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Vol. 50, No. 36
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Presidential Documents

Proclamation 5303 of February 20, 1985

National Safe Boating Week, 1985

By the President of the United States of America

A Proclamation

Americans increasingly look to the water for recreation and relaxation. This year, approximately one-quarter of us will enjoy boating in one or more of its many and varied forms. Therefore, it is important that all those involved in recreational boating observe proper safety practices, know and obey rules of safe boating, and show courtesy and consideration on the water.

In addition, all boaters should wear personal flotation devices while on the water. According to the United States Coast Guard, seventy-five percent of those who died in boating accidents last year might have been saved had they worn these devices.

The theme of this year's National Safe Boating Week emphasizes the dangers of combining alcohol consumption with operating a boat. The use of alcohol and other intoxicating substances is a major factor in boating accidents and fatalities. Boat operators who drink often cannot react promptly to hazards and thereby endanger not only themselves but also others on the water. The use of even small amounts of alcohol can significantly impair an operator's judgment and boat-handling skills. This is particularly true as fatigue caused by sun, glare, noise, wind, and boat motion intensifies the effects of alcohol. Through the observance of National Safe Boating Week, 1985, all Americans should be alerted to these dangers.

In recognition of the need for boating safety, the Congress, by joint resolution approved June 4, 1958, as amended (36 U.S.C. 161), authorized and requested the President to proclaim annually the week commencing on the first Sunday in June as National Safe Boating Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 2, 1985, as National Safe Boating Week. I invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia to provide for the observance of this week.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of February, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-4511
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Rules and Regulations

Federal Register
Vol. 50, No. 36
Friday, February 22, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 504]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period February 24–March 2, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period February 24–March 2, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910 as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on February 19, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good on mid sizes and easier on the larger and smaller sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910:

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.804 is added as follows:

§ 910.804 Lemon Regulation 504.

The quantity of lemons grown in California and Arizona which may be handled during the period February 24, 1985, through March 2, 1985, is established at 260,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 20, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–4560 Filed 2–21–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1823, 1924, and 1942

Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facility Loan regulations. This action is in response to general public and FmHA staff requests for clarification of the Community Facility Loan regulations. The intended effect is to provide more comprehensive guidance to applicants in obtaining FmHA financial assistance for water and waste disposal systems and essential community facilities.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Wallis B. McArthur, Loan Specialist, Water and Waste Disposal Division or Gary Morgan, Civil Engineer, Program Support Staff, Room 6322–S, Farmers Home Administration, Washington, DC 20250, telephone (202) 382–9583.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be a non-major action. This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action adopts existing administrative policies and is not expected substantially to affect budget outlay, to affect more than one agency, or to be controversial. It is anticipated that this action will not significantly impact Federal work-years or program costs. Facility planning, procurement and construction will continue to be reviewed by FmHA for compliance with applicable regulations. Additional efforts to administer the final changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to be a more efficient use of financial and natural resources. Sensitive lands will be protected.

thereby discouraging flood plain development which will reduce potential flood damage. This will result in future savings of money, facilities, and lives. This amendment revises the planning, bidding, contracting, and constructing regulations for Community Facilities. These amendments implement the certain provisions of 7 CFR Part 3015, Uniform Federal Assistance Regulations and OMB Circular A-102, Attachment O, which establishes standards governing State and local grantee procurement. Affirmative steps to assure utilization of small and minority firms, women's business enterprises and labor surplus areas are expanded. Procurement methods are expanded to include small purchase procedures, competitive sealed bids, competitive negotiation, and noncompetitive negotiation. Reference to FmHA Environmental Program is incorporated and statements on flood plains and wetlands, coastal zone management, wild and scenic rivers, and endangered species are included. Provisions have been added to implement Executive Order 12185, "Conservation of Petroleum and Natural Gas." Facility designs should consider energy saving devices.

This Rule includes water conservation provisions for water supply and treatment. Owners are encouraged, when economically feasible, to incorporate water conservation measures into a facility's design. Water system losses must be minimized and water meters must be used where appropriate. All FmHA funded facilities must be designed and constructed according to sound architectural and engineering practices. Section 1942.18 is revised and some paragraphs are rewritten to improve clarity. Section 1942.19(h)(ii) has been revised to provide that loan funds obligated in different fiscal years must have separate debt instruments.

This subpart has been amended to incorporate provisions of FmHA Environmental Program, Subpart G of Part 1940 of this chapter and Suspension and Debarment Proceedings, Subpart E of Part 1924 of this chapter. Subpart A, §§ 1942.1 through 1942.20 are printed in their entity to aid the reader. Cross reference to Subpart A contained in Subparts G, H and I of Part 1942 and Subpart E of Part 1942 are amended to correspond with numbering changes contained in rule change to Subpart A of Part 1942 of this chapter.

Charles W. Shuman, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities because these changes will provide more comprehensive guidance to applicants and make certain paragraphs consistent with other related actions.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 92-190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in Part 1901 Subpart H of this chapter.

CFDA No. 10.418 Water and Waste Disposal Systems for Rural Communities.

CFDA No. 10.423 Community Facility Loans.

A Proposed Rule to amend the regulations for the administration of Community Facility loans was published in the **Federal Register** for comment on December 5, 1983, (48 FR 54485). The major changes proposed were: (1) Provide more comprehensive guidance to applicants; (2) make certain paragraphs consistent with other related sections; (3) provide a means of public participation on FmHA financed projects; (4) provide direction to FmHA State and District Office personnel to ensure uniform implementation of antidiscrimination policies; (5) provide direction for servicing and maintaining insurance for projects in operation; and (6) redefine policies on procurement, environmental considerations, resource, water, and energy conservation.

Thirty-nine comments were received in response to the publication. Most respondents addressed multiple issues. Nine of the comments were from FmHA employees, two from State agencies, nine from private individuals and nineteen from organizations and public interest groups.

Discussion of Comments

1. *Preamble*—One commenter was confused about the reference to community program loan and grant making. We removed the reference to grants.

2. *Section 1942.1(a)*—Three comments were received. Two comments supported requirements for handicapped anti-discrimination practices. The third commenter suggested that FmHA should specifically support officially adopted State policies for physical and economic development. The latter suggestion was not accepted because the regulations already specifically support State strategy for rural development, which would include such physical and economic development policies.

3. *Section 1942.2(e)*—One commenter suggested we furnish copies of referenced public law and other documents to each FmHA office. The reference in question (Pub. L. 95-334) is a part of the Consolidated Farm and Rural Development Act, (CONACT) as amended. We added a reference to the CONACT.

4. *Section 1942.5(d)(6)*—One commenter questioned the need to send a copy of Form FmHA 442-14 to the Finance Office. We deleted this requirement.

5. *Section 1942.5(d)(7)*—Five commenters suggested that the interest rate for a loan be the rate prevailing at either loan approval or loan closing, whichever is less. This suggestion could create problems when a FmHA grant is involved and if the interest rate changes from the time the grant was calculated, the amount of FmHA grant funds and loan funds could change. In addition, other problems would occur with bond issues and referendums due to fluctuations in loan amounts. We did not adopt this suggested change.

6. *Section 1942.9(b)*—One commenter suggested clarification of this section. We changed it to require National Office concurrence if a single contract is negotiated for more than $100,000.

7. *Section 1942.17(d)(1)*—Eight comments concerned eligible loan purposes. In response, we made two changes. One added natural gas distribution systems as an essential Community Facility and the other change clarified when the payment of tap fees and other utility connection charges can be considered as eligible loan purposes. Several commenters misunderstood the proposed rule language on tap fees and connection charges. We clarified the section so that tap fees and connection charges are eligible loan purposes when a system must pay such charges to purchase bulk services. Individual tap fees and connection charges are not considered as an eligible loan purpose.

One commenter suggested we include installation of water meters as an "essential community facility." The suggestion was not accepted. However, water meters are considered an element of "Water and Waste Disposal Facilities" and are therefore an eligible loan purpose.

8. *Section 1942.17(e)*—Two comments concerned facilities for public use. One change adopted clarifies that inequities within the proposed project's service

area are to be remedied by the owner, on or before completion of the project that includes FmHA funding. Other commenters suggested that stronger language be incorporated which would promote service to low income users or other areas which may be subject to discrimination. Some commenters suggested that inequities be corrected in either water or waste disposal services as a condition of FmHA assistance. In other parts of this regulation, references made to discrimination issues and providing services to rural users are adequate. Correcting inequities in water or waste disposal facilities may be hampered by restrictions on the use of funds by State statutes or bond ordinances.

9. *Section 1942.17(f)(7)*—Two commenters suggested flexibility in the maximum loan term where an FmHA grant is involved. The forty-year loan term and the FmHA grant have the purpose of reducing the user cost to a reasonable level. Any decrease in the loan term not only increases the amount of grant funds needed but also may increase the user rate. Since this would defeat the purpose of the long term loan and increase need for grant funds, we made no change.

10. *Section 1942.17(h)(ii)*—Five comments concerned potential user cash contributions. We revised the paragraph in response to one comment. Where State statutes or ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances, an exception can be made to the requirement of a user cash contribution.

Four commenters suggested that meaningful user cash contributions be automatically waived for users in areas with community median incomes below 80 percent of the State non-metropolitan median household income. This suggestion has not been adopted since this regulation allows an exception for a meaningful user cash contribution where FmHA determines that the potential users as a whole in the applicant's service area cannot make such a contribution.

11. *Section 1942.17(j)*—(Paragraphs (j)(1) through (j)(8))—Four comments concerned the "General Requirements" in these paragraphs. A commenter on Fidelity Bonds was confused as to whether the bond covered only cash on hand, or cash and funds in a bank account or all funds (even savings or restricted fund accounts). Fidelity Bonds must provide coverage for all persons entrusted with the receipt and disbursement of all funds and the custody of valuable property. The method of which funds or property are held, is not an issue.

Requirements for monitoring insurance coverage and fidelity bonds have been revised to provide that FmHA is not responsible for continuous monitoring of insurance coverage.

Requirements for obtaining title insurance when General Obligation Bonds or assessment bonds serve as FmHA security, were reviewed at the request of one commenter. We feel that under the FmHA's responsibility to provide supervised credit, the borrower's interest in this area needs to be protected even though FmHA's security position is well protected.

