

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 25

RIN 0503-AA20

#### Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule contains the policy and procedures pertaining to 20 new rural enterprise communities designated by the Secretary of the U.S. Department of Agriculture (USDA) (Secretary) as authorized by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Agriculture Appropriations Act 1999) (Round IIS). These new Round IIS rural enterprise communities are supplemental to the second round of rural empowerment zone designations authorized by the Taxpayer Relief Act of 1997 (Round II). This rule also contains the policies and procedures for implementing a new grant program for Round II empowerment zones and Round IIS enterprise communities authorized by section 766 of the Agriculture Appropriations Act 1999 (USDA EZ/EC grants). Additionally, this rule clarifies post-designation procedures that rural empowerment zones and enterprise communities must follow to maintain their standing.

**DATES:** Written or email comments must be submitted on or before June 26, 2000. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through June 26, 2000.

**ADDRESSES:** Submit written comments in duplicate. Comments sent via the U.S. Postal Service should be addressed to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW,

Washington, DC 20250-0742. Comments sent via Federal Express Mail, or via another mail courier service requiring a street address, should be addressed to the same attention at 300 E Street, SW, 3rd Floor, Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Enterprise" in the subject line. All written comments will be available for public inspection during regular work hours at the 300 E Street, SW, address listed above.

**FOR FURTHER INFORMATION CONTACT:** Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024-3203, telephone 1-800-851-3403, or by sending an Internet e-mail message to "ocd@ocdx.usda.gov". For hearing-and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720-2600 (Voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been reviewed under E.O. 12866 and has been determined to be a significant regulatory action, as that term is defined in Executive Order 12866, and has been reviewed by OMB.

##### Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is 10.772.

##### Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of USDA, and delivered via the USDA Rural Development state directors in those states which have designated rural empowerment zones and enterprise communities.

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements contained in 7 CFR part 25

are comprised of one-time application requirements (Application burden) and ongoing reporting requirements (Reporting burden). For Round IIS, the Secretary designated the 20 additional rural enterprise communities from applications received in response to the notice inviting applications published April 16, 1998 in the **Federal Register** at 63 FR 19143.

The Application burden paperwork package approved by OMB under control no. 0570-0026 covered the Round II application effort. No additional Application paperwork requirements were associated with the Round IIS designations. USDA will, however, seek to amend the Reporting burden paperwork reduction package approved by OMB under control no. 0570-0027 to reflect the reporting requirements contained in this rule, as described in part 25, §§ 25.400, 25.403, 25.405(b)(2), attributable to 20 additional rural enterprise communities, and to reflect the requirements relating to the new 7 CFR part 25, subpart G imposed by §§ 25.603, 25.604(b) and 25.607(c), which requirements are imposed on Round II empowerment zones and Round IIS enterprise communities. Accordingly, USDA asks for comments regarding the information collections contained in the sections of this rule and elsewhere in 7 CFR part 25 stated above. The Secretary has submitted an information collection to OMB for approval.

Comments on these information collections should refer to the proposal by name or OMB control number. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C.; Attention: Desk Officer for Rural Development, U.S. Department of Agriculture.

Written comments may also be submitted via the U.S. Postal Service to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250-0742. Mail courier service deliveries requiring a street address should be sent to the same attention at

300 E Street, SW, 3rd Floor, Washington, DC 20546.

Specifically, comments are solicited from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The following table identifies the components of the information collection:

Type of collection	Section of 7 CFR part 25 affected	Number of respondents	Frequency of response	Estimate average response time (hours)	Annual burden (hours)
Periodic Reporting (all ECs and EZs) .....	25.400(a) 25.400(b) 25.403	57	2	10	1,140
Grant related paperwork burden (Round II EZs, Round IIS ECs only).	25.603(a)	25	1	3	75
	25.603(b)	25	1	3	75
	25.603(c)	25	1	1	25
	25.604(b)	25	1	1	25
Response to designation warning letter .....	25.405(b)(2)	1	1	1	1
Response to notice of grant suspension .....	25.607(c)	1	1	1	1

Total Burden in each Reporting Year, Years 1 through 10: 1,342 hours

**Environmental Impact Statement**

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

**Executive Order 12988**

This rule has been reviewed in accordance with E.O. 12988, 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 7 CFR part 11 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.

