment schedules are proposed, National Office authorization will be obtained prior to loan approval.

(7) Payment date. Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixth or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month.

§ 1781.9 Security, feasibility, evidence of debt, title, insurance and other requirements.

(a) *Security.* WS loans, WS advances, and RCD loans will be secured in accordance with applicable provisions of § 1780.14 of this chapter.

(b) *Feasibility.* All projects financed under the provisions of this part must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount that will provide for facility operation and maintenance, a reasonable reserve, and payment of the debt. The Rural Development State Director may obtain needed assistance in determining economic feasibility from officials of NRCS and other appropriate USDA agencies. See § 1780.7(f) of this chapter for applicable economic feasibility requirements and feasibility reports.

(c) *Notes, bonds, and bond transcript documents.* See subpart D of Part 1780 of this chapter for applicable requirements and provisions.

(d) *Insurance.* See § 1780.39(g) of this chapter for requirements.

(e) *National flood insurance.* The requirements of the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003 *et seq.*) will be complied with in accordance with applicable provisions of RD Instruction 1901-L. Also see § 1780.39(g) of this chapter.

(f) *Borrower contracts and bonds.* See subpart C of Part 1780 of this chapter for applicable provisions.

(g) *Title requirements.* (1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with NRCS policies and procedures.

(2) RUS will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to

secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of § 1780.14 of this chapter. The Rural Development State Director will make his decision after consultation with the Regional Attorney and the State Conservationist. He will notify NRCS in writing of his decision. Thereafter, title clearance will be completed under NRCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with § 1781.6(a)(9). In addition to the title evidence required by NRCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) *Purchasing lands, rights and facilities.* The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an Rural Development employee or an independent appraiser.

(i) *Water rights.* Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place and manner of use of water, and in disposing of water. All of the rights of any landowner, appropriator, or user of water from any source will be fully honored in all respects as they may be affected by facilities installed with WS loans and advances and RCD loans. If, under the provisions of State law, notice of the proposed diversion or storage of water by the applicant may be filed, the applicant will be required to file such a notice. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

§ 1781.10 [Reserved]

§ 1781.11 Other considerations.

(a) *Technical assistance.* When pipelines from reservoirs to treatment plants are included in watershed work plans, NRCS will not furnish engineering services for their design or installation. When such pipelines are to be financed by WS or RCD loans, RUS will supervise the activities of the private engineers retained for the purpose. Such RUS supervision will include, among other things, approval of private engineer's contracts, approval of plans and specifications, authorization of contract awards, spot checks of engineering inspection, and final inspection and acceptance.

(b) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Necessary professional services may include such as that of an engineer, architect, attorney, bond counsel, accountant, auditor, and financial advisor or fiscal agent. Form RD 442–19, ''Agreement for Engineering Services,'' may be used when appropriate. RUS Bulletin 1780–7, ''Legal Service Agreement'' may be used to prepare the agreement for legal services.

(c) *Other services.* Contracts for other services such as management, operation, and maintenance will be developed by the applicant and presented to the RUS official developing the docket for review and approval.

(d) *Fees for services.* Fees provided for in contracts, agreements or services will not be more than those ordinarily charged by the profession for similar work when RUS financing is not involved.

(e) *State pollution control or Environmental Protection Agency standards.* Facilities will be designed, installed and operated to prevent pollution of water in excess of established standards. Effluent disposal will conform with appropriate State and Federal Water Pollution Control Standards.

(f) *Water pollution.* When repayment of a WS loan, WS advance, or RCD loan will be dependent upon income from the use or sale of water, RUS approval will be contingent upon a determination that the proposed use of stored water for recreation or municipal supply might not be permitted by a State health department because the water is being polluted from an upstream or other source.

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in accordance with subpart G of part 1940 of this title. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by NRCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the NRCS environmental review fails to meet the requirements of subpart G of part 1940 of this title. The Rural Development State Director should document the action taken by NRCS in compliance with the requirements of the National Environmental Policy Act and formally adopt the impact statement or assessment if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the Rural Development State Director will make necessary arrangements with the State NRCS conservationist for such action to be taken before a loan is made.

