

# 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

### Rural Utilities Service

#### 7 CFR Part 1774

RIN 0572-AC14

#### Special Evaluation Assistance for Rural Communities and Households Program

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is issuing a regulation to establish the Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program as authorized by Section 6002 of The Food, Conservation and Energy Act of 2008, Public Law 110-246 (Farm Bill), which amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment added the new SEARCH grant program under which the Secretary is authorized to make predevelopment planning grants for feasibility studies, design assistance, and technical assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects.

**DATES:** You may submit comments according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than February 22, 2010 to be eligible for consideration. Late comments will not be considered.
- Electronic copies must be received by February 22, 2010 to be eligible for consideration.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and in the "Search Documents" box, enter RUS-09-Water-0001, and select GO>>. 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. 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, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, DC 20250-1522. Please state that your comment refers to Docket No. RUS-09-Water-0001.

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

#### FOR FURTHER INFORMATION CONTACT:

Anita O'Brien, Loan Specialist, Water and Environmental Programs, U.S. Department of Agriculture, Rural Utilities Service, Room 2230 South Building, Stop 1570, 1400 Independence Ave., SW., Washington, DC 20250-1570. Telephone: (202)690-3789, FAX: (202)690-0649, E-mail: [anita.obrien@usda.gov](mailto:anita.obrien@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Classification

##### *Executive Order 12866*

This proposed 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).

##### *Executive Order 12988*

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed 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 pre-empted; 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. sec. 6912(e)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

#### *Regulatory Flexibility Act Certification*

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

#### *Information Collection and Recordkeeping Requirements*

The information collection and recordkeeping requirements contained in this rule will not be effective until approved by the Office of Management and Budget (OMB), subject to the submission of a paperwork package for which the Agency intends to request approval from OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). RUS invites comments, on any aspect of this collection of information including suggestions for reducing the burden. Send questions or comments regarding this information collection to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Washington, DC 20250-1522, Fax: (202) 720-8435.

Nonprofit organizations applying for SEARCH grants must submit an application which includes an application form, various other forms, certifications, and supplemental information. RUS will use the information collected from applicants, borrowers, and consultants to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the SEARCH program.

The applicant will submit the following information:

SF-424, "Application for Federal Assistance." (cleared under 4040-0004)

Applicants use this form as a required cover sheet for applications submitted for SEARCH grants. The application is an official form required for all Federal grants and requests basic information about the applicant and the proposed project.

SF-424A, "Budget Information—Non-Construction Programs." (cleared under 4040-0006)

Applicants project costs and expenses for the grant project. The form also provides information on matching funds. This form is submitted as part of the pre-application and if the project is selected, as part of the formal application.

*SF-424B, "Assurances—Non-Construction Programs."* (cleared under 4040-0007)

Applicants read and sign this form to indicate the organization's intent to comply with the laws, regulations, and policies to which a grant is subject.

#### *Project Narrative*

Applicants will provide a project narrative detailing the project to be financed with the SEARCH grant funds. The narrative will also provide details on the activities or tasks to be accomplished, objectives, timetables for task completion, and anticipated results.

*RD 400-1, "Equal Opportunity Agreement" and RD 400-4, "Assurance Agreement."* (cleared under 0575-0018)

Applicants read and sign these forms to assure RUS that they agree to and will comply with Title VI of the Civil Rights Act of 1964, and the Equal Opportunity Clause under Executive Order 11246 of September 24, 1965.

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

USDA regulations published at 7 CFR Part 3017 implement the government-wide debarment and suspension system for USDA's non-procurement transactions. Applicants for SEARCH grants are required to provide certification under these regulations. Form AD-1047 may also be used to obtain the required certification.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction**

Form AD-1048 will be signed by applicant's suppliers, auditors, contractors, etc., and retained by applicant in their files.

#### **Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—for Grantees Other Than Individuals**

USDA regulations published at 7 CFR Part 3017 implement the Drug-Free Workplace Act of 1988, which requires that grant recipients agree that they will maintain a drug-free workplace. Applicants are required to provide certification under these regulations. Form AD-1049 may also be used to obtain the required certification.

#### **Relationship or Association With RUS Employees**

Applicants must identify and report any known relationship or association with a RUS employee such as close personal association, immediate family, close relatives, or business associates.

#### **Supporting Documentation**

Applicants must provide documentation of legal organization and authority to borrow funds, construct, operate, manage the facility, etc. The documentation may include articles of incorporation, certificate of incorporation and good standing, bylaws, rules, and organizational minutes. Applicants also must provide financial information such as financial statements, audits, or existing debt instruments. This information is necessary for RUS to determine an organization's legal existence, authority to perform certain functions, and financial capacity to borrow funds.

#### **Agreements for Professional Services**

Applicants must contract for the professional services rendered from an engineer, attorney, bond counsel, accountant, auditor, appraiser, or financial advisor. Contracts or other forms of agreement for services necessary for project planning and development are subject to RUS concurrence. Applicants must submit them to RUS for review and concurrence to ensure the needed services will be available at a reasonable cost.

#### **Grant Agreement**

The Grant Agreement sets forth the terms and conditions under which the applicant receives a RUS grant. Applicants and RUS must execute the document before RUS disburses grant funds.

#### **Audits Based on Federal Assistance**

Borrowers must submit audited financial statements annually in accordance with Generally Accepted Government Auditing Standards (GAGAS). The audit must comply with the requirements of OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations" or Water and Waste Disposal audit requirements.

The requirements for submitting an audit report under OMB Circular A-133 are based on the total amount of Federal financial assistance expended during a borrower's fiscal year from all Federal sources. Borrowers that expend \$500,000 or more in a year in Federal awards must have a single audit conducted for that year under OMB

Circular A-133. Those that expend less than \$500,000 in Federal awards and have an outstanding RUS loan balance equal to or greater than \$1,000,000 must submit an audit in accordance with Water and Waste Disposal audit requirements. Borrowers expending less than \$500,000 in Federal assistance and having a RUS loan balance less than \$1,000,000 may submit a management report instead of an audit report. RUS will designate the type of audit borrowers must submit.

#### **Management Reports**

All borrowers must furnish management reports that will provide management a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. This requirement is necessary to help assure that the facility will be properly managed and to protect the financial interest of the Government.

*Form RD 1942-8, "Resolution of Members or Stockholders"* (cleared under 0575-0015)

Nonprofit applicants prepare this form to indicate that the governing body has the authority to enter into a grant of a particular amount with RUS.

*Form RD 442-7, "Operating Budget"* (cleared under 0575-0015)

All applicants use the form to project income and expense items and a complete cash flow through the first full year of operations after they use the loan proceeds. These projections are necessary in determining the source and reliability of the projected income and the adequacy of resources to repay the loan in a timely manner, operate and maintain the facility, and maintain adequate reserves.

Comments on this information collection must be received by March 23, 2010.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

*Title:* Special Evaluation Assistance for Rural Communities and Household Program (SEARCH).

*OMB Control Number:* 0572-NEW.

*Type of Request:* New.

*Abstract:* The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 32.15 hours per responses.

*Estimated Number of Respondents:* 50.

*Estimated Number of Total Annual Responses per Respondents:* 820.

*Estimated Total Annual Burden on Respondents:* 1,050.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis at (202) 720–7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

### **E-Government Act Compliance**

Rural Development 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.

### **National Environmental Policy Act Certification**

The Administrator of RUS has determined that this proposed 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.

### **Catalog of Federal Domestic Assistance**

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.759—Special Evaluation Assistance for Rural Communities and Households Program (SEARCH). This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800 and at <https://www.cfda.gov>.

### **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.

### **Unfunded Mandates**

This proposed 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 proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

### **Executive Order 13132, Federalism**

The policies contained in this proposed 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 proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

### **Background**

The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(2)). The amendment added a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants. SEARCH grants are intended to assist the neediest, eligible communities that lack financial resources to pay for feasibility studies, design assistance and technical assistance associated with water and waste infrastructure needs.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes

on Federal and State reservations and other federally recognized Indian tribes. Up to 100 percent of the eligible cost of the grant may be funded and may not exceed \$30,000. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the Consolidated Farm and Rural Development Act (CONACT).

Eligible entities for the SEARCH grants will be the same entities eligible to obtain a loan, grant, or loan guarantee from the Rural Utilities Service Water and Waste Disposal and Wastewater loan and grant programs. However, as applied to the SEARCH program, rural area has been defined as one with a population of 2,500 or less. The Agency will define financially distressed areas as those where the median household income of the areas to be served is either below the poverty line or below 80 percent of the statewide non-metropolitan median household income.

The Secretary may use not more than four percent of the total amount of funds made available for a fiscal year for water and waste disposal to carry out the SEARCH program.