**The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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, USDA 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 UMRA generally requires USDA 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. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

**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. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

*I. Background*

The Empowerment Zone/Enterprise Community program confers upon rural distressed American communities the opportunity to design and implement programs to create jobs, support their residents in becoming skilled and able to earn a livable income and establish other strategies for creating opportunity and building a brighter future.

On April 16, 1998, the Secretary published an interim final rule and notice inviting applications for 5 newly authorized Round II rural empowerment zone designations. The deadline for applications was October 9, 1998. One hundred sixty eligible applications were received. On October 21, 1998, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 1999 was signed into law, authorizing an additional 20 rural enterprise communities. These Round II rural empowerment zones and Round IIS rural enterprise communities are in addition to the 3 rural empowerment zones and 30 rural enterprise

communities designated on December 21, 1994, by the Secretary pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Round I).

**Designation**

The statutory deadline by which Round II rural empowerment zones must be designated was January 1, 1999. There is no deadline for Round IIS rural enterprise community designations. On December 24, 1998 the Secretary designated 5 Round II rural empowerment zones and 20 Round IIS rural enterprise communities from the pool of over 160 eligible applications received for Round II. Notice to this effect was published on May 25, 1999 in the **Federal Register** at 64 FR 28152.

The nomination process for designation requires applicant communities to take stock of their assets and problems, create a vision for the future, and structure a strategic plan for achieving their vision. The amount of time and effort which an applicant community exerts in developing a strategic plan is considerable. USDA is of the opinion that a quality strategic plan (required as part of the application process) takes at least 6 months to develop. Town meetings are held and cross sections of the community are brought together to decide how they wish to develop as a community and how best to achieve those goals.

In Round II, over 160 communities took on this monumental task and expended a great deal of time, effort and money in bringing together their citizens and creating a strategic plan for their communities in applying for 5 authorized designations. The 160 eligible applications reflect a cross section of 38 states; 22 or more applications include reservation land or were submitted by Native American tribal communities. Nineteen Round I enterprise communities submitted applications for Round II empowerment zone designation. Also, Round IIS follows closely on the heels of the October 9, 1998, application deadline for Round II. The Round II applications

were current for purposes of Round IIS as well.

**Eligibility**

Part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 contains the eligibility criteria for Round IIS rural enterprise communities. The Secretary elected in his discretion to apply the criteria as modified for additional designations under section 1391(g) of the Internal Revenue Code, the same criteria which apply to Round II rural empowerment zones. These criteria are more inclusive than the original Round I EC eligibility criteria; they represent the latest version of eligibility criteria legislated for the program, including modifications to allow reservation land to be incorporated in the applications for designation and an outmigration criteria to be substituted for the poverty rate test defined in item 4 below:

To be eligible for designation as a Round IIS rural enterprise community an area must:

1. Have a maximum population of 30,000;
2. Be one of pervasive poverty, unemployment, and general distress;
3. Not exceed one thousand square miles in total land area;
4. Demonstrate a poverty rate that is not less than:
  - a. 20 percent in each census tract or census block numbering area (BNA); and
  - b. 25 percent in 90 percent of the census tracts and BNAs within the nominated area;
5. Be located entirely within no more than 3 contiguous states; if it is located in more than one state, the area must have one continuous boundary; if located in only one state, the area may consist of no more than 3 noncontiguous parcels;
6. Show that each nominated parcel independently meets the two poverty rate requirements;
7. Be located entirely within the jurisdiction of the unit or units of general local government making the nomination; and

8. Not include any portion of a central business district as defined in the Census of Retail Trade unless the poverty rate for each Census tract is at least 35 percent.

