Rules and Regulations

Federal Register

Vol. 72, No. 188

Friday, September 28, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1782

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951, 1955, and 1956

RIN 0572–AB59

Servicing of Water Programs Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an Agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as Rural Development, consolidates and amends the regulations utilized to service water and waste loan and grant programs. The rule will combine the water and waste loan and grant servicing regulations found in 7 CFR parts 1951, 1955, and 1956 into one regulation. Unnecessary and burdensome requirements for water and waste loan and grant servicing under the program will be eliminated. The streamlining of the water and waste loan and grant servicing regulation will allow the Agency to provide better service to entities needing assistance in resolving financial and economic problems in their communities and, in general, improve the quality of life in rural areas. Additionally, this rule implements Section 6018 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1936a) for Rural Development's Business, Housing and Utilities programs.

EFFECTIVE DATE: October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water and Environmental Programs, USDA Rural Development, Room 2230 South Building, Stop 1570, 1400 Independence Ave., SW., Washington, DC 20250–1570. Telephone: (202) 690–3789, FAX: (202) 690–0649, E-mail: *anita.obrien@usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. It has been determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since Rural Development is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule are currently approved under OMB control number 0575–0066 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Agency has submitted an information collection package to OMB to establish a new OMB control number, 0572–0137, for the information collection covered by this rule and will transfer the applicable burden from 0575–0066 to 0572–0137, when OMB approval is granted.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers (1) 10.760—Water and Waste Disposal System for Rural Communities, (2) 10.761—Technical Assistance and Training Grants, (3) 10.762—Solid Waste Management Grants (4) 10.763—Emergency Community Assistance Grants, and (5) 10.770—section 306C Water and Waste Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under numbers (1) 10.760—Water and Waste Disposal (WWD) System for Rural Communities, (2) 10.763—Emergency Community Assistance Grants, and (3) 10.770—Water and Waste Loans and Grants (section 306C) and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

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. Therefore, consultation with States is not required.

Background

The Rural Development water and waste program is administered by Water and Environmental Programs (WEP). 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 have not been completely reviewed for many years. The 1994 streamlining and reorganization of the Department of Agriculture provided an opportunity to review and rewrite the water and waste loan and grant servicing regulations. A task force was formed for that purpose. 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 servicing options for communities facing financial problems. Servicing options should result in reasonable user costs for rural residents, rural businesses, and other rural users. Additionally, in order to provide uniformity, servicing provisions for grants are addressed in the Departmental Grant Regulations cited in 1782.7.

Major changes are as follows:

1. Servicing regulations found in 7 CFR parts 1951, 1955, and 1956 are combined into one regulation.

2. The field staff is provided with more authority to service water and waste loans and grants.

3. The application process for servicing actions has been streamlined to reduce unnecessary paperwork and improve service to the rural communities. There will be fewer regulations, and the number of pages in the Code of Federal Regulations will be greatly reduced.

4. The functions of the 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)), have been transferred to the Rural Development Utilities programs based on the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). Therefore, in order to enhance the delivery of borrower services and better assist the public, Rural Development is simplifying and rewriting regulations originally published by FmHA and RDA. All parts pertaining to the water and waste loan program will be moved into 7 CFR part 1782. This action will have no effect on the RHS community facilities loan program, as this action makes no policy changes in the regulation with the exception of implementing Section 6018 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1936a). The following programs are affected by these amendments: (1) Water and Waste Disposal Loans and Grants, (2) Watershed Loans and Advances, (3) Resource Conservation and Development Loans, (4) Technical Assistance and Training Grants, (5) Emergency Community Assistance Grants, (6) Solid Waste Management Grants, and (7) Section 306C Water and Waste Facility Loans and Grants to Alleviate Health Risks.

5. Implement Sec. 6018 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). This change will allow the borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity. Rural Development has included language to implement this provision in 7 CFR 1782.23. These provisions will also be applicable to Rural Development's Business and Housing programs by adding § 1951.218 to 7 CFR 1951, subpart E.

Comments

Rural Development published a proposed rulemaking in the **Federal Register** on November 15, 2004, 69 FR 65546. One public comment was received; however, Rural Development did not receive any comments from outside Federal agencies. The one public comment received was in the form of a Web site entry. The comment pertained to the legislation authorizing the program, as follows: ''Why should only rural areas get this taxpayer money? Certainly urban districts have just as many financial issues. I find this kind of legislation extremely discriminatory. A survey is unnecessary and wasteful of taxpayer dollars. There are 50 years of history of data facts—there is no reason to survey. I would appreciate having sent to me a copy of the accomplishments of this little known agency for 2003.''