(h) *National Historic Preservation Act.* All projects will comply with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) in accordance with RD Instruction 1901–F.

(i) *Civil Rights Act of 1964.* Recipients of WS loans, WS advances, or RCD loans are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which prohibits discrimination because of race, color, or national origin. Borrowers must agree not to discriminate in their operations by signing Form RD 400–4, ''Nondiscrimination Agreement,'' before loan closing. This requirement should be discussed with the applicant as early in the negotiations as possible. Necessary actions will be taken in accordance with RD Instruction 1901–E.

(j) *Appraisals.* When required by the Rural Development State Director, appraisals will be made by an Rural Development official designated or an independent appraiser. Form RD 442–10, ''Appraisal Report—Water and Waste Disposal Systems,'' with appropriate supplements, may be modified as needed for use with the type of facilities being appraised.

(k) *Architectural Barriers Act of 1968.* All facilities financed with RUS loans and grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this act (42 U.S.C. 4151 *et seq.*).

§ 1781.12 Preapplication and application processing.

(a) *WS and RCD Loans.*—(1) *Preapplications.* (i) The processing office or other person designated by the Rural Development State Director may assist the applicant in completing SF 424.1, ''Application for Federal Assistance (For Non-construction),'' and will forward one of SF 424.1 to the Rural Development State Director.

(ii) The Rural Development State Director will review SF 424.1 along with other necessary information and will

coordinate selection of preapplications to be processed with NRCS. He will consult with NRCS State Conservationist concerning the status of the WS plan or RCD measure plan, the estimated time schedule for construction and cost of the proposed works to be installed with the loan, cost sharing funds to be made available to the applicant, and other pertinent information.

(iii) Form AD–622, ''Notice of Preapplication Review Action,'' will be prepared and signed by the Rural Development State Director within forty-five (45) days from receipt of the preapplication in the processing office stating the results of the review action. An original and one copy of Form AD–622 will be sent to the processing office who will deliver the original to the applicant.

(2) *Applications.* (i) The application includes applicable forms and information indicated in RUS Instruction 1780. When the Rural Development State Director determines that an application will be further processed and Form AD–622 is delivered, he will designate a community program specialist (field), or a member of the community program staff to assist the processing office and the applicant with assembling and processing the application.

(ii) The processing office should arrange needed conferences with the applicant and its legal and engineering consultants, and when necessary, arrange for review of other Rural Development officials, and provide bulletins, forms, instructions and other assistance with assembling and processing the application. A processing checklist and time schedule will be established by using Form RD 1942–40, ''Processing Check List (Public Bodies),'' or Form RD 1942–39, ''Processing Check List (Other than Public Bodies).'' The processing office will send a letter and a copy of the processing checklist to the applicant to confirm decisions reached at the conference. The original and a copy of the processing checklist will be kept in the processing office and will be posted current as application processing actions are taken. The copy will be circulated from the processing office to the State Office for use in updating copies of the forms retained, after which it will be returned from the State Office to the processing office.

(3) *Dockets.* WS loan, WS advance, and RCD loan dockets will be developed and assembled in accordance with applicable RUS Instruction 1780.

(b) *Watershed advances.* Applications for WS advances will be developed and processed with NRCS assistance as necessary.

(1) The Rural Development State Director will arrange with the NRCS State Conservationist to be advised when a local sponsoring organization applies to NRCS for a WS advance.

(2) The Rural Development State Director will request the NRCS State Conservationist to provide information justifying the WS advance along with a written recommendation that it be made. This will include:

(i) Economic feasibility of the proposed WS advance.

(ii) Evidence of the legal authority of the sponsoring local organization to incur the obligation and make required payments.

(iii) Any limitations on the issuance of additional bonds or notes which may be imposed by the provisions of bond ordinances or on resolutions which authorize the issuance of any outstanding obligation of the sponsoring local organization.

(iv) The amount of WS advance funds to be provided, purpose for which funds will be used, and date funds will be needed.

(3) When the above information has been made available to the Rural Development State Director, he will send written recommendations concerning further action on the WS advance request to the NRCS State Conservationist including actions to be taken in the preparation of the WS advance docket.