**Benefit Comparison**

During the time period from April 16, 1998 (publication of the notice inviting Round II applications) to October 9, 1998 (the deadline for applications), no direct federal funding from any appropriation source was in place for Round II designees. However, prospective applicant communities were made aware that future authorization of direct funding was possible. Effective October 21, 1998, section 766 of the Agriculture Appropriations Act 1999 appropriated a total of \$15,000,000 in grant funds to implement a second round of empowerment zone and enterprise communities, \$10,000,000 for the 5 Round II rural empowerment zones and \$5,000,000 for the 20 newly authorized Round IIS rural enterprise communities. In the notice designating Round II and Round IIS rural empowerment zones and enterprise communities published on May 25, 1999, the Secretary announced his intent to award equal grants of \$2,000,000 to the Round II rural empowerment zones, and equal grants of \$250,000 to each of the new Round IIS rural enterprise communities. An additional \$15,000,000 was appropriated on October 20, 1999, for Round II rural empowerment zones and enterprise communities (P.L. 106-74). It is the Secretary's intent to similarly allocate this appropriation.

The authorizing legislation provides that none of the tax benefits that are in effect for all other rural empowerment zones or enterprise communities accrue to Round IIS rural enterprise communities. Targeted federal financial assistance specific to enterprise community status is limited, in the case of Round IIS rural enterprise communities, to the newly authorized USDA EZ/EC grants.

**RURAL ENTERPRISE COMMUNITIES BENEFIT COMPARISON TABLE**

[Subject to change in the event of legislation enacted subsequent to this rulemaking]

	Round I	Round IIS
Period .....	In most cases, ten full calendar years following the Designation Date (December 21, 1994).	In most cases, ten full calendar years following the Designation Date (December 24, 1999).
Title XX of the Social Security Act Appropriations.	1 grant equal to \$2.9 million (rounded) .....	None.
Title VII of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999.	None .....	\$250,000 per EC.

RURAL ENTERPRISE COMMUNITIES BENEFIT COMPARISON TABLE—Continued

[Subject to change in the event of legislation enacted subsequent to this rulemaking]

	Round I	Round IIS
Title II of the Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000.	None .....	\$250,000 per EC.
Tax Exempt Bonds .....	A new category of tax-exempt private activity bonds was authorized for certain zone facilities. Issues are subject to state private activity bond cap levels on total issuances, and special limits on issue size.	Round IIS EC facilities do not have any special status, nor do the ECs have any special status relating to tax exempt bonding authority.
Work Opportunity Tax Credit (not exclusive to ECs or EZs; note: as of 11/1/99 this tax code provision had expired 6/30/99 but legislation to retroactively extend it was under consideration).	40% of qualified first-year wages paid to a member of a targeted group, where first-year wages taken into account may not exceed \$6,000. Targeted employees include high risk youth residents of EZs and ECs, food stamp and SSI recipients, vocational rehabilitation referrals and others.	This benefit does not attach to youth residents of Round IIS ECs, per se, however, they may qualify under the other identified targeted groups.
Internal Revenue Code 26 U.S.C. 179 Expensing .....	Capital costs of some kinds of business property which must otherwise be capitalized and depreciated over time may be deducted in the year incurred under section 179. For a zone business, the annual expensing allowance for section 179 property is increased by the lesser of (1) \$20,000 or (2) actual cost of property placed in service during the year. Eligible types of property do not include buildings. The phaseout provision of section 179 that would otherwise apply to eligible 179 property is reduced for zone property.	Not applicable.
Brownfields Deductible Expense (not exclusive to EZs and ECs).	Certain environmental remediation expenditures that would otherwise be capitalized into the cost of the land may be deducted if the costs are paid or incurred prior to January 1, 2001.	No special status accrues to Round IIS ECs.
Qualified Zone Academy Bonds (A national limitation across all empowerment zones and enterprise communities of up to \$400 million each year for years 1998 and 1999).	Tax credit bonds whereby certain financial institutions ( <i>i.e.</i> , banks, insurance companies, and corporations actively engaged in the business of lending money) that hold "qualified zone academy bonds" are entitled to a nonrefundable tax credit in an amount equal to a credit rate (set by the Treasury Department) multiplied by the face amount of the bond. They may or may not be interest bearing; if so, the interest is taxable. The credit is effective for obligations issued after December 31, 1997. The statute does not expressly provide for an allocation to rural empowerment zones or enterprise communities.	This benefit does not attach to rural IIS ECs <i>per se</i> , however, Round IIS academies may qualify under the subsidized school lunch criteria.

