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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1779, 1780, and 1783

Rural Housing Service

Rural Business-Cooperative Service,

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942 and 1980

Rural Housing Service

7 CFR Part 3570

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4274, 4279, and 4280

Docket Numbers: RUS-20-TELECOM-0022

RIN: 0572-AC50

**Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across
Select Rural Development Programs**

AGENCY: Rural Utilities Service, Rural Housing Service, Rural Business-Cooperative Service, USDA.

ACTION: Final rule; request for comments.

SUMMARY: The Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service, agencies that comprise the Rural Development Mission Area within the United States Department of Agriculture, are issuing this final rule to establish the authority authorized by Section 6210 of the Agriculture Improvement Act of 2018, which will assist rural families and small businesses in gaining access to broadband service by permitting recipients of a loan, grant, or loan guarantee from RD to use up to 10 percent of the amount provided to construct broadband infrastructure in areas not served by minimum acceptable level of broadband service. This rule describes the procedures by which these agencies will consider projects eligible for special broadband authority.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: This rule is being issued to allow for immediate implementation of this program. Although this final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the rule. These comments must be submitted electronically and received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rural Development will consider these comments and the need for making any revisions as a result of these comments.

ADDRESSES: Comments may be submitted on this rule using the following method:

- *Electronically using the Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and, in the “Search Documents” box, enter the RUS-20-TELECOM-0022 or the RIN No. 0572-AC50, and click the “Search” button. To submit a comment, choose the “Comment Now!” button. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the “Help” tab at the top of the Home page. In the Docket ID column, select RUS-20-TELECOM-0022 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.
- *Other Information:* Additional information about Rural Development and its programs is available on the internet at <http://www.rd.usda.gov>.

FOR FURTHER INFORMATION CONTACT: For inquiries directly related to this rulemaking, contact Michele Brooks, Director, Regulations Management Division, Innovation Center, Rural Development, United States Department of Agriculture, 400 Independence Avenue SW, Washington DC 20250; Telephone: (202) 690.1078; Email: Michele.Brooks@usda.gov

SUPPLEMENTARY INFORMATION:

Executive Summary

Background

Rural Development (RD) is a mission area within the United States Department of Agriculture (USDA) comprised of the Rural Utilities Service (RUS), Rural Housing Service (RHS) and Rural Business-Cooperative Service (RBCS). RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. RD meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America. Part of rebuilding America's infrastructure is investing in rural broadband. Access to broadband has become essential for the social and economic benefits it provides to American residents, businesses, governments and communities. Broadband is crucial for increased health, educational and economic opportunities, as well as for job and business creation and growth. Broadband can help close the digital divide between rural and urban communities. RD provides a variety of loans and grants to build broadband networks and deliver service to rural households and businesses, provide capital for rural telecommunications companies and broadband providers.

On December 20, 2018, Congress passed The Agricultural Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115-334). In addition to sweeping changes in broadband program authorities, Congress provided for special use of funding from other RD programs for broadband deployment in Section 6210, “Smart Utility Authority for Broadband.” The provision granted the Secretary of Agriculture the discretion to allow recipients of grants, loans, or loan guarantees under RD programs to use not more than 10 percent of such funding to finance broadband infrastructure in areas not served by the minimum acceptable level of broadband service, as defined in this part, and which will not result in competitive harm to a current RD loan, grant, or loan guarantee. While Section 6210 only imposes the competitive harm restriction with respect to RUS loan, grant, and loan guarantee recipients, RD has determined to apply the restriction RD-wide, consistent with the statutory guidance on conflicts and duplications of awards provided in 7 USC 2204b(d)(2).