12. *Section 1942.17(j)(9)*—Seven comments concerned the public information requirement. Four commenters endorsed the concept of public participation and urged that this section be retained in the Final Rule. One commenter's suggestion, which we adopted, is that a public hearing is not required for subsequent loans which are needed to complete financing of a project. The other commenters suggested that this requirement be strengthened to provide that certain topics be discussed at the meeting; however, we feel it is the applicant's responsibility to develop the agenda that will address critical project issues, which include but are not limited to: user rates, short and long term impacts, economically efficient designs, operation and maintenance, and financing costs.

13. *Section 1942.17(j)(10)*—Three of four commenters suggested that FmHA adopt a policy supporting service through individual installations. We feel that this technology may be applicable in certain cases; however, it should be considered along with all other designs in determining the design which best meets the users needs. The other commenters requested that the section be expanded to specify methods for denying service. We believe that this is unnecessary and that each individual project should be reviewed on its own merits.

14. *Section 1942.17(j)(11)*—One commenter pointed out that problems occur when one funding agency will not commit their funds until a second funding agency has done so and as a result, projects are being rejected although eligible under both agencies' rules. We realize that this does place a burden on the applicant to effectively communicate with funding agencies to obtain timely commitments of funds. We believe that the appropriate time will vary from project to project and also depends on the agencies' priorities and availability of funds. Therefore, we made no change.

15. *Section 1942.17(n)*—One commenter requested clarification as to whether current regulations should be used for grant recalculations. We have revised this paragraph to provide that any change in the FmHA funds will be based on revised project costs and the current number of users. However, other factors including FmHA regulations used at the time of loan/grant approval will remain the same.

Four commenters felt this provision would discourage participation from other funding agencies and eliminate joint financing of projects. The intent of this section is to adjust project funds from all sources after project costs are known, for example after bids have been opened. Any reduction of funds at this point should tailor funding needs to the project without adversely affecting funding from other sources.

16. *Section 1942.18(d)*—Four commenters addressed the topic "Design Policies." One commenter felt the Agency ignored life-cycle costs and recommended that it be stated as an Agency policy. However, the regulations provide that the design of FmHA-financed facilities should be in accordance with sound architectural and engineering practices. FmHA recognizes life-cycle costs as an element of sound architectural and engineering design practices.

Another commenter felt our requirements for pipe specifications would produce controversy since the ⅓ of operating pressure for surge allowance on ASTM specified pipe has been eliminated. We believe pipe should be designed to withstand the demands of the system surge pressures. This is a component of engineering design and should not be a matter of arbitrary limitations.

One commenter suggested that water system testing provisions be amended to provide test pressures at 1½ times working pressure or 150 PSI, whichever is greater. This paragraph was changed to provide a similar requirement which refers to the rated pressure of the pipe rather than 150 PSI.

17. *Section 1942.18 (e)(1)*—One commenter suggested that the requirement for the Office of the General Counsel review be eliminated on negotiated construction contracts under $10,000 where the contract amount is insignificant in the overall project. FmHA construction contract document guides are intended to provide borrowers with time tested methods of procurement of construction

services. We see no need to make an exception to this policy.

18. *Section 1942.18 (f)*—One commenter suggested that National Office approval of utility purchase contracts is not necessary where suitable alternative supplies are required. This paragraph is clarified to provide that National Office approval will be required only if a suitable alternative supply cannot be arranged within the repayment ability of the FmHA borrower.

19. *Section 1942.18 (h)*—Seven comments were received all related to discouraging borrowers from performing construction with their own forces. We agree that contracting for construction services with a general contractor is the preferred method to accomplish construction. However, we wish to retain flexibility to allow limited borrower construction in justifiable situations. We have clarified this point by adding language which will encourage owners to accomplish construction through contracts with others.

20. *Section 1942.18 (j)(2)*—Four commenters provided remarks on FmHA "Maximum Open and Free Competition" policy. One commenter supported our position; another was concerned about irrational claims from material and equipment suppliers and manufacturers. One saw this as an attempt by FmHA to impose its judgment on owners and their consultants. Another commenter felt FmHA was singling out pipe material to bear the burden of this provision. This provision adopts recommendations of a National Academy of Science study and is structured around the provisions of OMB Circular A-102, Attachment O. The intent of this paragraph is to provide competition which will ensure that the owner is obtaining the best price available for a design that will provide service to rural users in an economically efficient manner. This paragraph is not restricted only to pipe material but also applies to all materials and services. One point was clarified to allow the owner and its consultants to specify a singular material where conditions justify.

21. *Section 1942.18 (j)(5)*—Two commenters addressed provisions relating to small, minority, and women's businesses. This paragraph is not intended to establish Minority Business Enterprise requirements. The intent is to provide contracting opportunities to stimulate these private sector businesses.

22. *Section 1941.18 (j)(6)*—Three commenters expressed concern about an applicant's ability to perform price or cost analyses on architectural and engineering services. Another commenter was concerned about restrictions on contracts using percent of construction to determine a fee. We agree and have removed these requirements.

23. *Section 1942.18(j)(7)*—One commenter felt that this paragraph was misleading and that it prohibited the engineer from providing testing services during construction. This paragraph pertains to construction related work. The example the commenter used is closely related to professional services which are not covered by this paragraph.

24. *Section 1942.18(k)*—Eleven commenters expressed concern about the language in the provision for competitive negotiation which referenced architectural and engineering (A&E) services. Specific references to A&E services has been deleted. Two commenters were concerned about the improper use of noncompetitive procedures. The regulations have been clarified to provide that competitive sealed bids is the preferred procurement method for construction contracts. Sufficient reasons must exist for using any other procurement method.

One commenter noted that the proposed rule omits the phrase "Life-Cycle Costs." We have opted not to use this term at this point in the development of a project. This is an issue which is more suitably addressed during the design of a project and as we stated in paragraph 16 above, this is an element of sound architectural and engineering practices.

25. *Section 1942.18(l)*—One commenter recommended that for design/build projects, final plans should be required prior to start of construction. This has been adopted. Another commenter suggested the requirement be included for evaluation based on quality and the life-cycle cost analysis. Referring back to paragraphs 16 and 24 above, these items are considered as part of the design evaluation as a standard practice and need not be specified further.

26. *Section 1942.18(m)(3)*—Six commenters felt that an engineer or architect cannot determine that a contractor has fully "complied with the Plans and Specifications." This has been changed to provide for a certification of substantial compliance.

27. *Section 1942.18(n)(1)*—One commenter pointed out that California rarely allows liquidated damages and suggested the use of actual damages with a penalty. We believe the language allows sufficient latitude for departure where conditions warrant.

28. *Section 1942.18(n)(9)*—Three commenters expressed dismay on the paragraph relating to the Davis-Bacon Act. This paragraph only applies in very limited instances and is not a requirement under Community Facility loans. To avoid further confusion, this paragraph has been deleted. FmHA's policy on the Davis-Bacon Act can be found in 7 CFR Part 1901, Subpart D.

29. *Section 1942.18(n)(12)*—Seven commenters pointed out that the retainage provision conflicts with several State laws. The purpose of this paragraph is to clarify FmHA's position on retainage. We will continue to work with State agencies to arrive at a procedure which will allow both State and Federal regulations to be met.

Several commenters suggested the use of an escrow account for the retainage. We believe this adds confusion to the construction process and does not afford the owner the full measure of protection that retainage provides.

30. *Section 1942.18(o)*—One commenter suggested that the inspector's daily records should include both a daily diary and a daily inspection report. This has been adopted. Another commenter felt the inspector should determine that the contractor has complied with labor standards provisions of the construction contract when they exist. We fell that this is a contractor's responsibility and cannot be shifted to the owner through the inspector. Another commenter suggested that FmHA's prior approval on change orders which are less than 5 percent of construction cost not be required. Contract change orders may affect other items besides cost which may have a significant impact on a project. Even a change order of small dollar value can have a significant impact on owners with very limited financial resources. This recommendation was not adopted.

31. Some comments are general. One commenter suggested specific reference to Executive Orders 12372 and 12416, "Intergovernmental Review of Federal Programs." Current legislation for this FmHA program refers specifically to now obsolete OMB Circular A-95. We expect this to be corrected in the near future. One commenter suggested that any project extension be in compliance with current environmental regulations. This subject is addressed in Supart G of Part 1940 of this chapter.

The following additional changes were made for clarity and comprehension:

1. *Section 1942.17(d)(1)(i)(B)(8)*—To improve clarity, language was added to this paragraph to emphasize that funds may not be used in connection with

industrial parks to finance on-site utility systems or business and industrial buildings.

2. *Section 1942.17(e)(4)*—Language was added to specify that the State Director is to determine whether user rate schedules for portions of existing systems were developed under different financing, rates, terms, or conditions.

3. *Section 1942.17(g)(3)(i)*—A cross reference to the eligibility provisions of utility-type facilities was added.

4. *Section 1942.18(k)(2)(v)*—This paragraph was reworded to acknowledge that any or all bids may be rejected by the owner.

5. *Section 1942.18(o)(2)(iii)(B)*—Favorable developments to be reported has been expanded to include cost underruns or lower unit cost than originally planned and events which may result in less FmHA assistance.

List of Subjects

7 CFR Parts 1823 and 1924

Loan programs—agriculture.

7 CFR Part 1942

Community development, community facilities, loan programs—housing and community development, loan security, rural areas, waste treatment and disposal, domestic, water supply.

Therefore, FmHA amends Subparts B and H of Part 1823, Subpart E of Part 1924 and Subparts A, G, H, and I of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart B—Association Loans for Shift-In-Land-Use Projects

1. § 1823.55 is amended by revising paragraph (o) to read as follows:

§ 1823.55 Pasture and grazing associations.

* * * * *

(o) *Dockets.* Dockets will include items shown below and any additional material, information, or documents found necessary or desirable by the State Director.

