PART 979—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 979 is removed.

Dated: June 2, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–8895 Filed 6–7–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1980 and 4279

RIN 0570–AA49

Business and Industry Guaranteed Loans—Tangible Balance Sheet Equity

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: In this final rule the Rural Business-Cooperative Service (the Agency) amends existing regulations relating to Business and Industry (B&I) loans made or guaranteed by the Agency by modifying the provisions that address the evaluation of credit quality. Changes to these underwriting provisions were originally proposed on January 16, 2004. The scope of this final rule is more limited than originally proposed but also implements a change not originally discussed in the proposed rule. Specifically, in the case of the refinancing of USDA or other Federal agency debt only, the Agency is modifying the definition of tangible balance sheet equity to include the off balance sheet value of tangible assets to the extent of the difference between the depreciated book value of real property assets and their current market value supported by an appraisal or the original book value, whichever is less. In these limited cases, the adjusted tangible balance sheet equity will also include qualified subordinated debt owed to the owner. As stated above, these adjustments to the equity calculation will apply only in cases where the Agency is asked to guarantee a refinancing of outstanding debt currently owed to or guaranteed by a Federal agency, including the Small Business Administration. The intended effect of this action is to facilitate Agency guarantees of certain refinancing loans that otherwise would not meet the equity requirements because the financial statements prepared in accordance with generally accepted accounting principles do not reflect the current market value of real property assets owned by the borrower. In the case of all direct or guaranteed loan applications, the tangible net equity calculation may include a restricted universe of qualified intellectual property. The Agency is also increasing the equity requirements applicable to energy businesses.

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Rural Business-Cooperative Service, USDA, Stop 3224, Room 6845, 1400 Independence Ave., SW., Washington, DC 20250–3224, Telephone (202) 720–7818, Fax (202) 720–6003, or E-mail: *fred.kieferle@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the applicable programs is 10.768, Business and Industry Loans.

Program Administration

These programs are administered through the Business and Industry Division of the Rural Business-Cooperative Service within the Rural Development mission area of USDA and delivered via the USDA Rural Development State Directors.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V, the programs and activities within this rule are subject to E.O. 12372 which requires intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V. Accordingly, agency personnel advise all prospective applicants of whether their state has elected to participate in the consultation process by designating a single point of contact and name of that contact point.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this regulation have been approved by OMB under control numbers 0570–0014 and 0570–0017.

Government Paperwork Elimination Act

The Agency is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Environmental Impact Statement

It is the determination of the Agency that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities.

The modified equity test in the case of refinancing applies equally to large and small entities, but in practice, the Agency expects it to benefit smaller entities disproportionately more than larger businesses. In the Agency's experience, the largest single component of off balance sheet value in a small firm is the real property it owns. Small firms that are real property rich, but cash flow constrained, may find this change to be the only means to achieve flexibility in refinancing, while larger businesses may have other ways, i.e., other assets to work with, to achieve the same result. The scope of the final rule is such that a larger number of small firms, particularly those with loans guaranteed by the Small Business Administration, may be expected to benefit. To the extent that any business has qualified intellectual property, the benefits of the change proposed for qualified intellectual apply across the board, and as such is estimated to have no disproportionate impact, positive or negative, accruing to one size of business or another.

The change in equity requirements for energy loans may make it more difficult for small firms to qualify. The energy business is a capital intensive business and the corresponding risk is greater when it is undertaken by undercapitalized firms. It may be more difficult for small firms to raise the necessary equity for one project, whereas a larger business can spread the risk across more than one project.

The net effect of this rulemaking is expected to be neutral in its overall impact on smaller firms. Accordingly, a regulatory flexibility analysis was not performed.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

I. Background

The current loan processing regulations for the B&I Guaranteed Loan Program provide that the lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis. The Agency assumes this responsibility for the B&I Direct Loan Program. One of the elements of credit quality required in the regulation is that borrowers demonstrate a minimum level of tangible balance sheet equity. The threshold level of required tangible balance sheet equity is higher for new businesses than for existing businesses.

