

September 26, 2006

**SUPPORTING STATEMENT
(0572-0122)**

7 CFR Part 1779, “Water and Waste Disposal Programs Guaranteed Loans”

a. Justification

1. Explain the circumstances that make collection of information necessary.

The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture (USDA) Rural Development (RD) Utilities Programs, hereinafter referred to as Rural Development, is a credit agency of the USDA.

RUS is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily serving rural residents.

Water and Waste Disposal Programs (WW) have been in existence for approximately 60 years and have provided insured loan and grant funds through the WW program to finance many types of projects varying in size and complexity.

Implementation of the Water and Waste Disposal guaranteed loan program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed WW loans. This program is implemented through 7 CFR 1779.

2. Indicate how, by whom, and for what purpose information is to be used.

The information will be collected by Rural Development field offices from applicants/borrowers, their lenders, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Specifically, the burden to be cleared with this regulation is as follows:

REPORTING REQUIREMENTS - NO FORMS

Legal Authority and Responsibility. Each borrower must have, or obtain, legal authority necessary to own and operate the proposed facility, incur and repay debt, and pledge security for the loan. Copies of items such as charters, bylaws, and articles of incorporation are needed so Rural Development can determine the applicant has the proper authority to borrow money for the proposed project.

Proof of Lender Eligibility. This requirement is necessary to ensure the lender is capable of meeting the requirements of the enabling legislation as well as providing a reasonable assurance to the Government that the lender will provide maximum protection of the Government's investment in the borrower's operation.

Intergovernmental Review. Executive Order 12372 requires consultation with State officials on projects proposed for Federal financing. States may choose the Federal programs they wish to review. Clearinghouse review and approval is necessary for loan approval.

Preapplication/Application Development. The borrower/lender prepares information for preapplication and application packages which is necessary for proper analysis and the loan determination process performed by Rural Development. This information should include items listed in §1779.52(b) such as financial statements, audits, copies of organizational documents, existing debt instruments, and other items that are not described elsewhere. A financial feasibility analysis is required which includes an accurate projection of the usage, revenues, and expenses of the facility. Also included will be the environmental report prepared in accordance with 7 CFR part 1794 (cleared under 0572-0117).

Construction started prior to receipt of application. When applicants have started construction prior to the submission of an application, documentation is required to ensure that the construction was not started to circumvent our environmental review requirements. In the past 10 years, we have had no such applications. Burden hours are included under Application Development.

Cancellation of Conditional Commitment for Guarantee - The Agency must be advised immediately if for any reason the conditional commitment for guarantee is cancelled by the lender.

Construction Contracts. At the end of construction, the lender must provide Rural Development with written certification that all guaranteed loan funds were utilized for authorized purposes and Rural Development design policies have been met. The lender will report any problems in the project development to the Agency.

Lender Notification of Inspections. Rural Development requires the lender to notify the Agency of any scheduled field inspections during construction and after issuance of

the Loan Note Guarantee. The notification normally should be in written form and will be placed in the borrower's case file as evidence of these inspections. This action is required by the Agency to ensure compliance with Agency regulations and to ensure that the construction is of satisfactory quality. Burden hours are included in the Application Development, Construction Contracts, and Loan Servicing/Audits.

Pre-guarantee Review. The pre-guarantee review is necessary to ensure that all conditions for the loan guarantee have been met prior to loan closing. The lender provides documents and certifications to satisfy requirements of all conditions for the Loan Note Guarantee to be executed.

Lender Certification. Before the Loan Note Guarantee is issued, the lender must certify that certain requirements have been met. This certification is usually in written form and ensures that the guaranteed loan is made in accordance with Agency regulations. The lender must certify that all planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. Certification is also required that all required insurance is in effect, National Historic Preservation, debarment, equal employment opportunity, and equity requirements have been met as spelled out in Rural Development regulations. The lender must also certify that the loan has been properly closed, the borrower has marketable title to the collateral owned by the borrower, and the loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee. This is considered part of the preguaranteed review and burden has been included under this section.

Loan Servicing/Audited Financial Statements. The lender is responsible for servicing the entire loan. Failure to properly service the loan may result in cancellation of the guarantee or an adjustment in the percent of guarantee.

The lender must notify the Agency of any violation of the loan agreement by the borrower within 30 days of such violation.

The borrower is required to provide the lender, at a minimum, annual financial statements which the lender will analyze to determine the soundness of the borrower's operations. The lender provides a summary evaluation to Rural Development.

