

## Subpart C—Fire and Rescue and Other Small Community Facilities Projects

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SOURCE: 52 FR 43726, Nov. 16, 1987, unless otherwise noted.

### §1942.101 General.

This subpart provides the policies and procedures for making and processing insured Community Facilities (CF) loans for facilities that will primarily provide fire or rescue services and other small essential community facility projects and applies to fire and rescue and other Community Facilities loans for projects costing \$300,000 and under. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development

employee. Community Facilities loans for other types of facilities, and those costing in excess of \$300,000, are defined in subpart A of this part.

[68 FR 65830, Nov. 24, 2003]

#### **§1942.102 Nondiscrimination.**

(a) Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

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

#### **§1942.103 Definitions.**

*Agency.* The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

*Approval official.* An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

*Construction.* The act of building or putting together a facility that is a part of, or physically attached to, real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

*Owner.* An applicant or borrower.

*Processing office.* The office designated by the State program official to accept and process applications for Community Facilities projects.

*Regional Attorney or OGC.* The head of a Regional Office of the General Counsel (OGC).

*Small Community Facilities projects.* Community Facilities loans costing \$300,000 and under.

[68 FR 65830, Nov. 24, 2003]

#### **§1942.104 Application processing.**

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, "Application for Federal Assistance (For Construction)," with the Local or Area Rural Development Office. When practical, approval officials should meet with prospective applicants before an application is filed to discuss eligibility and Rural Development requirements and processing procedures. Throughout loan processing, Rural Development should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary, and what is required from them. Rural Development should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *Unfavorable decision.* If, at any time prior to loan approval, it is decided that favorable action will not be taken on an application, the approval official will notify the applicant, in writing, of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant in accordance with subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 55 FR 13504, Apr. 11, 1990; 68 FR 65830, Nov. 24, 2003; 68 FR 69001, Dec. 11, 2003]

#### **§1942.105 Environmental review requirements.**

Loans made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

[81 FR 11031, Mar. 2, 2016]

#### **§1942.106 Intergovernmental review.**

(a) Loans under this subpart are subject to intergovernmental review requirements set forth in U. S. Department of Agriculture regulations 7 CFR 3015, subpart V and RD Instruction 1970-I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) State intergovernmental review agencies that have selected community facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases, the State Director should obtain a letter from the State single point of contact exempting fire and rescue loans from intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

[52 FR 43726, Nov. 16, 1987, as amended at 61 FR 6309, Feb. 20, 1996; 76 FR 80730, Dec. 27, 2011]

#### **§1942.107 Priorities.**

(a) Eligible applications must be selected for processing in accordance with §1942.17(c) of subpart A of this part 1942.

(b) The District Director must score each eligible application in accordance with §1942.17(c)(2) (iii) of subpart A of this part 1942. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

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

### **§1942.108 Application docket preparation and review.**

(a) *Guides.* Application dockets should be developed in accordance with §1942.2(c) of subpart A of this part 1942.

(b) [Reserved]

(c) *Budgets.* All applicants must complete Form RD 442-7, "Operating Budget," except as provided in this paragraph. Applicants with annual incomes not exceeding \$100,000 may, with concurrence of the District Director, use Form RD 1942-52, "Cash Flow Projection," instead of Form RD 442-7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* The District Director should prepare and issue a letter of conditions in accordance with §1942.5 (a)(1) and (c) of subpart A of this part 1942.

(e) *Organizational review.* As early in the application process as practical, the approval official should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will be submitted in accordance with §1942.5(b) of subpart A of this part 1942.

(g) *State Office review.* The State Office must monitor fire and rescue and other small community facility project loanmaking and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with the Agency's regulations. The processing office should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine that one or more of the processing office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to the subpart for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with §1942.5(d) of subpart A of this part 1942 and subpart A of part 1901 of this chapter.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 67 FR 60854, Sept. 27, 2002; 68 FR 65830, Nov. 24, 2003]

#### **§1942.109 [Reserved]**

#### **§1942.110 Strategic economic and community development.**

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

[81 FR 10457, Mar. 1, 2016]

#### **§1942.111 Applicant eligibility.**

(a) *General.* Loans under this subpart are subject to the provisions of §1942.17(b) of subpart A of this part 1942.

