

Proposed Rules

Federal Register

Vol. 69, No. 219

Monday, November 15, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1782, 1951, 1955, and 1956

RIN 0572-AB59

Servicing of Water Programs Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to consolidate and amend the regulations utilized to service water and waste loan and grant programs. The proposed 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 RUS 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 proposes to implement Section 6018 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1936a) for the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS) and RUS.

DATES: Comments on the proposed rule must be received on or before January 14, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Agency Web Site: <http://www.usda.gov/rus/index2/Comments.htm>. Follow the instructions for submitting comments.

- E-mail: RUSComments@usda.gov. Include in the subject line of the message "7 CFR 1782."

- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522.

- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

Instructions: All submissions received must include the agency name and the subject heading "7 CFR 1782". All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to <http://www.usda.gov/rus/index2/Comments.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water and Environmental Programs, Rural Utilities Service, 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 proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be pre-empted; 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. sec. 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 the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS is requesting comments on the collection of information incorporated in this proposed rule. The reporting burden will be transferred from nine existing regulations into regulation 1782 and where possible, the reporting burden will be reduced.

Title: Servicing of Water and Waste Programs.

Type of Request: New collection.

Abstract: RUS' Water and Environmental Programs (WEP) provide financing and technical assistance for development and operation of safe and affordable water supply systems and sewage and other waste disposal facilities. WEP provides loans, guaranteed loans and grants for water, sewer, storm water, and solid waste disposal facilities in rural areas and towns of up to 10,000 people. The recipients of the assistance covered by 7 CFR part 1782 must be public entities. These can include municipalities, counties, special purpose districts; federally designated Indian tribes, land corporations not operated for profit, including cooperatives. The information, which is for the most part financial in nature, is needed by the Agency to determine if borrowers, based on their individual situations, qualify for the various servicing options.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 hours per response.

Respondents: Business or other for profit and non-profit institutions, and state and local governments.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondents: 1.35.

Estimated Total Annual Burden on Respondents: 80,976 hours.

The subject regulation is published for public review and comment. Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 690-1078.

Comments on this information collection must be received by January 14, 2005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this information collection requirement to Michele Brooks, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., Room 5166, Stop 1522, Washington, DC 20250-1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will be summarized, included in the request for OMB approval, and will become a matter of public record.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 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 section 202 and 205 of the Unfunded Mandates Reform Act.

Executive Order 13132, Federalism

The policies contained in this proposed 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 proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Background

RUS' 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 listed cited in 1782.7.

Major changes are:

1. Combines servicing regulations found in 7 CFR parts 1951, 1955 and 1956 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 RUS based on the Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6942. Therefore in order to enhance the delivery of borrower services and better assist the public, RUS 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 Rural Housing Services (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. 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. The RUS proposes to include language to implement this provision in 7 CFR 1782.23. These provisions will also be applicable to the RBS and RHS programs by adding § 1951.218 to 7 CFR part 1951, subpart E.

The Regulations

RUS 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. RUS 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, RUS proposes to remove 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. The Agency will issue a Staff Instruction that will include the administrative portion, which outlines the Agency's internal processing procedures. The Staff Instruction will be available to the public upon request at no cost.

Conclusion

RUS 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 the Agency to reduce regulations, streamline Agency 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 proposed to be 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 RUS indebtedness.
- 1782.17 Subordination of security or 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) policies and procedures for servicing direct and insured Water and Waste Disposal 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 RUS 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 RUS' financial interest. Servicing by RUS includes, but is not limited to, the review of budgets, management reports, audits and financial statements; performing security 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.

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 RUS.

Agency. RUS 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 RUS or predecessor agency loan assistance.

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

Chargeoff. Write off of a debt and termination of servicing activity without release of liability. A Chargeoff is a decision upon the part of 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 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 RUS, USDA, USDA and RUS may be used interchangeably throughout this part.

Grantee. Recipient of RUS 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. To satisfy 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.

Commercial rates and terms 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 RUS.

Rural Utilities Service (RUS). An Agency of the USDA 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 grant account.

Servicing official. A 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 chargeoff of a debt owed USDA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff action, individually or collectively.

Subordination agreement. A formal agreement whereby RUS permits another lender to have a senior or prior lien position on a borrower's assets to facilitate the borrower's obtaining financing from another source of credit. A subordinate lien position is an inferior or junior lien position.

USDA. United States Department of Agriculture.

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

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 the USDA/Rural Development or RUS, United States Department of Agriculture, 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, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibits 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 RUS grants are governed by the provisions of 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 non-typical 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 subordination and lease or sale of RUS 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 title. 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 part 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 RUS' 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 RUS 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 RUS debt, pay on debts secured by a prior lien, and pay on debts secured by a parity or subsequent lien if it is to RUS' advantage;

(ii) To purchase or acquire property more suited to the borrower's needs, providing RUS 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 RUS grants.* The requirements for the sale or disposition of assets financed with RUS 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 RUS 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 1780.7 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 RUS 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) RUS 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 RUS 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 RUS security being transferred unless the transferee is willing to accept such claims. RUS must also determine that the claims will not prevent the transferee from repaying the RUS 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 RUS 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 RUS, 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 1780.13(e) for a "new" loan or the expected life of the facility.

(14) RUS National Office concurrence is required for transfers not in compliance with paragraphs (a)(1) through (14) 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 Office of the General Counsel, USDA (OGC).

(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 1780.94(l) 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 RUS 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 RUS grants.* The requirements for the sale or disposition of assets financed with RUS 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 RUS 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 RUS 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 RUS 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 RUS will give consideration to the differences under the applicable law regarding the type of transaction under consideration. 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 RUS indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of RUS debt instruments, is not authorized.

§ 1782.17 Subordination of security or parity lien.

In order for RUS to agree to either a subordination or to a parity lien position, the borrower must submit a written request to the servicing office.

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

(1) An explanation of the purpose of the request for parity or subordination; amount of loan for which parity or subordination 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 RUS 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.

(8) Requests for a subordination of security are subject to the appropriate environmental review as required by § 1794.3 of this chapter.

(b) Requests for parity or subordination must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in § 1780.94(i) of this chapter, and as provided in applicable State law.

(c) Proposals for tax exempt issues will be considered for parity only.

(d) Once the borrower has met all of the requirements in paragraphs (a), (b) and (c) of this section and the proposal is determined to be in the Government’s interest, RUS will then grant approval of the borrower’s request for parity or subordination.

§ 1782.18 [Reserved]

§ 1782.19 Third party agreements.

The State Director may authorize third party operation, maintenance, and management of an RUS 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.

(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) Request 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) 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 OIG and/or to OGC is contemplated or pending because of suspected criminal violation, or

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

(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, chargeoff, 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, and

(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.* Nonjudgment 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) *Chargeoff.* (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) *Nonjudgment 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, 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-XXXX.

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. 1989; 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 of all loans. This subpart does not apply to direct Single Family Housing customers of the RHS. 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 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 Community Facility loans and grants; Rural Business Enterprise/ Television Demonstration grants; Association Recreation 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; and Rural Cooperative Development Grants in subpart F of part 4284 of this title. 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 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

6. 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) (including its county and State committees and their personnel), 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

7. 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 the 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

8. 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

9. 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. It pertains to the Farm Credit programs of the Farm Service Agency (FSA), Multi-Family Housing (MFH) and Community Facilities (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. 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 B—Management of Property

10. 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,” and references contained in this subpart to the Farmers Home Administration (FmHA) are synonymous with “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 and this subpart no longer apply to such loans. 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. This subpart does cover:

* * * * *

Subpart C—Disposal of Inventory Property

11. 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 (nonprogram (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 SFH inventory property. 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.

PART 1956—DEBT SETTLEMENT

12. 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

13. Amend § 1956.101 by adding the following sentence to the end of the section:

§ 1956.101 Purpose.

* * * 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.

Dated: October 7, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.
[FR Doc. 04-25247 Filed 11-12-04; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****7 CFR Part 4280**

RIN 0570-AA50

Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule: extension of comment period.

SUMMARY: The Rural Business-Cooperative Service (RBS) is extending

the deadline of November 4, 2004, for submitting comments regarding the proposed Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program. The program will assist farmers, ranchers, and small rural businesses to purchase renewable energy systems and make energy efficiency improvements. The proposed rule was published in the **Federal Register** on October 5, 2004 (69 FR 59650). This extension will allow additional time for the public to submit comments.

DATES: Comments must be submitted by December 15, 2004.

ADDRESSES: You may submit comments to this rule by any of the following methods:

Agency Web Site: <http://rdinit.usda.gov/regs/>. Follow instructions for submitting comments on the Web site.

E-Mail: comments@usda.gov. Include the RIN No. 0570-AA50 in the subject line of the message.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

Hand Delivery/Courier: Submit written comments via Federal Express Mail or another courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular working hours at 300 7th Street, SW., 7th Floor, address listed above.

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Special Advisor for Renewable Energy Policy and Programs, Office of the Deputy Administrator Business Programs, U.S. Department of Agriculture, Mail Stop 3220, 1400 Independence Ave., SW., Washington, DC 20250-3220, telephone: (202) 720-2976.

SUPPLEMENTARY INFORMATION: RBS published the notice of proposed rule making with a 30-day comment period. The reason for this limited time for comments was based primarily on the need to have a published final rule in time for the implementation of the program in fiscal year (FY) 2005. The Agency felt that since the program outlined in the proposed rule is similar