Response: Water and Waste Disposal Loans and Grants are authorized by the Consolidated Farm and Rural Development Act (TITLE III OF THE AGRICULTURAL ACT OF 1961) (Pub. L. 87–128; 75 Stat. 294). Rural Development makes water and wastewater loans and grants in accordance with 7 CFR 1780. The Agency has posted the most recent Annual Report for Fiscal Year (FY) 2006 at the following Web site address: *http://www.usda.gov/rus/water/*. Please view this report for an overview of the Water and Environmental Program and its accomplishments. Rural Development did not receive enough information in the comment to respond to the issue of a particular survey. No changes were made to the final regulation based on the comment received. However, changes were made to the regulation in § 1782.17. Review by the Agency of Circular No. A–129, issued by the Office of Management and Budget (OMB), led to the conclusion that subordination cannot be listed as a general option in its regulations. The Circular states that the Government's claim should generally not be subordinated to the claims of other creditors since subordination increases the risk of loss to the Government. In a special circumstance, the Agency might seek a waiver of this requirement from OMB, but this would be on a case-by-case basis as dictated by the individual facts of the case. Therefore, subordination was removed as an option from § 1782.17. Also, the Agency determined that § 1782.17 lacked the criteria needed to make the determination that granting a parity lien is in the Government's interest. The Agency has added such criteria to § 1782.17.

The Regulations

Rural Development has completed a consolidation of regulations affecting WEP loans and grants. Prior to this rule becoming effective, WEP borrowers were affected, in part, by the following regulations:

7 CFR part 1951, subpart A—Account Servicing Policies

7 CFR part 1951, subpart D—Final Payment on Loans

7 CFR part 1951, subpart E—Servicing of Community and Direct Business Programs Loans and Grants

7 CFR part 1951, subpart F—Analyzing Credit Needs and Graduation of Borrowers

7 CFR part 1951, subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

7 CFR part 1955, subpart A—Liquidation of Loans Secured by Real

Estate and Acquisition of Real and Chattel Property
7 CFR part 1955, subpart B—Management of Property
7 CFR part 1955, subpart C—Disposal of Inventory Property
7 CFR part 1956, subpart C—Debt Settlement—Community and Business Programs

All of the above-mentioned regulations include regulatory provisions of other programs of the former FmHA such as farm loans, business and industrial loans, single family housing, and multi-family housing. Rural Development is consolidating all regulatory actions in the above-mentioned regulations which affect WEP loan and grant servicing into one new regulation—7 CFR part 1782. This consolidated regulation will clarify for our borrowers and grantees the available servicing tools and the requirements to utilize these tools.

Additionally, Rural Development is removing all administrative processes from the regulations, leaving only regulatory actions that impact the public. This streamlining will make the regulation more concise and much easier to read and understand. A Staff Instruction will be issued that will include the administrative portion, which outlines agency internal processing procedures. The Staff Instruction will be available to the public upon request at no cost.

Conclusion

Rural Development believes the consolidation and streamlining of the regulations for this program will maximize the ability of the borrowers to use and understand the available servicing tools under this program. This consolidation is consistent with the Administration's efforts to streamline Government functions, improve the efficiency and effectiveness of Government activities, and strive to be more borrower-friendly. This effort will enable Rural Development to reduce regulations, streamline operations, and provide servicing assistance with fewer staff resources.

List of Subjects

7 CFR Part 1782

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant programs—Agriculture, Insurance, Loan programs—Agriculture.

7 CFR Part 1951

Accounting, Credit, Grant programs—Agriculture, Loan Programs—Agriculture, Low and moderate-income housing loans—Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1955

Government property, Government property management, Surplus government property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

■ Therefore, chapters XVII and XVIII of title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

■ 1. Part 1782 is added to read as follows:

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

Sec.
1782.1 Purpose.
1782.2 Objectives.
1782.3 Definitions.
1782.4 Availability of forms and regulations.
1782.5 Nondiscrimination.
1782.6 [Reserved].
1782.7 Grants.
1782.8 Payments.
1782.9 Environmental requirements.
1782.10 Audit requirements.
1782.11 Refinancing requirements.
1782.12 Sale or exchange of security property.
1782.13 Transfer of security and assumption of loans.
1782.14 Protection of service areas—7 U.S.C. 1926(b).
1782.15 Mergers and consolidations.
1782.16 Defeasance of Agency indebtedness.
1782.17 Parity lien.
1782.18 [Reserved].
1782.19 Third party agreements.
1782.20 Debt settlement.
1782.21 [Reserved].
1782.22 Exception authority.
1782.23 Use of Rural Development loans and grants for other purposes.
1782.24–1782.99 [Reserved].
1782.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.