Rural community leaders, businesses and utilities must consider broadband availability and uses as they plan for, and implement, new and improved facilities and services to support community and economic development. While integration of communications technology into a planned investment can be used for internal purposes, it can also serve as a catalyst to rural broadband deployment efforts. For example, investment in health care, public safety and businesses can be enhanced or leveraged to expand the availability and utilization of advanced broadband in rural areas. Smart highways can facilitate vehicle to infrastructure communications to enhance driver safety; smart water systems can remotely detect contaminants before they pose a health risk; smart pipelines can report leaks and structural weaknesses before they become dangerous; and smart grid systems deliver enhanced security and energy efficiency, as well as speed recovery after an electric outage. Through this regulation, RD enables limited integration

of broadband deployment with other rural investments funded through its broad suite of programs. It does so without adding the burden of seeking funding through separate program areas.

Note however that this regulation is not intended to affect existing authority available under Rural Development programs that can fund smart utility and broadband infrastructure. Notwithstanding such authority, such funding will be subject to this regulation with respect to the public notice and reporting requirements contained in this part when retail broadband service is provided.

Purpose of the Regulatory Action

The purpose of this regulation is to implement Section 6210 of the 2018 Farm Bill designed to leverage the federal resources available for the deployment of broadband services in rural areas. Under Section 6210, the Secretary has discretion to allow recipients of RD grants, loan, or loan guarantees to a limited amount of funds for broadband purposes.

Rural Development Program Cross-References

This rulemaking includes modifying each of the individual program regulations to include a cross-reference to the new 7 CFR part 1980, Subpart M. These cross-references allow the Agencies to establish the necessary requirements in each of the included programs so that the

Agencies can successfully carry out the purposes of sec. 6210 of the 2018 Farm Bill. The following paragraphs provide a brief description of the included programs.

7 CFR PART 1710 - GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES. The Electric Program makes loans and loan guarantees to finance the construction of electric distribution, transmission, and generation facilities, including system improvements to improve electric service in rural areas, as well as demand side management, smart grid, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.

7 CFR PART 1779 - WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS. This program provides guaranteed loans to assist private lenders to provide affordable financing to qualified borrowers to improve access to clean, reliable water and waste disposal systems for households and businesses in rural areas.

7 CFR PART 1780 - WATER AND WASTE LOANS AND GRANTS. This program provides direct loans and grants to fund clean and reliable drinking water systems, sanitary sewage disposal, sanitary solid waste disposal, and storm water drainage to households and businesses in eligible rural areas.

7 CFR PART 1783 - REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM). This program helps qualified nonprofits create revolving loan funds that can provide financing to extend and improve water and waste disposal systems in rural areas.

7 CFR PART 1942, SUBPART A - COMMUNITY FACILITY LOANS. This program provides affordable funding to develop essential community facilities in rural areas. An essential

community facility is defined as a facility that provides an essential service to the local community for the orderly development of the community in a primarily rural area, and does not include private, commercial, or business undertakings.

7 CFR PART 3570, SUBPART B - COMMUNITY FACILITIES GRANT PROGRAM. The purpose of this program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds.

7 CFR PART 3575, SUBPART A - COMMUNITY PROGRAMS GUARANTEED LOANS. This program provides loan guarantees to eligible private lenders to help build essential community facilities in rural areas.

7 CFR PART 4274, SUBPART D - INTERMEDIARY RELENDING PROGRAM (IRP). This program provides 1 percent low-interest loans to local lenders or “intermediaries” that re-lend to businesses to improve economic conditions and create jobs in rural communities.

7 CFR PART 4279, SUBPART B - BUSINESS AND INDUSTRY LOANS. The Business and Industry Guaranteed Loan Program bolsters the availability of private credit by guaranteeing loans for rural businesses.

7 CFR PART 4279, SUBPART C - BIOREFINERY, RENEWABLE CHEMICAL, AND BIOBASED PRODUCT MANUFACTURING ASSISTANCE LOANS. This program, also known as the Section 9003 Program, provides loan guarantees to assist in the development of advanced biofuels, renewable chemicals, and biobased products manufacturing facilities.