(c) *Combination WS loans and WS advances.* If an applicant requests both a WS loan and WS advance, the application for the WS loan should indicate the amount of the WS advance needed and whether a request for it has been made to NRCS. The Rural Development State Director and the NRCS State Conservationist will coordinate applicable processing actions of such applications. When the Rural Development State Director determines that favorable consideration will be given to an application for a loan or advance, he will provide instructions to the processing office for completing and processing the appropriate docket. Any questions concerning eligibility or other legal matters should be cleared with the Regional Attorney.

(d) *Review of Decision.* When it is determined that the preapplication or application cannot be given favorable consideration, the Rural Development State Director will return it to the processing office along with written reasons. When the processing office receives this information, it will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that the RUS Administrator may be requested to review the decision. This action will be taken in accordance with § 1780.37 of this chapter.

(1) Upon receipt of the State Office copy of a review request from the applicant, the Rural Development State Director will furnish a report on the matter to the Administrator.

(2) The Administrator will notify the applicant and the Rural Development State Director in writing of his decision and the reasons therefore.

§ 1781.13 [Reserved]

§ 1781.14 Planning, options, and appraisals.

(a) WS and RCD area plans are developed by sponsoring local agencies and organizations with technical assistance from NRCS and other Federal and State agencies. These plans include WS works of improvement and RCD measures to be developed or constructed for which NRCS construction funds may be made available on a cost share basis along with funds provided by the sponsoring local organization, a portion or all of which may be obtained by a WS loan and/or WS advance or a RCD loan.

(b) Current information on the availability of cost share funds and purposes for which they may be used is provided by NRCS. The amount of NRCS cost share funds and the amount of funds to be provided by the sponsoring local organizations will be indicated in each plan. The estimated amount of WS loan, WS advance or RCD loan anticipated by the sponsoring local organization should also be included.

(c) Plans for the development or construction of individual WS works of improvement and RCD measures will normally be developed with NRCS technical assistance. In every case they will be approved by both the NRCS State conservationist and the Rural Development State Director or their designated agent when a WS loan, WS advance or RCD loan is made.

(d) Options and appraisals related to the purchase of real estate for which a WS loan, WS advance, or RCD loan is made must be developed in accordance with NRCS and RUS requirements and approved by RUS. The determination of present market value will be made in accordance with § 1780.44(g) of this chapter.

§ 1781.15 Planning and performing development.

Planning and performing development will be handled in accordance with subpart C of part 1780

of this chapter and guidance from NRCS.

§ 1781.16 [Reserved]

§ 1781.17 Docket preparation and processing.

(a) *Loan dockets.* Dockets for WS loans, WS advances and RCD loans will be prepared in accordance with the applicable provisions of part 1780 of this chapter.

(1) *Time for preparation of docket.* Docket preparation may begin as soon as a preliminary draft of the watershed plan or RCD area plan, together with an estimate of costs and benefits, have been prepared with the assistance of NRCS and approved by the sponsoring local organization applicant. However, the applicant must understand that approval of the WS loan, WS advance, or RCD loan will not be determined until the work plan has been authorized for assistance by NRCS. To the extent practicable, docket preparation may be completed by that time to facilitate the availability of funds when needed.

(2) *Instructions for preparation of docket.* When the Rural Development State Director has determined that plans and other requirements are completed to the extent that preparation of the loan docket may begin, he will send the processing office a memorandum giving complete instructions for docket preparation, with a list of documents to be included in the docket.

(3) *Objectives of the docket.* The docket should include information for use in determining that:

(i) The sponsoring local organization:

(A) Has legal authority to construct and operate the proposed facility, borrow money, give security, incur debt, and generate revenue needed for operation, maintenance, reserves, debt payment, and other cash requirements.

(B) Is a sponsor or cosponsor of the WS plan or RCD work plan and is otherwise eligible for assistance.

(ii) Funds will be used for authorized purposes.

(iii) The source of income to be pledged for debt payment and the security proposed is adequate.

(iv) Actions required for loan closing are administratively satisfactory, legally sufficient and properly documented in accordance with Agency regulations.

(4) *Assembly of the docket.* The docket will be assembled in accordance with paragraph (a)(2) of this section and will include the following:

(i) A copy of the WS works of improvement agreement or RCD measure agreement.