Conventional accounting policies and procedures provide for a distinction between tangible and intangible assets. The net equity on a balance sheet reflects the net book value of all assets, after depreciation, less total liabilities. The current regulations take a conservative approach in evaluating the equity component of a balance sheet, specifying that acceptable equity for credit quality purposes be restricted to tangible balance sheet equity, as defined in the regulation.

Where the accounting terms used in the regulation coincide with terms used in generally accepted accounting principles (GAAP),[1] the GAAP definitions are presumed in the regulation. Tangible balance sheet equity is not a term used in GAAP; there is no commonly held definition. It is perhaps more accurate to call it an artificial construct than a term. It is nevertheless a concept familiar to many financial analysts and regulators who craft customized definitions, tailored to a specific industry or application, using the commonly understood terms found in GAAP as the basic building blocks.[2]

In this final rule, the Agency has elected to allow some credit for off balance sheet appreciation in real property as well as certain subordinated debt in this agency-defined formula for tangible balance sheet equity. This final rule provides that a restricted universe of intellectual property assets may be included in this adjusted equity calculation as well. Whereas the real property asset appreciation and subordinated owner debt provisions will apply only in the case of refinancing loans, the adjustment for qualified intellectual property assets will apply in the case of all applications.

Tangible balance sheet equity is a refinement of the GAAP concept of equity, typically arrived at by reducing balance sheet equity by the book value assigned to intangible assets, including but not limited to assets such as goodwill, going concern value, organizational start up expenses, etc. These items are recognized as capital assets for purposes of GAAP but may or may not be assets that can be readily liquidated or pledged as security for loans.

The modification proposed in this rulemaking acknowledges that the market value of real property assets may increase at the same time the net book value of such assets decrease. The net book value of real property usually decreases over time due to depreciation, whereas the market value of real property may stay the same or appreciate over time.

In a lower interest rate environment, refinancing is a reasonable business strategy. The current regulation, however, does not contemplate that any credit can be given for a positive difference between net book value and market value for purposes of evaluating the equity component of credit worthiness when a borrower seeks Agency-guaranteed refinancing at a lower interest rate. It has happened that borrowers that could have met a modified balance sheet equity test have been foreclosed from this option because the equity ratio calculated using the conventional GAAP values reported on the balance sheet do not meet the equity test in the current regulation at the time the refinancing is of interest to the borrower. When this happens, the borrower is tied to the existing lender that is the beneficiary of the original Agency guarantee on what has become

[1] The meaning of the term generally accepted accounting principles (GAAP) has evolved over time. It used to refer to widely used, but un-codified, accounting policies and procedures. With time, standard-setting bodies and professional organizations came into being and became more involved in recommending preferred practices by means of issued pronouncements. Over the past fifty years, principles were promulgated by different groups, some of which were no longer in existence, and some conflicts exist between the various pronouncements. The American Institute of Certified Public Accountants issued a statement of auditing standards (SAS–69) to better organize and clarify what is meant by GAAP. This statement instructs financial statement preparers, auditors and users of financial statements concerning the relative priority of the different sources of GAAP (past and present pronouncements by the many standard-setting entities) used by auditors to judge the fairness of presentation in financial statements.

[2] See, for example, Cal. Admin. Code title 28, section 1300.76, where the state requires licensed health care service plans to maintain a minimum tangible net equity and another, Federal, example at 12 CFR 208.41 where tangible net equity is incorporated into the capital adequacy requirements required of state chartered banks that are members of the Federal Reserve system.

an above market rate loan. This lender has minimal incentive to refinance the above market rate loan, and unless the Agency can guarantee another lender willing to refinance the first lender's exposure, the borrower is locked into the higher interest rate. It is not able to ''shop'' for a lower interest rate. When the loan in question is already guaranteed by a Federal agency, the taxpayer is in a position of guaranteeing the higher interest rate when a lower exposure could otherwise be affected and there is a corresponding increased risk of default under the guarantee. The increased risk of default comes about when these higher interest rates undermine the financial health of the borrowers and lead to what otherwise could be avoidable financial defaults.