7 CFR, PART 4280, SUBPART A - RURAL ECONOMIC DEVELOPMENT LOAN AND GRANT. This program, also known as REDLG, provides funding for rural projects through local utility organizations. USDA provides zero-interest loans to local utilities which they, in turn, pass through to local businesses (ultimate recipients) for projects that will create and retain employment in rural areas. The ultimate recipients repay the lending utility directly. The utility is then responsible for repayment to USDA.

7 CFR PART 4280, SUBPART B - RURAL ENERGY FOR AMERICA PROGRAM. This program, also known as REAP, provides guaranteed loan financing and grant funding to agricultural producers and rural small businesses to purchase or install renewable energy systems or make energy efficiency improvements.

7 CFR PART 4280, SUBPART E - RURAL BUSINESS DEVELOPMENT GRANTS. This program, also known as RBDG, is designed to provide technical assistance and training and other activities leading to the development or expansion of small and emerging private businesses that have fewer than 50 new workers and less than \$1 million in gross revenue, in rural areas.

Request for Comments

To enhance program delivery, RD seeks input from the public on this rule and will consider these comments and the need for making any revisions as a result of them. A final rule, if necessary, will be published in the **Federal Register**. Please refer to the **ADDRESSES** section on how to submit comments on this rule.

Executive Orders and other Certifications

Executive Order 12372, Intergovernmental Review

This rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034).

Executive Order 12866, Regulatory Planning and E.O. 13563, Improving Regulation and Regulatory Review

This rule has been determined to be not significant for purposes of Executive Order 12866 and E.O. 13563 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Management and Budget designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act Certification

RD has determined that the Regulatory Flexibility Act is not applicable to this rule because the Agency is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RD has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e)

of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. RD has assessed the impact of this rule on Indian tribes and determined that it does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with RD on this rule, please contact RD’s Native American Coordinator at (720) 544–2911 or AIAN@wdc.usda.gov.

Additionally, Rural Development recognizes the challenges of deploying broadband in tribal communities. Therefore, Rural Development will coordinate with USDA's Office of Tribal Relations to conduct at least one listening session to collect recommendations from tribes on how this program can help tribes address current broadband challenges, and gain additional insight into the unique economic, geographical and political realities that continue to impair access to affordable broadband infrastructure in many tribal communities.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is not significant under Executive Order 12886.

Information Collection and Recordkeeping Requirements

The Information Collection and Recordkeeping requirements contained in this rule have been approved by an emergency clearance under OMB Control Number 0572-0156. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), Rural Development invites comments on any aspect of this collection of information including suggestions for reducing the burden, for which the Agency intends to request approval from the Office of Management and Budget (OMB). Comments may be submitted regarding this information collection by the following method:

Comments may be submitted on this interim final rule using the following method:

- Electronically using the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and in the "Search Documents" box, enter the Docket Number RUS-20-TELECOM-0022 or the RIN No. 0572-AC50, and click the "Search"

button. To submit a comment, choose the “Comment Now!” button. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the “Help” tab at the top of the Home page. In the Docket ID column, select RUS-20-TELECOM-0022 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

Other Information: Additional information about Rural Development and its programs is available on the internet at <http://www.rd.usda.gov>.

Comments are invited on: (a) the accuracy of the agency’s estimate of burden including the validity of the methodology and assumption used; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Title: Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs.

OMB Control Number: 0572-0156.

Type of Request: New.

Abstract: The Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service, agencies that comprise the Rural Development Mission Area within the United States Department of Agriculture, are issuing this final rule to establish the authority authorized by Section 6210 of the Agriculture Improvement Act of 2018. This rule describes the procedures by which these agencies will consider projects eligible for special broadband authority and Smart Utility facilities.

The collection of information is necessary for RD to determine an applicant's ability to borrow under the terms of the 2018 Farm Bill and included programs and that the applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. As part of that submission, applicants are required to provide a service area map, where applicable, of their entire service territory.