II. Program Description

Use of Grant Funds

The authorizing statute is silent on the purposes for which Round IIS grant funds may be used. In the interest of uniformity in administering program benefits and efficiency in administering the program, the Secretary has elected in his discretion to provide that the purposes for which Round II and Round IIS grant funds may be used shall correspond to the purposes legislated for Round I federal funding, namely, those purposes contained in section 2007(a) of the Social Security Act (42 U.S.C. 1397(f)) for social services block grants awarded to Round I

empowerment zones and enterprise communities (EZ/EC SSBG funds). Further guidance on the purposes for which EZ/EC SSBG grant funds may be used may be found in Appendix C to the notice inviting applications for Round II, published on April 16, 1998 at 63 FR 19147.

Funding of Grants

Round IIS of the program will be administered by USDA as a Federal-local-private partnership, with a minimum of red tape. This rule proposes that the designated lead managing entity, as identified in the Memorandum of Agreement executed by the designee (see below), is to be the

recipient, or "primary grantee" of the USDA EZ/EC grant funds.

Modification of Strategic Plans

The pool from which the 20 new rural enterprise communities were designated was comprised of those which applied for Round II empowerment zone status. The strategic plans were developed with assumed spending levels higher than what direct federal funding levels authorized by the 1999 Agriculture Appropriations Act would support. Accordingly, this rule proposes that the plans incorporated in the applications be adjusted to reflect spending levels commensurate with actual appropriation levels for both Round II

empowerment zones and Round IIS enterprise communities. This requirement is imposed on the Round II and Round IIS designees only, it is not a modification of the Round II application process.

**Memorandum of Agreement**

The notice inviting applications published April 16, 1998 at 63 FR 19143 includes as an appendix a form of Memorandum of Agreement (MOA). Round I designees were asked to sign comparable MOAs. Round II and Round IIS applicants were given notice that they, too, will be required to sign comparable MOAs. A revised model MOA is included as an appendix to the notice of designation published in the **Federal Register**.

**List of Subjects in 7 CFR Part 25**

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development, Strategic planning.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is proposed to be amended as follows:

**PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES**

1. The authority citation for part 25 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 26 U.S.C. 1391; Sec. 766, Pub. L. 105–277, 112 Stat. 2681.

**Subpart A—General Provisions**

**§ 25.1 [Amended]**

2. Amend § 25.1 by revising paragraph (a) to read as follows:

**§ 25.1 Applicability and scope.**

(a) *Applicability.* This part contains policies and procedures applicable to rural empowerment zones and enterprise communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I), the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II), and the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Public Law 105–277) (Round IIS).

\* \* \* \* \*

**§ 25.3 [Amended]**

3. Amend § 25.3 by revising the definitions of “brownfield”, “designation”, and “designation date” and by adding in alphabetical order definitions for “designation period”,

“funding official”, “Office of Community Development”, “Round IIS”, “state director” and “USDA EZ/EC grant program” to read as follows:

*Brownfield* means a “qualified contaminated site” meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

*Designation* means the process by which the Secretary designates rural areas as empowerment zones or enterprise communities pursuant to eligibility criteria established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*).

*Designation date* means December 21, 1994, in the case of Round I designations, and December 24, 1998, in the case of Round II and Round IIS designations.

