

Rules and Regulations

Federal Register

Vol. 61, No. 23

Friday, February 2, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1901, 1940, 1951, and 2003

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Chapter XLII and Part 4284

RIN 0570-AA02

Rural Technology and Cooperative Development Grants

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

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulations for Rural Technology and Cooperative Development Grants (RTCDG) and amends other regulations utilized by RBS in administering its grant programs. This action is necessary to comply with legislation which authorizes grants for establishing and operating centers for rural technology or cooperative development. The intended effect of this action is to implement this grant program.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph R. Binder, Director, Specialty Lenders Division, Rural Business-Cooperative Service, US Department of Agriculture, Room 2245, South Agriculture Building, 14th and Independence Ave. SW, Washington, D.C. 20250. Telephone (202) 720-1400.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is not a "significant regulatory action."

Environmental Impact Statement

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and; (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR, part 1900, subpart B, or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, whichever is applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.771 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. RBS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J.

National Performance Review

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

Unfunded Mandate Reform Act of 1995

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection and record keeping requirements contained in these regulations were previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S. C. Chapter 35 and have been assigned OMB control numbers 0575-0018, 0575-0066, and 0570-0006, in accordance with the Paperwork Reduction Act of 1980. This final rule does not impose any new information or record keeping requirements from those approved by OMB.

Background

The RTCDG program was established by interim rule on August 12, 1994 (59 Fed. Reg. 41386-98). The public comment period ended October 11, 1994. The RTCDG program is authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1932 Act). The primary objective of the program is to improve the economic condition of rural areas. The RTCDG program will achieve this objective by supporting the creation or enhancement of institutions including cooperatives capable of

promoting the development and commercialization of new services, products, processes, and enterprises. The program is administered through Rural Economic and Community Development (RECD) State Offices acting on behalf of RBS. RBS, formerly known as the Rural Business and Cooperative Development Service, is the successor of the Rural Development Administration as to the RTCDG program pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354).

Discussion of Public Comments

A total of 14 commenters offered comments to the interim rule. The commenters represented the federal agencies, Arkansas Enterprise Groups, National Rural Cooperative Development Task Force, New York Department of City & Regional Planning, Winrock International in Arkansas, Southwest Grain of North Dakota, The Maine Ambulatory Care Coalition, and The North Dakota Associations of Rural Electric and Telephone Cooperatives.

Several respondents objected to the kinds of demographic data required because they believe it was not available, did not accurately represent, or only partially represented the distressed economic conditions of rural areas. The Agency agrees and, therefore, amends the regulation to allow applicants to use their choice of data as long as they reflect the intent of serving economically distressed communities and the data are from established official independent sources. This change will give applicants flexibility to use available data that best describe the conditions impacted by their proposal. The Agency, however, still will give preference in selecting those projects demonstrating their ability to effectively serve rural areas with few rural industries and agribusinesses, high levels of unemployment or underemployment, high rates of outmigration of people, businesses, and industries, or low levels of per capita income. This preferential treatment is required by Conact § 310B (f) (3).

Three respondents objected to the use of the terms, "industry" and "agribusiness" because there were no definitions provided and there is no consistent source of comprehensive data available. These terms also did not explain how to consider other points such as temporary businesses, and small vs. large businesses. These comments were adopted to allow applicants to use their choice of data with regard to industries and agribusinesses as long as they provided an accurate, comprehensive description of the

economic conditions of their community and their data are secured from established official independent sources.

Three respondents recommended that a higher score or priority be given to applicants who collaborate with others. The comment was not adopted because collaboration will strengthen the preapplication in all or most of the listed selection criteria so that it would not be a distinguishing factor. One respondent suggested that a higher priority be given to regional and multistate projects. The rule was not amended to adopt this comment because it would work unfairly against those organizations which do not have multistate responsibilities. Under the final rule there is no prohibition against multistate projects. In fact, applicants who propose multistate projects may get more points because of their project's ability to demonstrate national applicability of innovations developed under the program. One of the preferential selection criteria is the transferability or demonstration value of the project in helping rural areas outside the project area.

One respondent suggested that a higher priority be given to applicants in states who have not received RTCDG grants. This comment was not adopted because it would work unfairly against organizations which produce multiple quality applications.

One respondent suggested that a higher priority be given to organizations which administer multiple projects through several organizations. Another respondent suggested that fewer points be given to organizations which administer multiple projects. These comments were not adopted because the Agency sees no clear advantages or disadvantages to funding organizations who administer multiple projects. The possibility exists that organizations which administer multiple projects would have a broader perspective, a better ability to disseminate their innovations nationally, and a stronger capacity to manage projects effectively; however, the possibility also exists that this organization would increase overhead costs and provide fewer resources to benefit rural communities. Thus, the Agency finds no basis for treating multiple project applicants differently than single project applicants.

Two respondents suggested that a higher priority be given to organizations with demonstrated ability to administer effective projects. The Agency agrees and has adopted the comment as part of the criteria for scoring. Specifically, the Agency will consider the experience,

organizational skills, and background needed to successfully carry out the project.

One respondent suggested that the requirement for 25 percent matching funds be limited to administrative costs. The rule was not amended because program funds are limited and it is believed that organizations need to match some of the funding to demonstrate local support for the application.

One respondent suggested that all projects must be exclusively rural. The comment was not adopted. The projects will serve rural areas; however, there is nothing wrong with indirect benefits supporting urban interests as well as rural.

Two respondents recommended that the requirement to secure "evidence of support" for the project from all of the affected local governmental bodies be dropped. The rule was not amended because all affected governmental bodies should be on record as supporting the project. The time spent documenting this support will be worth the time spent in order to avoid misunderstandings later.

One respondent recommended that projects be selected in all major rural areas of the United States. The comment was not adopted in order to allow for the highest quality preapplications to be selected.

One respondent recommended that a different theme be selected each year. The Agency agrees that this is a desirable policy and plans to adopt it to the extent possible in keeping with rule-making requirements of the Administrative Procedures Act.

One respondent recommended that the preapplications be sent to the RECD State Office for initial processing to determine eligibility and to ensure that all necessary forms were in place before sending the preapplications to the RBS National Office for scoring and selection. The RBS National Office will follow this process. This is a better process because the RECD State Office employees know the area, applicants, and conditions of the communities better and can advise the National Office. Organizations who prepare multistate preapplications are to submit their preapplications through the state where the organization's headquarters are located.

One respondent commented that using RTCDG funds for revolving loans should be given a low priority. The Agency agrees that the RTCDG program should emphasize those statutory factors that will benefit economically distressed communities. However, Conact § 310B (f) (2) (C) specifically

provides that an acceptable center activity is a program providing loans and grants to individuals, small businesses, and cooperatives in rural areas served by the center for purposes of generating, evaluating, developing, and commercializing new products, processes, or services. The Agency will continue to carry out this mandate in its review and selection process.

In addition to the changes made in response to public comments, the Agency has made some administrative revisions. The Agency has revised its selection criteria to provide for Administrator's points. The Administrator may give emphasis to geographical distribution, interagency cooperation, or other appropriate factors. This change will allow the Administrator the flexibility to choose the best applicants for limited grant funds.

The Agency has added definitions for "center" and "subcenter" for clarity.

The Agency also has added references to the applicability of recently adopted departmental regulations to RTCDG grants made to nonprofit institutions. The Uniform Administrative Requirements For Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, 7 CFR part 3019, were adopted by interim final rule (60 Fed. Reg. 44122-39) on August 24, 1995.

The final rule removes the points from the selection criteria. The points assigned to each of the selection criteria will be given in the Federal Register notice to be published in advance each year. This will allow the Agency to adjust the priorities given to each of the preferential factors on a yearly basis to best meet the objectives set forth in the regulations.

All references to Farmers Home Administration in the organization procedures of 7 CFR part 2003 will be left in place but will be revised in the near future. At that time they will be changed to reflect the current names of the new agencies which were formed as a result of the reorganization.

Internal management procedures have been removed from the regulations but will appear in internal agency instructions.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant

programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 2003

Organization and functions (Government agencies).

7 CFR Part 4284

Business and Industry, Grant programs—Housing and community development, Rural areas.

Accordingly, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901, subpart E, is revised as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480, 2942.

Subpart E—Civil Rights Compliance Requirements *C*

2. Section 1901.204 is amended by revising paragraph (a)(27) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(27) Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.590 [Removed and Reserved]

4. Section 1940.590 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

5. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

6. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Rural Economic and Community Development (RECD) mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants in subpart E of part 4284 of this title; and Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title. RECD State Offices act on behalf of the Rural Housing Service, the Rural Business-Cooperative Service and the Rural Utilities Service as to loan and grant programs formerly administered by the Farmers Home Administration, the Rural Development Administration, and the Rural Electrification Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

* * * * *

PART 2003—ORGANIZATION

7. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; Public Law 100-82, 101 Stat. 545.

Subpart A—Functional Organization of the Farmers Home Administration or its Successor Agency Under Public Law 103-354

Exhibit A to part 2003 [Amended]

8. In part 2003, Exhibit A of subpart A, paragraph 2, under the heading of Assistant Administrator—Community and Business Programs is amended by revising “rural technology development grants” to read “rural technology and cooperative development grants.”

9. The heading of 7 CFR chapter XLII is revised to read as follows:

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

Chapter XLII (Parts 4284 and 4285) [Amended]

10. In 7 CFR chapter XLII (consisting of parts 4284 and 4285), everywhere “Farmers Home Administration”, “FmHA”, “Rural Development Administration”, or “RDA” appear, except “FmHA Instruction” and “Form FmHA” references, add the phrase “or its successor agency” immediately thereafter.

PART 4284—GRANTS

11. The authority citation for part 4284 is revised to read as follows:

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

12–13. Subpart F of part 4284 is revised to read as follows:

Subpart F—Rural Technology and Cooperative Development Grants

Sec.

- 4284.501 Purpose.
- 4284.502 Policy.
- 4284.503 [Reserved]
- 4284.504 Definitions.
- 4284.505 Applicant eligibility.
- 4284.506–4284.514 [Reserved]
- 4284.515 Grant purposes.
- 4284.516 Ineligible grant purposes.
- 4284.517–4284.526 [Reserved]
- 4284.527 Other considerations.
- 4284.528 Application processing.
- 4284.529–4284.539 [Reserved]
- 4284.540 Grant selection criteria.
- 4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.
- 4284.542–4284.556 [Reserved]
- 4284.557 Fund disbursement.
- 4284.558 Reporting.
- 4284.559–4284.570 [Reserved]
- 4284.571 Audit requirements.
- 4284.572 Grant servicing.
- 4284.573 Programmatic changes.
- 4284.574 Subsequent grants.
- 4284.575 Grant suspension, termination, and cancellation.
- 4284.576–4284.586 [Reserved]
- 4284.587 Exception authority.
- 4284.588–4284.599 [Reserved]
- 4284.600 OMB control number.

Subpart F—Rural Technology and Cooperative Development Grants

§ 4284.501 Purpose.

(a) This subpart outlines the Rural Business-Cooperative Service's (RBS) policies and authorizations and sets forth procedures to provide grants for technology and cooperative development in rural areas.

(b) Grants for establishing and operating centers for rural technology or cooperative development will be for the primary purpose of improving the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new services and products that can be produced or provided in rural areas; new processes that can be utilized in the production of products in rural areas; and new enterprises or cooperatives that can add value to on-farm production through processing or marketing.

(c) Copies of all forms and Instructions referenced in this subpart are available in the RBS National Office or any RECD State Office.

§ 4284.502 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Native American tribes within the state regardless of whether state development strategies include Indian reservations within the state's boundaries. Native American tribes residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of RECD servicing offices.

§ 4284.503 [Reserved]

§ 4284.504 Definitions.

Approval official—Any authorized agency official.

Center—The place established and operated by the grantee for rural technology or cooperative development.

Cooperative—An association organized to provide a specific service with open membership, equality in ownership and control, limited return on members' capital, and equitable methods to distribute any excess earnings back to its members.

Cooperative development—The startup, expansion, or operational improvement of a cooperative which will promote the development of new services and products that can be

produced or provided in rural areas, new processes that can be utilized in the production of products in rural areas, or new enterprises that can add value to on-farm production through processing or marketing. Operational improvement includes making the cooperative more efficient, better managed, etc.

Economic development—The growth of an area as evidenced by increases in total income, employment opportunities, decreased outmigration of populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Nonprofit institution—Any organization or entity, including an accredited institution of higher education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Project—The undertaking for which funds will be used to develop or operate a technology or cooperative development center.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal and state reservation or other federally recognized Indian tribe in rural areas.

RBS—The Rural Business-Cooperative Service, an agency of the United States Department of Agriculture, or a successor agency.

RECD—Rural Economic and Community Development mission area.

Rural and rural area—Includes all territory of a state that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Servicing office. Any RECD State Office or successor office.

Small business—A business which does not exceed the maximum number of employees or annual receipts allowed for a concern (including its affiliates) to be considered small according to the established size standards for Small Business Administration (SBA) assistance as set forth in § 121.601, 13 CFR, part 121. The business may be operated on a profit or nonprofit basis but must rely primarily on revenues of the business for operation rather than outside support.

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

Subcenter—A unit of a center acting under the same direction as and having a purpose consistent with that of the center.

Technology—The application of science to industrial or commercial objectives. The entire body of methods and material used to achieve such objectives.

Technology development—The creation of new technology or the use and application of existing technology to promote the development and commercialization of new products, new processes, and new services that can be produced or provided in rural areas.

Urbanized area—An area immediately adjacent to a city having a population of 50,000 or more which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated to extend from the contiguous boundaries to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city, but are located across a river from such city, are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

Urbanizing area—A community which is not now, or within the foreseeable future not likely to be, clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g. government; educational, health, and recreational facilities; and

business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized areas.

§ 4284.505 Applicant eligibility.

(a) Grants may be made to public bodies or nonprofit institutions.

(b) Grants may be made for technology and cooperative development in "rural areas." In determining whether an area is rural, the Agency will determine whether the area is urbanized or urbanizing and then the population density per square mile. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries or land set aside for such purposes will be excluded.

(c) An outstanding judgement obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgement is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgement.

§§ 4284.506–4284.514 [Reserved]

§ 4284.515 Grant purposes.

Grant funds may be used to pay up to 75 percent of the costs for establishing or operating centers for rural technology or cooperative development. Applicant's contribution may be in cash or third party in-kind contribution in accordance with parts 3015, 3016 and 3019 of this title and must be from nonfederal funds except that a loan from another federal source can be used for the applicant's contribution. Grant funds may be used for, but are not limited to, the following purposes:

(a) Technology research, investigations, and basic feasibility studies in any field or discipline for the purpose of generating principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives, agribusinesses, and other persons or entities in rural areas served by such centers in the development and commercialization of new products, processes, or services.

(b) The collection, interpretation, and dissemination of principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives,

agribusinesses, and other persons or entities in rural areas served by the center in the development and commercialization of new products, processes, or services.

(c) Providing training and instruction for individuals residing in rural areas served by the center with respect to the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new products, processes, or services.

(d) Providing loans and grants to individuals, small businesses and cooperatives in rural areas for purposes of generating, evaluating, developing and commercializing new products, processes, or services.

(e) Providing technical assistance and advisory services to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing and commercializing new products, processes, or services.

(f) Providing research and support to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing new agricultural enterprises to add value to on-farm production through processing or marketing.

(g) Paying up to 75 percent of the administrative costs of the applicant in carrying out its projects.

(h) Equipment and materials necessary to carry out other eligible grant purposes under this section.

§ 4284.516 Ineligible grant purposes.

Grant funds may not be used to:

(a) Pay more than 75 percent of project costs.

(b) Pay more than 75 percent of administrative costs.

(c) Duplicate current services or replace or substitute support previously provided.

(d) Pay costs of preparing the application package for funding under this program.

(e) Pay costs incurred prior to the effective date of the grant made under this subpart.

(f) Pay for building construction or the purchase of real estate or vehicles; improving or renovation of office space; or repair or maintenance of privately-owned property.

(g) Fund political activities.

(h) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§§ 4284.517–4284.526 [Reserved]**§ 4284.527 Other considerations.**

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin as outlined in subpart E of part 1901 of this title. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap; the requirements of the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, Pub. L. 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations.

(b) Environmental requirements.

(1) *General applicability.* Unless specifically modified by this section, the requirements of subpart G of part 1940 of this title apply to this subpart. For example, the Agency's general and specific environmental policies contained in §§ 1940.303 and 1940.304 of subpart G of part 1940 of this title must be met. Although the purpose of the grant program established by this subpart is to improve business, industry, and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmland and forest lands, prime rangelands, wetland, and flood plains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely impact on the environment.

(2) *Technical assistance.* An application for a technical assistance project is generally excluded from the environmental review process by § 1940.333 of subpart G of part 1940 of this title. However, as further specified in that section, the grantee of a technical assistance grant, in the process of providing technical assistance, must consider and generally document within their plans the potential environmental impacts of the plan and recommendations provided to the recipient of the technical assistance.

(3) *Applications for grants to provide financial assistance to third-party recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–20, "Request for

Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. The Agency will review the preapplication, supporting materials, and any required Forms FmHA 1940–20 and initiate an appropriate environmental review for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time from the information submitted. Because the Agency's approval of this type of grant application does not constitute a commitment to the use of grant funds for any identified third-party projects (see § 4284.541 of this subpart), no public notification requirements will apply to the preapplication. After the grant is approved, each third-party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title prior to the Agency providing its consent to the grantee to assist the third-party project. If the preapplication reflects only one specific project which is specifically identified as the third-party recipient for financial assistance, the Agency may perform the appropriate environmental assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements.

(c) *Government wide debarment and suspension (non-procurement) and requirements for drug-free workplace.* Persons who are disbarred or suspended are excluded from federal assistance and benefits including grants under this subpart. Grantees must certify that they will provide a drug free workplace. See part 3017 of this title and FmHA Instruction 1940–M (available in any RECD State Office) for further guidance.

(d) *Restrictions on lobbying.* All grants must comply with the lobbying restrictions set forth in part 3018 of this title.

(e) *Excess capacity or transfer of employment.*

(1) If a proposed grant is for more than \$1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide written support for an Agency determination that the proposal will not result in a project

which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations, or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written support will consist of a resolution from the applicant and Form FmHA 449–22, "Certification of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use Guide 2 of subpart G of part 1942 of this title (available in any RECD State Office) as an example in preparing the resolution. Future occupants of the site must be certified by the Department of Labor (DOL) as outlined in paragraph (e)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) [Reserved]

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of paragraph (e) (1) of this section have not been met. Information for obtaining this certification will be submitted, in writing, by the applicant to RECD. Grant approval may be given and funds may be obligated, subject to the DOL certification being received, provided RBS has made its own separate determinations of paragraphs (e) (1) (i) and (ii) of this section when applicable.

(f) *Management assistance.* Grant recipients will be supervised, as necessary, to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to, parts 3015, 3016, 3017 and 3019 of this title, as appropriate, and established RBS guidelines.

(g) *National Historic Preservation Act of 1966*. All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this title.

(h) *Uniform Relocation Assistance and Real Property Acquisition Policies Act*. All projects must comply with the requirements set forth in part 21 of this title.

(i) *Flood plains and wetlands*. All projects must comply with Executive Order 11988, "Flood Plain Management," and Executive Order 11990, "Protection of Wetlands."

(j) *Flood or mudslide hazard area precautions*. If the grantee financed project is in a flood or mudslide area, flood or mudslide insurance must be provided.

(k) *Termination of Federal requirements*. Once the grantee has provided assistance with project loans in an amount equal to the grant provided by RBS, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the RTCDG funds. Such new projects shall not be considered as being derived from federal funds. The purposes of such new projects, however, shall be consistent with these regulations.

(l) *Intergovernmental review*. Grant projects are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. A loan fund established in whole, or in part, with grant funds will also be considered a project for the purpose of intergovernmental review as well as the specific projects funded with grant funds from the RTCDG funds. For each project to be assisted with a grant under this subpart and which the state has elected to review under their intergovernmental review process, the state point of contact must be notified. Notification, in the form of a project description, can be initiated by the grantee. Any comments from the state must be included with the grantee's request to use RBS grant funds for the specific project. Prior to RBS's decision on the request, compliance with requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be completed in accordance with "Intergovernmental Review of Department of Agriculture Programs and Activities," subpart V of part 3015 of this title (see FmHA Instruction 1940-J, available in any RECD State Office).

§ 4284.528 Application processing.

(a) Preapplications.

(1) Applicants will file an original and one copy of Standard Form (SF)-424.1, "Application for Federal Assistance (For Non-construction)," with the appropriate RECD State Office. This form is available in any RECD State Office.

(2) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority to perform the proposed activities under the grant.

(ii) Latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred where one is reasonably obtainable.

(iii) Estimated breakdown of total costs, including costs to be funded by the applicant as well as other sources. Other sources should be identified. Certification must be provided from the applicant that its matching share to the project is available and will be used for the project. The matching share must meet the requirements of parts 3015, 3016 and 3019 of this title.

Certifications from an authorized representative of each source of funds must be provided indicating that funds are available and will be used for the proposed project.

(iv) Budget and description of the accounting system in place or proposed.

(v) Area to be served, identifying each government unit, i.e., town, county, etc., if affected by the proposed project and evidence of support and concurrence in the proposed project from the affected local governmental bodies as evidenced by a resolution or a written statement from the chief elected local official.

(vi) Evidence that the proposed project will serve or have the potential to serve economically distressed areas supported by established official independent sources of data which are sufficient to verify the extent to which economically distressed conditions exist. (Preference will be given in selecting projects demonstrating their ability to effectively serve rural areas with few rural industries and agribusinesses, high levels of unemployment or underemployment, high rates of outmigration of people, businesses, and industries, or low levels of per capita income).

(vii) A listing of businesses to be assisted.

(viii) Applicant's experience, including experience of key staff members and persons who will be providing the proposed services and managing the project.

(ix) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(x) Method and rationale used to select the areas or businesses that will receive the service.

(xi) Brief description of how the work will be performed and whether organizational staff, consultants or contractors will be used.

(xii) Evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished.

(xiii) A brief plan which contains the following provisions and describes how the applicant will meet those provisions:

(A) A provision that substantiates that the applicant will effectively serve rural areas in the United States.

(B) A provision that the primary objective of the applicant will be to improve the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of:

(1) New services and products that can be produced or provided in rural areas;

(2) New processes that can be utilized in the production of products in rural areas; and

(3) New enterprises that can add value to on-farm production through processing or marketing.

(C) Copies of the established official independent sources of data need to be included in the plan along with any documentation that more fully explains the data produced, methodology, source, or interpretation of the data.

(D) A description of the activities that the applicant will carry out to accomplish such objective.

(E) A description of the proposed activities to be funded under this subpart.

(F) A description of the contributions that the applicant's proposed activities are likely to make to the improvement of the economic conditions of the rural areas served by the applicant.

(G) Provisions that the applicant, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance

of representatives of business, industry, educational institutions, the federal government, and state and local governments.

(H) Provisions that the applicant will consult with any college or university administering Extension Service programs and cooperate with such college or university in the coordination of the center's activities and programs.

(I) Provisions that the applicant will take all practicable steps to develop continuing sources of financial support for the center, particularly from sources in the private sector.

(J) Provisions for:

(1) Monitoring and evaluating its activities; and

(2) Accounting for money received and expended by the institution under this subpart.

(K) Provisions that the applicant will provide for the optimal application of technology and cooperative development in rural areas, especially those areas adversely affected by agricultural economic conditions, through the establishment of demonstration projects and subcenters for:

(1) Rural technology development where the technology can be implemented by communities, community colleges, businesses, cooperatives, and other institutions; or

(2) Cooperative development where such development can be implemented by cooperatives to improve local economic conditions.

(xiv) If grant funds are to be used for the purpose of making loans or grants to individuals, small businesses, or cooperatives (ultimate recipients) in rural areas for eligible purposes under this subpart, the preapplication must include the agreement proposed to be used between the applicant and the ultimate recipients which includes the following:

(A) An assurance that the responsibilities of the grantee, as a recipient of grant funds under this subpart, are passed on to the ultimate recipient and the ultimate recipient understands its responsibilities to comply with the requirements set forth in this subpart, including parts 3015, 3016, and 3019 of this title.

(B) Provisions that the ultimate recipient will comply with debarment and suspension requirements contained in part 3017 of this title and will execute Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."

(C) Provisions that the ultimate recipient will execute Forms FmHA 400-1, "Equal Opportunity Agreement,"

and FmHA 400-4, "Assurance Agreement."

(D) Documentation that the ultimate recipient understands its responsibilities to the applicant.

(E) Documentation that the applicant understands its responsibilities in monitoring the ultimate recipient's activities under the grant and the applicant's plan for such monitoring.

(F) Documentation when other references or sources of information are used, along with copies if possible, to provide dates, addresses, page numbers and explanations of how interpretations are made to substantiate that such things as economically distressed conditions do exist.

(G) Narrative addressing all items in § 4284.540 (a) of this subpart regarding grant selection criteria.

(b) *Applications.* Upon notification that the applicant has been selected for funding, the following will be submitted to the RECD by the applicant:

(1) SF 424.1, "Application for Federal Assistance (for Non-construction)".

(2) Proposed scope of work, detailing the proposed activities to be accomplished and time frames for completion of each activity.

(3) Proposed budget, including source and amount of applicant contribution and any other funding sources for the proposed project.

(4) Other information requested by RECD to make a grant award determination.

(c) *Applicant response.* If the applicant fails to submit the application and related material by the date shown on the notice, RECD may discontinue consideration of the preapplication.

§§ 4284.529–4284.539 [Reserved]

§ 4284.540 Grant selection criteria.

Grants will be awarded under this subpart on a competitive basis. The priorities described in this paragraph will be used by RBS to rate preapplications. Preference will be given to applicants demonstrating factors in paragraphs (a) (4) and (5) of this section. RBS' review of preapplications will include the complete preapplication package submitted to the RECD State Office. Points will be distributed according to ranking as compared with other preapplications on hand. Recognizing that a wide variety of individual strategies and approaches may be used to promote economic development and that specific needs vary according to geographic region and over time, the Agency has determined to publish an informational notice annually in the Federal Register which will contain

those objective strategies or approaches, consistent with this subpart with weighted priorities, that the Agency wishes to emphasize during that year. The notice will establish the period of time that the Agency will accept preapplications for consideration of that fiscal year's funding.

(a) The selection criteria are as follows:

(1) Likelihood of project being effective in achieving one or more of the following: technological innovation, adaptation of existing technology, cooperative development, commercialization of new services and products, and promotion of new processes and enterprises.

(2) Innovativeness or originality of project in addressing authorized grant purposes.

(3) Experience, organizational skills, and background that are needed for applicant to successfully carry out project.

(4) Transferability or demonstration value of project to help rural areas outside of project area.

(5) Ability of project to contribute to the improvement of economic conditions in rural areas with one or more of the following: few rural industries and agribusinesses; high levels of unemployment or underemployment; high rates of outmigration of people, businesses, industries; and low levels of per capita income.

(6) The Administrator may award discretionary points to focus on geographical distribution, interagency cooperation or other appropriate factors.

(b) Each preapplication for assistance will be carefully reviewed in accordance with the priorities established in this section. A priority rating will be assigned to each preapplication. Preapplications selected for funding will be based on the priority rating assigned each preapplication and the total funds available. All preapplications submitted for funding should contain sufficient information to permit RBS to complete a thorough priority rating.

§ 4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.

The grantee will execute all documents required by the Agency to make a grant under this subpart.

§§ 4284.542–4284.556 [Reserved]

§ 4284.557 Fund disbursement.

Grants will be disbursed as follows:

(a) An SF-270, "Request for Advance or Reimbursement," will be completed by the applicant and submitted to RECD

not more frequently than monthly. The grantee will only be reimbursed for allowable costs incurred.

(b) [Reserved]

(c) The grantee's share in the cost of the project will be disbursed in advance of grant funds or on a pro-rata distribution basis with grant funds during the disbursement period. The grantee may not provide its contribution at the end of the grant period.

§ 4284.558 Reporting.

An SF-269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis. A final project performance report will be required with the last SF-269. The final report may serve as the last quarterly report. The final report must include a final evaluation of the project. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to RECD. The project performance reports shall include, but not be limited to, the following:

- (a) A comparison of actual accomplishments to the objectives established for that period;
- (b) Reasons why established objectives (if any) were not met;
- (c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and
- (d) Objectives and timetable established for the next reporting period.

§§ 4284.559–4284.570 [Reserved]

§ 4284.571 Audit requirements.

The grantee will provide an audit report in accordance with § 1942.17 of subpart A of part 1942 of this title. The audit requirements only apply to the years in which grant funds are received. Audits must be prepared in accordance with general accounting principles and standards using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions."

§ 4284.572 Grant servicing.

Grants will be serviced in accordance with subpart E of part 1951 of this title.

§ 4284.573 Programmatic changes.

The grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope or budget can result in suspension or termination of grant funds.

§ 4284.574 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this subpart.

§ 4284.575 Grant suspension, termination, and cancellation.

Grants may be canceled by RBS by written notice. Grants may be suspended or terminated for cause or convenience in accordance with parts 3015, 3016, and 3019 of this title.

§§ 4284.576–4284.586 [Reserved]

§ 4284.587 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law, or a decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest and shows how the adverse impact will be eliminated or minimized if the exception is made.

§§ 4284.588–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and record keeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570-0006. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 8 hours per response, with an average of 1.85 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250, and to the Office of Management and Budget, Paperwork Reduction Project (OMB#0570-0006), Washington, D.C. 20503.

Dated: January 3, 1996.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 96-1578 Filed 2-1-96; 8:45 am]

BILLING CODE 3410-32-U

Economics Management Staff

7 CFR Part 4001

Availability of Information

AGENCY: Economics Management Staff, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the Economics Management Staff (EMS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT:

Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agriculture Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344-2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. Part 4001 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, EMS has been abolished. This document removes 7 CFR Part 4001. Requests for information relating to EMS may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 510.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.