

# Rules and Regulations

Federal Register

Vol. 77, No. 142

Tuesday, July 24, 2012

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1777

RIN 0572-AC26

#### Water and Waste Disposal Loans and Grants

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

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations related to the Section 306C Water and Waste Disposal (WWD) Loans and Grants Program, which provides water and waste disposal facilities and services to low-income rural communities whose residents face significant health risks. Specifically, RUS is modifying the priority points system in order to give additional priority points to the colonias that lack access to water or waste disposal systems and face significant health problems. The intent is to ensure that the neediest areas receive funding.

**DATES:** This rule is effective August 23, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 1548, Room 5147 S, Washington, DC 20250-1590. Telephone number: (202) 720-2670, Facsimile: (202) 720-0718.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This 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.

#### 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 that 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 the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

#### Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

#### Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0109 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under number 10.770 Water and Waste Disposal Loans and Grants (Section 306C). The Catalog is available on the Internet at <http://www.cfda.gov>.

#### Executive Order 12372

This program is subject to the provisions of Executive Order 12372, Intergovernmental Consultation, which requires intergovernmental consultation with State and local officials.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate 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 Mandate Reform Act of 1995.

#### National Environmental Policy Act Certification

The Agency has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### 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. Therefore, consultation with the states is not required.

#### Executive Order 13175

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Additionally, during the Proposed Rule comment period no comments were filed by elected leaders or staff of Federally Recognized Indian Tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural

Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

### Background

USDA Rural Development (RD) is a mission area within the U.S. Department of Agriculture comprised of the Rural Housing Service, Rural Business/Cooperative Service and Rural Utilities Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than forty programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The RUS loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

The Consolidated Farm and Rural Development Act (CONACT) authorizes USDA to provide loans and grants for the development, storage, treatment, purification, or distribution of water; and for the collection, treatment, or disposal of waste in rural areas. Section 306C of the CONACT directs USDA to provide loans and grants to Indian Tribes and other targeted areas, such as colonias, for the construction of new water and waste systems, or for the extension or improvement of such systems, in rural areas. It should be noted that the changes to 7 CFR 1777 are meant to only affect those projects in colonias and do not change the agency's rules for administering assistance that is legislatively mandated to benefit Federally Recognized Indian Tribes. The loans and grants are to be available to provide these facilities only to communities whose residents face significant health risks, as determined by the Secretary, due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The Agency provides such loans and grants through its regulation, 7 CFR 1777, providing assistance to colonias along the U.S. Mexican border.

This rule will change the Rural Utilities Service's current prioritization of potential projects pursuant to 7 CFR part 1777, which is based upon a point system, wherein the greatest possible number of points (50) is given to proposed projects that seek to provide water and/or waste disposal services to a colonia. Colonias are communities along the U.S.-Mexico border that are defined in 7 CFR 1777.4 as "Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989."

RUS remains committed to improving the quality of, and access to, water and waste services in colonias areas, and often collaborates and coordinates with other federal and state funders to do so. Since 1993, RUS has provided \$425.5 million in grants for 519 projects serving colonias areas. RUS has also provided funding to Rural Development's Rural Housing Service customers, resulting in \$22,137,827 worth of assistance to 6,693 colonia households, which provided access to community water and waste systems. In addition, USDA continues to work with state and local partners to seek new ways to improve program delivery in these areas.

In December 2009, the Government Accountability Office (GAO) released a report describing a number of perceived inadequacies in Federal Government programs across various agencies focused on assisting colonias areas. In the report, GAO recommended that the Secretary of Agriculture direct Rural Development to revise its process to ensure that the agency only provide Section 306C colonia funds to projects that benefit colonias, as defined by Federal statute. While USDA disagrees with GAO's assertion that 306C funds are currently allocated contrary to statutory intent, the Agency understands that more should be done to ensure that colonias areas most in need, especially those that remain unserved, are better targeted for funding.

In an effort to better serve colonias areas, and to address concerns raised by GAO, RUS amends 7 CFR 1777 as it pertains to projects serving colonias.

### Purpose of This Final Rule

This final rule clarifies 7 CFR 1777.12 by including specific information on documentation to support a

determination of a significant health risk. The rule also revises 7 CFR 1777.13 to specifically focus on the priority point system used in selecting projects for 306C funding. This will ensure that the colonias that lack access to water or waste disposal systems, and face significant health problems, are given priority consideration for 306C funding.

### Comments

RUS published a proposed rulemaking in the **Federal Register** on March 9, 2012 at 77 FR 14307 and invited interested parties to comment. One public submission was received with regard to the need for funding and education in colonias area. No other comments were received from any other source. A summary of the submission and the Agency's response is summarized as follows:

*Issue 1:* Commenter agreed that the efforts of the Department of Agriculture to provide further funding in the form of grants for potable water and proper waste management is a good course of action.

*Response:* Agency concurs.

*Issue 2:* Commenter suggested that education and training must be a key component in granting aid.

*Response:* Agency concurs. RUS has technical assistance providers that work with colonias areas in terms of education and training.

*Issue 3:* Commenter would like USDA RD to focus on employment projects, as this will begin to lessen dependency on federal aid.

