

# Rules and Regulations

Federal Register

Vol. 74, No. 3

Tuesday, January 6, 2009

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

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1780

RIN 0572-AC11

#### Amending the Water and Waste Program Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the Agency, is amending its regulations to administer the Water and Waste Loan and Grant Programs. This action implements provisions of the 2008 Farm Bill for interest rates on direct loans and modifies the interest rate structure currently being used for the direct loan program. Interest rates on loans subject to 5 or 7 percent interest rate limitations (poverty and intermediate rates, respectively) will adjust with changes in the market rate. The poverty and intermediate interest rates will be established at rates equal to a percentage of current market yields for outstanding municipal obligations. The intended effect of the amendment is to make part 1780 current with statutory authority. No adverse comments are expected.

**DATES:** This rule will become effective February 20, 2009 without further action unless the Agency receives written adverse comments or written notices of intent to submit adverse comments on or before February 5, 2009. If the Agency receives adverse comments or notices, the Agency will publish a timely notice in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in

the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a postmark or equivalent no later than February 5, 2009.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. In the "Search Documents" box, enter RUS-08-Water-0005, check the box under the Search box labeled "Select to find documents accepting comments or submissions", and click on the GO>> key. To submit a comment, choose "Send a comment or submission" under the Docket Title. In order to submit your comment, the information requested on the "Public Comment and Submission Form" must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the "Public Comment and Submission Form".) Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "How to Use this Site" link.

- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250-1522.

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

#### FOR FURTHER INFORMATION CONTACT:

Cheryl Francis, Loan Specialist, Water and Environmental Programs, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 2229 South Building, Washington, DC 20250-1570. Telephone: (202) 720-9589; Fax: (202) 690-0649; e-mail: [cheryl.francis@wdc.usda.gov](mailto:cheryl.francis@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review.

#### E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the water and waste loan and grant program is 10.760, Water and Waste Disposal Systems for Rural Communities. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's on-line bookstore at <http://bookstore.gpo.gov>.

#### Executive Order 12372

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

#### 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. Additionally, (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 the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

### 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 Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion. They also involve minimal procedural matters on other agreements already negotiated.

### Unfunded Mandates

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

### National Environmental Policy Act Certification

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 0572-0121 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### Background

The water and waste loan and grant program is authorized by the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1921 *et seq.*), as amended. The program provides loan and grant funds for water and waste disposal projects serving the

most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less.

The direct loan program has a three-tier interest rate structure, commonly known as the poverty, intermediate, and market rates. The poverty and intermediate rates are available to customers least able to afford high interest rates. The poverty rate should be the lowest rate. However, the market rate was lower than the poverty rate (inverted rates) 11 out of 23 quarters from fiscal year 2003 through 2008. The inverted rates meant that the customers eligible for poverty and intermediate rate loans would repay their loans at rates higher than those that the market rate customers would pay. The inverted rates were inconsistent with section 307(a)(3)(A) of the CONACT, which stipulated that interest rates on loans be lower than the current market yield for outstanding municipal obligations.

The Food, Conservation and Energy Act of 2008 (Farm Bill) (Pub. L. 110-234) amends section 307(a)(3) of the CONACT (7 U.S.C. 1927(a)(3)). The amendments ensure that the poverty and intermediate rates are tied to the market rate. As percentages of the market rate, they will always be lower than the market rate. The poverty rate is set at 60 percent of the market rate, and the intermediate rate is set at 80 percent of the market rate. This interest rate change applies to loans approved after May 22, 2008. The change does not apply to a loan for a specific project that has been approved, but not closed on or before May 22, 2008. The interest rates of those loans will be determined by the rate structure that existed before the enactment of the Farm Bill. To conform to the Farm Bill's provisions, the water and waste loan and grant regulation, 7 CFR Part 1780, is being amended.

The interest rate changes will provide for a tiered interest rate structure, providing for the lowest interest rates to the lowest income communities. The new rate structure will allow the Agency to provide the neediest communities with financial assistance that will result in reasonable user costs for their users.

The poverty and intermediate interest rates have statutory limitations, established by the CONACT in section 307(a)(3). The poverty rate cannot exceed five percent, and the intermediate rate cannot exceed seven percent. As explained above, the market rate cannot exceed the current market yield for outstanding municipal

obligations in accordance with the Omnibus Reconciliation Act of 1981. Regardless of whether the interest rates must be determined by the approval date of a loan—on or before May 22, 2008, or on or after May 23, 2008—these statutory limitations are in effect.

Loans approved at each level of interest rates must meet certain requirements under the water and waste regulation. All loans approved at the poverty rate must comply with the following conditions:

(1) The primary loan purpose will be to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards, and

(2) The median household income of the service area is below the poverty level for a family of four, or below 80 percent of the statewide nonmetropolitan median household income.

The intermediate interest rate applies to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State. The market rate applies to all loans that do not qualify for a poverty or intermediate interest rate.

The three-tier interest rate structure existed on May 22 as follows:

(1) Poverty Interest Rate. The poverty rate was set at 4.500 percent regardless of fluctuations in the market rate, subject to the statutory limit of five percent.

(2) Intermediate Interest Rate. The intermediate rate was set at one-half of the difference of the poverty rate and the market rate.

(3) The market interest rate is based on the 11-Bond Index, published by Bond Buyer for general obligation bonds. The calculation uses the average yield of the four weeks prior to the first Friday of the last month before the beginning of a quarter.

The poverty and intermediate interest rates will be determined based on the approval date of the loan under amendments to the water and waste regulation. For a loan for a specific project that has been approved, but not closed on or before May 22, the rate structure in effect at that time will determine the rates. For loans approved on or after May 23, 2008, the percentage of market rate will be used to determine the poverty and intermediate interest rates.

The following table summarizes the interest rates:

	On or before May 22, 2008	On or after May 23, 2008	Limitations
Poverty Rate .....	4.50% .....	60% of market rate .....	5.00%.
Intermediate Rate .....	4.50% + 0.5 (Market Rate less Poverty Rate).	80% of market rate .....	7.00%.
Market Rate .....	Average of 11 Bond Index for the 4 weeks prior to the first Friday before the beginning of the new quarter.	Average of 11 Bond Index for the 4 weeks prior to the first Friday before the beginning of the new quarter.	Less than the current market yield for outstanding municipal obligations.

These amendments are not published for proposed rulemaking because they merely reflect changes in statutory authority enacted by the Farm Bill. They make only minor technical corrections to the regulations, which do not involve matters of agency discretion. The Farm Bill leaves no discretion to the agency for setting interest rates. Notice and public comment, therefore, are impractical, unnecessary, and contrary to the public interest.

**List of Subjects in 7 CFR Part 1780**

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

■ For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

**PART 1780—WATER AND WASTE LOANS AND GRANTS**

■ 1. The authority citation for part 1780 continues to read as follows:

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

**Subpart A—General Policies and Requirements**

■ 2. Amend § 1780.13 to add paragraph (a)(3) and to revise the introductory text of paragraph (b) and (c) to read as follows:

**§ 1780.13 Rates and terms.**

(a) \* \* \*

(3) For a loan for a specific project that has been approved, but not closed on or before May 22, 2008, the rate structure in effect at that time will determine the interest rates. For loans approved on or after May 23, 2008, a percentage of the market rate will be used to determine the poverty and intermediate interest rates.

(b) *Poverty rate.* The poverty interest rate will not exceed 5 per centum per annum. Loans approved on or after May 23, 2008, will have the poverty interest rate set at 60 percent of the market rate.

All poverty rate loans must comply with the following conditions:

\* \* \* \* \*

(c) *Intermediate rate.* The intermediate interest rate will not exceed 7 percent per annum. For a loan for a specific project that has been approved, but not closed on or before May 22, 2008, the intermediate rate is the poverty rate plus one-half of the difference between the poverty rate and the market rate, not to exceed 7 percent per annum. Loans approved on or after May 23, 2008, will have the intermediate interest rate set at 80 percent of the market rate. The intermediate interest rate will apply to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State.

\* \* \* \* \*

Dated: October 20, 2008.

**James M. Andrew,**  
*Administrator, Rural Utilities Service.*

[FR Doc. E8-31255 Filed 1-5-09; 8:45 am]

**BILLING CODE 3410-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 103, 212, 214, 245 and 299**

[CIS No. 2134-01; DHS Docket No. USCIS-2006-0067]

RIN 1615-AA60

**Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Correction**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Interim final rule; Correction.

**SUMMARY:** With this amendment, the Department of Homeland Security (DHS) corrects an inadvertent error that was made in the Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status interim rule published in the **Federal Register** on December 12, 2008, at 73 FR 75540.

**DATES:** This rule is effective January 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Laura Dawkins, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Second Floor, Washington, DC 20529-2140, telephone (202) 272-8350.

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

On December 12, 2008, the Department of Homeland Security published an interim rule in the **Federal Register** at 73 FR 75540 to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to lawful permanent resident. At 8 CFR 245.24 DHS inadvertently:

- Ended the sentence in paragraph (d)(9) with a “:” instead of a “;”;
- Omitted the word “facts” immediately after the word “specific” at the end of paragraph (d)(9), and
- Ended the sentence in paragraph (d)(10) with a “period” rather than a “; and”.

**Correction of Publication**

■ Accordingly, the publication on December 12, 2008, at 73 FR 75540 of the interim final rule that was the subject of FR Doc. E8-29277 is corrected as follows:

**PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

**§ 245.24 [Corrected]**

- 1. On page 75561, in the second column, at the end of paragraph (d)(9), revise the term “by specific:” to read: “by specific facts;”.
- 2. On page 75561, in the second column, at the end of paragraph (d)(10), remove the “.” and add a “; and” in its place.

Dated: December 30, 2008.

**Michael Aytes,**  
*Acting Deputy Director, U.S. Citizenship and Immigration Services.*

[FR Doc. E8-31380 Filed 1-5-09; 8:45 am]

**BILLING CODE 9111-97-P**