Borrower Default. In case of borrower default, the lender is responsible for notifying Rural Development officials and preparing a plan to correct the default. The lender will keep the Agency informed until the loan is no longer in default. The position of both Rural Development and the lender may be jeopardized if curative actions are not taken promptly. Should the lender be requested by a holder to repurchase a loan in default, a copy of the holder's written demand and the lender's written response must be furnished to the Agency. Should the lender not repurchase the loan, the Agency will purchase the guaranteed portion of the loan upon written demand of the holder.

Liquidation. When liquidation is necessary, the lender will prepare a liquidation plan in accordance with the lender's loan agreement and Form RD 449-35. The plan will contain information on how liquidation will be conducted, proof of the lender's ownership of the note and other security instruments, information concerning the borrower's assets, proposed method of obtaining maximum collection, and an estimate of the market and potential liquidated value of collateral. A detailed list of the items to be included in the liquidation plan is at §1779.81(c).

Bankruptcy Responsibilities. The lender must protect the guaranteed loan debt and all collateral securing it in case of bankruptcy proceedings. The lender will file a proof of claim, where necessary, and all required papers and pleadings, participate in meetings of creditors and all court proceedings, adequately protect the collateral, and keep Rural Development informed, in writing, of all aspects of the proceedings.

Transfers and assumptions. In case of a transfer and assumption either to an eligible or ineligible borrower, the lender is responsible for collecting and submitting a one-time non-refundable standard fee plus the cost of the appraisal to Rural Development.

The lender is responsible for making a complete credit analysis to determine viability of the project and will provide Rural Development with a statement that the transaction can be properly transferred and will file, register, or record all conveyance instruments as appropriate.

The lender will note all transfers and assumptions on all originals of Loan Note Guarantee(s) and provide Rural Development with a copy of the transfer and assumption agreement. The lender is responsible for notifying Rural Development before any borrower or guarantor is released from liability.

Disposition of Acquired Property. The lender will develop a plan as soon as possible to ensure all collateral is fully protected and a method of disposing of collateral is effected. If the plan does not address disposition of acquired property, the lender will prepare and submit to Rural Development a plan on the best method of sale considering all prospective purchasers. Failure to develop a plan and proceed according to the plan may result in a non-recoverable loss to the Government.

Lender's Request to Terminate Loan Note Guarantee or Contract of Guarantee.

The lender may request Rural Development to terminate the Loan Note Guarantee for any reason provided the lender holds all the guaranteed portions of the loan. In this case, the lender is required to provide Rural Development with a written notice that the loan(s) is paid in full and/or notice of the termination of the Loan Note Guarantee. These requests are kept in the borrower's file as evidence that the request(s) was in accordance with Agency regulations. This notice can be indicated on the Guaranteed Loan Status Report and the burden is included in this form.

Replacement of Loan Note Guarantee and Assignment of Guarantee. In those incidences where the Loan Note Guarantee or Assignment of Guarantee is lost, stolen,

destroyed, mutilate, or defaced, the Lender must notify Rural Development and request a replacement. The required documentation as described in §1779.73 must be included with the request. This would be considered part of loan servicing activities. In the past 12 years, there has been no such request.

REPORTING REQUIREMENTS - FORMS APPROVED UNDER OTHER NUMBERS

Form RD 3575-1, "Application for Loan and Guarantee (Community Programs)."

This form is used by both the lender and borrower to make application for a Rural Development WW guaranteed loan. The form supplies information needed to determine the use of the requested funding and aids in making an evaluation of the ability of the lender's and borrower's qualifications to meet objectives of the program. Cleared under OMB #0575-0137.

Form RD 449-14, "Conditional Commitment for Guarantee": This form is used to advise the lender that the loan has been conditionally approved for a guarantee, subject to the lender meeting the conditions set forth on this form. The lender is required to read and understand the conditions of this commitment and sign as certification that he understands and agrees to abide by the conditions. Cleared under OMB #0575-0137.

Form RD 449-30, "Loan Note Guarantee Report of Loss." In cases of bankruptcy, liquidation, and debt writedown, the lender is required to submit this form to Rural Development to report the amount of estimated loss on the loan. To date, the WW guaranteed loan program has not paid a loss. Cleared under OMB #0575-0137.

Form RD 449-35, "Lender's Agreement." When the Loan Note Guarantee is issued, Form RD 449-35 is issued. This agreement sets forth the lender's loan responsibilities and is signed by both the lender and the Rural Development official. Cleared under OMB #0575-0137.

Form RD 449-36 "Assignment Guarantee Agreement." If a lender assigns the guaranteed portion of a loan to a holder(s), the lender, the Agency and the holder(s) will execute Form RD 449-36. This is the agreement that sets forth the terms and conditions of the assignment. A copy of this form is filed by the Agency approving office as documentation that the assignment was executed in accordance with Agency regulations. Cleared under OMB #0575-0137.

Form RD 1980-19 "Guaranteed Loan Closing Report." The lender will prepare and deliver a Guaranteed Loan Closing Report for each loan to be guaranteed and a guarantee fee to the Agency servicing office in return for the loan Note Guarantee. Cleared under OMB #0575-0137.

All lenders complete this form for every loan guaranteed. The data collected on this form is necessary to activate the guaranteed loan on the Guaranteed Loan System (GLS).

Upon receipt of this form and the fee, the loan status is moved from obligated to closed on GLS. Four other agencies, including Rural Housing Service's Community Facilities and Single Family Housing, Rural Business Service, and Farm Service Administration also use this form.

Form RD 1980-43 "Lender's Guaranteed Loan Payment to USDA." This form is used by the lender to transmit payments due to USDA as a holder. These would be funds due to USDA when USDA has purchased all or a part of the guaranteed portion of the loan including USDA's pro-rata share of any payments received from the borrower or any funds received by the lender in the process of liquidation. Cleared under OMB #0575-0137.

Form RD 1980-41, "Guaranteed Loan Status Report." This form is used by the lender to inform Rural Development of the principal and interest balance on outstanding guaranteed loans and to inform Rural Development of the loan status (current or delinquent). Cleared under OMB #0570-0016.

Form RD 1980-44, "Guaranteed Loan Borrower Default Status." When a borrower defaults on a guaranteed loan, the lender is required to inform Rural Development of the borrower's status by using Form 1980-44. This form is prepared on each borrower to keep Rural Development informed of the current status. To date, the WW guaranteed loan program has had no borrowers in default. Cleared under OMB #0570-0016.

3. Describe whether, and to what extent, the collection of information involves the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology, and the basis for deciding to adopt these collection methods.

The Rural Development Utilities Program is committed to complying with the requirements of the E-Government Act and the Government Paperwork Elimination Act. Forms for this program, cleared under 0575-0137 and 0570-0016, are available electronically on the World Wide Web at USDA Service Center eForms (<http://forms.sc.egov.usda.gov/eforms/mainervlet>).

The Service Center eForms site uses the Web-based Centralized Authentication and Authorization Facility (WebCAAF) for eAuthentication. Through eAuthentication accounts users may save forms online and submit them to the appropriate USDA Service Center. However, because RUS requires supporting documentation that cannot be submitted electronically, forms used under this program currently cannot be submitted electronically to the Agency. Lenders and borrowers may complete the forms online, store them in an electronic format, and print them for submission to the Agency.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The Agency has reviewed all loan programs it administers to determine which programs may be similar in intent and purpose. The Agency has other loan programs that are similar. If there were simultaneous participation in more than one Agency loan program, the Agency would make every effort to accommodate the requests within the same set of applications and processing forms. This effort is presently facilitated by assignment by management of these programs to the same program area of responsibility. If an applicant is applying for, or receiving, a loan from another Federal agency, forms and documents furnished the other agency would be utilized to the extent possible.

5. If the collection of information impacts small businesses or other small entities, (item 5 of OMB Form 83-1), describe the methods used to minimize burden.

Information to be collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by the Agency to approve loans and monitor borrower performance.

6. Describe the consequence to Federal program if collection were conducted less frequently.

The information collected under this program is considered to be the minimum necessary to conform to the requirements of the program regulations established by law. Additionally, the Agency does not require any more information than a prudent commercial lending institution usually requires. Information is collected only when needed, and we believe no reduction of collection is possible. Without this collection, the Agency would not be able to meet its statutory mandates.

7. Explain any special circumstances that require collection to be conducted in a manner:

- a. **Requiring respondents to report information more than quarterly.** There are no information collection requirements that require specific reporting on more than a quarterly basis.
- b. **Requiring written responses in less than 30 days.** There are no specific information collection requirements that require less than 30 days response. However, in many cases (especially where a borrower's income or financial situation has declined), it benefits a borrower to provide the Agency with information as soon as possible. The Agency cannot provide the borrower

with program benefits until documentation is received to support the borrowers' request.