§ 1782.1 Purpose.

This part outlines the Rural Utilities Service's (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, policies and procedures for servicing direct and insured Water and Waste Disposal (WWD) loans and grants; Watershed loans and advances; Resource Conservation and Development loans; Technical Assistance and Training grants; Emergency Community Water Assistance grants; Solid Waste Management grants; and section 306C WWD loans and grants.

§ 1782.2 Objectives.

Loan and grant servicing is provided by Rural Development in order to assist recipients in complying with the established objectives and requirements for loans and grants, repaying loans on schedule, acting in accordance with any necessary agreements, and protecting Rural Development's financial interest. Servicing by Rural Development includes, but is not limited to, the review of budgets, management reports, audits, and financial statements; performing operational inspections; providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance and graduation reviews.

§ 1782.3 Definitions.

The following definitions apply to this part:

Acceleration. A written notice informing the borrower that the total unpaid principal and interest is due and payable immediately.

Adjustment. Satisfaction of a debt, including release of liability, when acceptance by the Agency is conditioned upon completion of payment of the adjusted amount at a specific time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

Administrator. Administrator of the Rural Utilities Service, an agency delivering the United States Department of Agriculture's Utilities Programs.

Agency. The Rural Utilities Service, an Agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, or any employee acting on its behalf in accordance with appropriate delegations of authority.

Assumption of debt. Agreement by one party to legally bind itself to pay the debt incurred by another.

Borrower. Recipient of Agency or predecessor Agency loan assistance.

Cancellation. Final discharge of debt with a release of liability.

Charge-off. Write off of a debt and termination of servicing activity without release of liability. A charge-off is a decision by the Agency to remove debt from Agency receivables, however, future payments may be received.

Compromise. Satisfaction of a debt including a release of liability by accepting a lump-sum payment of less than the total amount owed.

Defeasance. Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements from the prior issue.

Disposition of facility. Relinquishing control of a facility to another entity.

False information. Information, known by the applicant to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

Government. The United States of America, acting through the Agency. USDA, Rural Development and Agency may be used interchangeably throughout this part.

Grantee. Recipient of Agency or predecessor Agency grant assistance, technical assistance, or services.

Letter of Conditions. A written document that describes the conditions which the borrower and/or grantee must meet for funds to be advanced and the loan and/or grant to be closed.

Liquidation. Satisfaction of a debt through the sale of a borrower's assets and discharge of liabilities.

Parity Lien. A lien having an equal lien position to another lender's lien on a borrower's asset.

Reasonable rates and terms. The prevailing commercial rates and terms in the industry that borrowers are expected to pay when borrowing for similar purposes and periods of time.

Rural Development. The mission area of the Under Secretary for Rural Development. Rural Development State and local offices administer the water and waste programs on behalf of the Agency.

Rural Utilities Service (RUS). An Agency of the United States Department of Agriculture's Rural Development mission area established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Servicing office. The USDA office which maintains the official file of the borrower or grantee and is responsible for the routine servicing of the loan and/or grant account.

Servicing official. USDA official who has been delegated loan and grant approval and servicing authorities subject to any dollar limitations within applicable programs.

Settlement. Compromise, adjustment, cancellation, or charge-off of a debt owed USDA. The term ''settlement'' is used for convenience in referring to compromise, adjustment, cancellation, or charge-off action, individually or collectively.

Unliquidated obligations. Obligated loan or grant funds that have not been advanced.

USDA. United States Department of Agriculture.

Voluntary conveyance. A method by which title to security is voluntarily transferred to the Government.

§ 1782.4 Availability of forms and regulations.

Information about the availability of forms, regulations, bulletins, and procedures referenced in this chapter are available in any office of Rural Development USDA, Washington, DC 20250–1500 or at the Web site *http://www.usda.gov/rus/water*.

