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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1948, 1951 and 4274

RIN 0570–AA15

Intermediary Relending Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulations for the Intermediary Relending Program (IRP). This action is needed to clarify and revise procedures and requirements regarding a variety of issues. The amendments are expected to clarify the roles of the Government and intermediaries, make the program more responsive to the needs of intermediaries and ultimate recipients, and facilitate continuing expansion of the program.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 1521, 1400 Independence Ave, S.W., Washington, DC 20250. Telephone (202) 720–6819. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.767, Intermediary Relending Program.

Program Administration

Due to reorganization actions within the Department of Agriculture, the Intermediary Relending Program is currently administered by RBS. RBS is a successor to the Rural Development Administration, which was a successor to the Farmers Home Administration.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507)

Intergovernmental Review

As set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, Intermediary Relending Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS has conducted intergovernmental consultation with such state and local officials in accordance with RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings in accordance with the regulations of the Agency at 7 CFR 1900, subpart B, or those regulations published by the Department of Agriculture at 7 CFR part 11 to implement the statutory provisions relating to the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before filing suit to challenge action taken under this rule.

Environmental Impact Statement

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or

the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

National Performance Review

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

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall comply with 5 U.S.C. 553 notwithstanding the exemption of that section with respect to such rules. Accordingly, this rule has previously been published as a proposed rule, on January 18, 1995 (60 FR 3566), for public comment. However, we are making this action effective upon publication of this final rule rather than 30 days after publication. The net impact of this rule is to interpret and clarify previous requirements, remove restrictions, streamline requirements, and make the program a more flexible and effective tool for rural economic development. Therefore the Agency has determined that further delay in implementation of this rule would not be in the public interest.

Background

This regulatory package is an initiative to enhance the program through revisions based on experience with operation of the program. The primary changes include the following:

1. The regulation is completely reorganized for improved clarity.

2. Definitions are provided for ''Agency IRP loan funds,'' ''IRP revolving fund,'' ''revolved funds,'' and ''technical assistance.'' Throughout the document, clarifications are provided as to which requirements apply only to Agency IRP loan funds, which apply to revolving funds, and which apply to all assets in the IRP revolving fund.

3. Agency State Offices are authorized to accept and process all applications except those from applicants located within Washington, D.C.. Those applications will be processed by the National Office.

4. Eligibility requirements for intermediaries are revised to clarify that a proposed intermediary that does not have lending experience may still qualify for a loan, if it will arrange for services of people with lending experience.

5. Eligibility requirements are revised to provide that proposed intermediaries with a delinquent outstanding Federal debt are not eligible for program assistance.

6. Eligibility requirements are provided for ultimate recipients.

7. Eligible purposes for loans to ultimate recipients are revised to authorize loans for refinancing, management consulting fees, educational institutions, commercial fishing, revolving lines of credit, and hotels, motels and other recreation and tourism facilities (except golf courses, gambling and race tracks).

8. Security requirements are revised.

9. General guidelines are provided for interest rates and terms of loans to ultimate recipients, along with clarification that such rates must be within limits established in the intermediary's work plan.

10. Loan ceilings are revised to provide that, subject to certain conditions, intermediaries may receive a series of subsequent loans of up to $1 million each to a combined total of up to $15 million. The ceiling on loans to an ultimate recipient is raised to $250,000.

11. The intermediary's responsibilities for maintaining and managing the intermediary revolving fund are clarified and a provision is added for establishment of a reserve for bad debts.

12. Loan disbursement procedures are revised to allow intermediaries to draw up to 25 percent of their loan at loan closing. The funds may be placed in an interest bearing account if they are not immediately needed for loans to ultimate recipients.

13. The requirement for intermediaries to operate in accordance with an approved work plan is clarified and guidelines are provided for RBS approval of work plan revisions.

14. The contents of a complete application and work plan are revised to eliminate some unnecessary items, provide more detail on what should be covered regarding relending plans, add certifications regarding debarment, Federal debt collection policies, and lobbying, and provide for streamlined applications for subsequent loans.

15. The priority point scoring system is revised.

16. The requirement for a certification by the intermediary regarding equity is removed.

17. Guidelines are provided for information to be submitted to RBS regarding proposed loans to ultimate recipients and for RBS review and response to the information.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on January 18, 1995 (60 FR 3566). The proposed rule was published as a revision to 7 CFR part 1948, subpart C. This final rule also renumbers and redesignates the regulation as 7 CFR part 4274, subpart D. In addition to publishing the proposed new regulation text for public comment, the Agency specifically invited comments on several alternatives. Eighty comments were received, most of which contained comments on several issues. In general, the letters were very supportive of the IRP and of the proposed rule. A summary of the comments follows.

Section 1948.101(b) of the proposed rule included a broad purpose statement in compliance with the authority contained in the authorizing legislation. In response to a question asked by the Agency, 20 writers said it would be helpful to have a more detailed and descriptive mission statement in the regulation to set out the Agency intent to emphasize alleviation of poverty, aid disadvantaged and remote communities, assist smaller and emerging businesses, improve the partnership with other public and private resources, and further develop State and regional strategy based on identified community needs. Nine writers thought the language in the proposed rule text was adequate and that it would be better to have less, rather than more, restrictive language in the purpose statement. The final rule contains a purpose statement that clarifies what the Agency wants to emphasize while maintaining sufficient flexibility to approve the loan purposes set out in the eligible purposes section.

The proposed rule text would prohibit intermediaries from loaning for revolving lines of credit. The Agency also asked for comments on whether this is a service intermediaries should be providing. Ten writers thought that loans for revolving lines of credit should not be eligible. Some thought there is not much need. Others said this type of credit entails too much risk and intermediaries would not have the special expertise needed.