Form No.	Name of item	Total number of copies	Number signed	Docket	Copy for borrower
AD 621	Preapplication for Federal assistance	2	1	1	0
FmHA 400-1	Equal opportunity agreement	2	1	1	1
FmHA 400-3	Notice to contractors and applicants	3	1	1	1
FmHA 400-4	Assurance agreement	2	1	1	1
FmHA 400-6	Compliance statement	3	3	1	1
FmHA 422-1	Appraisal report (farm tract)	1	1	1	0
FmHA 424-1	Development plan (including contracts, if any)	2	1	1	1
FmHA 1940-1	Request for obligation of funds	5	0 and 1C	1	1
FmHA 440-2	County committee certification or recommendation	1	1	1	0
FmHA 440-34	Option to purchase real property	3	2	1	1
FmHA 442-7	Operating budget	2	1	1	1
FmHA 1942-8	Resolution of members or stockholders	1	1	1	0
FmHA 442-12	Financial statement	2	1	1	1
FmHA 442-14	Association project fund analysis	3	0	1	0
FmHA 442-17	Membership list (grazing association)	2	2	1	1
FmHA 442-29	Managers agreement (grazing association)	2	2	1	1
FmHA 442-33	Shift-in-land-use plan	1	0	1	0
FmHA 442-36	Application for membership in grazing association	1	1	1	0
FmHA 442-37 [1]	Management agreement—grazing association	2	2	1	1
FmHA 442-39	Processing check list (other than public bodies)	4	0	1	1
FmHA 442-44	Project summary (shift-in-land-use grazing)	3	1	1	0
FmHA 442-46	Letter of intent to meet conditions	2	1	1	1
FmHA 442-48	Grazing association loan resolution	2	1	1	1
	Legal service agreement	3	1	1	1
	Evidence of title to assets	1	1	1	0
	List of association officers	1	1	1	0
	Leases, permits, and other evidence of grazing rights	1	0	0	0
	Stock or membership certificate (facsimile or voided copy)	1	0	1	0
	Articles of incorporation	2	1	1	1
	Before and after maps	1	1	1	1
	By-laws	2	1	1	1
	Letters of conditions	4	1	1	1

[1] Prepare enough additional copies so that each member is furnished a copy. Signed copy retained by Secretary.

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measures

2. Section 1823.234 is revised to read as follows:

§ 1823.234 Loan processing.

Applications will be processed in accordance with this subpart. Dockets will include items shown below and any additional material, information, or dockets found necessary or desirable by the State Director.

Form No.	Name of item	Total number of copies	Number signed	Docket	Copy for borrower
AD 621	Preapplication for Federal assistance	2	1	1	0
FmHA 400-1	Equal opportunity agreement	2	1	1	1
FmHA 400-3	Notice to contractors and applicants	3	1	1	1
FmHA 400-4	Assurance agreement	2	1	1	1
FmHA 400-6	Compliance statement	3	3	1	1
FmHA 422-1	Appraisal report (farm tract)	1	1	1	0
FmHA 1940-1	Request for obligation of funds	5	0 and 1C	1	1
FmHA 424-1	Development plan (including contracts, if any)	2	1	1	1
FmHA 440-2	County committee certification or recommendation	1	1	1	0
FmHA 440-34	Option to purchase real property	3	2	1	1
FmHA 442-7	Operating budget	2	1	1	1

Form No.	Name of item	Total number of copies	Number signed	Docket	Copy for borrower
FmHA 1942-8	Resolution of members of stockholders	1	1	1	0
FmHA 1942-9	Resolution (security agreement)	2	1	1	1
FmHA 442-12	Financial statement	2	1	1	1
FmHA 442-14	Association project fund analysis	3	0	1	0
FmHA 442-19	Agreement for engineering services	3	1	1	1
FmHA 442-39	Processing check list (other than public bodies)	3	1	1	0
FmHA 442-42	Project summary (irrigation, drainage, other soil and water conservation measures)	3	1	1	0
FmHA 442-46	Letter of intent to meet conditions:				
	List of association officers	1	1	1	0
	Certified membership list	1	1	1	0
	Stock of membership certificate (facsimile or voided copy)	1	1	1	0
	Articles of incorporation or charter of other evidence of creation	2	1	1	1

PART 1924—CONSTRUCTION AND REPAIR

Subpart E—Suspension and Debarment Proceedings

3. In § 1924.216, paragraph (a)(2) is revised to read as follows:

§ 1924.216 Procedure for debarment and suspension.

(a) * * *

(2) Debarment proceedings may not commence and notice of proposed debarment many not be issued without the concurrence of OGC. In addition, debarment proceedings involving loans or grants under Subparts A and H of Part 1942 and Subparts A and E of Part 1980 of this chapter will be reviewed and concurred in the FmHA Administrator before notice is given under this subpart.

* * * * *

PART 1942—ASSOCIATIONS

4. Subpart A of Part 1942 is revised to read as follows:

Subpart A—Community Facility Loans

Subpart A—Community Facility Loans

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for community facilities. The Farmers Home Administration (FmHA) shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. FmHA State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) The County Office will normally be the entry point for preapplications and serve as a local contact point. However, applications will be filed with the District Office and loans will be processed to the maximum extent possible by the District Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. FmHA personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor community programs loan making and servicing, and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information on community program loan activity within the County Office service area to the County Supervisor at key points throughout the loan making process as described herein.

§ 1942.2 Processing applications.

(a) *Preapplications.* (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, Form AD–621, "Preapplication for Federal Assistance." The County Supervisor will assist applicants as needed in completing Form AD–621, and in filing written notice of intent and request for priority recommendation with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1901.352 (c) of Subpart H of Part 1901 of this Chapter). The County Supervisor will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for FmHA financing. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. The District Director will meet with the applicant, whenever appropriate, to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully review it. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of Form AD-621.

(iii) State intergovernmental review comments and recommendations (clearinghouse comments).

(iv) Priority recommendations.

(2) The State Director will review each Form AD-621 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of § 1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State A-95 or other appropriate State agency and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD-622, "Notice of Preapplication Review Action."

(iv) Form AD-622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by FmHA, stating the results of the review action. The original will be signed and delivered to the applicant, a copy to the County Supervisor, and a copy to the State Director.

(3) For preapplications eligible for FmHA funding which have the necessary priority to compete with similar preapplications, FmHA will:

(i) Complete Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," for projects excluded from environmental assessments under Subpart G of Part 1940 of this chapter prior to issuing Form AD-622 requesting an application; or

(ii) Issue an initial Form AD-622 for projects required to have environmental assessments under Subpart G of Part 1940 of this chapter containing the following statement:

> You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. You will be notified whether or not to proceed with a full application after you have provided the following materials to this office, and FmHA has completed its review.
>
> (A) Form FmHA 1940-20, "Request for Environmental Information."
>
> (B) Preliminary engineering or architectural report.
>
> (C) Professional services agreement for engineering or architectural services.

(4) The following statement must be added to Form AD-622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) to proceed.

(5) Preapplicants issued an initial Form AD-622 requesting information referenced in § 1942.2 (a)(3)(ii) of this subpart will be issued a subsequent Form AD-622 upon review of the information and completion of an environmental assessment. Preapplicants will be advised whether to proceed with a full application.

(b) *Environmental review.* Environmental requirements will be documented in accordance with Subpart G of Part 1940 of this chapter and submitted to the State Director. Prior to requesting an application, the State Director will ensure that the appropriate environmental review is completed.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include Form AD-624, "Application for Federal Assistance (for construction programs)," and related forms, materials, and information. The application will be assembled in accordance with Guide 15 of this subpart or State guides developed under § 1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form FmHA 442-39, "Processing Check List (Other Than Public Bodies)," or Form FmHA 442-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing

actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter.

(e) *Joint funding.* FmHA may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA to any applicant to whom FmHA is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by Section 125 of Pub. L. 95-334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form FmHA 422-10, "Appraisal Report—Water and Waste Disposal Systems," may be used with appropriate supplements. Form FmHA 442-10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by § 1941.17 (g)(2)(iii)(B)(*2*), (g)(3)(iii)(B)(*2*), and (j)(4) of this subpart, may be prepared by the FmHA engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

§ 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§ 1942.5 Application review and approval.

(a) *Procedures for review.* Ordinarily FmHA staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the FmHA staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The District Director will complete the project summary including written analysis and recommendations using either Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," for utility type projects or Form FmHA 442-43, "Project Summary—Community Facilities (Other than utility-type projects)," for all other types of projects. The District Director will prepare a draft letter of conditions listing all the requirements which the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, term of loan and any payment deferment, number of users (members) and verification required, contributions, rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required, adoption of Form FmHA 1942-47, "Loan Resolution (Public Bodies)," for public bodies or Form FmHA 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application."

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $——. If FmHA makes the loan, the interest rate will be that charged by FmHA at the time a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you."

Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(iii) District Directors may add the following:

If the conditions set forth in this letter are not met within —— days from the date hereof, FmHA reserves the right to discontinue the processing of the application.

(2) The FmHA staff engineer or architect, as appropriate, will include a written analysis and recommendations on Form FmHA 442-43 or Form FmHA 1942-45.

(3) The Chief, Community Programs or Community and Business Programs will review the assembled application and include on Form FmHA 442-43 or Form FmHA 1942-45 written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See Subpart A of Part 1901 of this chapter).

(1) The District Director should assemble applications for the National

Office review in the following order from top to bottom and forward them to the State Director for review and recommedation prior to submission to the National Office:

(i) Transmittal memorandum including:

(A) Recommendation.

(B) Date of expected obligation.

(C) Any unusual circumstances.

(ii) Copies of the following:

(A) Proposed letter of conditions.

(B) Applicable State Intergovernmental review comments (FmHA Instruction 1940–J, available in any FmHA office).

(C) Forms FmHA 1942–45 or FmHA 442–43 (including the required copy of Forms FmHA 442–7, "Operating Budget," and FmHA 442–14, "Association Project Fund Analysis").

(D) Form FmHA 1942–51, "Water and Waste Disposal Grant Determination," if applicable.

(E) Preliminary architectural or engineering report.

(F) Form FmHA 442–3, "Balance Sheet." This form may be supplemented to provide further details if desired.

(G) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of § 1942.17 (g)(2)(iii) and (g)(3)(iii) of this subpart, an income and expense statement for the last five years of operation will be submitted if available.

(H) For other essential community facility loans secured under paragraph (b)(1)(ii)(G) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(G) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(I) Financial Feasibility Report when required by § 1942.17 (h)(1).

(J) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(K) Other forms and documents on which there are specific questions.

(L) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the District Director or other FmHA representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the District Director will send two copies of the letter of conditions and two copies of Forms FmHA 442–43 or FmHA 1942–45 to the State Director. A copy of the letter of conditions and the appropriate project summary will be sent to the County Supervisor for information purposes. The State Director will immediately send one copy of Forms FmHA 442–43 or FmHA 1942–45 (including the required copy of Forms FmHA 442–7 and FmHA 442–14) and a copy of the letter of conditions to the National Office, Attention: Water and Waste Disposal Division or Community Facilities Division, as appropriate. The District Director, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form FmHA 442–46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form FmHA 442–46, the District Director will immediately notify the State Director and provide complete information as to the reasons for such declination. The District Director will provide the County Supervisor with an information copy of the report.