*Response:* Agency concurs. RUS believes that modern, reliable water and waste infrastructure can provide the foundation for economic growth and future employment opportunities in colonias areas.

### List of Subjects in 7 CFR Part 1777

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

For the reasons discussed in the preamble, the Agency amends 7 CFR part 1777 as follows:

### PART 1777—SECTION 306C WWD LOANS AND GRANTS

- 1. The authority citation continues to read as follows:

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

- 2. Amend § 1777.12 add a sentence to the end of paragraph (b) introductory

text and add paragraphs (b)(1) through (4) to read as follows:

**§ 1777.12 Eligibility.**

\* \* \* \* \*

(b) \* \* \* The following requirements regarding the documentation must be followed:

(1) The originating documentation must come from an independent third party source that has the experience in specifying the health or sanitary problem that currently exists.

(2) The documentation must state specifically the health or sanitary problems that exist. General statements of problems or support for the project are not acceptable.

(3) Current users of the facility must be experiencing the current health or sanitary problem and not future or possible users.

(4) If no facility exists, documentation must include specific health and sanitary problems associated with individual facilities that currently exist to warrant the health and sanitary determination.

■ 3. Revise § 1777.13 to read as follows:

**§ 1777.13 Project priority.**

Paragraphs (a) through (d) of this section indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications.* The application and supporting information submitted with it will be used to determine applicant eligibility and the proposed project's priority for available funds. Applicants determined ineligible will be advised of their appeal rights in accordance with 7 CFR part 11.

(b) *State Office review.* All applications will be processed and scored in the area office and then reviewed for funding priority at the State Office using RUS Bulletin 1777-2. Eligible applicants that cannot be funded will be advised that funds are not available and advised of their appeal rights as set forth in 7 CFR part 11.

(c) *National Office.* The National Office will allocate funds on a project-by-project basis as requests are received from the State Office. If the amount of funds requested exceeds the amount of funds available, the total project score will be used to select projects for funding. The RUS Administrator may assign up to 35 additional points which will be considered in the total points for items such as geographic distribution of funds, severity of health risks, etc.

Unobligated funds will be pooled by mid-August of each year and made available to all States with eligible colonias applicants on a case-by-case basis.

(d) *Selection priorities.* The priorities described below will be used to rate applications and in selecting projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(6) of this section and will be used in selecting projects for funding.

(1) *Population.* The proposed project will serve an area with a rural population:

- (i) Not in excess of 1,500—30 points.
- (ii) More than 1,500 and not in excess of 3,000—20 points.
- (iii) More than 3,000 and not in excess of 5,500—10 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

- (i) Not in excess of 50 percent of the statewide nonmetropolitan median household income—40 points.
- (ii) More than 50 percent and not in excess of 60 percent of the statewide nonmetropolitan median household income—20 points.
- (iii) More than 60 percent and not in excess of 70 percent of the statewide nonmetropolitan median household income—10 points.

(3) *Joint financing.* The amount of joint financing committed to the proposed project is:

- (i) Twenty percent or more private, local, or State funds except Federal funds channeled through a State agency—10 points.
- (ii) Five to 19 percent private, local, or State funds except Federal funds channeled through a State agency—5 points.

(4) *Colonia.* (See definition in § 1777.4). The proposed project will provide water and/or waste disposal services to the residents of a colonia:—50 points. Additional points will be assigned as follows:

- (5) *Access and health risks for colonias.* (i) A colonia that lacks access to both water and waste disposal facilities, resulting in a significant health risk—50 points.
- (ii) A colonia that lacks access to either water or waste disposal facilities, resulting in a significant health risk—40 points.
- (iii) A colonia that has access to water and waste disposal facilities, but is facing a significant health risk—15 points.

(6) *Discretionary.* In certain cases, and when a written justification is prepared, the State Program Official with loan/grant approval authority may assign up to 15 points for items such as natural

disaster, to improve compatibility/coordination between RUS' and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc.

Dated: July 18, 2012.

**Jonathan Adelstein,**  
Administrator, Rural Utilities Service.

[FR Doc. 2012-18017 Filed 7-23-12; 8:45 am]

**BILLING CODE 3410-15-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 362**

**RIN 3064-AD88**

**Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends FDIC regulations to prohibit any insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquiring such security and periodically thereafter, that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. An issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest.

This final rule adopts the proposed creditworthiness standard with the clarifying revision described below. In the final rule, the phrase "projected life of the investment" has been revised to "projected life of the security" to more closely track the language in the Office of the Comptroller of the Currency's ("OCC") final rule.<sup>1</sup> The clarifying revision addresses ambiguities in the proposed rule and harmonizes the final rule with the final rule adopted by the OCC regarding permissible investments for national banks.<sup>2</sup>

**DATES:** *Effective Date:* The final rule is effective on July 21, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kyle Hadley, Chief, Examination Support Section, (202) 898-6532, Division of Risk Management Supervision; Eric Reither, Capital Markets Specialist, (202) 898-3707, Division of Risk

<sup>1</sup> 77 FR 35253. (June 13, 2012).

<sup>2</sup> *Id.* at 35257.