This final rule provides refinancing flexibility to borrowers with Federal direct or Federally guaranteed debt when the market value of the real property on the balance sheet justifies a more flexible approach to the equity requirement than is allowed by the current regulation. The definition of a refinancing loan in this rule provides that all of the proceeds must be used to extinguish pre-existing debt. Accordingly, the amount of the refinancing loan may not exceed the outstanding balance of the loan(s) to be refinanced. Where a refinancing request is coupled with a ''new money'' guarantee application, the conventional, unadjusted, tangible balance sheet equity test will be applied to the combined guarantee request. The modified equity calculation does not apply to all refinancing requests, only those pertaining to debt that is directly owed to a Federal agency or guaranteed by a Federal agency. This limitation is primarily due to policy considerations relating to the relative economic impact of refinancing actions versus new loans and how the Agency's use of its obligational authority is accounted for as a result of the Federal Credit Reform Act of 1990 (Pub. L. 101–508). Further elaboration on this may be found in the comments section of this preamble wherein the modified tangible balance sheet equity calculation is discussed at greater length.

In order to provide for an alternate equity calculation in determining whether the credit requirement is met for refinancing loans, the Agency has modified existing regulations to define ''tangible balance sheet equity'' and added two new definitions that build directly and indirectly on this term—''adjusted tangible net worth'' and ''allowed tangible asset appreciation.'' The term ''subordinated owner debt'' is also added. These new terms apply only in the case of refinancing requests. ''Subordinated owner debt'' is defined as subordinated debt owed to one or more of the owners of the borrower.

An example that demonstrates the practical effect of this change is as follows. XYZ Company is capitalized with $200,000 cash on day 1 and uses $200,000 cash and $800,000 Agency guaranteed debt to purchase a building for $1,000,000 on day 2. Assume (1) the building is depreciated at 10 percent a year, (2) the market value of the building at the end of year 2 has appreciated to $1,200,000, (3) there are no other assets on the balance sheet at the end of year 2 for purposes of this simplified example, (4) the mortgage does not begin to amortize until the end of year 4, and (5) the income statement reflects a cumulative net loss of ($200,000) for the first two years of operations. At the end of year 2 the company would like to refinance the mortgage debt. Under the existing regulation, at this point in time tangible balance sheet equity is $ -0-. Per the revised regulation, however, the tangible balance sheet can be adjusted upwards by an increment equal to the difference between the net book value of the property ($800,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be $-0-plus $200,000, or $200,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 200,000/1,000,000, or 20 percent.

A second refinement to the GAAP concept of equity in this rulemaking for this credit evaluation criterion is to include in the equity calculation subordinated debt contributed to the borrower by the business owner(s). In order for this subordinated debt to count as equity for purposes of the equity criterion, the subordinated note must be expressly subordinate to the Agency's B&I loan exposure, whether that exposure is direct or guaranteed. Moreover, the loan documentation must provide that repayment of this subordinated debt may not commence until the earlier of the full repayment of the B&I loan exposure or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the B&I loan exposure. The partial repayment schedule in the case of the latter scenario may not be more accelerated than the debt repayment schedule in effect for the Agency's B&I loan exposure.

To carry our earlier example one step further, assume (1) that an owner provides $100,000 of subordinated debt to XYZ Company in year 3 so that it can purchase a patent. Also assume (2) the market value of the building at the end of year 3 remains at $1,200,000, (3) there are no other assets on the balance sheet at the end of year 3 for purposes of this simplified example, and (4) the income statement reflects a cumulative net loss of ($300,000) for the first three years of operations. Instead of refinancing at the end of year two as described above, the Company seeks a refinancing loan guarantee at the end of year three. Total liabilities equal the $800,000 mortgage debt plus $100,000 in subordinated owner debt. Tangible balance sheet equity as defined in the current rule equals total equity less the book value of intangible assets, or ($100,000) minus $100,000 = ($200,000). Per the revised regulation, however, the tangible balance sheet equity can be adjusted upwards by an increment equal to the difference between the net book value of the property ($700,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be ($200,000) plus $300,000, or $100,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 100,000/1,000,000, or 10 percent. Assuming the 10 percent equity requirement for existing businesses would apply and this borrower would qualify for a refinancing loan as a result of this regulatory change, then the income statement shows three years of consecutive accrual losses, but breakeven cash flows.