(3) If the applicant executes Form FmHA 442–46, the District Director will forward two copies of the completed Form FmHA 442–14; and the completed and executed original, a signed copy and an unsigned copy of Form FmHA 1940–1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and Subpart A of Part 1901 of this chapter (available in any FmHA office). The loan will be considered approved on the date the signed copy of Form FmHA 1940–1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form FmHA 1940–1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form FmHA 1940–1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940–1.

(3) The State Director or designee will request an obligation of loan and/or grant funds from the Finance Office after signing Form FmHA 1940–1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA 1940–1.

(4) Requests for obligation received by the Finance Office before 2:30 p.m. Central Time will be processed on the date of the request. For requests received after 2:30 p.m. Central Time, there may be instance in which a request will be processed on the next working day.

(5) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds were reserved during the previous night's processing cycle. If funds cannot be reserved for a project, the Finance Office will notify the State Office by telephone of the reason. The obligation date and date the applicant is notified of loand and/or grant approval is six working days from the date funds are reserved in the Finance Office unless an exception is granted by the National Office. The Finance Office will mail Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," to the State Office confirming the reservation of funds with the obligation date.

(6) Immediately after notification by the Finance Office that the funds have been reserved, the State Director or designee will notify, by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA State Office).

(7) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA 1940–1 which has been previously signed by the applicant and loan aproval official. The date the applicant is notified is also the date the interest rate is established. The State Director or designee will record the date of applicant notification on the original of Form FmHA 1940–1 and include it as a permanent part of the District Office project file with a copy place in the State Office file. The District Director will notify the county Supervisor that the applicant has been notified of approval.

§ 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type roject to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by FmHA.

(c) *Initial compliance review.* An initial compliance review should be completed under Subpart E of Part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA 440-57 has been received from the Finance Office; and

(2) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of FmHA funds.* When FmHA provides loan funds during the construction period using interim (temporary) instruments described in § 1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately. In developing the permanent instruments, the sequence of preference set out in § 1942.19(e) of this subpart will be followed.

§ 1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and § 1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.

(b) *Preparation of mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) *Source of funds for insured loans.* All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with § 1942.17(p)(6) of this subpart. See Subpart B of Part 1951 of this chapter as to the method of returning loan and grant funds.

(e) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take appropriate actions outlined in FmHA Instruction 102.1 (available in any FmHA office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 102.1.

(f) *Posting management system records.* Record on Form FmHA 2033-33, "Management System Card—Community Programs," any actions to be completed subsequent to loan closing.

(g) *Supervised bank accounts.* Supervised bank accounts will be handled under Subpart A of Part 1902 of this chapter.

§ 1942.8 Actions subsequent to loan closing.

(a) *Mortgages.* Real estate or chattel mortages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(b) *Notes.* For a loan from the RDIF, a conformed copy of the note will be sent to the Finance Office immediately after loan closing.

(c) *Multiple advances—bond(s).* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made.

(d) *Bond registration record.* Form FmHA 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) *Material for State Office.* When the loan has been closed, the District Director will submit to the State Director:

(1) The complete docket; and

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(g) *State Office review of loan closing.* The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to OGC for post closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of FmHA's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review. After the loan has been properly closed, the District Director will inform the County Supervisor of that fact.

(h) *Safeguarding bond shipments.* FmHA personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA office), whenever they mail or deliver these items.

(i) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the District Office.

§ 1942.9 Planning, bidding, contracting, and constructing. [See §§ 1942.17(p) and 1942.18]

(a) *Review of construction plans and specifications.* All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The use of negotiated procurement for a construction contract or a contracting method under § 1942.18(k)(4) or § 1942.18(l) of this subpart exceeding $100,000 must be concurred in by the National Office. Procurement under § 1942.18(l) of this subpart will not be considered when an FmHA grant is involved. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and FmHA engineer/architect's comments and recommendations, and when noncompetitive negotiation is proposed, submit an evaluation of previous work of the proposed construction firm.

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) *Noncompliance.* State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with § 1942.18(j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

(e) *County Office notification.* The District Director will notify the County Supervisor of each construction contract award and final inspection occurring within the County Office service area.

§§ 1942.10–1942.11 [Reserved]

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(a) *Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."* The District Director or State Director may prepare and execute Form FmHA 1940–10 in accordance with the Forms Manual Insert (FMI). For a loan made from the RDIF, if the check has been received or is subsequently received in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

(b) *Notice of cancellation.* If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940–10. Any application for title insurance, if ordered, will be canceled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The District Director may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

§ 1942.13 Loan servicing.

Loans will be serviced under Subpart E of Part 1951 of this chapter.

§ 1942.14 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in Subpart A of Part 1901 of this chapter. Except for loan and grant approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006–B (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or start of construction.

§ 1942.17 Community Facilities.

(a) *General.* This section includes information and procedures specifically designed for use by applicants including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes FmHA policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas. State and substate A–95 agencies may recommend priorities for applications. FmHA will fully consider all A–95 agency review comments and priority recommendations in selecting applications for funding.

(b) *Applicant eligibility.* Facilities financed by FmHA must primarily serve rural residents. For water or waste disposal facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States. For essential community facilities the term "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States. Facilities must be located in rural areas except for utility-type services, such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, FmHA funds may be used to finance only that portion serving rural users, regardless of facility location. Loans for water or waste disposal facilities will not be made to any city or town with a population in excess of 10,000. Loans for essential community facilities will not be made to any city or town with a population in excess of 20,000. Assistance to areas or communities adjacent to, or closely associated with, non-rural areas is limited by § 1942.17(c) of this subpart.

(1) *Type of applicants*—(i) *Public bodies* such as municipalities, counties, districts, authorities, or other political subdivisions of a State.

(ii) *Organizations operated on a not-for-profit basis* such as associations, cooperatives, and private corporations. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval.

(A) Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve the local residents. Ties may be evidenced by items such as:

(*1*) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community;

(*2*) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or, substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

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

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

(3) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in Guide 24 of this subpart.

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

(c) *Priorities*—(1) *Truly rural areas.* FmHA program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal, or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development, parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social, and economic purposes a single community having a contiguous boundary.

(2) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, FmHA officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgement.

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

(ii) *State Office review.* All preapplications will be reviewed and scored and Form AD-622, "Notice of Preapplication Review Action," issued within the time limits in § 1942.2(a)(2)(iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD-622 and advised of their appeal rights under Subpart B of Part 1900 of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(iii) *Selection priorities.* The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in Part I of Guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) *Population priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(*1*) The proposed project is located in a rural community having a population not in excess of 2,500—25 points.

(*2*) the proposed project is located in a rural community having a population not in excess of 5,500—20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c)(2)(iii)(A)(*1*) of this section.)

(B) *Health priorities.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project is:

(*i*) Needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply—25 points.

(*ii*) Required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system—25 points.

(*2*) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard—25 points.

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(*1*) Less than the poverty line for a family of four as prescribed by the Office of Management and Budget (OMB) as described under Section 624 of the Economic Opportunity Act of 1964 (U.S.C. 2971d)—25 points.

(*2*) More than the poverty line but less than 85% of the State's nonmetropolitan median household income—20 points.

(*3*) Between 85% and 100%, inclusive, of the State's nonmetropolitan median household income—15 points.

(D) *Other factors.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents—10 points.

(*2*) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(*i*) Public safety—10 points. (Examples include fire, police, rescue and ambulance services.)

(*ii*) Health care—5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, medicare and medicaid requirements, and minor expansions needed to meet the immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under § 1942.17(c)(2)(iii)(B)(*2*) of this subpart.)

(*3*) Water and Waste Disposal and Community Facilities preapplications.

(*i*) Applicant is a public body or Indian tribe—5 points.

(*ii*) Project is located in a "truly rural area" as described in § 1942.17(c)(1) of this subpart—10 points.

(*iii*) Amount of joint financing committed to the project is:

(*a*) 20% or more private, local or state funds except federal funds channeled through a state agency—10 points.

(*b*) 5%–19% private, local or state funds except federal funds channeled through a state agency—5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c)(2)(iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if FmHA funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between FmHA's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) *Results of State Office review.* After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from FmHA that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for futher processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information with an authorization for the District Director to prepare and issue Form AD–622 in accordance with § 1942.2(a)(2)(iv) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in § 1942.17(c)(2)(iii)(A) (*1*) or (*2*); and the criteria in §1942.17(c) (2)(iii)(B)(*1*) (*i*) or (*ii*) or (B)(*2*) of this subpart.

(v) *Application development.* Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) *Project obligations.* To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) *Requests for additional funding.* All requests for additional allocations of funds submitted to the National Office must follow the formats found in Parts I and II of Guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office. These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

Priority	Points
1	5
2	3
3	1

(viii) *Cost overruns.* A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) *Eligible loan purposes.* (1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal, and other essential community facilities providing essential service primarily to rural residents.

(A) "Water or waste disposal facilities" include water, sanitary sewerage, solid waste disposal, and storm waste-water facilities.

(B) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to:

(*1*) Fire and rescue services;

(*2*) Health services;

(*3*) Community, social, or cultural services;

(*4*) Transportation facilities, such as streets, roads, and bridges;

(*5*) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(*6*) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing;

(*7*) Natural gas distribution systems; and

(*8*) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) "Otherwise improve" includes but is not limited to the following:

(*1*) The purchase of major equipment, such as fire trucks, ambulances, solid waste collection trucks, and X-ray machines, which will in themselves provide an essential service to rural residents;

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

(*3*) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under § 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) of this section.

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA.

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

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

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

(*2*) The debts are incurred for the facility or service being financed or any part thereof;

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

(G) Prepay costs for which FmHA grant funds were obligated provided there is:

(*1*) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(*2*) Full documentation showing that:

(*i*) Loan funds will only be utilized on a temporary basis; and

(*ii*) All FmHA loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request FmHA approval to pay such obligations. Such requests may be approved if FmHA determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by FmHA; and

(D) All environmental requirements applicable to FmHA and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material, or other liens that may attach to the security property. FmHA may authorize payment of such obligations at the time of loan closing. FmHA's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA authorization for paying such obligations shall be in writing. If construction is started without FmHA approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(*5*), (d)(1)(i)(B)(*6*) or (d)(1)(i)(B)(*7*) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section.

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348.

(viii) New combined sanitary and storm water sewer facilities.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use and primarily serve rural residents.

