

§§ 1779.10–1779.11

index.htm), the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate any adverse environmental effects. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design will incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. The lender must assist the Agency in ensuring that the borrower complies with the Agency's environmental review process and implements any mitigation measure identified in the environmental review document or Conditional Commitment for Guarantee. This assistance includes ensuring that the borrower takes no action (for example, initiation of construction) or incur any obligations that will have an adverse environmental impact or limit the range of alternatives to be considered prior to completion of the environmental review process. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to the approval of the applicant's request or commitment of Agency resources.

§§ 1779.10–1779.11 [Reserved]

§ 1779.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties in interest. Agency inspections do not relieve any parties in interest of

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their responsibilities to conduct necessary inspections.

§ 1779.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 1779.14–1779.16 [Reserved]

§ 1779.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1779.18–1779.19 [Reserved]

§ 1779.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.* (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They