In this final rule, the Agency has also elected upon consideration to include another refinement of the tangible balance sheet equity computation, applicable to all applications, not just refinancing loans, whereby qualified intellectual property may count as well. Intellectual property falls within the definition of intangible assets, and as such, would not ordinarily be included in a conventional tangible balance sheet equity computation. But this formula is subject to Agency definition in the final analysis, and the Agency has elected to recognize that the liquidity arguments for tangible assets that gave rise to the development of the adjusted equity calculation in the first place, may also apply to a restricted universe of qualified intellectual property as well. In modern rural businesses, credit should be given for these reasonably liquid intangible assets in the adjusted equity calculation.

The narrow universe of qualified intellectual property that will count as equity under the adjusted computation consists of trademarks, patents or copyrights that are included on current (within one year) audited balance sheets, for which an audit opinion has been received that states the financial reports fairly represent the values therein, and the value of which has been arrived at in accordance with GAAP standards for valuing intellectual property. Also, the work papers supporting this valuation of intellectual property must be satisfactory to the Administrator in order for the asset to be considered qualified for this purpose.

This final rule also increases the equity requirement for certain energy projects and provides that financing will be guaranteed for energy projects only when they have met certain performance criteria. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the design levels projected in the application for purposes of underwriting the loan or loan guarantee. Based on comments received, the Agency slightly lowered the equity requirements for energy loans, but continued to require higher equity levels than other industries. The higher equity requirements reflect the Agency's determination that energy projects are riskier than the average B&I portfolio loan and an intent to apply equity criteria that more closely conform to conventional lender practice. The Agency's energy borrowers are typically not utilities in the conventional sense. As a general rule, conventional utilities have other sources of financing and higher capital requirements than can practicably be met by Agency programs.

The final rule requires that energy projects must demonstrate two complete operating cycles at design performance levels projected in the application. A complete operating cycle consists of the purchase of raw material inputs, their input into the manufacturing process and transformation into a design specified number of output units for a given level of raw material input within a specified period of time and at a design-specified quality level. In the case of projects that produce steam or electricity as an output, there is an additional requirement that they be successfully interconnected with the purchaser of the output. This is not the same as being connected to the power grid alone. Being connected to the grid, without enforceable wheeling agreements and physical interconnection with the buyer at the other end of the transmission route, does not satisfy this requirement. Successful interconnection with the purchaser of the steam or electricity means that everything is in place that is required for the purchaser to receive the steam or electricity output in accordance with the contractual terms specified and such delivery by the seller and acceptance by the purchaser has been demonstrated.

The Agency revised the definition for energy projects to include both 'power' and 'energy.' The term 'power plant' is commonly used to describe a facility that uses fuels to produce electricity or high pressure steam. In these type plants, power and energy are intrinsically related. The change in definition makes it clear that electric or steam facilities are also considered ''energy projects,'' as are facilities that produce fuels such as ethanol or biodiesel. The Agency also decided to narrow the scope of energy projects that require increased equity by removing the production of batteries and fuel cells from the definition based on comments received.

II. Comments on the Proposed Rule and Responses

The following paragraphs summarize the comments received and the Agency responses. We received 15 responses of which, one is from an elected state official, six are from borrowers or borrower representatives (a producer association, business consultants, etc.), and eight are from the lender community (two of the lender comments are from the same bank).

A. Comments on the Modified Tangible Balance Sheet Equity Test

All comments received regarding the modified tangible balance sheet equity requirement were positive. Eight of the comments claimed we did not go far enough; they urged that the new equity test be applied to new loan guarantee requests as well.