*Designation period* means the lesser of ten years or such time as has elapsed from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e).

*Funding official* means the state director in the state where the designated rural area is located, or if the designated rural area is located in more than one state, the state where the headquarters office of the lead managing entity is located.

*Office of Community Development or OCD* means the office of the Deputy Administrator, Community Development, as identified in 7 CFR 2003.26(b)(4).

*Round IIS* identifies designations of rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 1999 (Public Law 105–277).

*State director* means the state director for the Rural Development mission area within USDA, as identified in 7 CFR 2003.10.

*USDA EZ/EC grant program* means the grant program authorized by section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Public Law 105–277) for the benefit of Round II empowerment zones and Round IIS enterprise communities.

**§ 25.4 [Amended]**

4. Amend § 25.4 by revising paragraphs (a) and (b)(2) and adding paragraphs (b)(3) and (b)(4) to read as follows:

**§ 25.4 Secretarial review and designation.**

(a) *Designation.* The Secretary will review applications for the designation

of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural empowerment zones and enterprise communities as are made shall be from the applications submitted in response to the notice inviting applications or other applicable notice published in the **Federal Register**. The Secretary may elect to designate as champion communities those nominated areas which are not designated as either a rural empowerment zone or enterprise community and whose applications meet the criteria contained in § 25.301.

(b) \* \* \*

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural empowerment zones in addition to those designated in Round I.

(3) *Round IIS.* The Secretary may designate up to 20 rural enterprise communities in addition to those designated in Round I.

(4) *Champion communities.* The number of champion communities is limited to the number of applicants which are not designated empowerment zones or enterprise communities.

\* \* \* \* \*

**Subpart B—Area Requirements**

**§ 25.103 [Amended]**

5. Amend § 25.103 by revising the introductory text of paragraphs (b)(2) and (b)(3) to read as follows:

**§ 25.103 Area size and boundary requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) For purposes of applying paragraph (a)(1) of this section to Round II and Round IIS designations:

\* \* \* \* \*

(3) For purposes of applying paragraph (a)(2) of this section to Round II and Round IIS designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

\* \* \* \* \*

**§ 25.104 [Amended]**

6. Amend § 25.104 as follows:

a. Amend the headings of paragraphs (a)(2) and (b)(2) by adding “and Round IIS”.

b. Revise the introductory text of paragraphs (a), (b) and (c), and revise paragraph (c)(2) to read as follows:

**§ 25.104 Poverty rate.**

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following

poverty rate criteria specific to Round I, Round II and Round IIS nominated areas:

\* \* \* \* \*

(b) *Special rules.* The following special rules apply to the determination of poverty rate for Round I, Round II and Round IIS nominated areas:

\* \* \* \* \*

(c) *General rules.* The following general rules apply to the determination of poverty rate for Round I, Round II and Round IIS nominated areas.

\* \* \* \* \*

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II and Round IIS, up to 3 noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria contained in this section.

\* \* \* \* \*

### Subpart C—Nomination Procedure

#### § 25.202 [Amended]

7. Amend § 25.202 by revising paragraph (b)(7) to read as follows:

#### § 25.202 Strategic plan.

\* \* \* \* \*

(b) \* \* \*

(7) Include such other information as required by USDA in the notice inviting applications or other applicable notice.

\* \* \* \* \*

#### § 25.203 [Revised]

8. Revise § 25.203 to read as follows:

#### § 25.203 Submission of applications.

*General.* A separate application for designation as an empowerment zone or enterprise community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the notice inviting applications or other applicable notice as published in the **Federal Register** and must contain complete and accurate information.

### Subpart D—Designation Process

#### § 25.300 [Amended]

9. Amend § 25.300 by revising paragraphs (a) and (b) to read as follows:

#### § 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of applications for designation as empowerment zones or enterprise communities, including submission deadlines and addresses, in a notice inviting applications or other

applicable notice, to be published in the **Federal Register**.

(b) *Acceptance for processing.* USDA will accept for processing those applications as empowerment zones and enterprise communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the notice inviting applications or other applicable notice published in the **Federal Register**. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

\* \* \* \* \*

### Subpart E—Post-Designation Requirements

#### § 25.404 [Amended]

10. Amend § 25.404 as follows:

a. Redesignate paragraph (a) as (c) and paragraph (b) as (d).

b. Add new paragraphs (a) and (b) to read as follows:

#### § 25.404 Validation of designation.

(a) *Maintaining the principles of the program.* The empowerment zone, enterprise community or champion community (the designated community) must maintain a process for ensuring ongoing broad-based participation by community residents consistent with the approved application and planning process outlined in the strategic plan.

(1) *Continuous improvement.* The designated community must maintain a process for evaluating and learning from its experiences. It must detail the methods by which the community will assess its own performance in implementing its benchmarks, the process it will use for reviewing goals and benchmarks and revising its strategic plan.

(2) *Participation.* The designated community must develop as part of its strategic plan a written plan for assuring continuous broad-based community participation in the implementation of the strategic plan and the means by which the strategic plan is implemented, including board membership in the lead entity and other key partnership entities.

(b) *Administration of the strategic plan.* The strategic plan must be administered in a manner consistent with the principles of the program contained in § 25.202(a).

(1) *Lead Entity.* The lead entity must have legal status and authority to receive and administer funds pursuant to Federal, state and other government or nonprofit programs.

(2) *Capacity.* The lead entity must have the capacity to implement the strategic plan, as demonstrated by audited financial statements as of the most recent fiscal year or other documentation that may be requested by USDA.

(3) *Board membership.* The membership of the board must be representative of the entire socio-economic spectrum in the designated community including business, social service agencies, health and education entities, low income and minority residents. Board membership may be determined by either broad-based election or by appointment to meet this diversity requirement; however, not more than 45 percent of board members may be selected by appointment. Elections of community residents to the board may be done by any locally acceptable process; however, at least one board member from each of the designated community's census tracts must be elected and representative of the low income residents in their census tract.

(4) *Partnerships.* The relationship between the designated community's lead entity board and local governments and other major regional and community organizations operating in the same geographic area is critical to the community's success in implementing its strategic plan. Every effort should be made to identify and maintain relationships with local partners. Documentation including, but not limited to, minutes of meetings, benchmark activity reports and annual reports of the lead entity must reflect the contributions of local partnership entities.

(5) *Public information.* The designated community must have written procedures in place describing the means by which citizens of the community and partnership organizations will be kept informed of the community's activities and progress in implementing the strategic plan, consistent with the principal objective of community based partnerships pursuant to § 25.202(a)(2). These procedures must be kept current and compliance with them documented on an ongoing basis.

\* \* \* \* \*

11. Subpart G of part 25, consisting of §§ 25.600 through 25.999 is added to read as follows:

**Subpart G—Round II and Round IIS Grants**

Sec.

- 25.600 Purpose.
- 25.601 Delegation of authority.
- 25.602 Eligible recipients.
- 25.603 Grant approval and obligation of funds.
- 25.604 Disbursement of grant funds.
- 25.605 Grant program reporting requirements.
- 25.606 Financial management and records.
- 25.607 Suspension or termination of grant funds.
- 25.608–25.619 [Reserved]
- 25.620 Eligible grant purposes
- 25.621 Ineligible grant purposes
- 25.622 Other considerations
- 25.623 Programmatic changes
- 25.624 Exception authority
- 25.625–25.999 [Reserved]

**Subpart G— Round II and Round IIS Grants****§ 25.600 Purpose.**

This subpart outlines USDA policies and authorizations and contains procedures for the USDA EZ/EC grant program.

**§ 25.601 Delegation of authority.**

(a) *Program administration.* The Deputy Administrator, Office of Community Development, shall be responsible for the overall development of policy and administration of the USDA EZ/EC grant program.

(b) *Funding official.* Unless otherwise provided, the state director is responsible for implementing the authorities in this subpart, consistent with the guidance issued by the Office of Community Development. Except for grant approval and environmental determination authorities, state directors may re-delegate their duties to qualified staff members.

(c) *Environmental review determinations.* The funding official is responsible for making environmental review determinations.

(d) *Authority to issue regulations.* The Under Secretary, Rural Development, may promulgate regulations under this part.

**§ 25.602 Eligible recipients.**

(a) *General.* The grants made under this subpart shall be made to the lead managing entities on behalf of the Round II rural empowerment zones and Round IIS rural enterprise communities, respectively, in accordance with an approved strategic plan. Such grants shall be available to successor entities approved in writing by USDA.

(b) *Exception.* The funding official, with the approval of the Office of Community Development, may elect to award all or part of the available grant funds to an alternate grantee.

(c) *Subrecipients.* The grantee shall relay funds to subrecipients, as provided in the approved strategic plan, as soon as practicable.

**§ 25.603 Grant approval and obligation of funds.**

Grants may be made at such time as the nominated area has been designated and such other prerequisites as USDA shall determine have been met, including but not limited to:

(a) The empowerment zone or enterprise community has entered into a memorandum of agreement satisfactory to USDA;

(b) The empowerment zone or enterprise community has conformed its strategic plan to be consistent with the level of federal grant aid available and such conforming amendments (if any) have met with the approval of the Office of Community Development and the funding official;

(c) Completion of the environmental review process, including all appropriate public notices;

(d) The proposed grantee has agreed, in form and substance satisfactory to the Office of Community Development, to any funding conditions imposed by USDA;

(e) The grantee has submitted a request for obligation of funds, in form and substance satisfactory to the Office of Community Development, inclusive of the following certification:

“The grantee certifies that it and all direct or substantial subrecipients are in compliance and will continue to comply with all applicable laws, regulations, executive orders and other generally applicable requirements, including those contained in 7 CFR parts 25, 3015, 3016, 3017, 3018, 3019 and 3052, and any agreement to meet funding conditions, in effect at the time of the grant or as subsequently amended.”

**§ 25.604 Disbursement of grant funds.**

(a) The funding official will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

(b) A “request for advance or reimbursement,” in form and substance satisfactory to USDA, must be completed by the grantee on behalf of itself and all applicable subrecipients and submitted to the funding official.

(c) Requests for advance or reimbursement must identify:

(1) The amount requested for each benchmark activity;

(2) The cumulative amount advanced to date (not inclusive of the current amount requested) for each benchmark activity;

(3) The total USDA EZ/EC grant obligated for each benchmark activity;

(4) The total approved budget for the applicable project or program (inclusive of non USDA EZ/EC grant program sources);

(5) An estimated percentage of completion or progress made in accomplishing the benchmark goal associated with each benchmark activity;

(6) Certification that the lead managing entity and the subrecipients (where applicable) are in compliance with all applicable laws and regulatory requirements; and

(7) Such other information as the funding official may require.

(d) Requests for advance or reimbursement may include only activities or projects which are identified in an approved strategic plan.

**§ 25.605 Grant program reporting requirements.**

Grantees may incorporate grant reporting requirements in the reports submitted pursuant to § 25.400, or submit them separately. In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

**§ 25.606 Financial management and records.**

(a) In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed in those parts, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

(b) Grantees must retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least 3 years after the end of the designation period, except that the records shall be retained beyond the 3 year period if audit findings have not been resolved or if directed by the United States. Records may be retained and submitted in electronic form if allowed by Generally Accepted Government Accounting Principles.

**§ 25.607 Suspension or termination of grant funds.**

(a) Grants under this subpart, may be suspended or terminated by the funding official, in all or in part, in accordance

with this subpart and the applicable provisions of 7 CFR parts 3015, 3016 and 3019, as applicable.

(b) The funding official may elect to suspend or terminate the entirety of a grant, or funding of a particular benchmark activity, but nevertheless fund the remainder of a request for advance or reimbursement, where the funding official has determined:

(1) That grantee or subrecipient of the grant funds has demonstrated insufficient progress toward achieving the related benchmark goal or in any other way failed to comply with the strategic plan;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis;

(3) The strategic plan, as amended, calls for a revised use of the grant funds; or

(4) Such other cause as the funding official identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

(c) The funding official shall notify the grantee in writing within 30 days of the official's decision to suspend or terminate all or part of the grant. This notice shall identify what is being suspended or terminated, whether such decision is revocable, and such requirements as may be a precondition to reconsideration of the decision.

#### §§ 25.608–25.619 [Reserved]

#### § 25.620 Eligible grant purposes.

Eligible grant purposes are:

(a) Services directed at the goals of—

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(b) Projects and activities identified in the strategic plan for the area; and

(c) Activities that benefit residents of the area for which the grant is made.

#### § 25.621 Ineligible grant purposes.

Grant funds may not be used:

(a) As a source of local matching funds required for other federal grants;

(b) To fund political activities;

(c) To duplicate current services or replace or substitute for financial support provided from other sources. If the current service is inadequate, however, grant funds may be used to

augment financial support or service levels beyond what is currently provided;

(d) To pay costs of preparing the application package for designation under this part;

(e) To pay costs of a project which were incurred prior to the execution date of the applicable memorandum of agreement;

(f) To 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;

(g) To pay any judgment or debt owed to the United States;

(h) To assist in the relocation of businesses;

(i) To support or promote gambling; or

(j) For political lobbying.

#### § 25.622 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and part 1901, subpart E, of this title.

(b) *Environmental review.* All grants made under this subpart are subject to the environmental requirements in effect for the water and environmental programs of the Rural Utilities Service at 7 CFR part 1794. The threshold levels of environmental review, for projects funded by the USDA EZ/EC grant program (or EZ/EC SSBG funds where the Secretary is authorized to execute the responsibilities under the National Environmental Policy Act of 1969), which projects, by their nature, would qualify for assistance under any program administered by the Rural Housing Service or Rural Business Service within USDA, shall be determined in accordance with 7 CFR 1940 Subpart G as follows:

(1) Projects meeting the descriptions found at 7 CFR 1940.310(b), (c), (d) and (e) shall be considered categorically excluded (without an environmental report) for purposes of 7 CFR 1794.21.

(2) Projects meeting the descriptions found at 7 CFR 1940.311 shall be considered categorically excluded (with an environmental report) for purposes of 7 CFR 1794.22.

(3) Projects meeting the description found at 7 CFR 1940.312 shall require the preparation of an environmental assessment (EA) for purposes of 7 CFR 1794.23.

(4) Projects which would normally require the preparation of an environmental impact statement (EIS) for purposes of 7 CFR 1940.313 shall require an EIS for purposes of 7 CFR 1794.25.

(c) *Other USDA regulations.* The rural empowerment zone and enterprise community program is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, “Uniform Federal Assistance Regulations”;

(2) 7 CFR part 3016, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”;

(3) 7 CFR part 3017, “Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)”;

(4) 7 CFR part 3018, “New Restrictions on Lobbying”;

(5) 7 CFR part 3019, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and

(6) 7 CFR part 3052, “Audits of States, Local Governments, and Non-Profit Organizations.”

#### § 25.623 Programmatic changes.

Prior approval from USDA is required for all changes to the scope or objectives of an approved strategic plan or benchmark activity. Failure to obtain prior approval of changes to the strategic plan or benchmarks, including changes to the scope of work or a project budget may result in suspension, termination, and recovery of USDA EZ/EC grant funds.

#### § 25.624 Exception authority.

The Deputy Administrator, Office of Community Development, may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Deputy Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

#### §§ 25.625–25.999 [Reserved]

Dated: April 14, 2000.

**Dan Glickman,**

*Secretary.*

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