Applicants seeking funding to finance the provision of retail broadband under the special broadband authority of this part are generally expected to comply with the rules related to broadband funding under Title VI of the Rural Electrification Act. To be considered for funding under special broadband authority, applicants must provide:

- (1) a description of the proposed retail broadband project;
- (2) a map, where applicable, of the proposed service area to be funded under smart utility authority of the applicant;
- (3) the amount and type of support requested by the applicant;
- (4) any other information required of similar applicants under Title VI of the Rural Electrification Act.

Fully Searchable Data Base -- The applicant information provided will be made part of a fully searchable database which could disclose to the public the information above.

Public Notice Survey – The agency will post a public notice filing on the agency’s website. Incumbent service providers in the area may respond to the public notice filing by providing a public notice response.

Estimated Number of Respondents: 53

Estimated Number of Responses per Respondent: 3

Estimated Total Annual Responses: 159

Estimate of Hours (Burden) per Response: 1.5 hours.

Estimated Total Annual Burden on Respondents: 239 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Branch 2 Regulations Management Division, Innovation Center, Rural Development, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250. Phone: 202–720–7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

RD is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Certification

This rule has been examined under RD environmental regulations at 7 CFR part 1970. RD has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.), an Environmental Impact Statement is not required.

Catalog of Federal Domestic Assistance

The programs eligible for special broadband authority under this rule are as follows:

- Business and Industry Loan Program - 10.768
- Biorefinery Assistance - 10.865
- Community Facilities Loans and Grants – 10.766
- Grant Program to Establish a Fund for Financing Water and Wastewater Projects - 10.864
- Intermediary Relending Program – 10.767
- Rural Business Development Grant - 10.351
- Rural Economic Development Loans and Grants – 10.854
- Rural Electrification Loans and Loan Guarantees – 10.850
- Rural Energy for America Program - 10.868
- Rural Rental Housing Loans - 10.415
- Sec. 538 Rural Rental Housing Guaranteed Loans – 10.438
- Water & Waste Disposal Systems for Rural Communities - 10.760

The Catalog of Federal Domestic Assistance Programs is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office,

Washington, DC, 20402–9325, telephone number (202) 512–1800 or online at

<https://beta.sam.gov/>

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Civil Rights Impact Analysis

RD has reviewed this rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that the program purpose, application submission and eligibility criteria, and the issuance of this rule will neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with a disability, by virtue of their race, color, national origin, sex, age, disability, marital, or familial status.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program,

political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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List of Subjects

7 CFR Part 1710

Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1779

Loan programs, Waste treatment and disposal, Water supply.

7 CFR Part 1780

Community development, Community facilities, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1783

Business and industry, Community development, Community facilities, Grant programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1942

Business and industry, Community facilities, Fire prevention, Grant programs-business, Grant programs-housing and community development, Grant programs-Indians, Indians, Loan programs-agriculture, Loan programs-housing and community development, Loan programs-Indians, Loan programs-natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1980

Agriculture, Business and industry, Community facilities, Credit, Disaster assistance, Livestock, Loan programs-agriculture, Loan programs-business, Loan programs-housing and community development, Low-and moderate-income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3570

Administrative practice and procedure, Fair housing, Grant programs-housing and community development, Housing, Low- and moderate-income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4274

Community development, Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4279

Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Business and industry, Energy, Grant programs-business, Loan programs-business, Rural areas.

Accordingly, for reasons set forth in the preamble, chapters XVII, XVIII, XXXV, and XLII of title 7 of the Code of Federal Regulations (CFR) are amended as follows:

Chapter XVII –Rural Utilities Service, Department of Agriculture

PART 1710 - GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

- 1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 1921 et seq., 6941 et seq.

Subpart C—Loan Purposes and Basic Policies

- 2. Amend § 1710.106 by adding paragraph (g) to read as follows:

§ 1710.106 Uses of loan funds.

* * * * *

(g) A borrower is permitted to use up to 10 percent of the amount provided under this part to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

- 3. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

- 4. Amend § 1779.24 by adding paragraph (f) to read as follows:

§ 1779.24 Eligible loan purposes.