Twenty-eight writers felt that there is a crucial need for revolving credit lines for small businesses and that intermediaries should have the option of offering this service if they do have expertise. The Agency is convinced that a significant need exists for this type of credit, so the final rule allows intermediaries to provide revolving lines of credit, if they meet guidelines that are included.

The proposed rule would allow intermediaries to make loans up to $250,000. The Agency asked, however, if it might be appropriate to retain the previous loan limit of $150,000. This

issue received more comments than any other single issue in the proposed rule. Eleven writers were in favor of a $150,000 limit, indicating that smaller loans are more difficult to obtain elsewhere and that the program should be targeted toward small loans and small businesses. However, 50 writers supported an increased loan limit of $250,000. Many said they would not need that authority often, but occasionally there is a very real need. Some thought the limit should be even higher or the proposed restriction on the portion of the portfolio that may be invested in loans of over $150,000 should be removed.

The strong support by the comments, for the proposed higher limit, reinforces the Agency belief that more flexibility is needed to allow intermediaries to decide what size projects are best in their areas. Therefore, the language of the proposed rule on this issue is retained in the final rule.

The Agency requested comments on appropriate outcome and performance measures and reporting requirements for the intermediary loan funds financed by the program, and for the funded activities of the ultimate recipients of the loans. Twenty-five writers commented on this issue, but there was little consensus. Most writers recognized the need for information for program evaluation, but most were also concerned about the amount of burden on intermediaries to provide information. Five writers thought the program should be evaluated on little more than the amount of funds loaned out and the repayment to the Agency. Six said reports should be made to the Agency on an annual or semi-annual basis rather than quarterly. Fourteen writers thought the number of jobs created or saved should be an evaluation criterion. Three considered leveraging of other funds an item that should be monitored. Three indicated that the fund balance, net profit, and solvency of the intermediary should be considered. Five writers suggested monitoring trends in the tax base of the service area as an indicator of the success of an intermediary's program. One writer suggested the Agency check on standard revolving loan fund reporting requirements developed by the Economic Development Administration. Other possible measures or report items suggested by 1 or more writers included sales volume, taxes paid and gross payroll of ultimate recipients, Standard Industrial Classification of ultimate recipients, summary of delinquent loans and actions taken, accomplishments regarding public policy, networking, outreach, and technical assistance, housing units and square feet of facilities constructed, and unemployment rate and per capita income trends in service area. Comments were requested on this issue as a tool to obtain ideas. There was no consensus among the writers, and the Agency believes more study is needed before making regulatory changes. No change from the proposed rule has been made in the final rule regarding this issue. The Agency will continue, however, to work on the development of an improved reporting form.

The proposed rule text would require intermediaries to have a successful lending record or to bring individuals with loan making and servicing experience and expertise into the operation. In the interest of enabling more socially oriented community-based organizations to use the program, the Agency asked for comments on allowing loans to intermediaries that have experience in assisting rural business or community development, but not lending experience.

Several writers expressed the desire to be sure of flexibility as to how such expertise may be achieved when the applicant intermediary does not have the experience in-house prior to filing the application. Hiring new staff with the needed experience, contracting for services, and creating a review or advisory board with experienced lenders as members are all options that one or more writers wanted to be sure were available. Only six writers advocated not requiring lending experience in some form for intermediary eligibility. Twenty six writers felt lending experience is important. Several writers were quite adamant that intermediaries cannot be expected to be successful and should not be approved unless they have lending experience or will acquire the services of someone with lending experience before receiving Federal funds.

It was the intent of the proposed rule language to require lending experience in some form, but to allow considerable flexibility as to how the experience is brought into the intermediaries' decision processes. A preponderance of the writers seemed to agree with that concept. Therefore, no change from the proposed rule language is made in the final rule on this issue.

The proposed rule text requires that at least 51 percent of the ownership interest or membership of both intermediaries and ultimate recipients be citizens of the United States or legally admitted to the United States for permanent residence. The Agency asked for comments on the concept of allowing loans to ultimate recipients owned by persons who are not United States citizens or admitted for permanent residence, provided the project funded creates or retains jobs for U.S. residents. Such loans would be restricted to fixed assets located in the U.S. and the business would have to have managers that are U.S. citizens or legally admitted to the U.S. for permanent residence. Seventeen writers expressed approval of the concept. They generally indicated that this provision would help to create jobs and that foreign investment may be particularly helpful to the U.S. economy. Three writers opposed this concept, generally on the grounds that profits from businesses with Federal assistance should not leave the country. Since the publication of the proposed rule, questions have been raised as to how this provision may relate to provisions of the Welfare Reform Act. Because of uncertainty regarding that issue, the change allowing the ultimate recipients to not be citizens or lawfully admitted residents has not been adopted in the final rule.

The Agency asked for comments on revising the eligible loan purposes for loans to ultimate recipients to include management consultant fees. Five writers were opposed to making management consultant fees an eligible loan purpose. They pointed out that if management is a problem it should be solved before a loan is approved and that Small Business Development Centers and the Service Core of Retired Executives can assist with management questions. They did not think the services the ultimate recipients would receive would be worth the cost or would improve repayment ability.

Nineteen writers thought intermediaries should be able to offer loans for management consultant fees. This group of writers tended to believe that management consultants would be likely to help some businesses enough for the business to become successful and to return additional profits sufficient to pay for the cost of the consultant fees. This group also tended to believe that intermediaries should be able to make the decision, without federal restriction. The Agency agrees that this use of funds could be effective in some cases and that intermediaries should be able to decide if this assistance should be an eligible loan purpose. The final rule includes management consultant fees as an eligible loan purpose for loans to ultimate recipients.