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally served. Applicants and borrowers must obtain written concurrence of the FmHA prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potent user will be afforded an opportunity to request service by signing a Users Agreement. Those declining service will be afforded an opportunity to sign a statement to such effect. FmHA has guides available for these purposes in all FmHA offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, or national origin.

(3) This does not preclude:

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

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

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., water or waste disposal) will be remedied by the owner on or before completion of the project that includes FmHA funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

> In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more nonprofit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

(f) *Rates and terms*—(1) *General.* Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). The interest rates will be set by FmHA at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. The interest rate for each loan will be the rate in effect on the date the signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to the applicant. The interest rate to be charged on each loan will be entered on Form FmHA 1940-1 on the date the form is mailed to the applicant. For each loan, the basis for determining what interest rate is appropriate will be completely documented on Form FmHA 442-43, "Project Summary—Community Facilities, (Other Than Utility-Type Projects)," or Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects."

(2) *Poverty line rate.* The poverty line interest rate will not exceed five per centum per annum. It will apply to loans for which the loan approval official determines both the following condition exist:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to enforce the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

(ii) The median household income of the service area is below the poverty line for a family of four, as prescribed by the Office of Management and Budget (OMB), as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f)(2) or (f)(3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

(5) *Prime farmland.* For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two per centum per annum if the project

being financed will involve the use of, or construction on, prime or unique farmland in accordance with FmHA Instruction 440.1, Exhibits B and J (available in any FmHA office).

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated on a national basis by the FmHA based on data provided by the Bureau of the Census, or other reliable sources. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median household income of the service area and the nonmetropolitan median household income of the State should be done concurrently, using data from the same year.

(7) *Repayment terms.* Loans will ordinarily be scheduled for repayment on terms similar to those used in the State for financing such facilities but in no case shall they exceed the useful life of the facility or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA funds are used in connection with an FmHA loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA is jointly financing with another lender, the FmHA payments of principal and interest should approximate amortized installments.

(i) If the borrower will be retiring other debts, the repayment on such debts may be considered in developing the repayment schedule for the FmHA loans.

(ii) Principal payments may be deferred in whole or in part for a period not to exceed the end of the third full year after the estimated date of loan closing. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the Prior approval of the National Office. Deferments of principal will not be used to:

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by FmHA determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

(iii) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. Monthly payments will be required if consistent with the foregoing, and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

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

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

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

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

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

(iv) *Disposition of Property.* Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included FmHA grant funds will be apportioned as may be required by the grant agreement.

(v) *Protective advances.* Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender, and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) *Public bodies.* Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

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

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

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

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time residents and facility costs result in a higher than reasonable rate for such full-time residents, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes, or assessments for public bodies or other organizations having the authority to issue or pledge such taxes, or assessments.

(ii) *Solid waste projects* will be secured by bonds pledging solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in enforcement rights, or by the taxing power of participating local governments.

(iii) *Other essential community facilities* other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) General obligation bonds.

(*2*) Assessments.

(*3*) Bonds which pledge other taxes.

(*4*) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(*5*) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*6*) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(*7*) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration, U.S. Department of Agriculture" (see FmHA Instruction 2000-T, available in any FmHA office.)

(*8*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*9*) When the applicant cannot meet the criteria in paragraph (g)(2)(iii)(A) (*1*) through (*8*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g)(2)(iii)(A) (*6*) through (*9*) of this section:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g)(2)(iii)(A) (*1*) through (*5*) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g)(2)(iii)(A) (*6*) through (*9*) of this section as appropriate.

(3) *Other-than-public bodies.* Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for FmHA assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

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

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of FmHA otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) Other security. Promissory notes from individuals, stock or membership subscription agreements, individuals member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to FmHA as additional security in any case in which the interest of FmHA will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full time residents and facility costs result in a higher than reasonable rate for such full time residents, the loan will be secured by an assignment or pledge of general obligation bonds, taxes or assessments from public bodies or other organizations having authority to issue bonds backed by taxes or assessments.

(ii) *Solid waste projects* will be secured by a pledge of solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in enforcement rights, or by the taxing power of participating local governments.

(iii) *Essential community facilities* other than utility type such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*2*) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(*3*) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration, U.S. Department of Agriculture" (see FmHA Instruction 2000–T, available in any FmHA office).

(*4*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*5*) When the applicant cannot meet the criteria in paragraphs (g)(3)(iii)(A) (*1*) through (*4*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(*6*) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA staff and approval official.

(1) *Financial feasibility reports.* All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:

(i) Included as part of the preliminary engineer/architectural report using Guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using Guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by FmHA.

(2) *Applicants for loans for utility-type facilities* dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

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

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

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

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

(*3*) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

(*1*) For users presently receiving service, or

(*2*) Where FmHA determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

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

(B) The amount of cash contributions required in paragraph (h)(2)(ii)(A) of this section will be set by the applicant and concurred in by FmHA. Contribtions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of FmHA under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n)(2)(iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by FmHA before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

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

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

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by FmHA prior to loan closing.

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

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

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

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

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

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

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

(i) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected the ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) *General requirements*—(1) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

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

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) *Planning, bidding, contracting, constructing.* [See § 1942.18].

(3) *Insurance and bonding.* Needed insurance coverage and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first. Ordinarily, FmHA should be listed as mortgagee on the property insurance when FmHA has a lien on the property. Insurance policies are not required to be filed in the case file. However, the borrower must continue to maintain insurance in adequate amounts to protect the Government's interest for the life of the loan. Normally, after the first year of operation, a listing of insurance in annual audits or management reports will be considered as sufficient evidence of insurance maintenance. A copy of the fidelity bond(s) should be filed in the borrower's case file. Insurance requirements will not normally be over and above those proposed by the borrower provided coverage is found to be adequate, and in accordance with the following:

(i) *Property insurance.* Fire and extended coverage may be required on all aboveground structures, including borrower-owned equipment and machinery housed therein, usually in the amount of their replacement value. This does not apply to water reservoirs, standpipes, elevated tanks, and other noncombustible materials used in treatment plants, clearwells, clarification units, filters, and the like. Property insurance on subsurface lift stations is not required except for the value of the pumping equipment and electrical equipment therein.

(ii) *Flood insurance.* Facilities located in special flood and mudslide prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(iii) *Worker's compensation.* The borrower will carry worker's compensation insurance for all of its employees in accordance with applicable State laws.

(iv) *Liability and property damage insurance.* Requirements for liability insurance will be carefully and thoroughly considered in connection with each project financed. Public liability and property damage insurance amounts will be established accordingly. It the borrower owns trucks, tractors, or other vehicles that are driven over public highways, public liability and property damage insurance will be required.

(v) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed. The applicant will maintain such insurance as determined necessary by the governing body, with the advice of the applicant's attorney and concurrence of FmHA.

(vi) *Fidelity bonds.* The borrower will provide fidelity bond coverage for the positions of persons entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of money that the borrower will have on hand at any one time, exclusive of loan funds deposited in a supervised bank account. Unless prohibited by State law, the United States, acting through the Farmers Home Administration, will be named as co-obligee in the bond. Corporate fidelity bonds will be obtained except that in unusual circumstances FmHA may give prior approval to cash bonds. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used. A certified power-of-attorney with effective date will be attached to each bond.

(4) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. FmHA may require an appraisal by an independent appraiser or FmHA employee.

(i) *Title for land, rights-of-way, easements, or existing facilities.* The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA 442-21, "Rights-of-Way Certificate," and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used.

(A) *Rights-of-way and easements.* Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. Form FmHA 442-20, "Right-of-Way Easement," may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give FmHA the required security.

(B) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA 427-9, "Preliminary Title Opinion," and Form FmHA 427-10, "Final Title Opinion," may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by FmHA and OGC.

(*1*) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide FmHA a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to FmHA prior to requesting closing instructions. FmHA will be provided a title insurance policy which will insure FmHA's interest in the property without any title defects or restrictions which have not been waived by FmHA.

(*2*) The loan approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. If the

District Director is the loan approval official and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be waived, the defect or restriction must be removed.

(ii) *Water rights.* When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(iii) *Land purchase contract:* (A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(*1*) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(*2*) The applicant cannot obtain the land through condemnation.

(*3*) There are not other suitable sites available.

(*4*) National Office concurrence is obtained in accordance with paragraph (j)(4)(iii)(D)(*2*) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the FmHA loan. The contract must provide that if the purchaser fails to make payment that FmHA will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then FmHA must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(*1*) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(*2*) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(*3*) The land purchase contract must be recorded.

(5) *Lease agreements.* Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the FmHA loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) *Notes and bonds.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The amount of each bond will ordinarily be in multiples of not less than $1,000.

(i) Form FmHA 440-22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(ii) § 1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA in accordance with Subpart G Part 1940 of this chapter. The applicant will provide any information required.

(8) *Health care facilities.* The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Services certifying that the proposed facility meets the standards in § 1942.18(d)(4).

(9) *Public information.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by FmHA. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify FmHA. The applicant will provide FmHA a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) *Service through individual installation.* Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in § 1942.17(b).

(ii) FmHA must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

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

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

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

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

(11) *Funds from other sources.* FmHA loan funds may be used along with or in connection with funds provided by the applicant or from other sources. Since "matching funds" is not a requirement for FmHA loans, shared revenues may be used with FmHA funds for project construction.

(k) *Other Federal, State, and local requirements.* Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with FmHA funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) *Compliance with special laws and regulations.* Applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

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

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

(iii) Land use zoning; and

(iv) Health and sanitation standards and design and installation standards unless an exception is granted by FmHA.

(2) *State Pollution Control or Environmental Protection Agency Standards.* Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met.

(3) *Consistency with other development plans.* FmHA financed facilities will not be inconsistent with any development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(4) *State agency regulating water rights.* Each FmHA financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(5) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 and Subpart E of Part 1901 of this chapter, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of Subpart E of Part 1901 of this chapter.

(6) *Title IX of the Education Amendments of 1972.* No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or education activity receiving FmHA financial assistance except as otherwise provided for in the Education Amendments of Title IX. The FmHA State Director will provide guidance and technical assistance to carry out the intent of this paragraph.

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

(8) *Age Discrimination Act of 1975.* This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to: (i) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provide benefits or assistance based on age; (ii) establish criteria for participation in age-related terms; (iii) describe intended beneficiaries or target groups in age-related terms; and, (iv) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et. seq.).