(ii) A copy of the Operation and Maintenance Agreement between NRCS and the WS or RCD sponsoring local organization for the WS works of improvement or the RCD measure.

(iii) A statement from the NRCS State Conservationist concurring in the feasibility of the WS work of improvement or RCD measure and that NRCS is providing financial and/or technical assistance in accordance with applicable WS or RCD authorities.

(5) *Narrative by processing office.* This should be included in or attached to the Project Summary. It should relate project costs to benefits of the WS or RCD loan or WS advance. Minimum and average individual charges, tax levies or assessments should be given where applicable. Where taxes or assessments on land will be levied, acres should be indicated and average cost per acre should be given. Analyses of income from recreational facilities should be based on the best information available from local, State, and Federal agencies concerned with such recreation facilities. Determination of water rates, schedules, and estimated consumption of water should be made by the same methods as for loans for domestic water and irrigation.

(6) *Estimates of right-of-way Costs.* The docket should include, as part of the Project Summary, current estimated costs of easements, rights-of-way, and other land rights which must be acquired. The amount estimated for such purposes in the WS or RCD plan should reflect current conditions.

(b) *Loan processing by State Office.*—(1) *Review of the docket.* The processing office will check the docket for accuracy and completeness and forward it to the State Office with their recommendations. The Rural Development State Director will review the docket to determine that:

(i) All documents are accurate and complete.

(ii) The proposed loan complies with WS and RCD program policies and procedures of both RUS and NRCS.

(iii) Security is adequate and the repayment plan is sound.

(iv) Funds requested are for authorized purposes.

(v) Actions are in compliance with requirements of applicable Federal and State laws.

(2) *Letter of conditions.* When the Rural Development State Director determines that the docket is complete and the proposed activity is feasible, he will prepare a proposed letter of conditions under which the application may be further processed. The letter will be delivered to and discussed with the applicant. Upon acceptance of the conditions the applicant will indicate intentions to meet the conditions by a letter of interest and the application will be further processed.

(3) *Legal review.* The complete docket and proposed letter of conditions will be forwarded to the Regional Attorney, OGC for review and preparation of closing instructions. If it is not possible to issue closing instructions at that time, the Regional Attorney, will issue a preliminary legal opinion commenting upon the applicants legal existence, authority to incur debt and give security for the WS loan, WS advance, or RCD loan requested and actions to be taken before closing instructions may be issued.

(4) *Authorization for approval.* When the Rural Development State Director receives closing instructions or a preliminary legal opinion for a WS loan, WS advance, or RCD loan that is not within his approval authority he will send this information along with the docket, the proposed letter of conditions, and a memorandum recommending approval to the National Office. A copy of his memorandum will be sent to the processing office. If the proposed action is within the Rural Development State Director's approval authority he need not submit the material listed in this paragraph (b)(4) to the National Office unless he wants review and comments before approval.

(c) *WS advance processing.* (1) When the Rural Development State Director has concurred with the NRCS State Conservationist in the inclusion of a WS advance in a watershed plan, preparation of the advance docket can be initiated and will be processed in the same manner as for a WS loan. Where both a WS loan and WS advance are planned only one docket will be prepared to include both the WS loan and WS advance.

(2) If the advance appears to be sound and proper, the Rural Development State Director will send a proposed memorandum of concurrence to the NRCS State Conservationist. The memorandum will state that RUS concurs in the execution of a work of improvement agreement for which NRCS will obligate advance funds and that RUS will accept the proposed obligations of the applicant to repay the advance subject to conditions specified in or attached to the memorandum. These conditions will include all appropriate requirements in accordance with paragraph (b)(2) of this section and will specify compliance with closing instructions issued by the Regional Attorney. It will also indicate that preparation of the WS advance docket will be in accordance with paragraph (a) of this section.

(3) The Rural Development State Director and the NRCS State Conservationist will sign the memorandum of concurrence to NRCS when:

(i) It has been determined that funds for the advance will be obligated by NRCS; and

(ii) The WS advance docket, has been approved; and

(iii) Closing instructions have been issued by the Regional Attorney; and

(iv) The Rural Development State Director and NRCS State Conservationist have determined that the applicant can comply with all requirements of the letter of conditions and closing instructions.