- c. **Requiring more than an original and two copies.** There are no specific information collection requirements that require more than an original and two copies.
- d. **Requiring respondents to retain records for more than 3 years.** There are no such requirements.
- e. **Not utilizing statistical sampling.** There are no such requirements.
- f. **Requiring use of statistical sampling which has not been reviewed and approved by OMB.** No such requirements exist.
- g. **Requiring a pledge of confidentiality.** There are no such requirements.
- h. **Requiring submission of proprietary trade secrets.** There are no such requirements.

8. If applicable, identify the date and page number of publication in the Federal Register of the agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure, or reporting format.

As required by 5 CFR 1320.8(d), a notice to request comments was published on August 17, 2006, at 68 FR 53709 (attached). No public comments were received.

Also, the Agency contacted two lenders directly to discuss our paperwork burden. In general, both lenders said that they did not feel that our paperwork was excessive. One lender said that he found the local Rural Development employees to be very helpful and very valuable in processing the guaranteed loan. The other lender said that he did not see the need for some of the forms, but that the process was not burdensome.

The lenders contacted are:

- (a) Thomas J. Reinhold, Senior Vice President,
JP Morgan Chase Bank, NA,
Cincinnati, OH 45236
(513) 985-5118
- (b) Ron Grandy, Executive Vice President
First National Bank
Dieterich, IL

(618) 783-8300

(c) Lewis Blurton, Loan Officer
Bank of Idaho
Idaho Falls, ID
(208) 524-5500

9. Explain any decision to provide any payments to respondents other than remuneration of contractors or grantees.

No such decisions or payments were made.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

No assurance of confidentiality was provided. The information collected under the provisions of this program is not considered to be of a confidential nature. Organizations, such as nonprofit entities and public bodies from which the information is collected, are ordinarily required to make their activities available for public scrutiny.

11. Provide additional justification for any question of a sensitive nature such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

The information collected does not contain any questions of a sensitive nature such as sexual behavior, religious beliefs, or other matters commonly considered private.

12. Provide estimates of the hour burden of collection of information.

See attached spreadsheet.

Based on the Agency's current funding level, the burden for collecting information under this regulation is estimated at 15 respondents annually filing 110 responses. An estimated 7.8 average hours per response for completing the information collection requirements was based on information in existing reports, experience of Agency employees in handling the elements in the burden and discussions with lenders for a total of an estimated 858 man hours. The cost per hour to complete this collection is estimated at \$40 which represents the average salary for a commercial loan officer as listed in the Occupational Outlook Handbook which is published by the US Department of Labor; Bureau of Labor Statistics. The average salary was adjusted for inflation. Therefore, the total cost to the public is estimated at \$34,320 to comply with this collection.

13. Estimated total annual cost burden to respondents and or recordkeepers resulting from this collection of information.

There are no capital and start-up costs or operations and maintenance costs associated with this collection.

14. Provide estimates of annualized cost to the Federal Government.

Rural Development estimates the cost to the Federal Government to administer the activities of this program to be \$155,560 per year. This includes staff time at the field and National Office levels, printing, publication of regulations, operational expenses, and overhead. Because of the small WW Guaranteed Loan Program, the costs are minimal. A breakdown of the cost to the Federal Government to administer this program are as follows:

- ◆ Staff Time:
 - Agency servicing office - Program promotion, reporting, and maintenance as appropriate
(These duties will generally be performed by a loan specialist (GS 12 step 4) - 200 hours x 20 applications x \$34.28 per hour = \$137,120 annually.)
 - National Office - Development of regulations, instructions, forms, and resource/training materials
(These duties will generally be the responsibility of a loan specialist (GS 13 step 5) - 320 hours x \$42.00 = \$13,440 annually)
- ◆ Associated Costs: Publication of regulations, instructions, forms, and resource/training materials. (WW instructions and forms are posted on the WW web site and are not printed and distributed through the postal department. The estimated cost of the electronic distribution and local printing (if applicable) is \$5,000 annually.)

15. Explain reasons for changes in burden, including the need for any increase.

This is an extension of a currently approved information collection.

16. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication.

Rural Development has no plans to publish the information collected under the provisions of this program.

17. If seeking approval to not display the expiration date for OMB approval of the information collected on, explain your reasons.

N/A

18. Explain each exception to the certification statement contained in OMB Form 83-I.

There are no exceptions requested.

b. Collection of Information Employing Statistical Methods.

This collection does not employ statistical methods.