(l) *Professional services and contracts related to the facility*—(1) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: engineer, architect, attorney, bond counsel, accountant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to FmHA concurrence. Form FmHA 1942-19, "Agreement for Engineering Services," may be used when appropriate. Guide 20, "Agreement for Engineering Services (FmHA/EPA—Jointly Funded Projects)" may be used on projects jointly funded by FmHA and EPA. Guide 14 may be used in the preparation of the legal services agreement.

(2) *Bond counsel.* Unless otherwise provided by § 1942.19(b), public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to FmHA for review and approval. Management

agreements should provide at least those items in Guide 24.

(4) *Fees.* Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when FmHA financing is not involved.

(m) *Applying for FmHA loans*—(1) *Preapplication.* Applicants desiring loans will file Form AD-621, "Preapplication for Federal Assistance," and comments from the appropriate A-95 clearinghouse agency normally with the appropriate FmHA County office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

(2) *Preapplication review.* Upon receipt of the preapplication, FmHA will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of FmHA loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from FmHA); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where FmHA determines that loans at reasonable rates and terms should be available from commercial sources, FmHA will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for FmHA loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) *Incurring obligations.* Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by FmHA.

(4) *Results of preapplication review.* After FmHA has reviewed the preapplication material and any additional material that may be requested, Form AD-622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) *Application conference.* Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with FmHA for an application conference to provide a basis for orderly application assembly. FmHA will provide applicants with a list of documents necessary to complete the application. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) *Application completion and assembling.* This is the responsibility of the applicant with guidance from FmHA. The applicant may utilize their professional and technical representatives or other competent sources.

(7) *Review of decision.* If an application is rejected, the applicant may request a review of this decision under Subpart B of Part 1900 of this chapter.

(n) *Actions prior to loan closing and start of construction*—(1) *Excess FmHA loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable FmHA forms, the letter of conditions, and other items will be revised. Decreases in FmHA funds will be based on revised project costs and current number of users, however, other factors including FmHA regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) *Loan resolutions.* Loan resolutions will be adopted by both public and other-than-public bodies using Form FmHA 1942-47, "Loan Resolution (Public Bodies)," or Form FmHA 1942-9, "Loan Resolution (Security Agreement)." These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Government.

(v) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government and to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require.

(vi) To provide the Government at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain FmHA's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form FmHA 400-4, "Assurance Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of $10,000.

(xi) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government as invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to FmHA.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissiable source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) *Interim financing.* In all loans exceeding $50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. Guide 1 or Guide 1a, as appropriate, may be used to inform the private lender of FmHA's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the FmHA loan would normally be closed, that is immediately prior to the start of construction. The FmHA loan should be closed as soon as possible after the disbursal of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When an FmHA Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total FmHA loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The FmHA loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the FmHA loan is closed, the applicant will be required to provide FmHA with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

(i) Statements to the extent possible are obtained;

(ii) The interest of FmHA can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) *Obtaining closing instructions.* After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time with applicant funds shall be appropriately accounted for.

(6) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with FmHA funds will present evidence of the commitment of these funds from such other sources. This evidence will be available before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of FmHA loan funds. If this is not possible, funds will be disbursed on a pro rata basis. FmHA funds will not be used to pre-finance funds committed to the project from other sources.

(o) *Loan closing*—(1) *Closing instructions.* Loans will be closed in accordance with the closing instructions issued by OGC.

(2) *Obtaining insurance and fidelity bonds.* Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by FmHA will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by FmHA.

(4) *Review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by the State Director and OGC.

(p) *Project monitoring and fund delivery during construction*—(1) *Coordination of funding sources.* When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) *Multiple advances.* In the event interim commercial financing is not legally permissible or not available, multiple advances of FmHA loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public exigency. Multiple advances will be used only for loans in excess of $50,000.

Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) § 1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form FmHA 440-11, "Estimate of Funds Needed for 30 Day Period Commencing ______," to show the amount of funds needed during the 30-day period.

(iii) FmHA loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d)(1)(iv)(G) of this section. If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p)(3)(i) of this section.

(3) *Use and accountability of funds.*—(i) *Supervised bank account.* Loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in Subpart A of Part 1902 of this chapter.

(ii) *Other than supervised bank account.* If a supervised bank account is not used, arrangements will be agreed upon for the prior concurrence by FmHA of the bills or vouchers upon which warrants will be drawn, so that the payments from loan funds can be controlled and FmHA records kept current. If a supervised bank account is not used, use Form FmHA 402-2, "Statement of Deposits and Withdrawals," or similar form to monitor funds. Periodic reviews of nonsupervised accounts shall be made by FmHA at the times and in the manner as FmHA prescribes in the conditions of loan approval. State laws regulating the depositories to be used shall be complied with.

(iii) *Use of minority owned banks.* Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230 and is also available in all FmHA offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with FmHA funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of FmHA and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form FmHA 424-12, "Inspection Report." The original Form FmHA 424-12 will be filed in the project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. In all cases where the governing body has entered into an agreement for technical services with an engineer/architect or if such services are being made available by another Federal or State agency, the District Director is authorized to review partial payment estimates prepared by the project engineer/architect and accept them for payments after approval by the borrower. Each such payment estimate will contain a certification by the project engineer or architect that all material purchased and all work performed is in accordance with the plans and specifications. When there is no project engineer or architect, the District Director may review and accept estimates for payments which have been approved by the borrower after determining that funds are requested for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

(5) *Payment for construction.* Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form FmHA 424-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form FmHA 424-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by FmHA, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(6) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remaining, with exception of applicant contributions, may be considered in direct proportion to the amount obtained from each source. Remaining funds will be handled as follows:

(i) *FmHA loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section and § 1942.354 of Subpart H of Part 1942 of this chapter, provided the use will not result in major changes to the facility design or project and that the purpose of the loan and/or grant remains the same.

(A) On projects that only involve an FmHA loan and no FmHA grant, funds that are not needed will be applied as an extra payment on the FmHA indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an FmHA grant, all remaining FmHA funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p)(6)(i) of this section will be deobligated.

(ii) *Funds from other sources.* Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) *Borrower accounting methods, management reporting and audits*—(1) *Accounting methods and records.*—(i) *Method of accounting and financial statements.* Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by FmHA. This requirement is for accrual basis financial statements and not for accrual basis accounting systems. Organizations may keep their books on an accounting basis other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(ii) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from the FmHA loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(iii) *Records.* Form FmHA 1930–5, "Bookkeeping System—Small Borrower," may be used by small organizations as a method of recording and maintaining accounting transactions.

(iv) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the Comptroller General, or to their representatives.

(2) *Management reports.* These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. In those cases where revenues from multiple sources are pledged as security for an FmHA loan, two reports will be required; one for the project being financed by FmHA and one combining the entire operation of the borrower. In those cases where FmHA loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues will suffice. The following management data will be submitted by the borrower to the FmHA District Director.

(i) *Financial information.* (A) Form FmHA 442–2, "Statement of Budget, Income and Equity," which includes Schedule 1, "Statement of Budget, Income and Equity" and Schedule 2, "Projected Cash Flow."

(B) Prior to the beginning of each fiscal year, two copies, with data entered in column three only of page one, annual budget of Schedule 1 and all of Schedule 2, will be submitted to the District Director. Twenty (20) days after the end of each of the first three quarters of each year, two copies with all information furnished on Schedule 1 will be submitted. For the fourth quarter of each year, submit together with the year-end financial requirements of paragraphs (q) (4) and (5) of this section. More frequent submissions may be required by FmHA when necessary. The submission dates to the District Director will be 90 days following year-end for audited statements and 60 days following year-end for unaudited statements. The fourth quarter submission may serve the dual purpose of management report and year-end financial requirement for Statement of Income.

(ii) *Additional information.* (A) A list of the names and addresses of all members of the governing body as appropriate, also indicating the officers and their terms of office, will be included with the other information required at the end of the year.

(B) Borrowers delinquent on payment to FmHA or experiencing financial problems, will develop a positive action plan to resolve financial problems. The plan will be reviewed with FmHA and updated at least quarterly. Guide 22 may be used for developing a positive action plan.

(3) *Substitute for management reports.* When FmHA loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports.

(4) *Borrowers required to have aduits*—(i) *Audit requirements*—(A) *Annual audits.* Audits are required each year from:

(*1*) Borrowers whose gross annual income exceeds $100,000.

(*2*) Others as FmHA State Director may require.

(B) *Audit guide.* Audits will be prepared in accordance with the requirements of the handbook, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees." The handbook is available at all FmHA officers.

(C) *Independent public accountant defined.* Audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(ii) *Public body borrowers.* Audit reports prepared in accordance with State statutes or regulatory agencies are acceptable provided they contain the financial information necessary and are prepared on a frequency sufficient to furnish borrowers and FmHA the information for proper loan analysis. A copy of the audit report will be submitted to the District Director as soon as possible but in no case later than 90 days following the period covered by the audit. Public bodies should refer to the FmHA audit guide for further information and guidance.

(iii) *Other borrowers.* Borrowers other than public bodies and public bodies where the State has no audit requirements are requested to have their records audited by an independent public accountant on an annual basis. A copy of the audit report will be submitted to the District Director as soon as possible but in no case later than ninety (90) days following the period covered by the audit.

(5) *Borrowers not required to have audits.* Borrowers whose gross annual income for a full year of operation is less than $100,000 and who do not have an annual audit made by an independent public accountant, will within 60 days following the end of each fiscal year, furnish the FmHA with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442–2 and FmHA 442–3 may be used. For borrowers using Form FmHA 442–2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

(r) *FmHA actions for borrower supervision and servicing*—(1) *Management assistance and management reports.* Management assistance will be based on such factors as observation of borrower operations and review of the periodic financial reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FmHA.

(i) *The District Director* is responsible for obtaining all management report data from the borrower and promptly reviewing and making any necessary recommendations to the borrower within 40 calendar days. However, after receiving management reports for borrowers whose FmHA indebtedness exceeds $500,000 and for delinquent and problem case borrowers, the District Director will forward them with comments to the State Director for review.

(ii) *District Director reviews of borrower operations.* (A) A review of the borrower's total operational and management practices, including records and accounts to be maintained, will be made between the beginning of the ninth and the end of the eleventh full month of the first year of operation. A report will be made to the State Director by sending a copy of Form FmHA 442-4, "District Director Report." Earlier reviews will be made when needed to resolve operational and management problems that may arise.