§ 1782.5 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, sale of facility, or other servicing action under this subpart will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education Amendments of 1972 (Pub. L. 92–318), section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), and other Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, or for so long as the purchaser owns it, whichever is later.

§ 1782.6 [Reserved]

§ 1782.7 Grants.

Servicing actions relating to Agency grants are governed by the provisions of several regulations and executive orders, including, but not limited to, 7 CFR parts 3015, 3016, 3017, 3018, 3019, 3021, and 3052 as applicable, and Executive Order (E.O.) 12803. Grantees remain responsible for property acquired with grant funds in accordance with terms of a grant agreement and applicable regulations.

§ 1782.8 Payments.

Payments will be applied in accordance with the terms of the debt instrument. Information on nontypical payments can be obtained from the Servicing official or office. All new borrowers will use pre-authorized debits as required in their Letter of Conditions.

§ 1782.9 Environmental requirements.

Servicing actions involving lease or sale of Agency-owned property will be reviewed for compliance with 7 CFR part 1794 as required in § 1794.3. The appropriate environmental review will be completed prior to approval of the servicing action.

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with § 1780.47 of this chapter. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of 7 CFR 3052 address audit requirements for recipients of Federal grants.

§ 1782.11 Refinancing requirements.

If at any time it appears to the Government that the borrower is able to refinance the amount of the indebtedness 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, 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.

§ 1782.12 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth in this section.

(a) *Approval conditions.* Approval may be given when the servicing official determines that:

(1) The consideration is for the full amount of the debt or the present fair market value as determined by an appraisal completed by a qualified Rural Development employee or an independent appraiser as determined appropriate by the approval official;

(2) The sale or exchange will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan and the transaction will not adversely affect the Agency's security position;

(4) If the property to be sold or exchanged will be used for similar purposes that the loan was made, the purchaser will:

(i) Execute Form RD 400–4, ''Assurance Agreement.'' The instrument of conveyance will contain the civil rights covenant referenced in 7 CFR 1901.202(e); and

(ii) Provide the Agency with a written agreement assuming all rights and obligations of the original borrower, and

(5) Proceeds remaining after paying any reasonable and necessary selling expenses are to be used for one or more of the following purposes:

(i) To pay Agency debt, pay on debts secured by a prior lien, and pay on debts secured by a parity or subsequent lien if it is to the Agency's advantage;

(ii) To purchase or acquire property more suited to the borrower's needs, providing the Agency's security position is maintained; and

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability, place the operation on a sounder financial basis, or further the loan objectives and purposes.

(b) *Sale of assets financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

(c) *Release from liability.* If a borrower can no longer meet the objectives of the loan, the property may be sold. If the full amount of the borrower's debt is paid or assumed, the State Director may release the borrower from liability.

§ 1782.13 Transfer of security and assumption of loans.

It is the Agency's policy to approve transfers and assumptions to transferees that will continue the original purpose of the loan. Assistant Administrator written concurrence is required when the transfer exceeds the State Director's loan approval authority. The transfer will be approved in accordance with the following requirements:

(a) *General requirements for transferees.* The fulfillment of the following requirements for transfers will be determined by the approval official, in his or her discretion:

(1) The transferees must meet the eligibility requirements of 7 CFR part 1780 and provide the same information required in 7 CFR part 1780, subpart B, for application processing.

(2) The transfer will not be disadvantageous to the Government as determined by the approval official.

(3) If the Agency debt(s) exceeds the present market value of the security as determined by an appraisal, the transferee will assume an amount at least equal to the present market value.

(4) The Agency must concur in plans for disposition of funds in any reserve account, including project construction bank accounts. A reserve account may be considered as a transferable asset.

(5) The transferee will assume all of the borrower's responsibilities regarding loans. The transferee will also agree to accept the original loan conditions plus any conditions set forth by the Agency with regard to the transfer.

(6) A current appraisal will be completed to establish the present market value of the security when the full debt is not being assumed.

(7) There must be no lien, judgement, or similar claims of other parties against the Agency security being transferred unless the transferee is willing to accept such claims. The Agency must also determine that the claims will not prevent the transferee from repaying the Agency debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(8) A letter of conditions establishing requirements to be met in connection with the transfer will be issued, and the transferee will be required to execute Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' prior to closing of the transfer.