The most significant change in this final rule from the proposed rulemaking is the result of additional deliberation within the Agency. The proposed regulatory text applied to the refinancing of any loan, whether or not it is currently USDA guaranteed. Upon further reflection, concern developed with respect to the risk that an existing lender, not presently guaranteed by USDA, can get the equivalent of a ''bailout'' if the more flexible equity test is applied. There is also sensitivity within USDA as to the proportion of obligational authority used for refinancing. It is true that if USDA issues a guarantee to Lender A for a loan, the proceeds of which pay off a USDA guaranteed loan held by Lender B, there is no increase in risk or exposure to the taxpayer. However (and this may not be fully realized or appreciated by the private sector community), under federal budget rules, in this circumstance the Agency's available obligational authority is reduced as if a new loan guarantee had been issued to Lender A. A refinancing action is scored against the Agency's budget the same as a new loan action, even though the net incremental risk to the taxpayer differs significantly as between the two scenarios.

The Agency must concern itself with maximizing the economic benefit that can be achieved in rural America with limited Federal funding and recognize that net new capital invested in rural America has a greater economic impact than the incremental cash flow improvements associated with refinancing loan guarantees.

We ultimately believe that a policy of conforming the modified equity test to recognize off balance sheet values inherent in the appreciation of real property is rooted in common sense. However, the expectation is that this rule could well result in a situation where the Agency is presented with a significant increase in the proportion of refinancing requests relative to new loan requests, with a concomitant reduction in the net economic benefit per dollar of budget authority. Therefore, this final rule does not expand the scope of the tangible balance sheet equity test beyond direct Federal debt and Federally guaranteed debt. It does not go as far as many of those providing comments would have wished, but it reflects a balanced approach to the issue in the current budget environment.

As explained in the preamble to the proposed rule, the Agency considered, but elected not to propose, revising the tangible balance sheet equity test to apply across the board, for all borrowers, and not restrict its availability to refinancing loan applications. It may be that the Agency's experience with the limited applicability of this rulemaking will lead to proposing its wider application in the future. For now, it was determined to proceed with a more limited applicability in order to bring relief to at least some borrowers in a more rapid period of time. The final rule is narrower in scope than was the proposed rule. The proposed rule applied the modified equity calculation to all refinancing loans; the final rule limits its application to the refinancing of debt owed to a Federal agency.

The Agency also considered allowing full market value refinancing in the proposed rulemaking. The potential for abuse of market appraisals for purposes of full market value refinancing is thought to be greater than the potential benefit of liberalizing the related equity criterion to this maximum degree. In the alternative, the Agency has opted to allow consideration of market value only with respect to the equity test calculation; the amount of the refinancing loan itself may not exceed the outstanding balance of the loan to be refinanced. Market value must be determined by appraisals using arms-length methodologies to arrive at an unbiased ''fair or current market value.''

Allowing flexibility in the equity requirement for refinancing loans where the market value of real property assets supports such flexibility will serve to enhance the financial health of Agency-guaranteed borrowers and promote rural development.

B. Comments on the Modified Equity Requirement for Energy Projects

Seven of the 15 comments addressed the increased equity requirements proposed for energy loans—all were critical, arguing that the equity requirement should be no different than for other types of businesses. One argued for preferential treatment for non profit borrowers. One lender, while critical of the differentiated equity requirement, nevertheless observed that the requirement that energy projects demonstrate two complete operating cycles would ''weed out'' bad projects. A commodity producer association pointed out that many private sector lenders require 50 percent equity, and if the Agency implements the modifications the Business and Industry program will offer very little advantage over private lender options already available for producer owned businesses.

We expect that most of the energy loan applications will continue to be for ethanol or similar projects. The Agency's experience in lending for ethanol projects from the mid 1970s to 1990 was not good. This was due to the combined factors of weak underwriting criteria, underdeveloped technologies and inexperienced managers. As of 1990, credit criteria were tightened up and the technology has developed to the point where it is now commercially proven. The Agency is somewhat conforming its equity requirement to those found in the private sector inasmuch as the technology is now quite established and needs less support. Agency-guaranteed loans will still enjoy a better interest rate and the available term may be advantageous when compared to the non-guaranteed private sector alternative.

As for energy projects that are not ethanol or biodiesel, we observe that many renewable energy projects find it difficult to impossible to obtain private sector financing even when project equity ratios are high. Thus, while the equity ratios implemented for energy projects are higher than the requirements for other industries, we believe that Agency financing under those circumstances nevertheless represents a source of capital often unavailable for these technologies elsewhere. The higher equity ratios strike a balance between no capital available at all and the risk to the taxpayer in providing support for renewable energy projects. However, in response to these comments, the Agency modified the equity requirement for energy projects, but still will require higher equity levels than other industries.