(B) Subsequent reviews will be made for all delinquent and other borrowers having financial problems and reported to the State Director by a copy of Form FmHA 442-4. These borrowers will adopt a positive action plan (see Guide 22). The plan will be reviewed quarterly by the District Director until the delinquency is eliminated or other servicing actions are recommended.

(C) The District Director may, after the end of the borrower's third fiscal year of operation, exempt it from submitting management reports provided it:

(*1*) Is current on its loan payments.

(*2*) Is meeting the conditions of its agreements with FmHA.

(*3*) Has demonstrated its ability to successfully operate and manage the organization and has not obtained subsequent loans in the last 3 years which have significantly altered the scope of the project.

(*4*) Has the State Director's written concurrence for all borrowers whose FmHA indebtedness exceeds $500,000.

(D) Borrowers qualifying for this exemption will still be required to submit a copy of its audits or annual financial statements.

(E) Ordinarily and exception will not be made to the requirement for the borrower to submit a copy of its annual budget.

(F) The District Director or State Director may reinstate the requirements for submission for periodic management reports for those borrowers who became delinquent or otherwise are not carrying out their agreements with FmHA or require more frequent submission of management reports. This requirement will be reinstated for borrowers receiving a subsequent loan which will significantly alter the scope of the project.

(G) The District Director may accept management reports which are not prepared on page 1 of Form FmHA 442-2 Schedule 1 but contain like information. However, page 2 of this form must be used by all borrowers required to furnish management reports.

(iii) *The State Director* is responsible for:

(A) The review of the District Director's submission for all borrowers whose indebtedness exceeds $500,000. The State Director will forward comments to the District Director in order that a response, if necessary, can be sent to the borrower within 40 calendar days after the borrower's submission of its management reports.

(B) The review of all delinquent and problem case borrower management reports. Ordinarily, review findings and instructions regarding further management assistance will be determined within 20 calendar days of submission for delinquent and problem borrowers.

(C) Forwarding to the National Office copies of review findings, instructions for further assistance, and positive action plans on delinquent borrowers and borrowers experiencing financial problems.

(2) *Audits and financial statements*—(i) *The District Director* is responsible for obtaining all audit reports and financial statements from the borrower. Those received from borrowers whose FmHA indebtedness exceeds $500,000 and from delinquent and problem case borrowers will be promptly reviewed and forwarded to the State Director with appropriate comments.

(ii) *The District Director* is responsible for the review of audits and financial statements and for recommendations and instructions for borrower assistance. For borrowers required to have audits, the District Director will review each audit for conformance with "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits for FmHA Borrowers and Grantees." The borrower will be required to furnish any additional information necessary to satisfy the audit requirement. Guide 21 may be used in the audit review process.

(iii) *The State Director* is responsible for the review of audits of borrowers whose indebtedness exceeds $500,000 and delinquent and problem case borrowers. The State Director may recommend to the District Director any necessary actions to be taken.

(3) *Security inspections.* A representative of the borrower will ordinarily accompany the District Director during each inspection.

(i) *Post construction inspection.* The District Director will inspect each facility between the beginning of the ninth and the end of the eleventh full month of the first year of operation. This will normally coincide with the District Director's review of the borrower's total operational and management practices described in paragraph (r)(1)(ii)(A) of this section. The results of this inspection will be reported to the State Director on Form FmHA 424-12. Earlier inspections will be made when operational or other problems indicate a need. The State Director will provide guidance to the District Director to assure that action will be taken to correct project deficiencies.

(ii) *Subsequent inspections.* The District Director will make subsequent inspections of borrower security property and facilities during each third year after the post construction inspection. The results of this inspection will be reported to the State Director on Form FmHA 424-12.

(iii) *Special inspections.* The District Director may request, or the State Director may determine, the need for a member of the State staff to make certain security inspections. In such cases, the State Director will detail a staff member to make such inspections.

(iv) *Follow-up inspections.* If any inspection discloses deficiencies or exceptions, or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of follow-up inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(4) *Civil rights compliance reviews* will be performed under Subpart E of Part 1901 of this chapter for the life of the loan.

(5) *Other loan servicing actions* will be in accordance with Subpart E of Part 1951 of this chapter.

(s) *Loans under Pub. L. 98-8 (Emergency Jobs Bill).* Each FmHA project that is funded utilizing FmHA loan funds authorized by the Pub. L. 98-8 (Emergency Jobs Bill), will also comply with § 1942.372 (b) and (c) of Subpart H of Part 1942 of this chapter.

§ 1942.18 Community Facilities—Planning, Bidding, Contracting, Constructing.

(a) *General.* This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to FmHA concurrence. Architects and engineers must be licensed in the State where the facility is to be constucted.

(c) *Preliminary reports.* Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from FmHA.

(d) *Design policies.* Facilities financed by FmHA will be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. FmHA's environmental considerations are under Subpart G of Part 1940 of this chapter.

(i) *Floodplains and wetlands.* Facilities must avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, and avoid direct or indirect support of floodplain and wetland development whenever there is a practicable alternative. This subject is more fully discussed in Executive Order 11988, Executive Order 11990, and Water Resources Council's Floodplain Management Guidelines (43 FR 6030) which is available in all FmHA offices. Facilities located in special flood and mudslide prone areas must comply with FmHA's eligibility and insurance requirements in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(ii) *Coastal Zone Management.* Facilities shall be designed and constructed in a manner consistent with approved State management programs, under the Coastal Zone Management Act of 1972 (Pub. L. 92-583 Section 307 (c)(1) and (2)) as supplemented by the Department of Commerce regulations 15 CFR Part 930.

(iii) *Wild and Scenic Rivers.* Facilities shall be designed and constructed in order that designated wild and scenic rivers be preserved in free-flowing condition and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations under the Wild and Scenic Rivers Act of 1978 (Pub. L. 95-625).

(iv) *Endangered species.* Facilities shall be designed and constructed in a manner to conserve, to the extent practicable, the various endangered and threatened species of fish or wildlife and plants, and will not jeopardize their continued existence and will not result in destruction or modification of the habitat of species in the Endangered Species Act of 1973 (Pub. L. 93-205).

(2) *Historic preservation.* Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with the National Historic Preservation Act of 1966 (16 U.S.C 470) as supplemented by 36 CFR Part 800 and Executive Order 11593, "Protection and Enhancement of the Cultural Environment." Subpart F of Part 1901 of this chapter sets forth procedures for the protection of Historic and Archaeological Properties.

(3) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR Parts 15 and 15b.

(4) *Health care facilities.* The proposed facility must meet the minimum standards for design and construction contained in the Public Health Service/ Health Resources and Services Administration (PHS/HRS), Health and Human Services Publication No. (HRS-M-HF) 84-1, "Guidelines for Construction and Equipment for Hospital and Medical Facilities." The facility must also meet the life/safety aspects of the 1981 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent codes that may be designated by the Secretary of HHS. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

(5) *Energy conservation.* Facility design should consider cost effective energy saving measures or devices.

(6) *Lead base paints.* Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317) with reference to paint specifications used according to Exhibit H of Subpart A of Part 1924 of this chapter.

(7) *Fire protection.* Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) *Growth capacity.* Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) *Water quality.* All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93-523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR Part 141).

(11) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by FmHA. Extensions to existing combined systems can only be financed when separate systems are impractical.

(12) *Compliance.* All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed

10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1½ times the working pressure or rated pressure of the pipe, whichever is greater.

(16) *Metering devices.* Water facilities financed by FmHA will have metering devices for each connection. An exception to this requirement may be granted by the FmHA State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(e) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents* are available from FmHA. When FmHA's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by FmHA, OGC's review of the construction contract documents will be obtained prior to their use.

(2) *Contract review and approval.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bids bonds, and bid tabulation sheets will be forwarded to FmHA for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA. The FmHA State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as perfabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) *Utility purchase contracts.* Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the FmHA State Director or designee. To the extent practical, FmHA review and approval of such contracts should take place prior to their execution by the owner. Form FmHA 442-30, "Water Purchase Contract," may be used when appropriate. If the FmHA loan will be repaid from system revenues, the contract will be pledged to FmHA as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable FmHA to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(*1*) Alternative supplies considered; and

(*2*) Recommendations and comments; and

(*3*) Any other necessary supporting information.

(B) Copies of the following:

(*1*) Proposed letter of conditions; and

(*2*) Form FmHA 442-7, "Operating Budget"; and

(*3*) Form FmHA 442-3, "Balance Sheet"; and

(*4*) Preliminary Engineering Report; and

(*5*) Proposed Contract.

(C) Owner and FmHA engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless FmHA determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to FmHA as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) *Sewage treatment contracts.* Owners preparing to enter into a contract with private or public sources to treat sewage shall have written contracts for such service and all such contracts are subject to FmHA concurrence. Paragraph (f) of this section should be used as a guide to prepare sewage treatment contracts.

(h) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the FmHA State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under § 1942.17(p)(5) of this part.

(i) *Owner's contractual responsibility.* This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractural and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with State and local laws, rules and regulations, and the following standards:

(1) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by FmHA funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by FmHA funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. Acceptable materials should be specified in accordance with paragraphs (j)(4)(i) and (j)(4)(ii) of this section to assure proper installation and to avoid uncertainty and misunderstanding. Where materials which would normally be suitable are not included for bidding, the owner and its consultant must be prepared to justify the selection of the material(s) specified.

(3) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) *Solicitation of offers,* whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) *Small, minority, and women's businesses and labor surplus area firms.* (i) affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to FmHA of the steps taken to comply with paragraphs (j)(5)(i) (A) through (F), (j)(5)(ii), and (j)(5)(iii) of this section.

(6) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(7) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;

(iii) The governing body's officers, employees, or agents;

(iv) Any member of the immediate family or partners in paragraphs (j)(7)(i), (j)(7)(ii), or (j)(7)(iii) of this section; or

(v) An organization which employs, or is about to employ, any person in paragraph (j)(7)(i), (j)(7)(ii), (j)(7)(iii) or (j)(7)(iv) of this section.

(8) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by FmHA under Part 1924 Subpart E of this chapter.

(k) *Procurement methods.* Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and perinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. When the amount of noncompetitive construction contracts exceeds $100,000 National Office concurrence must be obtained in accordance with § 1942.9(b) of this subpart. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services.

(5) *Additional procurement methods.* Additional innovative procurement methods may be used by the owner with prior written approval of the FmHA National Office.

(l) *Contracting methods.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with FmHA written approval. If the contract amount exceeds $100,000, National Office prior concurrence must be obtained under § 1942.9(b) of this subpart. This method cannot be used when an FmHA grant is involved. The owner should request FmHA approval by providing at least the following information to FmHA:

(1) The owner's written request to use an unconventional contracting method with a description of the proposed method.

(2) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include items such as:

(i) A nontechnical statement summarizing the work to be performed by the contractor and the results expected.

(ii) The sequence in which the work is to be performed and a proposed construction schedule.

(3) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for:

(i) Any extra cost which may result from errors or omissions in the services provided under the contract.

(ii) Compliance with all Federal, State, and local requirements effective on the contract execution date.

(4) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(5) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(6) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(7) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by FmHA prior to the start of construction.

(8) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(m) *Contracts awarded prior to preapplications.* Owners awarding construction or other procurement contracts prior to filing a pre-application with FmHA must comply with the following:

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of FmHA regulations. The evidence will consist of at least the following:

(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) *Modifications.* Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the FmHA financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m)(4) of this section.

(3) *Consultant's certification.* Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) *Owner's certification.* Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to FmHA financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) *Contract provisions.* In addition to provisions defining a sound and complete contract, any recipient of FmHA funds shall include the following contract provisions or conditions in all contracts:

(1) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) *Termination.* All contracts exceeding $10,000, shall contain provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions when the contract may be terminated because of circumstances beyond the control of the contractor.

(3) *Surety.* In all contracts for construction or facility improvements awarded exceeding $100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment, each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA 424-10, "Release by Claimants," and Form FmHA 424-9, "Certificate of Contractor's Release," may be obtained at the local FmHA office and used for this purpose. The United States, acting through the Farmers Home Administration, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(4) *Equal Employment Opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60.

(5) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report all suspected or reported violations to FmHA.

(6) *Records.* All negotiated contracts (except those of $2,500 or less) awarded by owners shall include a provision to the effect that the owner, FmHA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and

records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for three years after owners make final payments and all other pending matters are closed.

(7) *State Energy Conservation Plan.* Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(8) *Change orders.* The construction contract shall require that all contract change orders be approved in writing by FmHA.

(9) *FmHA concurrence.* All contracts must contain a provision that they shall not be effective unless and until the FmHA State Director or designee concurs in writing.

(10) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactory at 50 percent completion, further partial payments may be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 percent of the value of the work completed.

(11) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FmHA and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 40 CFR Part 15.4(c) as set forth in Guide 18 of this subpart which is available in all FmHA offices.

(o) *Contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where FmHA will review the planned development with the owner, its architect or engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 424.16, "Record of Preconstruction Conference," and the discussion and agreements will be documented. Form FmHA 424-16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA funds to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA as soon as any of the following conditions are met:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA assistance.

(3) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by FmHA upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to FmHA for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and FmHA for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form FmHA 424-18, "Partial Payment Estimate," are available on request from FmHA.

(4) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

(i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.

(ii) All entries shall be legible and shall be made in ink.

(iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.

(iv) The daily entries shall be made available to FmHA personnel and will be reviewed during project inspections.

(5) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a FmHA State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made without FmHA State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction techniques, materials or equipment for facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form FmHA 424-12, "Inspection Report," and a copy provided to all appropriate parties.

(6) *Final inspection.* A final inspection will be made by FmHA before final payment is made.

(7) *Change is development plans.*

(i) Changes in development plans may be approved by FmHA when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA's security; and

(D) The change is within the scope of the contract.

(ii) Changes will be recorded on Form FmHA 424-7, "Contract Change Order," or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, change orders must be approved by the FmHA State Director or a designated representative.

(iii) Changes should be accomplished only after FmHA approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

(a) *General.* This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) *Policies related to use of bond counsel.* Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) *Issues of $250,000 or less.* At the option of the applicant for issues of $250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, FmHA, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) *Issues of $50,000 or less.* At the option of the applicant and with the prior approval of the FmHA State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by FmHA to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with FmHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA.

(3) *For loans of less than $500,000.* The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2) (iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions with respect to FmHA requirements should be discusesd with the FmHA representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

(3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(5) Certified copies of the resolution or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of FmHA loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the

advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certrificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of Section 306(a)(1) or to Section 309A(h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926(a)(1) or 1929a(h)], and providing that if the bonds evidencing the indebtedness in question are required by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds.

(e) *Permanent instruments for FmHA loans to repay interim commercial financing.* FmHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) *First preference—Form FmHA 440-22, "Promissory Note (Association or Organization)".* If legally permissible use Form FmHA 440-22 for insured loans.

(2) *Second preference—single instruments with amortized installments.* If Form FmHA 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each FmHA advance on the reverse thereof or on an attachment to the instrument. Form FmHA 440-22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that "interest only" is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

(i) Annual payments—Subtract the due date of the *last annual interest only* installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
$2016-1978=38$ annual payments
$\$100{,}000.00\times.05929=\$5{,}929.00$ annual payment due

(ii) Semiannual payments—Multiply by two the number of years between the due date of the *last annual interest only* installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Semiannual Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
$2016-1978=38\times2=76$ semiannual periods
$\$100{,}000.00\times.02952=\$2{,}952.00$ semiannual payment due

(iii) Monthly payments—Multiply by twelve the number of years between the due date of the *last annual interest only* installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Monthly Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
$2016-1978=38\times12=456$ monthly payments
$\$100{,}000.00\times.00491=\$491.00$ monthly payment due

(3) *Third preference—single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, "Second perference" applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

(*1*) Billed delinquent interest,
(*2*) Past due interest installments,
(*3*) Past due principal installments,
(*4*) Interest installment due, and
(*5*) Principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, *use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers.* Such bonds will conform with the minimum requirements of paragraph

(h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) *Multiple advances of FmHA funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

(g) *Multiple advances of FmHA funds using temporary debt instrument.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA loan funds and will be for the full amount of the FmHA loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved) and approved by the State Director and OGC. At the same time FmHA delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(1) The date from which each advance will bear interest.

(2) The interest rate.

(3) A payment schedule providing for interest on outstanding principal at least annually.

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1000). Single bonds may provide for repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) to compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name, of "United States of America, Farmers Home Administration," and will remain so registered at all time while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the FmHA Finance Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by FmHA. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. Monthly payments will be required if consistent with the foregoing, and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(6) *Place of payment.* Payments on bonds purchased by FmHA should be submitted to the FmHA District Office by the borrower. The District Office will then remit the payments to the Finance Office or deposit them in a Treasury General Account in accordance with Subpart B of Part 1951 of this chapter.

(7) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (e) of this section.

(8) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) *Scheduling of FmHA payments when joint financing is involved.* In all cases in which FmHA is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA payments of principal and interest should approximate amortized installments.

(10) *Precautions.* The following types of provisions in debt instruments should be avoided.

(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions.

(iv) Provisions that amend convenants contained in Forms FmHA 1942-47, "Loan Resolution (Public Bodies)," or FmHA 1942-9, "Loan Resolution (Security Agreement)."

(11) *Multiple Loan Instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form FmHA 1940-1, "Request for Obligation of Funds", of the action.

(i) *Bidding by FmHA.* Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. FmHA will not submit a bid at the advertised sale unless required by State law, nor will reference to FmHA's rates and terms be included. If no acceptable bid is received, FmHA will negotiate the purchase of the bonds.

§ 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used by FmHA officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of FmHA's Commitment.

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

(7) Guide 7—Preliminary Engineering Report Water Facility.

(8) Guide 8—Preliminary Engineering Report Sewerage Systems.

(9) Guide 9—Preliminary Engineering Report Solid Waste Disposal Systems.

(10) Guide 10—Preliminary Engineering Report Storm Waste-Water Disposal.

(11) Guide 11—Daily Inspection Report.

(12) Guide 12—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration—Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an FmHA Loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration—Department of Agriculture Regarding Supplementary Grant Assistance for the Construction of Public Works and Development Facilities.

(14) Guide 14—Legal Services Agreement.

(15) Guide 15—Community Facility Borrower's Application.

(16) Guide 16—Community Facility Loan Docket.

(17) Guide 17—Construction Contract Documents—Short Form.

(18) Guide 18—FmHA Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (FmHA/EPA Jointly Funded Projects).

(21) Guide 21—Review of Audit Reports.

(22) Guide 22—Delinquent Accounts Positive Action Plan.

(23) Guide 23—Agreement for Joint Use of Electric System Poles.

(24) Guide 24—Minimum Suggested Contents of Management Agreements.

(25) Guide 25—Joint Policy Statement Between EPA and FmHA.

(26) Guide 26—Community Programs Project Selection Criteria.

(b) These guides are for use by FmHA officials, applicants and applicant's officials and/or agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and/or grants from FmHA. This includes activities related to applying for and obtaining such financial assistance. These guides are not published in the **Federal Register**, however, they are available in any FmHA office.

§§ 1942.21-1942.49 [Reserved]

§ 1942.50 OMB control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575-0015.

Subpart G—Industrial Development Grants

§ 1942.322 [Amended]

5. In § 1942.322, paragraph (b), remove the words "§ 1942.20 of" from the first sentence.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.368 [Amended]

6. In § 1942.368, paragraph (c) and in Exhibit D, paragraph XVIII (c), change the reference from § 1942.5(d)(8)" to "§ 1942.5(d)(6)."

Subpart I—Resource Conservation and Development (RCD) loans and Watershed (WS) loans and Watershed Advances

7. In § 1942.409, paragraphs (a), (e) and (f) are revised to read as follows:

§ 1942.409 Security, feasibility, evidence of debt, title, insurance and other requirements.

(a) *Security*—WS loans, WS advances and RCD loans will be secured in accordance with applicable provision of 1942.17(g).

* * * * *

(e) *National flood insurance*—The requirements of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 will be complied with in accordance with the applicable provisions of FmHA Instruction 1901-L. Also see § 1942.18(d)(1)(i).

(f) *Borrower contracts and bonds.* See § 1942.18 (e), (i) and (n)(3) of Subpart A of Part 1942 for applicable provisions.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: October 25, 1984.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 85-4106 Filed 2-21-85; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-115]

Change in Disease Status of Great Britain Because of Viscerotropic Velogenic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries declared to be free of viscerotropic velogenic Newcastle disease (VVND). It has been determined that VVND has now been eradicated from Great Britain. The effect of this action is to relieve certain restrictions on the importation into the United States from Great Britain of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs.