

# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1739

RIN 0572-AC09

#### Community Connect Broadband Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, amends its regulations for the Community-Oriented Connectivity Broadband Grant Program (Community Connect Grant Program). Since the inception of the Community Connect Grant Program, the Agency has faced the challenge of identifying eligible rural communities. The Agency has reviewed its method of identifying eligible communities and has determined that modifications to the program regulations are required in order to expand the resource material used to identify eligible communities. The use of additional resources should increase the number of communities eligible for grant funding. Additionally, the Agency has changed the test for economic hardship. The current regulations compare an applicant community's per capita personal income to the national per capita personal income. Because of the varying costs of living among the states, it was determined that a better measure of economic distress would be a comparison of the applicant community's median household income to that of its state. This change is also expected to increase the number of eligible grant applicants. Lastly, this rule amends the current regulations by specifying operating expenses which the

Agency has approved for grant funding. These changes have been determined to be non controversial and are being enacted as a direct final rule.

This rule is not applicable to Community Connect grant applications filed for funding during fiscal year 2007.

**DATES:** *Effective Date:* This rule is effective September 17, 2007, without further action, unless the Agency receives adverse comments within September 4, 2007. If adverse comments are received, the Agency will publish a timely **Federal Register** document withdrawing this rule. *Comment Due Date:* Comments must be received on or before September 4, 2007.

**ADDRESSES:** Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS-07-Telecom-0008 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Acting Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250-1522. Please state that your comment refers to Docket No. RUS-07-Telecom-0008.

Other Information: Additional information about Rural Development and its programs is available at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Kuchno, Director, Broadband Division, USDA Rural Development Utilities Program, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250-1599, Telephone (202) 690-4673, Facsimile (202) 690-4389. E-mail address: [kenneth.kuchno@usda.gov](mailto:kenneth.kuchno@usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

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

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Community Connect Grant Program is 10.863. The Catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325; telephone (202) 512-1800.

#### Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Sec 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

#### Executive Order 13132, Federalism

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

#### Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an

opportunity for public comment. Because this final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

#### Unfunded Mandates

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

#### Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

#### Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0127 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### Background

##### Overview

The USDA Rural Development Utilities Programs (the Agency) improve the quality of life in rural America by providing investment capital, in the form of loans and grants, for the deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nation-wide telecommunications network. With access to the same advanced telecommunications networks of its urban counterparts, especially broadband networks designed to accommodate distance learning, telework and telemedicine, rural

America will see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. Of particular concern to the Agency are communities where broadband service is not available and where population densities are such that the cost of deployment to them is high and build-out of infrastructure is unlikely. The Agency is committed to ensuring rural communities will have access to affordable, reliable, advanced communications services, comparable to those available throughout the rest of the United States, to provide a healthy, safe and prosperous place to live and work.

The Community Connect Grant Program was started as a Pilot Program with the Fiscal Year 2002 budget and has been funded ever since through the appropriations process. After administering the program as a pilot program for two years, the Agency proposed rules for the program, and on July 28, 2004, the current rules were published, and the program was formally implemented. Since then more than 670 requests for grant funds totaling over \$410 million were requested through Fiscal Year 2006. Of those requests, 129 were granted for \$57 million to bring broadband service to 129 communities in 26 states and Puerto Rico.

While the Agency is proud of the results achieved in the Community Connect Grant Program thus far, it believes that the overall effectiveness of the program can be improved by modifying the existing rules. Through these changes, the Agency is increasing eligibility criteria to include communities that clearly meet the intent of the program. Specifically, this rule will: (1) Add the Rand McNally Atlas as a community locator; (2) change the income measure for eligibility from a national comparison to a state comparison; and (3) clarify the items that are eligible to be considered as operating expenses.

##### Discussion of Changes

1. Adding the Rand McNally Atlas as a community locator. Currently the regulation states that a project must serve an incorporated or unincorporated town, village, or borough recognized in the latest decennial census of the Bureau of the Census to be eligible for funding. While this program has been successful in reaching much of rural America, the Agency recognizes that areas not identified in the 2000 census are excluded from funding. It is advisable to add another resource, updated more frequently than the

decennial census and including communities not found in the census, to identify rural communities. The Agency therefore adds the Rand McNally Atlas as a resource to identify rural communities. It is anticipated that the addition of the Rand McNally Atlas as a community locator will increase the number of communities eligible for funding.

2. Change the income measure from a national comparison to a state comparison. Rural communities that would otherwise be eligible for grant funding have been previously excluded because their per capita personal income is relatively high in comparison to the national average. However, using the communities median household income compared to their state's median household income, these communities would qualify as economically challenged. Given the variable cost of living among the states, the comparison of state statistics is a better indicator of economic distress. The intent of this program is to allow all rural communities without broadband service facing economic hardship to fairly compete for funding. By comparing a community's median household income to their state's median household income, all rural economically challenged communities may compete fairly for funding.

3. Clarify the items that are eligible to be considered as operating expenses. Currently the regulation states that operating expenses incurred in providing broadband transmission service to critical facilities is an eligible purpose and that the salaries and administrative costs associated with these expenses may be limited by the Agency. Through the course of this program, applicants have not clearly understood what operating expenses are eligible. Many applicants have requested funds for ineligible operating expenses and had to be eliminated from the grant competition. To assist the applicant with better understanding what operating expenses are considered eligible, the Agency is specifically defining the eligible operating expenses.

Other corresponding changes were made throughout the regulation to reflect the addition of the Rand McNally Atlas and the change to state income measures.

#### List of Subjects in 7 CFR 1739

Broadband, Grant programs—Communications, Rural Areas, Telecommunications, and Telephone.

■ For reasons set forth in the preamble, the Rural Utilities Service amends Chapter XVII of title 7 of the Code of

Federal Regulations by revising part 1739 as follows:

## **PART 1739—BROADBAND GRANT PROGRAM**

### **Subpart A—Community Connect Grant Program**

Sec.

- 1739.1 Purpose.
- 1739.2 Funding availability and application dates and addresses.
- 1739.3 Definitions.
- 1739.4–1739.9 [Reserved]
- 1739.10 Eligible applicant.
- 1739.11 Eligible project.
- 1739.12 Eligible grant purposes.
- 1739.13 Ineligible grant purposes.
- 1739.14 Matching contributions.
- 1739.15 Completed application.
- 1739.16 Review of grant applications.
- 1739.17 Scoring of applications.
- 1739.18 Grant documents.
- 1739.19 Reporting and oversight requirements.
- 1739.20 Audit requirements.
- 1739.21 OMB control number.

### **Subpart B—[Reserved]**

**Authority:** Title III, Pub. L. 108–199, 118 Stat. 3.

### **Subpart A—Community Connect Grant Program**

#### **§ 1739.1 Purpose.**

(a) The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide, on a “community-oriented connectivity” basis, broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. The Agency will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

(b) Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a “community-oriented connectivity” basis. The “community-oriented connectivity” concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals.

#### **§ 1739.2 Funding availability and application dates and submission.**

(a) The Agency will publish, annually in the **Federal Register**, a Notice of Funds Availability (hereinafter “NOFA”) that will set forth the total amount of funding available; the maximum and minimum funding for each grant; the application submission dates; and the appropriate addresses and agency contact information. The NOFA will also outline and explain the procedures for submission of applications, including electronic submissions. The Agency may publish more than one NOFA should additional funding become available.

(b) Notwithstanding paragraph (a) of this section, the Agency may, in response to a surplus of qualified eligible applications which could not be funded from the previous fiscal year, decline to publish a NOFA for the following fiscal year and fund said applications without further public notice.

#### **§ 1739.3 Definitions.**

As used in this subpart:

*Agency* shall mean the Rural Utilities Service, which administers the United States Department of Agriculture (USDA) Rural Development Utilities Programs.

*Bandwidth* means the capacity of the radio frequency band or physical facility needed to carry the Broadband Transmission Service.

*Basic Broadband Transmission Service* means the broadband transmission service level provided by the applicant at the lowest rate or service package level for residential or business customers, as appropriate, provided that such service meets the requirements of this part.

*Broadband Transmission Service* means providing an information-rate equivalent to at least 200 kilobits/second in the consumer’s connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

*Community* means any incorporated or unincorporated town, village, or borough recognized in the latest decennial census as published by the Bureau of the Census or in the most recent edition of a Rand McNally Atlas that is located in a Rural Area.

*Community Center* means a public building, or a section of a public building with at least ten (10) Computer Access Points, that is used for the purposes of providing free access to and/or instruction in the use of broadband Internet service, and is of the appropriate size to accommodate this

purpose. The community center must be open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday.

*Computer Access Point* means a new computer terminal with access to Basic Broadband Transmission Service.

*Critical Community Facilities* means the Community Center and every public school or education center, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations in the proposed Service Area.

*Eligible Applicant* shall have the meaning as set forth in § 1739.10.

*Eligible Grant Purposes* shall have the meaning as set forth in § 1739.12.

*End-User Equipment* means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, inside wiring, interactive video equipment, or other facilities required for the provision and use of Broadband Transmission Service.

*Matching Contribution* means the applicant’s qualified contribution to the Project, as outlined in § 1739.14 of this part.

*Project* means the applicant’s proposed Basic Broadband Transmission Service financed by the grant and Matching Contribution for the proposed Service Area.

*Rural Area* means any area, as verified by the latest decennial census of the Bureau of the Census or the latest edition of the Rand McNally Atlas, which is not located within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

*Service Area* means a single Community, and may include the unincorporated areas located outside and contiguous to the Community’s boundaries, in which the applicant proposes to provide Broadband Transmission Service.

*Spectrum* means a defined band of frequencies that will accommodate the Broadband Transmission Service.

*Telecommunications Terminal Equipment* means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over-the-air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is

used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

**§§ 1739.4–1739.9 [Reserved].**

**§ 1739.10 Eligible applicant.**

To be eligible for a grant, the applicant must:

(a) Be legally organized as an incorporated organization, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b(b) and (c), a state or local unit of government, or other legal entity, including cooperatives or private corporations or limited liability companies organized on a for-profit or not-for-profit basis.

(b) Have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

**§ 1739.11 Eligible project.**

To be eligible for a grant, the Project must:

(a) Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by the Agency prior to the award of the grant;

(b) Serve one Community recognized in the latest U.S. Census or the latest edition of the Rand McNally Atlas;

(c) Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

(d) Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

(e) Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

**§ 1739.12 Eligible grant purposes.**

Grant funds may be used to finance:

(a) The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

(b) The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents

before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or \$100,000;

(c) End-User Equipment needed to carry out the Project;

(d) (1) Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction. In order to qualify as eligible costs for grant coverage or as matching fund contributions, operating expenses for providing broadband transmission service to Critical Community Facilities must:

(i) Be incurred for the purpose of providing broadband service to the Critical Community Facilities and be for costs incurred during the first two years of operation; and

(ii) Be for the following purposes subject to the specified maximum amounts:

(A) Salary for operations manager, not to exceed \$30,000 per year.

(B) Salary for technical support staff, not to exceed \$30,000 per year.

(C) Salary for community center staff, not to exceed \$25,000 per year.

(D) Bandwidth expenses, not to exceed \$25,000 per year.

(E) Training courses on the use of the Internet, not to exceed \$15,000 per year.

(2) The operating costs to be funded by the grant or used as matching contributions cannot exceed in the aggregate \$250,000. No other operating expenses are eligible for grant funding or to be considered as matching funds; and

(e) The purchase of land, buildings, or building construction needed to carry out the Project.

**§ 1739.13 Ineligible grant purposes.**

(a) Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

(b) Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

**§ 1739.14 Matching contributions.**

(a) The grant applicant must contribute a Matching Contribution which is at least fifteen percent (15%) of the grant amount requested and shall be in the form of:

(1) Cash for eligible grant purposes.

(2) In-kind contributions for purposes that could have been financed with

grant funds under this part. In-kind contributions must be new or non-depreciated assets with established monetary values. Manufacturers' or service providers' discounts shall not be considered as a Matching Contribution.

(3) The rental value of space provided within an existing building to be used as the Community Center, provided that the space is free of charge to the applicant, for the first 2 years of operation.

(b) Costs incurred by the applicant, or by others on behalf of the applicant, for facilities, installed equipment, or other services rendered prior to submission of a completed application shall not be considered as an Eligible Grant Purpose or Matching Contribution.

(c) Rental values of space provided must be substantiated by rental agreements documenting the cost of space of a similar size in a similar location.

(d) Any financial assistance from federal sources shall not be considered as a Matching Contribution unless there is a federal statutory exception specifically authorizing the federal financial assistance to be considered as such.

**§ 1739.15 Completed application.**

A completed application must include the following documentation, studies, reports and information in form satisfactory to the Agency. Applications should be prepared in conformance with the provisions of this part and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the Agency's Application Guide for this program, found at <http://www.usda.gov/rus/telecom/> containing instructions and all necessary forms, as well as other important information, in preparing their application. Paper copies of the application guide can be requested by contacting the Director, Broadband Division at the following address: Stop 1599, South Agriculture Building, Room 2868, Washington, DC 20250. Completed applications must include the following:

(a) *An Application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the Project.* The applicant must provide the Agency with a general project overview that addresses the following categories:

(1) A description of why the Project is needed;

(2) A description of the applicant;

(3) An explanation of the total Project cost;

(4) A general overview of the broadband telecommunications system

to be developed, including the types of equipment, technologies, and facilities to be used;

(5) Documentation describing the procedures used to determine the unavailability of existing Broadband Transmission Service; and

(6) A description of the participating Critical Community Facilities.

(c) *Scoring criteria documentation.*

Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in § 1739.17.

(d) *System design.* The applicant must submit a system design that contains the following, satisfactory to the Agency:

(1) A narrative discussing the proposed Community Center, all costs of the Project, all existing and proposed facilities that are a part of the Project, the services to be provided by the Project, and the proposed Service Area;

(2) Engineering design studies providing an economical and practical engineering design of the Project, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs; and

(3) A map of the proposed Service Area reflecting the proposed location of the Community Center and all participating Critical Community Facilities.

(e) *Scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the Project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the Project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line item costs for Eligible Grant Purposes, the Matching Contribution, and other sources of funds necessary to complete the Project.

(f) *Community-Oriented Connectivity Plan.* The applicant must provide a Community-Oriented Connectivity Plan consisting of the following:

(1) A listing of all participating Critical Community Facilities to be connected. For those Critical Community Facilities in the Service Area which will not be included in the Project, an explanation of why they are not being included should be provided. The applicant must also provide documentation that it has consulted with agents of all Critical Community Facilities in the Service Area, and must provide statements as to their willingness to participate, or not to participate, in the proposed Project;

(2) A description of the services available to local residents through the use of the Community Center;

(3) A listing of the proposed Telecommunications Terminal Equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the Project designed to further the deployment and use of Broadband Transmission Service, that the applicant intends to build or fund using the Agency's grant funds and the Matching Contribution; and

(4) If other telecommunications carriers (including interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) are participating in the delivery of services, a description of the consultations and the anticipated role of such providers in the proposed Project.

(g) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating the sustainability of the Project during the first two years and after completion and the sufficiency of resources and expertise necessary to undertake and complete the Project. The following financial information is required:

(1) Certified financial statements, if available; otherwise, the most current income statement and balance sheet for existing operations; and

(2) Pro-forma financial information for 5 years, evidencing the sustainability of the Project.

(h) *A statement of experience.* Information on the owners' and principal employees' relevant work experience that would ensure the success of the Project. The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and to perform the activities proposed under the grant application.

(j) *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the Agency's grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

(k) *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(4) 7 CFR part 3018—New Restrictions on Lobbying.

(5) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(6) Certification regarding Architectural Barriers.

(7) Certification regarding Flood Hazard Precautions.

(8) An environmental report, in accordance with 7 CFR 1794.

(9) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(10) Federal Obligation Certification on Delinquent Debt.

#### § 1739.16 Review of grant applications.

(a) All applications for grants must be delivered to the Agency at the address and by the date specified in the NOFA (see § 1739.2) to be eligible for funding. The Agency will review each application for conformance with the provisions of this part. The Agency may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(c) Applications conforming with this part will then be evaluated competitively by a panel of the Agency's employees selected by the Administrator of the Agency, and will be awarded points as described in the scoring criteria in § 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

(d) Regardless of the score an application receives, if the Agency determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned with no further action.

**§ 1739.17 Scoring of applications.**

(a) All eligible applications will receive points for the following scoring criteria:

- (1) The rurality of the Project (up to 40 points);
- (2) The economic need of the Project's Service Area (up to 30 points); and
- (3) The "community-oriented connectivity" benefits derived from the proposed service (up to 30 points).

(b) Scoring criteria:

(1) *The rurality of the project*—up to 40 points.

(i) This criterion will be used to evaluate the rurality of the Community served by the Project, in accordance with the following method of scoring. If a Community is identified in the latest decennial Census, the applicant must use the Census information. If a Community is not identified in the Census but is identified in the latest edition of the Rand McNally Atlas, the applicant will use the Rand McNally Atlas information. Rurality shall be determined by the following criteria:

(A) The 2000 population data contained in the U.S. Bureau of the Census at <http://factfinder.census.gov>: or

(B) The population data contained in the latest edition of the Rand McNally Atlas. If no population data is contained in the Rand McNally Atlas for a community that is recognized in the Atlas, then that community is not eligible for a grant.

(ii) The following categories are used in the evaluation of rurality:

(A) Level 1 means any Community having a population of less than 500 inhabitants.

(B) Level 2 means any Community having a population of at least 500 and not in excess of 1,000 inhabitants.

(C) Level 3 means any Community having a population over 1,000 and not in excess of 2,000 inhabitants.

(D) Level 4 means any Community having a population over 2,000 and not in excess of 3,000 inhabitants.

(E) Level 5 means any Community having a population over 3,000 and not in excess of 4,000 inhabitants.

(F) Level 6 means any Community having a population over 4,000 and not in excess of 5,000 inhabitants.

(G) Level 7 means any Community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any Community having a population over 10,000 and not in excess of 20,000 inhabitants.

(iii) Each application will receive points based on the location of the facilities financed using the definitions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(A) For a Service Area that includes a Level 1 Community, it will receive 40 points.

(B) For a Service Area that includes a Level 2 Community, it will receive 35 points.

(C) For a Service Area that includes a Level 3 Community, it will receive 30 points.

(D) For a Service Area that includes a Level 4 Community, it will receive 25 points.

(E) For a Service Area that includes a Level 5 Community, it will receive 20 points.

(F) For a Service Area that includes a Level 6 Community, it will receive 15 points.

(G) For a Service Area that includes a Level 7 Community, it will receive 10 points.

(H) For a Service Area that includes a Level 8 Community, it will receive 5 points.

(2) *The economic need of the Project Service Area*—up to 30 points. This criterion will be used to evaluate the economic need of the Service Area. Applicants must utilize the median household income (MHI) for the Community serviced and the state in which the Community is located, as determined by the U.S. Bureau of the Census at <http://factfinder.census.gov>. If the community was qualified using the Rand McNally Atlas, the applicant must use the MHI, contained in the decennial census, of the county in which the Community resides as the Community MHI. Applicants will be awarded points as outlined below for service provided in the Community where the MHI is less than 75 percent of the state MHI:

(i) MHI is 75 percent or greater of state MHI; 0 points;

(ii) MHI is less than 75 percent and greater than or equal to 70 percent of state MHI; 5 points;

(iii) MHI is less than 70 percent and greater than or equal to 65 percent of state MHI; 10 points;

(iv) MHI is less than 65 percent and greater than or equal to 60 percent of the state MHI; 15 points;

(v) MHI is less than 60 percent and greater than or equal to 55 percent of the state MHI; 20 points;

(vi) MHI is less than 55 percent and greater than or equal to 50 percent of the state MHI; 25 points;

(vii) MHI is less than 50 percent of the state MHI; 30 points;

(3) *The "community-oriented connectivity" benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the

services proposed by the Project, and local community involvement in planning and implementation of the Project. Applicants may receive up to 30 points for documenting the need for services and benefits derived from service as explained in this section.

(ii) The Agency will consider:

(A) The extent of the applicant's documentation explaining the economic, education, health care, and public safety issues facing the community and the applicant's proposed plan to address these challenges on a community-wide basis;

(B) The extent of the Project's planning, development, and support by local residents, institutions, and community facilities will be considered. This includes evidence of community-wide involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the Project planning and development;

(C) The extent to which the Community Center will be used for instructional purposes including Internet usage, Web-based curricula, and Web page development; and

(D) Web-based community resources enabled or provided by the applicant, such as community bulletin boards, directories, and public web-hosting.

**§ 1739.18 Grant documents.**

The terms and conditions of grants shall be set forth in grant documents prepared by the Agency. The documents shall require the applicant to own all equipment and facilities financed by the grant. Among other matters, the Agency may prescribe conditions to the advance of funds that address concerns regarding the Project feasibility and sustainability. The Agency may also prescribe terms and conditions applicable to the construction and operation of the Project and the delivery of Broadband Transmission Service to Rural Areas, as well as other terms and conditions applicable to the individual Project.

**§ 1739.19 Reporting and oversight requirements.**

(a) A project performance activity report will be required of all recipients on an annual basis until the Project is complete and the funds are expended by the applicant. Recipients are to submit an original and one copy of all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which

have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of 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

(3) Objectives and timetable established for the next reporting period.

(b) A final project performance report must be provided by the recipient. It must provide an evaluation of the success of the Project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) The Agency will monitor recipients, as it determines necessary, to assure that Projects are completed in accordance with the approved scope of work and that the grant is expended for Eligible Grant Purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work within designated time periods is being accomplished, and other performance objectives are being achieved.

#### **§ 1739.20 Audit requirements.**

A grant recipient shall provide the Agency with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, an existing Telecommunications or Electric Borrower with the Agency, or any other entity not covered by the following paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, "Policy on Audits of the Agency's Borrowers."

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

#### **§ 1739.21 OMB Control Number.**

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572-0127.

### **Subpart B—[Reserved]**

Dated: July 19, 2007.

**James M. Andrew**,  
*Administrator, Rural Utilities Service.*  
[FR Doc. E7-15106 Filed 8-2-07; 8:45 am]  
**BILLING CODE 3410-15-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

**[Docket No. CE272; Special Conditions No. 23-212-SC]**

#### **Special Conditions: Centex Aerospace Inc., Cirrus Design Corporation Model SR22; Installation of a Full Authority Digital Engine Control (FADEC) Engine and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Centex Aerospace Inc. modified Cirrus Design Corporation Model SR22. This airplane as modified by Centex Aerospace Inc. will have a novel or unusual design feature(s) associated with the installation of a full authority digital engine control (FADEC) engine. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 26, 2007. Comments must be received on or before September 4, 2007.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE-7, Attention: Rules Docket, Docket No. CE272, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE272. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate,

ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4135, fax: 816-329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### **Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### **Background**

On March 15, 2004, Centex Aerospace, Inc. applied for a supplemental type certificate for the Cirrus Model SR22 to install a full authority digital engine control in the Cirrus Model SR22. GenTex Aerospace, Inc. plans to install a Teledyne Continental Motors model IOF-550-N engine in the Cirrus Design Corporation Model SR-22 airplane. This type certified engine, approved under FAA Type Certificate E3SO; Revision 7, dated