Several comments observe that project risks can be mitigated by means other than increased equity. The following examples of possible risk mitigation vehicles were suggested: a strong contract for the purchase of the output (off take agreement), the use of established technologies, or performance guarantees combined with surety bonds to mitigate construction risk. All of these address a particular kind of risk—either the project doesn't get built, it doesn't operate as expected or the market for the output doesn't materialize at the price forecast. These vehicles are all worthwhile underwriting tools, but only increased equity protects against unforeseen risks. The lower the debt burden on a project, the more likely the project will be able to surmount any of these risks and pay off the debt as and when due. With respect to off take agreements in particular, if the projected cash flow stream associated with the off take agreement is strong, it will cover both debt service and an equity return. If the imputed equity return is sufficient, this should be attractive to third party investors such that the equity requirement can be met. If the off take agreement is not sufficient for this, it cannot be said that it is a substitute for increased equity.

List of Subjects

7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

7 CFR Part 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

■ Accordingly, Chapters XVIII and XLII, title 7, of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

■ 1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart E—Business and Industrial Loan Program

■ 2. Section 1980.402 is revised to read as follows:

§ 1980.402 Definitions.

(a) The following general definitions are applicable to the terms used in this subpart. *Adjusted tangible net worth.* Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Area of high unemployment. An area in which a B&I loan guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. A borrower may be a cooperative organization, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Community facilities. For the purposes of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights of way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Energy projects. Commercially available projects that produce or distribute energy or power and/or projects that produce biomass or biogas fuel.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by Rural Development under Public Law 103–354 to a borrower setting forth the conditions under which Rural Development will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the B&I guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under generally accepted accounting principles (GAAP).

■ 3. Section 1980.411 is amended by adding new paragraphs (a)(11)(iv) and (a)(11)(v) and by adding a new paragraph (a)(16) to read as follows:

§ 1980.411 Loan purposes.

* * * * *

(a) * * *

(11) * * *

(iv) It does not refinance subordinated owner debt; or

(v) (Except where the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed) the amount to be refinanced by the Agency is a secondary part (less than 50 percent) of the overall loan requested.

* * * * *

(16) *Energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

* * * * *

■ 4. Section 1980.441 is revised to read as follows:

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing loan or guarantee request with a new loan or guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the loan is closed; a certification to this effect is required of all guaranteed lenders.

(d) The modified formula for determining whether the equity requirement is met, "adjusted tangible net worth," may be used only in cases where the guarantee requested is for a loan, the proceeds of which are to be used entirely to refinance a debt owed to the Federal government or Federally guaranteed debt. In all other situations, the equity requirement must be determined using tangible net worth.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4279—GUARANTEED LOANMAKING

■ 5. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 7 U.S.C. 1932(a).

Subpart A—General

■ 6. Section 4279.2 is revised to read as follows:

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Adjusted tangible net worth. Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by "Agency" or "Rural Development" as applicable.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form RD 4279–6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. All parties liable for the loan except for guarantors.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Conditional Commitment (Business and Industry). Form RD 4279–3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Energy projects. Commercially available projects that produce or distribute energy or power and/or produce biomass or biogas fuel. Commercially available energy projects that utilize technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmer's Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance Office. The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279–6 or predecessor form.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provision of the appropriate subpart.

Lender's Agreement (Business and Industry). Form RD 4279–4 or predecessor form between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry). Form RD 4279–5 or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product. Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a *pro rata* basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note. Evidence of debt. "Note" or "Promissory Note" shall also be construed to include "Bond" or other evidence of debt where appropriate.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) *Abbreviations.*

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lenders Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

(c) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

Subpart B—Business and Industry Loans

■ 7. Section 4279.113 is amended by revising paragraph (r) and by adding a paragraph (cc) to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in § 4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of the application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt) and the lender is providing better rates or terms. Subordinated owner debt is not eligible under this paragraph. Unless the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed, the refinancing must be a secondary part (less than 50 percent) of the overall loan.