§ 1781.18 Feasibility.

(a) Before WS loan, WS advance, or RCD loan is approved, a determination of feasibility will be made by the Rural Development State Director based upon a review of plans developed in cooperation with NRCS personnel. The feasibility determination must have the concurrence of the NRCS State Conservationist before a WS loan, WS advance, or RCD loan is approved.

(b) A written assessment of the project's feasibility will be made by the processing office, Architect/Engineer, and Program Chief in their recommendations or comments on the Project Summary. These should reflect concurrence of the respective NRCS personnel in counterpart positions with whom they cooperate in administering these programs.

§ 1781.19 Approval, closing, and cancellation.

(a) Approval and closing actions will be taken in accordance with the applicable provisions of part 1780 of this chapter and the following requirements have been met:

(1) The WS or RCD plan has been approved for operations by NRCS and the applicant is an official sponsoring or cosponsoring local organization for the plan as evidenced by being included in the list of sponsoring or co-sponsoring local organizations in the plan.

(2) Closing instructions or a preliminary legal opinion has been prepared by the Regional Attorney.

(3) The governing body of the applicant's sponsoring local organization has formally passed and approved the loan resolution.

(4) The Rural Development State Director and NRCS State Conservationist have determined that all planned actions can be carried out as proposed in the project plan and the docket.

(5) The NRCS State Conservationist and Rural Development State Director have mutually agreed on the priority to be given the WS loan or WS advance, or RCD loan. In making this determination, consideration will be given to the relative priority of the WS works of improvement or RCD measures to all other such work in the State and the anticipated availability of Federal and local funds to assure continuity of action and work until the project is completed. When funds are to be provided by NRCS for a WS or RCD loan or a WS advance such funds must be obligated by NRCS before closing.

(6) Public bodies will be required to use bond counsel in accordance with subpart D of part 1780 of this chapter.

(b) When favorable action is not taken on a WS loan, WS advance, or RCD loan, the Rural Development State Director will notify the NRCS State Conservationist and the applicant in writing and, if possible, arrange for a meeting of RUS and NRCS representatives with the applicant to explain the action. WS loans, WS advances, or RCD loans may be canceled before closing.

§ 1781.20 Disbursement of WS and RCD loan funds and WS advance funds.

(a) WS and RCD loan funds will be disbursed by the processing office in accordance with the applicable provisions of § 1780.45 of this chapter and RUS Bulletin 1781–1, paragraph (5). Funds will be made available to the borrower as needed for payment of development or other costs for which the loan is made. The processing office must determine that the payment is for an authorized purpose and is for benefits accrued to the borrower. This will require evidence from NRCS in accordance with the applicable provisions of RUS Bulletin 1781–1, ''Memorandum of Understanding Between RUS and NRCS.''

(b) WS advance funds may be disbursed in the same manner as WS loan funds if such funds are transferred to RUS by NRCS for disbursement or they may be disbursed by NRCS. When WS advance funds are disbursed by NRCS, payments from advance of funds will be reported to the Rural Development State Director each month to be reported to the Finance Office and charged to the borrower's account. This action will be taken in accordance with the applicable provisions of RUS Bulletin 1781–1 or RUS Bulletin 1781–2 and agreement between the NRCS State Conservationist and Rural Development State Director as follows:

(1) When a future water supply is being developed with NRCS, WS advance funds, the NRCS State Conservationist will send the Rural Development State Director a monthly report of funds disbursed. This will include three (3) copies of Form NRCS–AS–49a and 49b, ''Contract Payment Estimate and Construction Progress Report,'' along with a transmittal Memorandum showing the sequential number (first, second, third, etc.) of the payment, the amount and date of payment, the check number by which the payment was made and the cumulative amount of advance funds disbursed to date. When the works of improvement, for which WS advance funds are used is completed the final report will, in addition to the above, show the date that construction was completed and the total amount of WS advance funds used.

(2) WS advances for construction costs will be set out each month on Form NRCS–49a. The Rural Development State Director should make arrangements with the NRCS State Conservationist to be supplied each month with a copy of Form NRCS 49a when advance funds are included together with an official statement from the NRCS State Administrative Officer giving the date of the check and the exact amount of each advance of funds made under the advance provisions of the project agreement or of any engineering services agreement or other supplementary agreement which further implements the proposal for the advance in the project agreement. The original will be sent immediately to the Finance Office and a copy provided for the processing office file.

(3) When WS advance funds are used to acquire property for site preservation the same reporting procedure as for a future water supply will be used except that Form NRCS–AS–49a and 49b if used, should be adopted to indicate fund use. As payments are made on land on which a mortgage or other security instrument is required, such instruments will be executed in accordance with instructions from the Regional Attorney, OGC.

(4) The Rural Development State Director must send the bond or note evidencing WS advance indebtedness of the borrower to the Finance Office along with reports of payments from advance funds disbursed by NRCS. A copy of the bond or note and copy of each report of payment will be sent to the processing office.

(c) *Actions subsequent to closing of loans or advances.* Actions will be taken in accordance with § 1780.44 of this chapter.

§ 1781.21 Borrower accounting methods, management, reporting, and audits.

These activities will be handled in accordance with the provisions of § 1780.47 of this chapter.

§ 1781.22 Subsequent loans.

Subsequent loans will be processed in accordance with this part.

§ 1781.23 Servicing.

Servicing will be handled in accordance with the provisions of subpart E of part 1951 of this title.

§ 1781.24 State supplements and availability of bulletins, instructions, forms, and memorandums.

(a) State supplements will be issued as needed in accordance with applicable provisions of part 1780 of this chapter.

(b) Bulletins, instructions, forms and memorandums are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC. 20250–1500.

§§ 1781.25—1781.100 [Reserved]

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements*C*

6. The authority citation for subpart E of part 1901 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480, 2942.

7. Section 1901.204 is amended by revising paragraph (a)(25) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(25) Section 306C WWD loans and grants.

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PART 1940—GENERAL

8. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§§ 1940.586 and 1940.587 [Removed and Reserved]

9. Sections 1940.586 and 1940.587 are removed and reserved.

PART 1942—ASSOCIATIONS

10. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—Community Facility Loans

11. Section 1942.1 is amended by revising paragraph (a) to read as follows:

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for community facilities except for fire and rescue and water and waste disposal facilities. This subpart applies to community facility loans for fire and rescue facilities only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title. The Agency shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Federal statues provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

* * * * *

12. Section 1942.17 is amended by revising the heading and introductory text of paragraph (p)(6)(i) to read as follows:

§ 1942.17 Community facilities.

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(p) * * *

(6) * * *

(i) *Agency loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section, provided the use will not result in major changes to the facility design or project and that the purposes of the loan and/or grant remains the same.

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Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

13. Section 1942.308 is amended by revising paragraph (c) to read as follows:

§ 1942.308 Regional Commission grants.

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(c) ARC is authorized under the Appalachian Regional Development Act of 1965 (40 U.S.C. 1–405), as amended, to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by the Agency. Therefore, a separate Project Management Agreement between the Agency and ARC is not needed for each ARC grant.

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14. Section 1942.349 is revised to read as follows:

§ 1942.349 Forms, guides, and attachments.

Guides 1 and 2 of this subpart, Attachment 1 and Forms referenced (all available in any Rural Development office) are for use in administering RBE/television demonstration grants.

Subpart H—[Removed and Reserved]

15. Subpart H of part 1942 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

16. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

17. Section 1951.201 is revised to read as follows:

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans and grants; Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity

Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants; and Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title. Rural Development State Offices act on behalf of the Rural Utilities Service, the Rural Business-Cooperative Service, and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

PART 1956—DEBT SETTLEMENT

18. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart C—Debt Settlement-Community and Business Programs

19. Section 1956.101 is revised to read as follows:

§ 1956.101 Purposes.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; direct Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans; and Indian Tribal Land Acquisition loans; and Section 306C WWD loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105 as described in § 1956.147 of this subpart.

Dated: May 15, 1997.

Jill Long Thompson,

Under Secretary for Rural Development.

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