The Agency requested comments on a suggestion to revise the eligible loan

purposes to allow intermediaries to use IRP funds to provide direct technical assistance to ultimate recipients or prospective recipients. Ten of the respondents did not believe it is financially feasible to fund technical assistance from IRP loan funds. If the intermediary is allowed to use part of the funds loaned by the Agency to pay for the intermediary's costs for providing assistance to ultimate recipients, then that amount of funds is no longer available to be loaned to ultimate recipients. Therefore, that amount of funds is owed by the intermediary to the Agency, but is not producing revenue for the intermediary. This group of respondents indicated that all funds received by the intermediary from the agency should be reloaned by the intermediary to generate repayment ability.

Twenty respondents favored allowing IRP funds to be used by the intermediary to pay costs of providing technical assistance, primarily based on the grounds that such assistance is needed for many potential ultimate recipients to become successful. The Agency agrees that technical assistance is a valuable tool for assisting new or struggling businesses and the ability to provide more or better technical assistance would enable intermediaries to assist more businesses in communities where the assistance is most needed. However, the Agency agrees with the commenters questioning the financial feasibility of the concept. No one has solved the problem of how an intermediary would repay the funds it used to pay for technical assistance. No change from the proposed rule is made on this issue.

When the IRP was initiated in 1988, the security required for most loans to intermediaries was a blanket pledge of the IRP revolving fund. In 1991, the regulation was revised to require assignments on all promissory notes and security documents. The proposed rule attempted to clarify, but not change, the requirement that promissory notes be transferred to the Agency and assignment documents be provided but not recorded. Intermediaries have complained from time to time about being required to provide the assignments and the Agency asked for comments on whether the providing of assignments is an inordinate burden on the intermediary.

Forty-two respondents to the proposed rule said the assignments should not be required and seven said they did not object to continuing the assignments. The objectors generally cited such things as the legal costs for having assignments prepared, the administrative burden on both the intermediary and the Agency of transferring documents back and forth and monitoring them, and the additional complications of releasing paid-in-full loans, foreclosure, and other servicing actions. Those that did not object generally indicated that the burden of assignments is not great and the requirement is consistent with sound lending practice. In the interest of reducing administrative burden on both intermediaries and Agency staff and providing more flexibility for intermediaries to operate their programs, the requirement for assignments has been removed from the final rule.

Three writers objected to the requirement that intermediaries agree, in the loan agreement, to provide additional security as the Agency may require at any time during the life of the loan if an assessment indicates the need for such security to protect the Government's interest. When the original IRP regulation was published in 1988, four writers objected to this provision. It was retained then because the Agency believed that it was needed to protect the Government's interest. The basic concept is retained now for the same reason, although the language has been amended as part of the amended security requirements. The assets of a revolving fund, which make up the security for most IRP loans, continually change. The value can easily deteriorate, either because of economic conditions outside the control of the intermediary or because of poor decisions by the intermediary. In such cases, if the intermediary has other assets that could be used to repay the IRP loan, the Agency has a responsibility to the taxpayers to use whatever tools are available to ensure loan repayment.

Current regulations require intermediaries to obtain the Government's review and concurrence in the IRP loans the intermediaries propose to make to ultimate recipients. The proposed rule clarifies the limited scope of review required for concurrence and also clarifies that the requirement for review and concurrence applies only when Federal loan funds are involved. The requirement does not apply to loans made from the revolving fund from collections on previous loans. In addition, the Agency requested comments on a suggestion to exempt intermediaries that have demonstrated a successful track record of lending IRP funds and servicing loans from the requirement or to simply not require Government review and concurrence on loans to ultimate recipients made from subsequent loans to intermediaries.

Thirty-nine respondents to the proposed rule said that Agency review and concurrence should not be required for intermediaries that have established a successful record. Several of those respondents would like all prior Agency review eliminated, even on initial loans. One said Agency review and concurrence is not a burden and should be continued. One indicated Agency review and concurrence helps protect the intermediary against the possibility of future findings that a loan was not eligible and the process would not be a burden if it did not include an environmental impact assessment and intergovernmental consultation. The objectors generally seemed to feel that Agency review is an unnecessary additional step that slows service to the ultimate recipients. An intermediary is reviewed before its loan is approved for ability to carry out the program and then monitored through periodic visits, reports, and audits. The intermediaries would like the ability to make their day-to-day lending decisions independently.

The Agency has determined that loans to ultimate recipients made from Agency IRP loan funds, regardless of whether the funds are from an initial or subsequent loan to an intermediary, constitute Federal financial assistance. Therefore, the Agency has a responsibility to ensure that the funds are used for authorized purposes. More specifically, the National Environmental Policy Act imposes certain responsibilities on the Agency to consider environmental impacts and Executive Order 12372 imposes responsibilities on the Agency to provide opportunity for intergovernmental consultation and consider comments from designated representatives of State government before approving the financial assistance. These are specific requirements imposed on the Agency that the Agency does not have legal authority to delegate or to fail to perform. The Agency cannot meet these responsibilities unless it retains prior approval authority for all loans to ultimate recipients that are made from agency funds. No change from the proposed rule in made on this issue.

Intermediaries are required to establish separate bookkeeping accounts and bank accounts for the IRP revolving fund. Intermediaries that receive more than one IRP loan are required to establish a separate revolving fund with separate accounts for each loan. The proposed rule would allow the funds to be combined with Government consent and under certain conditions. The

Agency invited comments on the alternative of allowing the funds to be combined without Government consent unless the purposes of the loans were significantly different.

Thirty-eight writers commented on this issue and all of them were opposed to keeping separate accounts if it can be avoided. The Agency is generally in agreement, but there are situations where there is no logical alternative to separate funds. For example, there are several intermediaries now that have one loan made without a requirement for assignments of promissory notes and collateral documents to the Agency and another loan that does have that requirement. To know which ultimate recipient loans must have assignments, such an intermediary must either keep separate funds or provide assignments for all loans. The decision to remove the requirement for assignments will solve this issue, but there may be other similar issues in the future.

The real issue, therefore, appears to be whether the burden should be on the intermediary to request consent to combine funds when it may be appropriate or on the Agency to impose the requirement for separate funds when necessary. To accommodate the comments to the extent feasible, the final rule has been amended from the proposed rule to place the burden on the Agency to impose the requirement when necessary.

The Agency invited comments on the intergovernmental and environmental review requirements referenced in the proposed rule and how they could be further streamlined. Four respondents indicated that environmental assessments are important and not much can be done to make the process more streamlined than it already is. Twenty-six respondents thought the environmental review and the intergovernmental consultation process is excessive. Most of the comments were in reference to environmental concerns. Several comments appeared to indicate that the writers were considering environmental review in terms of protection against reduced collateral value due to site contamination with hazardous material. That is a credit quality issue and most of the Agency environmental review procedure does not address that issue. The Agency review is addressed toward assessing the possibility that financing the proposed project will result in some future environmental impact. Some of the suggestions were for procedures that are already authorized under Agency regulations and some were for items that would put the Agency in violation of its environmental responsibilities.

The National Environmental Policy Act (NEPA) and the regulations of the Council on Environmental Quality require environmental assessments of proposed Agency actions and sets out general procedures and requirements for meeting the requirements. Executive Order 12372 requires an opportunity for State comments on proposed Federal actions and sets out general procedures. The Agency is always looking for ways to meet these requirements more rapidly and in a manner more convenient for the people the Agency serves. The comments have not identified further changes that could be made at this time that would streamline the process and keep the Agency in compliance with NEPA and Executive Order 12372. Therefore, no changes from the proposed rule have been made regarding these issues.

In connection with implementation of the proposed rule the Agency plans to begin using a printed form as a loan agreement rather than preparing a loan agreement for each loan based on an exhibit to the regulation. Comments were invited on a possible additional step of having one loan agreement serve for multiple loans to the same intermediary by having a supplemental loan agreement extending the coverage of the original loan agreement to include the additional loan executed at loan closing for each subsequent loan.

One writer thought that it was a good idea to have a new loan agreement for each loan as new members of the board or management team would be more likely to read it if a new agreement must be signed. Twenty-eight writers were in favor of simply having an amendment or supplement to the original loan agreement for subsequent loans. Accordingly, the final rule provides for a supplemental loan agreement to be executed in connection with subsequent loans to make the original loan agreement applicable to the subsequent loan.

The Agency asked for comments on several alternative application requirements recommended by a task force but not incorporated into the proposed rule text. Nine writers were generally in favor of the suggested further revisions to the application. One of these writers said intermediaries would have the information and could share it. Another was willing to trade more due diligence at the application stage for more independence later. Eight writers were opposed to the additional application information. They generally seemed to feel that the language in the proposed rule text is adequate and the changes suggested would complicate the process, make it more time consuming, require more paperwork, and cause more inconsistencies.

The task force recommended application requirements be further revised, in section 1948.122(a)(2)(iii) of the proposed rule, to provide that the demonstration of need could be met through targeting criteria and supporting evidence that such prospective ultimate recipients exist in sufficient numbers to justify funding the intermediary's request. One of the writers was adamant that the show of need should not be based on targeting information, but rather, better documentation should be required to show that an adequate number of potential ultimate recipients exist. The Agency believes that it is important to realize that need for jobs does not necessarily equal demand for business loans. To create loan demand, there must also be existing or potential businesses willing and able to borrow and repay funds for startups or expansion. The Agency does, however, want to encourage the identification of areas of greatest need and target program assistance to those areas when feasible. Therefore, the final rule includes the option to include targeting information in the demonstration of need, provided it is accompanied by evidence that such prospective ultimate recipients exist in sufficient numbers to justify the loan.

The task force recommended further revising the application requirements by requiring the proposed intermediary to provide a set of goals, strategies, and anticipated outcomes for its program and a mechanism for evaluating the outcome of its IRP loan program. The Agency believes it is important for intermediaries to develop goals, strategies, and anticipated outcomes in order to obtain the maximum result from program funds. Therefore, the final rule includes a requirement for goals, strategies and anticipated outcomes for the intermediary's IRP loan program. To avoid further increasing the paperwork burden, there is no requirement included for a method of measuring outcome. The Agency will continue to study ways to measure outcomes in a consistent manner throughout the country.

The task force also recommended requiring each proposed intermediary to provide specific information on how it will ensure that technical assistance will be made available to ultimate recipients. The Agency believes that having technical assistance available to ultimate recipients may be an important factor in the success of many revolving loan funds. However, some intermediaries may not be able to

arrange for such services but can operate a successful relending program without it. Such intermediaries should not be denied assistance. Therefore, the final rule requires applicants to describe what technical assistance will be available to its ultimate recipients, without requiring that such assistance be universally available.

As proposed, priority points for community representation are limited to intermediaries with service areas not exceeding 10 counties. The Agency believes it should retain the category to encourage local participation in intermediary management, but remove some of the objections raised. The change to 14 counties is adopted in the final rule.

The Agency invited comments on further modifications to proposed scoring criteria to place greater emphasis on such factors as community and beneficiary targeting, conformance with regional or community development plans, and encouragement of smaller-size loans, with proportionately less emphasis on the intermediary's own resources and its ability to leverage funds.

Regarding the reduction of priority points for leveraging and intermediary contribution, six writers commented in favor and eleven commented in opposition, primarily based on differences of opinion on what is most important for the public good.

Regarding the creation of a new category of points for smaller loans, three writers were in favor and sixteen were opposed. The opposition seemed to be based on belief that the size of loans has little or no impact on the effectiveness of the program, intermediaries need flexibility to meet the needs in their particular areas, and intermediaries could too easily say they were going to make small loans, to get the points, and then not do it.

Regarding the awarding of points to intermediaries that propose to operate in accordance with a strategic plan, particularly one developed for an empowerment zone or enterprise community, writers were nearly equally divided, on philosophical grounds, with eight commenting in favor and nine commenting in opposition.

In the final rule, the reductions in points for leveraging are adopted, to shift more relative weight toward social factors. The previous points for intermediary contribution are maintained because that is a very important contributor to improved collectability of the Agency's loan. The suggested new points for small loans are not adopted because we believed that such a change would detract from program effectiveness. The suggested language regarding strategic plans and Empowerment Zones and Enterprise Communities is adopted as guidance for items that could justify Administrator points because the Agency generally wants to encourage strategic planning and assistance to Empowerment Zones and Enterprise Communities.

Also, an additional category of priority points has been added based on reduction in population of the service area. This was done because it came to the Agency's attention after the comment period was over that some areas have a low unemployment rate because of out migration. The percentage of the population seeking employment is low because many of the people needing employment have already left. Therefore, unemployment rate alone does not adequately reflect the need for economic development and jobs to enable the existing population to stay and former residents to return.

The proposed rule would require intermediaries to establish a bad debt reserve in the amount of 15 percent of the IRP portfolio unless a different amount is justified by the intermediary and approved by the Agency. The Agency asked for comments on whether 15 percent of the IRP portfolio is an appropriate amount of bad debt reserve for most intermediaries.

Most writers that commented on this issue agreed that a bad debt reserve is needed and sixteen writers thought 15 percent was an acceptable amount.

However, twenty-six writers disagreed with the 15 percent, with most of them saying it is too high. Many of the writers wanted the amount of the reserve required for each intermediary to be established based on that intermediary's history and situation. The Agency agrees that there should be flexibility, and the proposed rule language would allow for flexibility, but the Agency also wants to provide a general guideline from which adjustments can be made as appropriate. From the writers who mentioned any particular amount, most suggestions ranged between 3 and 10 percent of the portfolio. The final rule adopts a guideline amount of six percent because the program history seems to justify that amount as sufficient for the losses that have occurred.

The proposed rule would remove a general prohibition on loans for recreation and tourism facilities, but retain a prohibition on loans for hotels, motels, bed and breakfast establishments, and convention centers. Thirty-nine writers favored making hotels, motels, bed and breakfasts and convention centers eligible, compared to three who agreed with keeping them ineligible. It was pointed out that such facilities are very important to the potential economic development of many rural areas and that it is unfair to treat them as a group rather than consider each on its own merits.

The final rule adopts hotels, motels, bed and breakfasts, and convention centers as eligible. The Agency agrees that such facilities can be an important economic development tool in some areas and that each should be evaluated on its own merits.

One writer wanted virtually unrestricted use of IRP for financing agricultural production. The Agency believes that agricultural production is a specialized type of financing, the Department of Agriculture has special lending programs for agricultural production, and IRP should, for the most part, be restricted to other general business development. The recommendation is not adopted.

One writer wanted cranberry production to be made an eligible loan purpose, and pointed out that Senate Report 103–290, ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Bill, 1995,'' suggested the Department to make regulatory changes to allow Maine cranberry growers to qualify for IRP assistance. The Agency has determined that singling out one product, such as cranberry production, as an exception to the prohibition on loans for agriculture production is not justified. Therefore, the suggestion regarding cranberries is not adopted and other exceptions to the prohibition are also eliminated.

One writer said that commercial fishing should be an eligible loan purpose. Commercial fishing was inadvertently made ineligible through the definition of agriculture production. The recommendation is adopted by revising the definition.

Six writers were opposed to the provision that would limit subsequent loans to intermediaries to $1 million per year. These writers prefer that the loan amounts be limited only by factors such as the intermediary applicant's lending record or the demand for funds in the service area. The demand for funds is very difficult to determine accurately and may change drastically with little or no notice. Slow use by intermediaries of approved loan funds is still a major Agency concern in IRP in spite of Agency efforts to limit loan amounts according to demand. Limiting all subsequent loans to $1 million per year reduces the likelihood that intermediaries will borrow more than they can use in 1 year. The demand by

intermediaries for IRP funds from the Agency far exceeds the available funds. Limiting subsequent loans to $1 million per year will help to ensure distribution of each year's available funds to more applicants, while still allowing intermediaries with large needs to eventually obtain large amounts of funds. This provision of the proposed rule is unchanged.

Three writers requested that the term underrepresented be defined. The final rule includes a definition of underrepresented group as a group of U. S. citizens with identifiable common characteristics that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage the group represents of the general population.

Three writers wanted intermediaries to be allowed to use IRP funds to guarantee loans, as a alternative to making direct loans to ultimate recipients. They were apparently interested in the intermediaries having greater flexibility to determine how to best use the IRP funds to meet the needs of their service areas.

The Agency feels that an important benefit of the IRP is that, due to the low cost of money provided by the Agency and the nonprofit nature of most intermediaries, intermediaries can often offer below market interest rates to businesses that cannot afford market rates. By offering guarantees rather than direct loans, the interest rate would be established by commercial lenders, based on their cost of money and profit goals, and the interest rate advantage would be lost. Offering loan guarantees instead of direct loans also brings in a new set of management concerns and risks. Guaranteeing a loan does not require any cash, so the IRP loan funds would not be ''used'' to make the guarantee. Guaranteeing a loan creates a contingent liability, requiring the guarantor to pay an unknown amount at an unknown future date in the event a loss occurs. Presumably, IRP funds would be placed by the intermediary in secure investments and held to be available to pay losses if necessary. Some intermediaries might use this type of program as an excuse to place an excessive amount of funds in safe investments to accumulate interest earnings rather than help ultimate recipients. Other intermediaries might place too small an amount in safe investments and then be unable to meet their commitments in the event of losses that exceed expectations. This recommendation is not adopted.