* * * * *

(f) A borrower is permitted to use up to 10 percent of the amount provided under this part to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

PART 1780—WATER AND WASTE LOANS AND GRANTS

- 5. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

- 6. Amend § 1780.9 by adding paragraph (h) to read as follows:

§ 1780.9 Eligible loan and grant purposes.

* * * * *

(h) A borrower is permitted to use up to 10 percent of the amount provided under this part to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

PART 1783—REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)

- 7. The authority citation for part 1783 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(B).

Subpart A—General

- 8. Revise § 1783 to read as follows:

§ 1783.1 What is the purpose of the Revolving Fund Program?

This part sets forth the policies and procedures for making grants to qualified private, non-profit entities to capitalize revolving funds for the purpose of providing financing to eligible entities for pre-development costs associated with proposed water and wastewater projects or with existing water and wastewater systems, and short-term costs incurred for replacement equipment, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems. An eligible entity is permitted to use up to 10 percent of the amount provided under this part to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

PART 1942 – ASSOCIATIONS

- 9. The authority citation for part 1942 continues to read as follows

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

Subpart A -Community Facility Loans

- 10. Amend § 1942.17 by revising paragraph (d)(1)(i)(B)(5) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(5) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing. Additionally, a borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

* * * * *

PART 1980 – GENERAL

- 11. Add subpart M, consisting of §§ 1980.1201 through 1980.1210 to read as follows:

Subpart M - Special Authority to Enable Funding of Broadband and Smart Utility

Facilities Across Select Rural Development Programs

Sec.

1980.1201 Purpose.

1980.1202 Special broadband and smart utility facility funding.

1980.1203 Definitions.

1980.1204 Eligibility.

1980.1205 Eligible purposes.

1980.1206 Application process and public notice requirement.

1980.1207 Approval to provide retail broadband service.

1980.1208 Award procedures and compliance.

1980.1209 Reporting.

1980.1210 OMB Control Number

Authority: 7 USC 1981(e) and 7 USC 908

§ 1980.1201 Purpose.

This subpart establishes policies and procedures for the review, approval and servicing of projects authorized to use funding for broadband and smart utility facilities (Special Broadband Authority) in select Rural Development programs. This special broadband authority will leverage the federal resources available for the deployment broadband services in rural areas.

The Secretary has discretion to allow recipients of RD grants, loans, or loan guarantees to use a limited amount of funds for broadband purposes.

§ 1980.1202 Special broadband and smart utility facility funding.

(a) The Secretary, acting directly or through authority delegated to the RD agency heads, may allow a recipient of an RD grant, loan, or loan guarantee to use up to 10 percent of project funds for any purpose outlined in § 1980.1205 and in compliance with this part.

(b) Prior to exercising authority under this part, the Agency with a request for special broadband authority (the Awarding Agency) shall consult with the Administrator of the affected RD Agency to determine:

(1) If the provision of broadband service by the recipient (or another party under a wholesale broadband service agreement) would cause competitive harm to a current Rural Development borrower, grantee, or guaranteed lender with respect to an active project for broadband deployment and provision of services. With respect to a current RD awardee in the project service area that has significantly defaulted on, or not material complied with its award requirements, the affected RD agency may make a finding of no competitive harm unless it is necessary to protect the government's interest;

(2) If the recipient intends to use the funds for the provision of retail broadband service and, if so, assist the agency in providing public notice and receiving responses from existing service providers, as provided in this rule, so that a determination can be made as to whether the minimum acceptable level of broadband service exists in the service area at the time of the request; and

(3) If the recipient does not intend to provide broadband service, and the funded facilities will only be used for internal use, such as smart utility, there shall be no finding of competitive harm and the recipient shall be relieved of the public notice provision requirement of § 1980.1207 and reporting requirements of § 1980.1209. Note that recipients funding broadband facilities for internal use under an RD program's existing authority would not be subject to this part with respect to the 10 percent funding limitation; however, if such facilities are contemplated to provide retail broadband service in the future, the public notice requirements of § 1980.1206(b) and (c) will apply.