(b) *Credit elsewhere determinations.* The approval official must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the approval official should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources, approval officials should maintain liaison with representatives of lenders in the area. The State Director should keep approval officials informed regarding lenders outside the area who might make loans in the area. Approval officials should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of §1942.17(e) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 68 FR 65830, Nov. 24, 2003]

#### **§1942.112 Eligible loan purposes.**

(a) Funds may be used:

(1) To construct, enlarge, extend, or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents and rural business. Rural businesses would include facilities such as educational and other publicly owned facilities. "Otherwise improve" includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents.

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(iii) The construction or development of an essential community facility requisite to the beneficial and orderly development of a community operated on a nonprofit basis in accordance with §1942.17(d) of this subpart. This subpart includes those projects meeting the definition of a small community facility project.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

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

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than RD.

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

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

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

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

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

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

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

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

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

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

(iii) Contract documents have been approved by RD; and

(iv) All environmental requirements applicable to RD and the applicant have been met; and

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

(b) Funds may not be used to finance:

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

(2) Loan finder's fees.

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

[52 FR 43726, Nov. 16, 1987, as amended at 57 FR 21195, May 19, 1992; 68 FR 65831, Nov. 24, 2003]

#### **§1942.113 Rates and terms.**

Rates and terms for loans under this subpart are as set out in §1942.17(f) of subpart A of this part 1942.

#### **§1942.114 Security.**

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of RD during the repayment period of the loan, and in accordance with the following;

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the Agency loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with §1942.17(g)(3)(iii)(A)(1) of subpart A of this part 1942.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed \$250,000.

(f) Loans under this subpart are subject to the provisions of §1942.17(g)(1) of subpart A of this part 1942, regarding security for projects utilizing joint financing.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

**§1942.115 Reasonable project costs.**

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. RD may require an appraisal by an independent appraiser or Agency employee.

**§1942.116 Economic feasibility requirements.**

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the Agency staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using guide 6 to subpart A of this part 1942 (available in any RD Office), or

(b) Prepared by the applicant using Form RD 1942-54, "Applicant's Feasibility Report."

**§1942.117 General requirements.**

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of §1942.17 (i) of subpart A of this part 1942.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the loan resolution without such membership

authorization when State statutes and the organization charter and bylaws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of §1942.17(j)(3) of subpart A of this part 1942.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of §1942.17(j)(4) of subpart A of this part 1942.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of §1942.17(j)(5) of subpart A of this part 1942.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of §§1942.17(j)(6) and 1942.19 of subpart A of this part 1942.

(g) *Public information.* Loans under this subpart are subject to the provisions of §1942.17 (j)(9) of subpart A of this part 1942.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of §§1942.2 (e) and 1942.17 (j)(11) of subpart A of this part 1942.

#### **§1942.118 Other Federal, State, and local requirements.**

(a) Loans under this subpart are subject to the provisions of §1942.17 (k) of subpart A of this part 1942.

(b) An initial compliance review should be completed under subpart E of part 1901 of this chapter.

#### **§1942.119 Professional services and borrower contracts.**

(a) Loans under this subpart are subject to the provisions of §1942.17 (l) of subpart A of this part 1942.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with §1942.108 (g) of this subpart. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

#### **§§1942.120-1942.121 [Reserved]**

#### **§1942.122 Actions prior to loan closing and start of construction.**

(a) *Excess Agency loan funds.* Loans under this subpart are subject to the provisions of §1942.17 (n)(1) of subpart A of this part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of §1942.17 (n)(2) of subpart A of this part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of §1942.17 (n)(3) of subpart A of this part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of §1942.17 (n)(5) of subpart A of this part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of §1942.17 (n)(6) of subpart A of this part 1942.

(f) *Assurance agreement.* All applicants must execute Form RD 400-4, "Assurance Agreement," at or before loan closing.

### **§1942.123 Loan closing.**

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

(1) Form RD 440-57, "Acknowledgement of Obligated Funds/Check Request," has been received from the Finance Office.

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

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

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and §1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in §1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

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

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

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

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

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

(2) The Office of the Deputy Chief Financial Officer will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the Rural Development Manager.

(3) The Rural Development Manager will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Office of the Deputy Chief Financial Officer immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the Area Office and a copy will be forwarded to the Office of the Deputy Chief Financial Officer. In developing the permanent instruments, the sequence of preference set out §1942.19(e) of Subpart A of Part 1942 of this chapter will be followed.

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

(j) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018-D.

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

(l) *Review of loan closing.* When the loan has been closed, the Rural Development Manager will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the Rural Development Manager's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review Rural Development standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the Rural Development Manager of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

#### **§§1942.124-1942.125 [Reserved]**

#### **§1942.126 Planning, bidding, contracting, constructing, procuring.**

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

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

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that RD may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed \$100,000. Guide 6 to subpart A of this part 1942 (available in any RD office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive Agency concurrence. When negotiated procurement is used for construction costing not more than \$100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with

paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, RD may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if RD determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by RD must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR parts 15 and 15b.

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

(1) *Standard construction contract documents.* When standard construction contract documents available from RD are used, or when the amount of the contract does not exceed \$100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by RD, and the contract amount exceeds \$100,000, the Regional Attorney must review the documents before their use.

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

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

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of §1942.18(i) of subpart A of this part 1942.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of §1942.18(j) of subpart A of this part 1942.

(h) *Procurement methods.* Unless the Agency National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in §1942.18(k)(1) of subpart A of this part 1942.

(2) Competitive sealed bids as provided in §1942.18(k)(2) of subpart A of this part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing \$100,000 or less when the owner desires to use a "preengineered" or "packaged" building.

(3) Competitive negotiation as provided in §1942.18(k)(3) of subpart A of this part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding \$100,000 in cost when the owner desires to use a "pre-engineered" or "packaged" building and for major equipment.

(4) Noncompetitive negotiation as provided in §1942.18(k)(4) of subpart A of this part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of §1942.18(1) of subpart A of this part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of §1942.18(m) of subpart A of this part 1942.

(k) *Construction contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of §1942.18(n) of subpart A of this part 1942. Construction contracts for loans under this subpart are also subject to the provisions of §1901.205 of subpart E of part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to subpart A of this part 1942 of this chapter will normally be used instead of Form RD 1924-5, "Invitation for Bid (Construction Contract)," and Form RD 1924-6, "Construction Contract." When guide 18 is used with a design/build type contract, section 4, "Conflict of Interest," may need revision.

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

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where RD will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924-16, "Record of Preconstruction Conference," and the discussions and agreements will be documented. Form RD 1924-16 may be used for this purpose.

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

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

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

(A) Reasons why established goals were not met.

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

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

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

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

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or RD or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to RD for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the Agency District Director. Guide 11 of subpart A of this part 1942 (available in any Rural Development office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by RD are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, owner's architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form RD 1924-12, "Inspection Report," and a copy provided to all interested parties, including the Agency State Director.

(5) *Final inspection.* A final inspection will be made by RD before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be approved by RD when requested by owners, provided:

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

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

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

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of 7 CFR part 1970 have been met.

(ii) Changes will be recorded on Form RD 1924-7, "Contract Change Order," or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the Agency District Director.

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

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

(B) Changes in facility design.

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

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

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

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987, as amended at 81 FR 11031, Mar. 2, 2016]

#### **§1942.127 Project monitoring and fund delivery.**

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities

will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of §1942.17 (p)(2) of subpart A of this part 1942.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of §1942.17 (p)(3) of subpart A of this part 1942.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of §1942.17(p)(4) of subpart A of this part 1942.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form RD 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form RD 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by RD does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use Agency loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, RD may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of §1942.17 (p)(6) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

#### **§1942.128 Borrower accounting methods, management reports and audits.**

(a) Loans under this subpart are subject to the provisions of §1942.17(q) of subpart A of this part 1942 except as provided in this section.

(b) Borrowers with annual incomes not exceeding \$100,000 may, with concurrence of the District Director, use Form RD 1942-53, "Cash Flow Report," instead of page one of schedule one and schedule two of Form RD 442-2, "Statement of Budget, Income, and Equity." When used for budgeting, the cash statement should be projected for the upcoming fiscal year. When used for quarterly or annual reports, the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

#### **§1942.129 Borrower supervision and servicing.**

Loans under this subpart are subject to the provisions of §1942.17(r) of subpart A of this part 1942 and subpart E of part 1951 of this chapter.

**§§1942.130-1942.131 [Reserved]**

**§1942.132 Subsequent loans.**

Subsequent loans will be processed under this subpart.

**§1942.133 Delegation and redelegation of authority.**

Loan approval authority is in subpart A of part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loans regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

**§1942.134 State supplements and guides.**

State Directors will obtain National Office clearance for all State supplements and guides under RD Instruction 2006-B (available in any Rural Development office).

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

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and subpart A of part 1942 are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

**§§1942.135-1942.149 [Reserved]**

**§1942.150 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0120.