The Administrator of the RUS is required to prescribe regulations to implement the provisions of Section 6002 of the Farm Bill and does so through the proposed regulations herein. In developing the proposed SEARCH program regulations, the Agency relied heavily on existing Rural Development regulations relative to water and waste disposal loans and grants.

### **List of Subjects in 7 CFR Part 1774**

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

Therefore for the reasons discussed in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1774 to read as follows:

### **PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)**

#### **Subpart A—General Provisions**

Sec.

1774.1 General.

1774.2 Definitions.

- 1774.3 Availability of forms and regulations.
- 1774.4 Allocation of funds.
- 1774.5–1774.6 [Reserved]
- 1774.7 Environmental requirements.
- 1774.8 Other Federal statutes.
- 1774.9 [Reserved]

#### Subpart B—Grant Application Processing

- 1774.10 Applications.
- 1774.11 [Reserved]
- 1774.12 Eligibility.
- 1774.13 Limitations.
- 1774.14 Eligible grant purposes.
- 1774.15 Selection criteria.
- 1774.16 Grant application processing and approval.
- 1774.17 Grant closing and disbursement.
- 1774.18 Reporting requirements, accounting methods and audits.
- 1774.19 Applications determined ineligible.
- 1774.20 Conflict of interest.
- 1774.21–1774.23 [Reserved]
- 1774.25–1774.99 [Reserved]
- 1774.100 OMB Control Number.

**Authority:** 7 U.S.C. 1926(a)(2)(C).

#### Subpart A—General Provisions

##### § 1774.1 General.

The purpose of the Special Evaluation Assistance for Rural Communities and Household (SEARCH) Grant program is to provide financial assistance to the neediest, eligible communities, who lack financial resources to pay for feasibility studies, design assistance and technical assistance. This subpart sets forth the general policies and procedures for making and processing predevelopment planning SEARCH grants for water and waste projects.

##### § 1774.2 Definitions.

The following definitions apply to subparts A and B of this part.

**Agency.** The Rural Utilities Service of the United States Department of Agriculture (USDA) within the Rural Development mission area of the Under Secretary for Rural Development. The Processing Official will administer this water and waste program on behalf of the Rural Utilities Service.

**Approval official.** The Agency official at the State level who has been delegated the authority to approve grants.

**ConAct.** Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(2)).

**Design assistance.** Preliminary design and engineering analysis necessary for an application for funding. Design assistance does not include financial assistance for development of plans, specifications, or bidding documents.

**DUNS Number.** Data Universal Numbering System number obtained from Dun and Bradstreet and used when applying for Federal grants or cooperative agreements. A DUNS

number may be obtained at no cost, by calling 1-866-705-5711.

**Eligible entity.** Entity that meets eligibility requirements to obtain a loan, loan guarantee or grant under Paragraphs 1, 2 or 24 of Section 306(a) of the ConAct (codified at 7 U.S.C. Section 1926(a)(1)(2) and (24)).

**Feasibility study.** Documentation associated with an objective analysis of project-related technical engineering or environmental impact analyses required to support applications for funding water or waste disposal projects through USDA, Rural Utilities Service or other agencies.

**Financially distressed area.** An area is considered financially distressed if the median household income of the area to be served is either below the poverty line or below 80 percent of the statewide non-metropolitan median household income based on available historic statistical information from the latest decennial census.

**Grantee.** The applicant receiving financial assistance directly from the RUS to carry out the project or program under this program.

**Poverty line.** The level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

**Processing official.** The Agency official designated by the approval official as having the authority to accept and process applications for water and waste disposal assistance.

**Rural area.** For the purposes of this SEARCH program, any area not in a city or town with a population of 2,500 or fewer, according to the latest decennial census of the United States.

**State.** Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the U.S. Virgin Islands.

**Technical assistance.** Supervision, oversight, or training by an organization for the development of an application for financial assistance.

##### § 1774.3 Availability of forms and regulations.

Information about the forms, instructions, regulations, bulletins, OMB Circulars, Treasury Circulars, standards, documents and publications cited in this part is available from any USDA/Rural Development Office or the United States Department of Agriculture, Washington, DC 20250–1500 and at <http://www.grants.gov>.

##### § 1774.4 Allocation of funds.

The Secretary may use not more than four percent of the total amount of funds made available for a fiscal year for water and waste disposal activities for SEARCH grants.

##### §§ 1774.5–1774.6 [Reserved]

##### § 1774.7 Environmental requirements.

The policies and regulations contained in Part 1794 of this chapter apply to grants made in accordance with this part.

##### § 1774.8 Other Federal Statutes.

Other Federal statutes and regulations are applicable to grants awarded under this part. These include but are not limited to:

(a) 7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

(b) 7 CFR part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.

(c) 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 7 CFR part 1794, RUS Implementation of the National Environmental Policy Act.

(e) 7 CFR part 1901, subpart E—Civil Rights Compliance Requirements.

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

(g) 7 CFR part 3016—USDA Implementation of OMB Circular Nos. A-102 and A-97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(h) 7 CFR part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 7 CFR part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(j) 7 CFR part 3021, as amended—Government-wide Debarment and Suspension (Non-procurement); Government-wide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(k) 7 CFR part 3052—USDA implementation of OMB Circular No. A-133 regarding audits of institutions of higher education and other nonprofit institutions.

(l) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs.

#### **§ 1774.9 [Reserved]**

### **Subpart B—Grant Application Processing**

#### **§ 1774.10 Applications.**

(a) To file an application, an organization must provide their DUNS number. An organization may obtain a DUNS number from Dun and Bradstreet by calling (1-866-705-5711). To file a complete application, the following information should be submitted:

(1) Standard Form 424, “Application for Federal Assistance (For Non-Construction).”

(2) Standard Form 424A & B, “Budget Information—Non-Construction Programs.”

(3) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, organizational documents, or existing debt instruments. The Processing Official will advise applicants regarding the required documents. Applicants that are indebted to RUS will not need to submit documents already on file with the Processing Official as long as such documents are current and valid.

(4) Project narrative detailing the project to be financed with the SEARCH grant funds. The narrative will also provide details on the activities or tasks to be accomplished, objectives, timetables for task completion, and anticipated results.

(5) The applicant’s Internal Revenue Service Taxpayer Identification Number (TIN).

(6) Other Forms and certifications. Applicants will be required to submit the following items to the Processing Official, upon notification from the Processing Official to proceed with further development of the full application:

(i) Form RD 442-7, “Operating Budget”;

(ii) Form RD 400-1, “Equal Opportunity Agreement”;

(iii) Form RD 400-4, “Assurance Agreement”;

(iv) Form AD-1047, “Certification Regarding Debarment, Suspension and other Responsibility Matters”;

(v) Form AD-1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;

(vi) Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(vii) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

(b) Applicants are encouraged to contact the State Office or the Processing Official to find out how to file electronically. The application and supporting documentation must be sent or delivered to the Processing Official, unless it is filed electronically.

#### **§ 1774.11 [Reserved]**

#### **§ 1774.12 Eligibility.**

The following eligibility requirements must be met:

(a) The applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision or a state, territory or commonwealth, or

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community, or

(3) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(b) The area to be served must be financially distressed and rural as defined in § 1774.2 of this part.

#### **§ 1774.13 Limitations.**

Grant funds may not be used to:

(a) Fund political or lobbying activities.

(b) Pay for work already completed.

(c) Purchase real estate or vehicles, improve or renovate office space, or repair and maintain privately owned property.

(d) Construct or furnish a building.

(e) Intervene in the Federal regulatory or adjudicatory proceedings.

(f) Sue the Federal Government or any other government entities.

(g) Pay for any other costs that are not allowable under OMB Circular A-87, OMB Circular A-110, OMB Circular A-102 or OMB Circular A-122.

(h) Make contributions or donations to others.

(i) Fund projects that duplicate technical assistance given to implement action plans under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7

U.S.C. 6613). Applicants cannot receive both grants made under this part and grants that the Forest Service makes to implement the action plans for five continuous years from the date of grant approval by the Forest Service.

(j) To pay an outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded. An applicant will be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

#### **§ 1774.14 Eligible grant purposes.**

(a) Eligible predevelopment planning costs are feasibility studies, preliminary design assistance, and technical assistance as each is defined in § 1774.2. The eligible predevelopment activities funded with these grant funds must be agreed to and accepted by the Agency prior to the disbursement of the SEARCH grant. The predevelopment planning costs must be related to a proposed project that meets the following requirements:

(1) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(2) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a)(1) of this section.

(3) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a)(1) of this section.

(b) The Secretary, subject to the limitation in § 1774.4 of this part, may fund up to 100 percent of the eligible grant costs, not to exceed \$30,000.