§ 1980.1203 Definitions.

Agency. One of the three Rural Development agencies, the Rural Housing Service, the Rural Business-Cooperative Service or the Rural Utilities Service.

Agency head. The Administrator of the applicable RD agency.

Awarding Agency. An agency which has received an application for special broadband authority or has approved an application for such authority.

Broadband service. Any technology identified by the Secretary as having the capacity to provide transmission facilities that enable a subscriber to originate and receive voice, data, graphics, and video.

Con Act. The Consolidated Farm and Rural Development Act of 1972, as codified and amended at 7 USC 1921 *et seq.*

Minimum acceptable level of broadband service. The minimum transmission capacity with respect to terrestrial service that will qualify as broadband service, as published by the RUS in the **Federal Register** pursuant to 7 CFR part 1738. If a new minimum transmission capacity is published in the **Federal Register** while a request for smart utility authority is pending,

broadband service for the purpose of reviewing the request will be defined by the minimum transmission capacity that was in effect at the time the request was received by the Agency.

Rural Development (RD). A mission area of the United States Department of Agriculture (USDA) made up of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBCS) and the Rural Utilities Service (RUS).

Retail broadband service. For the purposes of this subpart, retail broadband service means any broadband service that is provided to the public at a charge. Broadband Service which is used exclusively by the recipient for its own purposes and is not sold to the public is not retail broadband. Broadband service which is sold to other service providers through wholesale agreements shall also not be considered retail broadband service.

RE Act. The Rural Electrification Act of 1936, as codified and amended at 7 USC 901 *et seq.*

Secretary. The Secretary of Agriculture.

Special broadband authority. Approval by an RD program to use up to 10 percent of the proceeds of an RD loan, grant, or loan guarantee for the purposes of constructing, improving, or acquiring broadband facilities and equipment in rural areas, whether or not retail or wholesale broadband service will be provided.

Smart utility. The use of broadband facilities and equipment that is only available internally by a recipient during the economic life of the assets financed by an RD loan, grant, or loan guarantee.

§ 1980.1204 Eligibility.

Programs eligible to be considered for smart utility and broadband service authority include RD programs under the Rural Electrification Act and the Consolidated Farm and Rural Development Act. Programs included, but not limited to, are as follows:

(a) 7 CFR part 1710 – General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees;

(b) 7 CFR part 1779 – Water and Waste Disposal Programs Guaranteed Loans;

(c) 7 CFR part 1780 – Water and Waste Loans and Grants;

(d) 7 CFR part 1783 – Revolving Funds for Financing Water and Wastewater Projects (Revolving Fund Program);

(e) 7 CFR part 1942, subpart A -- Community Facility Loans;

(f) 7 CFR part 3575, subpart A – Community Programs Guaranteed Loans;

(g) 7 CFR part 3560 – Direct Multi-Family Housing Loans and Grants;

(h) 7 CFR part 3565 – Guaranteed Rural Rental Housing Program;

(i) 7 CFR part 3570, subpart B – Community Facilities Grant Program;

(j) 7 CFR part 4274, subpart D - Intermediary Relending Program (IRP);

(k) 7 CFR part 4279, subpart B – Business and Industry Loans;

(l) 7 CFR part 4279, subpart C - Biorefinery, Renewable Chemical and Biobased Product Manufacturing Assistance Loans;

(m) 7 CFR, part 4280, subpart A - Rural Economic Development Loan and Grant Programs;

(n) 7 CFR part 4280, subpart B – Rural Energy for American Program; and

(o) 7 CFR part 4280, subpart E - Rural Business Development Grants.

§ 1980.1205 Eligible purposes.

Recipients may use funds for the costs of the construction, improvement, and acquisition of broadband facilities and equipment in rural areas, as set forth in this part. Rural area shall be defined by the applicable program regulations.

§ 1980.1206 Application process and public notice requirement.

(a) *Initial notification to agency for all programs.* Applicants seeking to use program funds for eligible purposes under § 1980.1205 must inform the RD agency at the time of application, except for Smart Grid loans authorized under the RE Act and 7 CFR part 1710. This is to determine that sufficient funding is available in the applicable program to consider funding this special broadband authority in addition to the underlying RD project.

(b) *Notice for retail broadband.* All applicants that use special broadband authority to provide retail broadband service must provide the following information, which will be posted publicly on RUS' fully searchable website, in addition to the identity of the applicant and the status of the application:

- (1) A description of the proposed retail broadband project
- (2) A map of the proposed service area to be funded under smart utility authority of the applicant;
- (3) The amount and type of support requested by the applicant;
- (4) The estimated number and proportion of service points in the proposed service territory without fixed broadband service, whether terrestrial or wireless; and
- (5) Any other information required of the applicant in a funding notice.

(c) *Information available to the public for approved applications.* For applications that are approved for the provision of retail broadband service under the special broadband authority, the following information will be made available to the public:

(1) The information provided in paragraph (a) of this section;

(2) Each annual report required under §1980.1209, which will be redacted to protect any proprietary information; and

(3) Such other information as the Administrator of the RUS deems sufficient to allow the public to understand the assistance provided.

(d) *Alternative methods of public notice.* The Administrator of the RUS will provide instructions on the RUS website for alternative methods of public notice and responses by existing service providers related to projects seeking funding under the special broadband authority where the Administrator determines that existing procedures and systems used by applicants to RUS' broadband programs would be impracticable, costly, or impose excessive delay.

(e) *Additional requirements for guarantees, intermediaries and revolving loan programs.* In addition to paragraphs (a) through (d) of this section, participants and recipients of funds from eligible RD guarantee, intermediary, and revolving loan programs set forth in § 1980.1204 shall be subject to the following requirements:

(1) No funds may be issued by program participants to recipients for special broadband authority without written approval from the Awarding Agency.

(2) Recipients must apply for special broadband authority on a project-by-project basis through program participants. Program participants shall serve as the applicant to the Awarding Agency and shall be responsible for ensuring that the public notice, reporting and other

requirements of this part are contained in applicable agreements between the participant and the recipient.

§ 1980.1207 Approval to provide retail broadband service

(a) *Service area assessment.* For applicants requesting to provide retail broadband service under the special broadband authority, applications must be posted publicly for 45 days.

(1) During the public notice period, service providers may voluntarily submit information required by the RUS Administrator onto the agency's mapping tool, or alternate methods if determined by the RUS Administrator under § 1980.1206(d). Information submitted by service providers shall be exempt from disclosure pursuant to 5 USC 552(b)(2)(B).552.

(2) If no broadband service provider submits information under paragraph (a)(1) of this section, the agency shall consider the number of providers in the proposed service area to be established by using any other data regarding the availability of broadband service that the RUS may collect or obtain through reasonable efforts.

(b) *Use of funds.* After review of information submitted from service providers, if any, and all available data on broadband availability, if the RUS determines that the minimum acceptable level of broadband service is available in the proposed retail service area, the Awarding Agency shall not approve the use of funds for such purpose. The Awarding Agency, however, may approve the use of funds for retail broadband service if:

(1) Areas with the minimum acceptable level of broadband service are eliminated from the proposed service area; and

(2) The applicant covenants that it will not provide service in these areas with funds from the Awarding Agency.

(c) *Use of Funds for wholesale broadband service.* For applicants requesting that funds be used for wholesale broadband service, the applicant must agree:

(1) To publicly advertise in the service area that broadband service is available at wholesale to any service provider; and

(2) That the same wholesale contract will be used for all service providers requesting wholesale service and offered at the same per unit price.

§ 1980.1208 Award procedures and compliance.