Two writers wanted intermediaries to be allowed to purchase participation agreements in bank loans. Many intermediaries cooperate with banks, making referrals to each other and sharing risks through joint financing of ultimate recipient needs. The Agency strongly encourages this cooperation and joint financing. However, we have required that in a joint financing arrangement, the intermediary and bank each make a separate loan with separate debt instruments. When an organization buys a participation agreement it normally is not making a loan; it is purchasing an investment. The loan is made by the bank. The bank holds the promissory note and the collateral. The bank does the loan servicing, collects the payments, and forwards the appropriate portion of the payment to the holder of the participation agreement. The holder of the participation agreement has no responsibility for and no control over the servicing and no direct relationship with the borrower. It is an investor, not a lender. It would be too easy for the intermediary to use the purchase of participation agreements as a mechanism to simply invest in loans the bank would make anyway.

The Agency believes that, to properly carry out the intent of the program, intermediaries should have a direct lender-borrower relationship with the ultimate recipients. The intermediary should be in position to deal directly with the ultimate recipient to service the loan. If necessary, the Agency should be able to influence the servicing of the loan by the intermediary or to foreclose on a defaulted loan to an intermediary and take over the servicing and collection of the loan to the ultimate recipient.

The IRP regulation has always required intermediaries to make loans and the Agency has held that buying participations is not making loans. The word direct was inserted in the proposed rule to further clarify the intent. The language of the proposed rule is maintained in the final rule.

Three writers recommended elimination of the provision that ultimate recipients cannot obtain loans from more than one intermediary. This recommendation has been adopted. However, the language has been revised to clarify that the limits on loan amount to one ultimate recipient apply to the total dollar amount of IRP debt, regardless of whether it is one loan from one intermediary or several loans from several intermediaries.

Two writers also objected to the provision that IRP funds cannot finance more than 75 percent of total project costs. This provision helps to ensure wider distribution of limited program funds and reduced risk through ultimate beneficiary contribution or leveraging of other funding sources, and so the recommendation is not adopted.

Two writers requested a preferred lender status be established for experienced and successful intermediaries that target assistance to certain populations. Only one writer indicated what special benefits a preferred status should carry. Rather than create a special class of intermediaries, the agency is moving toward providing all the discretion and benefits it considers reasonable to all intermediaries. Therefore, the recommendation is not adopted.

The one writer who suggested specific benefits for preferred lenders proposed a moratorium on loan principal and interest payments to the Agency so long as the lender met certain performance standards. If the lender did not maintain the standards, it would lose its preferred lender status and be expected to resume normal loan repayment. Presumably, the interest that accrued and the principal that came due while the moratorium was in effect would be forgiven.

The Agency does not have the legal authority to forgive debt except in debt settlement situations when it is documented that the borrower does not have repayment ability. Also, as a matter of good credit program management, the Agency does not believe loan programs should be mixed with the characteristics of grant programs. If a grant is appropriate, the assistance should be authorized as a grant and recognized as a grant by all parties from the beginning. If a loan is made, it should be clearly set out in writing exactly what repayment is required. Then collection should be pursued in accordance with the lenders rights, so long as the borrower has repayment ability. To set up a loan with the understanding that a certain payment is required under normal circumstances but will be reduced under certain conditions would invite misunderstanding and dispute over the borrower's liability, create servicing problems, and foster law suits to enforce or prevent collection. The recommendation is not adopted.

One writer requested that intermediaries be able to provide equity investment for ultimate recipients. Another requested the conflict of interest paragraph from the existing regulation be kept in place so that it applies to all loans from the IRP revolving fund. In the proposed rule the requirement was moved and would only apply to loans from Agency IRP loan funds. The conflict of interest paragraph provides that an intermediary and its principal officers (including immediate

family) must hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) must hold no legal or financial interest or influence in the intermediary. This not only prevents an intermediary from using Agency IRP loan funds for equity investment, it prevents the intermediary from making a loan from Agency IRP loan funds to an ultimate recipient to which it has provided equity investment from another source of funding.

The Agency recognizes that there is a need for equity investment or venture capital for new businesses in rural areas. However, providing equity investment means purchasing an ownership interest in the business. The Agency is concerned that if an intermediary is considering a loan to a business in which it owns an interest, the intermediary's credit quality analysis and loan approval decision may be influenced by its desire to assist or protect the value of its ownership interest. The final rule does not authorize the use of IRP loan funds for equity investment and the conflict of interest restriction has been rewritten so that it applies to all loans made from the IRP revolving loan fund.

One writer wanted the definition of rural to be amended so that loans could be made to ultimate recipients in cities of up to 50,000 people. The Agency believes that retaining the 25,000 population limit will help direct the limited funding to the areas of greatest need. The recommendation is not adopted.

One writer indicated that the definitions of Agency IRP loan funds, IRP revolving fund, and revolved funds are not sufficiently clear. The writer wanted a statement included, consistent with an existing Administrative Notice, to provide that revolved funds are not subject to the requirements of Agency regulations. The writer also wanted a paragraph to set out what regulatory procedures are required of intermediaries administering non-Federal funds. The Agency believes that the definitions of Agency IRP loan funds, IRP revolving funds, and revolved funds are as clear as can be achieved. The Agency believes that the broad statement in the previous regulation regarding non-federal funds not being subject to the regulations has been the cause of past confusion about what requirements apply in different situations. The Agency has intentionally avoided such broad statements in the new regulation. Also, the Agency intentionally wrote the proposed rule to apply the requirements differently than under the Administrative Notice that provided interpretation of the previous regulation. The Agency has attempted to end the confusion over these issues by clearly stating in each section of the regulation whether that section applies to Agency IRP loan funds only or to the IRP revolving fund. Section 4274.332(a) explains that if the reference is to the IRP revolving fund, the requirement applies to both revolved (or non-Federal) funds and Agency IRP loan funds. If the reference is to Agency IRP loan funds, without reference to the IRP revolving fund, then the requirement applies only to Agency IRP loan funds. The language of the proposed rule on this issue is not changed.

One writer recommended the restrictive language regarding interest rates to ultimate recipients be removed to allow intermediaries flexibility. The proposed rule only provides a general guideline regarding how interest rates should be established and requires that limits be established in the work plan. There is also a provision for amending the work plan that could be used should the limits established at the application stage become a problem in the future.

Some guidelines and limits are needed to deal with two extremes that continue to occur from time to time. Some intermediaries propose to charge interest rates so low that sufficient revenues would not be produced to maintain the revolving fund and meet the repayment schedule to the Agency. These intermediaries must be counseled and encouraged to plan for higher rates in order for the loan from the Agency to be feasible. There are other intermediaries that propose interest rates so high that it raises questions as to whether the intermediary is trying to help ultimate recipients and the community or just trying to bring in revenues.

The Agency believes that the language in the proposed rule gives the intermediary considerable flexibility while also providing sufficient guidelines to allow the Agency to prevent unreasonable extremes. The recommendation is not adopted.

One writer requested that the ban on loans to charitable and educational institutions be removed because they can be valid businesses. Another writer wanted certain organizations that the writer considered charitable to be eligible. The prohibition of loans to educational institutions has been removed in the interest of allowing more flexibility and the reference to charitable has been clarified. The Agency's concern is that loans not be made if the recipient will depend on donations, rather than sales or fees, to repay the loan or administer the revolving loan fund.

One writer objected to the requirement that the intermediary's interest in insurance required of the ultimate recipient be assigned to the Agency. The Agency agrees that valid assignment of all such insurance is an unnecessary administrative burden. The final rule has been modified to require assignments of insurance only if the intermediary is in default.

In addition to responding to the public comments, the final rule differs from the proposed rule by providing that any applicant that is delinquent on any Federal debt is not eligible to receive assistance from Agency IRP funds. This provision was added to comply with Public Law 104–132 dated April 26, 1996 (31 U.S.C. 3720B).

Lists of Subjects

7 CFR Part 1948

Business and industry, Credit, Economic development, Rural areas.

7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

7 CFR Part 4274

Community development, Economic development, Loan programs—Business, Rural areas.

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

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

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 note.

Subpart C—[Removed and Reserved]

2. Subpart C, part 1948 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 has been revised to read as follows:

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

Subpart R—Rural Development Loan Servicing

4. Section 1951.852(b)is amended by removing the numeric paragraph designations and by removing the

abbreviation for ''FmHA or its successor agency under Pub. L. 103–354''.

5. Section 1951.853 is amended by revising in paragraph (a) the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'' and by revising paragraph (b)(2)(ix) to read as follows:

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

* * * * *

(b) * * *

(2) * * *

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

* * * * *

6. Section 1951.883 is amended by revising paragraph (a)(2) to read as follows:

§ 1951.883 Reporting requirements.

(a) * * *

(2) Quarterly or semiannual reports (due 30 days after the end of the period).

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain only information on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

* * * * *

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

7. Chapter XLII, title 7, Code of Federal Regulations is amended by adding a new part 4274 to to read as follows:

PART 4274—DIRECT AND INSURED LOANMAKING

Subparts A–C—[Reserved]

Subpart D—Intermediary Relending Program (IRP)

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a USDA Rural Development employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to United States Department of Agriculture (USDA) Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office.

§ 4274.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for an application is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to applications under the office's jurisdiction.

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Rural area. All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more, according to the latest decennial census.

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing office is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

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

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(b) *Abbreviations.* The following are applicable to this subpart:

B&I—Business and Industry
IRP—Intermediary Relending Program
OGC—Office of the General Counsel
OIG—Office of Inspector General
OMB—Office of Management and Budget
RBS—Rural Business-Cooperative Service, or any successor agency
RDLF—Rural Development Loan Fund
USDA—United States Department of Agriculture

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (*i.e.*, usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United

States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements—Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government by the ultimate recipient or any of its principals shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

(a) *Intermediaries.* Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipients.* Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.319.

(13) Educational institutions.

(14) Revolving lines of credit: *Provided,*

(i) The portion of the intermediary's total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed two years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary's authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§§ 4274.315–4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project .

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(d) Assistance to government employees, military personnel, or principals or employees of the intermediary or organizations for which such persons are directors or officers or in which they have ownership of 20 percent or more.

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(f) Agricultural production.

(g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(h) Community antenna television services or facilities.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(k) Lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years.

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan.

§§ 4274.321–4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary's work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) *Intermediaries.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be assignable.

(b) *Ultimate recipients.* Security for a loan from an intermediary's IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

§§ 4274.327–4274.330 [Reserved]

§ 4274.331 Loan limits.

(a) Intermediary.

(1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in § 4274.302(a) will not exceed $2 million.

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of the Agency IRP loan funds approved for the intermediary have been disbursed to eligible ultimate recipients;

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectable accounts;

(iii) The outstanding loans of the intermediary's IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed $1 million each and not more than one loan will be approved for an intermediary in any one fiscal year.

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

(b) *Ultimate recipients.* Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) $250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient's project for which the loan is being made.

(c) *Portfolio.* No more than 25 percent of an IRP loan approved may be used for

loans to ultimate recipients that exceed $150,000. This limit does not apply to revolved funds.

§ 4274.332 Post award requirements.

(a) *Applicability.* Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the ''IRP revolving fund,'' such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from ''Agency IRP loan funds,'' without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving fund.* For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with § 4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolved funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves must be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary's portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

§§ 4274.333—4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) *Intergovernmental consultation.* The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. (See RD Instruction 1940-J (available in any Rural Development State Office)).

(b) *Environmental requirements.*

(1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for a loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application.

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title including public notification requirements. The results of this review will be used by the Agency in making its decision on

concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) *Equal opportunity and nondiscrimination requirements.*

(1) In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, title VI of the Civil Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act.

(d) *Seismic safety of new building construction.*

(1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or a supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) *The provisions for late charges.* The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default;

(5) *The disbursement procedure.* Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement;

(i) The intermediary may initially draw up to 25 percent of the loan funds. If the intermediary does not have loans to ultimate recipients ready to close sufficient to use the initial draw, the funds must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed for such loans. The initial draw must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary. Any funds from the initial draw that have not been used for loans to ultimate recipients within 1 year from the date of the draw must be returned to the Agency as an extra payment on the loan. Agency IRP loan funds must not be used for administrative expenses;

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing;

(6) *The provisions regarding default.* On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an ''event of default'' in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of;

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the

Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

(7) *The insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) *Flood Insurance.* The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter.

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation.

(b) The intermediary will agree in the loan agreement:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund;

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A–128 or A–133 should submit audits made in accordance with those circulars;

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of;

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary's policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding;

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan

award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) That if any part of the loan has not been used in accordance with the intermediary's work plan by a date three years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Intermediary Relending Program promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

§§ 424.339—4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency.

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary's ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see § 4274.301(b)); and

(ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(3) Environmental information on a form provided by the Agency for all projects positively identified as proposed ultimate recipient loans that are Class I or Class II actions under subpart G of part 1940 of this title;

(4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;

(5) A *pro forma* balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;

(6) A written agreement of the intermediary to the Agency audit requirements;

(7) An agreement on a form provided by the Agency assuring compliance with Title VI of the Civil Rights Act of 1964;

(8) Complete organizational documents, including evidence of authority to conduct the proposed activities;

(9) Evidence that the loan is not available at reasonable rates and terms

from private sources or other Federal, State, or local programs;

(10) Latest audit report, if available;

(11) A form provided by the Agency in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;

(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions; and

(13) A statement on a form provided by the Agency regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:

(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and

(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.344 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary's headquarters is located. Intermediaries headquartered in the District of Columbia may file the application with the National Office, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250–1521.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—5 points;

(B) At least 25% but less than 50% of the total project cost—10 points; or

(C) 50% or more of the total project cost—15 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-Agency derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs—5 points;

(B) At least 25% but less than 50% of total project costs—10 points; or

(C) 50% or more of total project costs—15 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

(A) At least 150% but not more than 175%—5 points;

(B) At least 125% but less than 150%—10 points; or

(C) Below 125%—15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):

(A) At least 50% but less than 75%—5 points;

(B) At least 75% but less than 100%—10 points; or

(C) 100%—15 points.

(iii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points;

(B) At least 125% but less 150%—10 points; or

(C) 150% or more—15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points;

(B) At least 20% but less than 30% of the workforce—10 points; or

(C) 30% of the workforce or more—15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:

(A) At least 10% but less than 20%—5 points;

(B) At least 20% but less than 30%—10 points; or

(C) 30% or more—15 points.

(vi) The population of the service area according to the most recent decenial census was lower than that recorded by the previous decenial census by the following percentage:

(A) At least 10 percent but less than 20 percent—5 points;

(B) At least 20 percent but less than 30 percent—10 points; or

(C) 30 percent or more—15 points.

(3) *Intermediary contribution.* All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

(i) At least 5% but less than 15%—15 points;

(ii) At least 15% but less than 25%—30 points; or

(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points;

(ii) At least 3 but less than 5 years—10 points;

(iii) At least 5 but less than 10 years—20 points; or

(iv) 10 or more years—30 points.

(5) *Community representation.* The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

(i) At least 10% but less than 40% of the board members are community representatives—5 points;

(ii) At least 40% but less than 75% of the board members are community representatives—10 points; or

(iii) At least 75% of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage; a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan.

§§ 4274.345—4274.349 [Reserved]

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary's intent to meet the conditions. If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

§§ 4274.351—4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document.

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.356 Loan closing.

(a) At loan closing, the intermediary must certify to the following:

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.

(4) That no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(b) The processing officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.

§§ 4274.357—4274.360 [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolved funds to make loans to ultimate recipients without obtaining prior Agency concurrence. When an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient, and prior to final approval of such loan, Agency concurrence is required.

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(1) Certification by the intermediary that;

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations;

(iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

(2) For projects that meet the criteria for a Class I or Class II environmental assessment or environmental impact statement as provided in subpart G of part 1940 of this title, a completed and executed request for environmental information on a form provided by the Agency;

(3) All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request on specific cases.

§§ 4274.362—4274.372 [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374—4274.380 [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4274.382—4274.399 [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Dated: January 9, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–3044 Filed 2–5–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–104–1]

Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Oklahoma to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Oklahoma has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on April 7, 1998 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 9, 1998.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 97–104–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 97–104–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. Section 93.301(c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Section 93.301(c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported from regions where CEM exists for permanent entry must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. These States have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to receive stallions or mares over 731 days of age from a region where CEM exists because the States have entered into a written agreement with the Administrator, APHIS, to enforce State laws and regulations to control CEM, and the States have agreed to quarantine, test, and treat mares and stallions over 731 days of age from a region where CEM exists in accordance with § 93.301(e) of the regulations.

Oklahoma has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all the requirements in § 93.301(e) for importing mares and stallions over 731 days old from regions where CEM exists. This direct final rule will, therefore, add Oklahoma to the list of States in §§ 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.