(9) The transferee will obtain insurance according to Agency requirements.

(10) The effective date of the transfer is the date the transfer is closed, which is the same date Form RD 1951–15, ''Community Programs Assumption Agreement,'' or other appropriate assumption agreement which is executed and delivered by all necessary parties.

(11) Title to all assets will be conveyed from the transferor to the transferee unless all parties concerned, including the Agency, agree upon other arrangements. All instruments of conveyance will contain the necessary nondiscrimination covenant as referred to in § 1782.5.

(12) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the Government.

(13) The State Director is authorized to approve transfers to eligible transferees at the same interest rate as on the borrower's note(s) or bond(s). The maturity of the debt instrument for the assumed debt may not exceed the lesser of the repayment period authorized in 7 CFR part 1780 for a ''new'' loan or the expected life of the facility.

(14) Agency National Office concurrence is required for transfers not in compliance with paragraphs (a)(1) through (13) of this section.

(b) *Loan requirements for eligible transferees.* If a loan is evidenced and secured by a note and lien on real or chattel property, Form RD 1951–15, or other appropriate assumption agreement will be executed by the transferee. If a bond secures a loan, transfer documents will be developed by bond counsel and approved by the Office of the General Counsel (OGC), USDA.

(1) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, 7 CFR part 1780 will govern the preparation of any new debt instruments required.

(2) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(3) Any development funds remaining in a bank account that are not refunded to the Agency will be transferred to a bank account for the transferee. This will occur simultaneously with the closing of the transfer, and the funds will be used in completing planned development.

(c) *Release from liability.* Transferors may be released from liability when their debt is paid in full or when the debt is settled in accordance with § 1782.20 of this part.

(d) *Transfer of facility financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

§ 1782.14 Protection of service areas—7 U.S.C. 1926(b).

(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the ''Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99–591, 100 Stat. 3341 (1986),'' from loss of users due to actions or activities of other entities in the service area of the Agency financed system. Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower's ability to repay its Agency debt.

(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.

§ 1782.15 Mergers and consolidations.

Mergers and consolidations will be processed the same as a transfer and assumption, although approvals by the Agency will give consideration to the differences under the applicable law regarding the type of transaction under consideration and the unique facts involved in each transaction. Mergers occur when two or more entities combine in such a manner that only one remains in existence. Consolidations occur when two or more entities combine to form a new consolidated entity, and the original entities cease to exist. In both mergers and consolidations, the surviving or emerging entity acquires the assets and assumes the liabilities of the entity or entities that ceased to exist.

§ 1782.16 Defeasance of Agency indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of Agency debt instruments, is prohibited.

§ 1782.17 Parity lien.

In order for the Agency to agree to a parity lien position, the borrower must submit a written request to the servicing office.

(a) The written request for parity must contain the following items:

(1) An explanation of the purpose of the request for parity; amount of loan for which parity is requested; description of security property; type of security instrument; name and address of financial institution requesting the transaction; and other information determined necessary by the servicing official to evaluate the request.

(2) Current financial statements or an audit, if available or determined necessary by the servicing official.

(3) An annual operating budget which projects income and expenses for a typical year's operation. If construction is involved, the budget must be projected through the first full year of operation following completion of the planned improvements.

(4) A copy of the proposed security instrument.

(5) A certification from the borrower that the Agency debt cannot be refinanced at reasonable rates and terms.

(6) An appraisal, when the primary security is real estate or determined necessary by the servicing official in order to determine the adequacy of loan security or repayment ability.

(7) A certification that any development work will comply with subpart C of part 1780 of this chapter.

(b) Requests for parity must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in 7 CFR part 1780, subpart D, and as provided in applicable State law.

(c) If the borrower has met all of the requirements in paragraphs (a) and (b) of this section and the proposal is determined to be in the Government's interest, the Agency will then grant approval of the borrower's request for parity. The following factors will be considered in assessing whether the request is in the Government's interest:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the security documents, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the security documents to the value of all assets pledged as security under the security documents;

(4) The borrower's ability to repay its debt owed to the Government;

(5) The overall financial viability of the borrower;

(6) The borrower's current relationship with the Agency (i.e. no defaults under the loan documents);

(7) Such other factors that may be relevant in individual cases, as determined by the Agency.

§ 1782.18 [Reserved]

§ 1782.19 Third party agreements.

The State Director may authorize third party operation, maintenance, and management of an Agency financed facility. The borrower's attorney must review the contract, management agreement, written lease, or other third party agreement and issue an opinion to the Agency as to their legal sufficiency. The borrower shall retain the legal authority necessary for owning, constructing, operating, and maintaining the facility.

§ 1782.20 Debt Settlement.

Pursuant to 7 U.S.C. 1981, this section prescribes policies for debt settlement of Water and Waste Disposal loans; Watershed loans and advances; Resource Conservation and Development loans; and 306 (c) Water and Waste Facility loans. Within the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134) is the Debt Collection Improvement Act of 1996. This law provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned over to the Secretary of the Treasury for appropriate action to collect or terminate collection actions on the debt or claim. Debt that is in litigation or foreclosure, with a collection agency or designated Federal debt collection center, or that will be disposed of under an asset sales program, is exempt from transfer to the Secretary.

(a) *General requirements for debt settlement.* (1) The debt or any extension thereof on which settlement is requested must be due and payable. The debt will be due and payable either under the terms of the note or other instrument, or by acceleration, unless the debt is to be cancelled without application under paragraph (e)(2) of this section or charged off under paragraph (f) of this section.

(2) Normally, all security will be disposed of prior to the date of application for debt settlement unless it is necessary to abandon security through the debt settlement process. In such cases, debt settlement may proceed if the servicing official determines that further collection efforts would be ineffective, uneconomical, and not in the best interests of the Government.

(3) Debtors will not be permitted to sell security and use the proceeds as part or all of a compromise/adjustment debt settlement offer.

(4) Requests for debt settlement will consist of Form RD 1956–1 ''Application For Settlement of Indebtedness,'' current financial information, description and estimated market value of collateral, and status of operation (*i.e.*, number of users, compliance with environmental issues, etc.).

(5) Office of General Counsel (OGC) advice on compliance with State or Federal statutes that may affect the debt settlement action must be requested.

(b) *Debts ineligible for settlement.* Debts will not be settled if:

(1) Referral to the Office of Inspector General and/or to OGC is contemplated or pending because of suspected criminal violation,

(2) Civil action to protect the interest of the Government is contemplated or pending,

(3) An investigation for suspected fiscal irregularity is contemplated or pending, or

(4) The debtor requests settlement of a claim that has been referred to or a judgment obtained by the United States Attorney. The settlement offer and any related payment must be submitted directly to the United States Attorney for consideration.

(c) *Types of debt settlement.* Typically, debt settlement will be accomplished through compromise/

adjustment, charge-off, or cancellation. Any debt remaining after the security has been liquidated, by sale or transfer, will be cancelled if there are no other assets from which to collect the debt. The servicing official will proceed with advice from OGC and the National Office, as required.

(d) *Compromise and adjustment.* Debts may be compromised or adjusted and security retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full,

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount that the debtor is able to pay.

(e) *Cancellation.* Non-judgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(1) *With application by the debtor.* Debts may be cancelled upon application of the debtor, subject to the following conditions:

(i) The servicing official furnishes a favorable recommendation concerning the cancellation;

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected;

(iii) The debtor is unable to pay any part of the debt, and has no reasonable prospect of being able to do so; and

(iv) The debt or any extension thereof is due and payable under the terms of the note or other instrument or due to acceleration by written notice prior to the date of application.

(2) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(i) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form RD 1956–1. A copy of the Bankruptcy Court's Discharge Order must be attached.

(ii) *Impractical to obtain debtor's signature.* Debts may be cancelled if it is impractical to obtain a signed application and the requirements of paragraphs (e)(1) of this section are met. Form RD 1956–1 will document the specific reason(s) why it was impossible or impracticable to obtain the signature of the debtor. If the debtor refused to sign the application, the reason(s) should be documented.

(f) *Charge-off*—(1) *Judgment debts.* Judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(i) The United States Attorney's file is closed, and

(ii) The requirements of paragraph (e)(2)(ii) of this section, if applicable, have been met, or 2 years have elapsed since any collections were made on the judgment. The debtor must also have no equity in the property subject to the lien or upon which a lien can be obtained.

(2) *Non-judgment debts.* Debts that cannot be settled under other sections of this part may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(i) When OGC advises in writing that the claim is legally without merit or that evidence necessary to prove the claim in court cannot be provided; or

(ii) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(A) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so; or

(B) Is able to pay part or all of the debt but refuses to do so, and OGC provides an opinion to the effect that the Government cannot enforce collection of a significant amount from assets or income.

§ 1782.21 [Reserved]

§ 1782.22 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. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course(s) of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. The exception decision will be documented in writing, signed by the Administrator, and retained in the files.

§ 1782.23 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the borrower or grantee to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) If the new use of the property is under the authority of another USDA Agency Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(c) Borrowers and grantees that wish to use the proceeds for other purposes may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

§ 1782.24–1782.99 [Reserved]

§ 1782.100 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0572–0137.

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

PART 1951—SERVICING AND COLLECTIONS

■ 2. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989; 31 U.S.C. 3716, 42 U.S.C. 1480.

Subpart A—Account Servicing Policies

■ 3. Amend § 1951.1 by adding the following sentence to the end of the section:

§ 1951.1 Purpose.

* * * This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, or

Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart D—Final Payment on Loans

■ 4. Revise § 1951.151 to read as follows:

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farm Service Agency (FSA), Rural Housing Service (RHS), and Rural Business-Cooperative Service (RBS), herein referred to as ''Agency,'' for processing final payment on all loans. This subpart does not apply to Direct Single Family Housing customers or to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of the RHS. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

■ 5. Revise § 1951.201 to read as follows:

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing the following programs: 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; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; System for Delivery of Certain Rural Development Programs panel grants; in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants, and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of 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. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

■ 6. Add § 1951.218 to read as follows:

§ 1951.218 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the loan borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act, as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) For the purpose of this section, Administrator means the Administrator of the Rural Housing Service or Rural Business-Cooperative Service that has the delegated authority to administer the loan or grant program that covers the property or the proceeds from the sale of property proposed to be used in another way.

(c) If the new use of the property is under the authority of another Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(d) Borrowers and grantees that wish to take advantage of this option may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

■ 7. Revise § 1951.251 to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's need for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term ''Agency'' used in this subpart refers to the Farm Service Agency (FSA), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to RHS direct single family housing (SFH) customers. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

■ 8. Revise § 1951.701 to read as follows:

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Rural Development when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by Rural Development 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. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

PART 1955—PROPERTY MANAGEMENT

■ 9. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

■ 10. Revise § 1955.1 to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of loans to individuals and to organizations as identified in § 1955.3 of this subpart. It pertains to the Farm Credit programs of the Farm Service Agency (FSA), Multi-Family Housing (MFH) and Community Facility (CF) programs of the Rural Housing Service (RHS), and direct programs of the Rural Business-Cooperative Service (RBS). Guaranteed RBS loans are liquidated upon direction from the Deputy Administrator, Business Programs, RBS. This subpart does not apply to RHS single family housing loans, or to CF loans sold without insurance in the private sector. These CF loans will be serviced in the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Programs of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Subpart B—Management of Property

■ 11. Revise the introductory text of § 1955.51 to read as follows:

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Farm Service Agency (FSA), herein referred to as ''Agency.'' This subpart does not apply to RHS single family housing loans or community program loans sold without insurance to the private sector. These community program loans will be serviced by the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title. This subpart covers:

* * * * *

Subpart C—Disposal of Inventory Property

■ 12. Revise § 1955.101 to read as follows:

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights, and chattels. It also covers the granting of easements and rights-of-way on inventory property. Credit sales of inventory property to ineligible (non-program (NP)) purchasers will be handled in accordance with Subpart J of Part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this Subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this Subpart. This subpart does not apply to Single Family Housing (SFH) inventory property or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing Programs. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

PART 1956—DEBT SETTLEMENT

■ 13. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 31 U.S.C 3711; 42 U.S.C. 1480.

Subpart C—Debt Settlement—Community and Business Programs

■ 14. Revise § 1956.101 to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Community Facility loans; Association Recreation loans; Rural Renewal loans; direct Business and Industry loans; and Shift-in-land-use loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Non-program 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. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

Dated: September 12, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 07–4756 Filed 9–27–07; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150–AI15

NRC Size Standards; Revision Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct Final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 24, 2007, for a direct final rule that was published in the **Federal Register** on August 10, 2007 (72 FR 44951). This direct final rule amended the NRC's regulations concerning the size standard it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and has made the same change to its annual fee rule.

DATES: *Effective Date:* The effective date of October 24, 2007 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852. These same documents are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are