(a) The Awarding Agency will inform applicants seeking consideration of funding under this part of the agency's disposition of the applicant's request;

(b) Except as provided in § 1980.1206(e), awards made under this part shall be managed and serviced by the Awarding Agency;

(c) Except as provided in § 1980.1206(e), the Agency shall be responsible for oversight and compliance of projects utilizing authority under this part;

(d) Requirements for providing retail broadband service or wholesale broadband service under §§ 1980.1206, 1980.1207, and this section shall be made part of the applicable loan or grant agreement between the recipient and the Awarding Agency, or, with respect to guarantees and intermediaries, between the program participants and the recipients;

(e) The applicable agreement must provide that non-compliance with this part or use of funds for retail broadband service or wholesale broadband service without having received agency authority to do so as required in this part, shall:

(1) Be an automatic event of default under the applicable agreement; and

(2) Require that the associated loan or grant funds used in violation of this part be disallowed or returned immediately to the awarding agency or to the program participant for eligible relending.

§ 1980.1209 Reporting.

For three years starting the first January 31st after completion of the broadband project, recipients of funds used for retail broadband service under this part must submit the following information each year utilizing RUS' online reporting system:

- (a) Existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
- (b) The estimated number of end users who are currently using or forecast to use the new or upgraded infrastructure;
- (c) The progress towards fulfilling the objectives for which the assistance was granted;
- (d) The number and geospatial location of residences and businesses that will receive new broadband service;
- (e) The speed and price of the Recipient's broadband service offerings; and
- (f) The average price of broadband service in the project's service area.

§ 1980.1211 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572-0156.

Chapter XXXV—Rural Housing Service, Department of Agriculture

PART 3570—COMMUNITY PROGRAMS

12. The authority citation for part 3570 continues to read as follows:

Authority: 64 FR 32388, June 17, 1999, unless otherwise noted.

Subpart B—Community Facilities Grant Program

- 13. Amend §3570.62 by adding paragraph (a)(2)(iii) to read as follows:

§ 3570.62 Use of grant funds

* * * * *

(a) * * *

(2) * * *

(iii) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

* * * * *

PART 3575—GENERAL

- 14. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

- 15. Amend § 3575.24 by adding paragraph (b)(5) to read as follows:

§ 3575.24 Eligible loan purposes.

* * * * *

(b) * * *

(5) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980 , subpart M.

**Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service,
Department of Agriculture**

PART 4274—DIRECT AND INSURED LOANMAKING

- 16. The authority citation for part 4274 continues to read as follows:

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

Subpart D—Intermediary Relending Program (IRP)

- 17. Amend §4274.314 by adding paragraph (b)(16) to read as follows:

§ 4274.314 Loan purposes.

* * * * *

(b) * * *

(16) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

PART 4279—GUARANTEED LOANMAKING

- 18. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 310B(a)(2); and 7 U.S.C 8103.

Subpart B—Business and Industry Loans

- 19. Amend § 4279.113 by adding paragraph (z) to read as follows:

§ 4279.113 Eligible uses of funds

* * * * *

(z) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing

Assistance Loans

- 20. Amend § 4279.210 by adding paragraph (d)(10) to read as follows:

§4279.210 Project eligibility requirements.

* * * * *

(d) * * *

(10) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

* * * * *

PART 4280—LOANS AND GRANTS

- 21. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 1932(c).

Subpart A—Rural Economic Development Loan and Grant Programs

- 22. Amend §4280.15 by adding paragraph (i) to read as follows:

§ 4280.15 Ultimate recipient projects eligible for rural economic development loan funding.

* * * * *

(i) A borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

Subpart B—Rural Energy for America Program

- 23. Amend § 4280.101 by adding paragraph (c) to read as follows:

§ 4280.101 Purpose.

* * * * *

(c) Grants or guaranteed loans, or a combination grant and guaranteed loan to a borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

Subpart E—Rural Business Development Grants

- 24. Amend § 4280.417 by adding paragraph (e) to read as follows:

§4280.417 Project eligibility.

* * * * *

(e) An applicant is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

Bette B. Brand,
Deputy Under Secretary, Rural Development.