* * * * *

(cc) *To finance energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

■ 8. Section 4279.131 is amended by revising paragraph (d) to read as follows:

§ 4279.131 Credit quality.

* * * * *

(d) *Equity.* (1) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(i) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(A) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with § 4279.149 of this subpart), and

(B) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(ii) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(2) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(3) The lender must certify that the equity requirement was determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed.

* * * * *

Dated: May 30, 2006.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. E6–8891 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AH83

Revision of Fee Schedules; Fee Recovery for FY 2006; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on May 30, 2006 (71 FR 30722) concerning the licensing, inspection, and annual fees charged to NRC applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990, as amended. This action is necessary to correct typographical and printing errors.

DATES: *Effective Date:* July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

■ 1. On page 30735, in the third column, in the last line of the continued paragraph, the reference to ''Section III.B.3.a–'' is corrected to read ''Section III.B.3.a–h''.

■ 2. On page 30741, under Table XIV.—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS, in the first column, in the fourth line, the phrase ''60 prorated annual fee'' is corrected to read ''60 percent prorated annual fee''.

§ 171.16 [Corrected]

■ 3. On page 30755, the second sentence of footnote 1 is corrected to read, ''However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2005, and permanently ceased licensed activities entirely by September 30, 2005.''

§ 171.19 [Corrected]

■ 4. On page 30756, in the first complete paragraph, the third sentence is corrected to read, ''The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2(A)(2), 2(A)(3), 2(A)(4), 2B, 2C, 3A through 3P, and 4B through 9D.''

Dated at Rockville, Maryland, this 2nd day of June, 2006.

For the Nuclear Regulatory Commission.

Peter J. Rabideau,

Acting Chief Financial Officer.

[FR Doc. E6–8923 Filed 6–7–06; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 109

[Notice 2006–10]

Coordinated Communications

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations regarding communications that are coordinated with Federal candidates and political party committees. The Commission's rules set out a three-prong test for determining whether a communication is ''coordinated'' with, and therefore an in-kind contribution to, a Federal candidate or a political party committee. These final rules implement the recent decision of the Court of Appeals in *Shays* v. *Federal Election Commission,* in which the court determined that the Commission needs to provide a more complete explanation and justification for its rules pursuant to the Administrative Procedure Act. To comply with the court's decision, and to address other issues involving the coordinated communication rules, the Commission is issuing these Final Rules and Explanation and Justification. Further information is provided in the supplementary information that follows.

DATES: Effective July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, Mr. Ron B. Katwan, Ms. Margaret G. Perl, or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Scope of Regulatory Changes

The Commission is revising its regulations regarding communications that are coordinated with Federal candidates and political party committees. The Commission is: (1) Revising the fourth content standard at 11 CFR 109.21(c)(4) to establish separate time frames for communications referring to political parties, Congressional and Presidential candidates; (2) creating a safe harbor for certain endorsements and solicitations by Federal candidates; (3) revising the temporal limit of the common vendor and former employee conduct standards; (4) creating a safe harbor for the use of publicly available information; (5) creating a safe harbor for the establishment and use of a firewall; (6) clarifying that the payment prong of the coordinated communication test is satisfied if an outside person pays for only part of the costs of a communication; and (7) revising 11 CFR 109.37 to include the applicable time frame and safe harbor revisions in 11 CFR 109.21.

Transmission of Final Rules to Congress

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on June 2, 2006.

Explanation and Justification

I. Background

A. Bipartisan Campaign Reform Act and 2002 Coordination Rulemaking

The Bipartisan Campaign Reform Act of 2002,[1] (''BCRA''), repealed the Commission's pre-BCRA regulations regarding ''coordinated general public political communications'' and directed the Commission to promulgate new regulations on ''coordinated communications'' in their place.[2] Congress specified in BCRA that the Commission's new regulations ''shall not require agreement or formal collaboration to establish coordination.''

[1] Pub. L. 107–155, 116 Stat. 81 (2002); amending the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act'' or ''FECA'').

[2] Pub. L. 107–155, sec. 214(b), (c) (2002).