#### **§ 1774.15 Selection criteria.**

Projects will be selected based primarily on the funding priorities in 7 CFR 1780.17. The Program Official discretionary points stated in 7 CFR 1780.17(e) can also include consideration of the following criteria:

(a) Systems with limited resources.

(b) Smallest systems with lowest incomes.

(c) Funds availability.

#### **§ 1774.16 Grant application processing and approval.**

(a) Before starting to assemble the full application, the applicant should arrange through the Processing Official an application conference to provide a basis for orderly application assembly.

The processing office will explain program requirements, public information requirements and provide guidance on preparation of items necessary for final determination.

(b) The Processing Official will determine if the application is properly assembled. If not, the applicant will be notified within fifteen federal working days as to what additional submittal items are needed.

(c) The Processing Official and Approval Official will coordinate their reviews to ensure that the applicant is advised about eligibility and anticipated fund availability within 45 days of the receipt of a completed application.

(d) The Processing Official will submit the following to the Approval Official:

(1) "Water and Waste Project Information Summary";

(2) Form RD 442-3, "Balance Sheet" or a financial statement or audit that includes a balance sheet;

(3) Letter of Conditions;

(4) Form RD 1942-46, "Letter of Intent to Meet Conditions";

(5) Form RD 1940-1, "Request for Obligation of Funds";

#### **§ 1774.17 Grant closing and disbursement.**

(a) *Grant closing.* RUS Bulletin 1780-12 "Water or Waste System Grant Agreement" will be completed and executed in accordance with the requirements of grant approval. The grant will be considered closed when RUS Bulletin 1780-12 has been properly executed. Processing officials or Approval officials are authorized to sign the grant agreement on behalf of RUS.

(b) *Grant disbursements.* Agency policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. If an approved grant includes applicant or other contributions, then these funds will be disbursed before the disbursement of any Agency grant funds.

(c) *Payment for project costs.* Project costs will be monitored by the RUS processing office. Invoices will be approved by the borrower and submitted to the Processing Official for concurrence. The review and acceptance of project costs by the Agency does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.

(d) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions if SEARCH grants funds are financing less than 100 percent of the project. Funds remaining may be

considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(1) Remaining funds may be used for eligible grant purposes as described in 1774.14 of this subpart, or

(2) Grant funds not expended will be canceled. Prior to the actual cancellation, the borrower, its attorney and its engineer will be notified of RUS' intent to cancel the remaining funds.

#### **§ 1774.18 Reporting requirements, accounting methods and audits.**

All Agency grantees will follow the reporting requirements as outlined in 7 CFR 1780.47.

#### **§ 1774.19 Applications determined ineligible.**

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The notification to the applicant will state that an appeal of this decision may be made by the applicant under 7 CFR Part 11.

#### **§ 1774.20 Conflict of interest.**

Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Rural Development employees with Water and Environmental Programs responsibility, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants of this assistance are required to identify any known relationship or association with an RUS employee.

#### **§§ 1774.21-1774.23 [Reserved]**

#### **§ 1774.24 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course(s) of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. The exception decision will be documented in writing, signed by the Administrator, and retained in the files.

#### **§§ 1774.25-1774.99 [Reserved]**

#### **§ 1774.100 OMB Control Number.**

The information collection requirements in this part will not be

effective until approved by the Office of Management and Budget (OMB), subject to the submission of a paperwork package to OMB and assigned an OMB Control Number.

Dated: January 15, 2010.

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

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**BILLING CODE 3410-15-P**

## **FARM CREDIT ADMINISTRATION**

### **12 CFR Part 652**

#### **RIN 3052-AC51**

### **Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, Agency, us, or we) proposes to amend our regulations on the Risk-Based Capital Stress Test (RBCST or model) used by the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation). We propose to update the model to address recent additions to Farmer Mac's program authorities, specifically the authority for Farmer Mac to finance rural utility loans. We are also proposing to revise the existing treatment of risk mitigations of general obligations for the AgVantage Plus program and related structures, as established in Version 3.0 of the model. Finally, we propose revising the treatment of counterparty risk on non-program investments in the model by adjusting the haircuts applied to those investments to keep the model consistent with statutory requirements for calculating Farmer Mac's regulatory minimum capital level.

**DATES:** You may send us comments by March 8, 2010.

**ADDRESSES:** We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods: