



This document is scheduled to be published in the Federal Register on 03/09/2012 and available online at <http://federalregister.gov/a/2012-05627>, and on FDsys.gov

United States Department of Agriculture

Rural Utilities Service

7 CFR 1777

RIN 0572-AC26

Water and Waste Disposal Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend the regulations pertaining 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 proposing to modify the priority points system within the regulation in order to give additional priority points to colonias areas that are un-served and that are facing significant health risks. The intent is to ensure that the neediest areas receive funding. RUS is also seeking comments on other potential modifications that could provide

incentive for local entities to assist areas designated as colonias that lack access to water or waste disposal systems and/or which face significant health risk.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments by either of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting comments.
- 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 5159, Washington, DC 20250–1522.

Additional information about the Agency and its programs is available on the Internet at <http://www.rurdev.usda.gov>.

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 proposed 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

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal, Alaska native, or native Hawaiian governments and sovereign institutions or have tribal implications that preempt tribal law.

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. 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.

Currently, the Rural Utilities Service prioritizes potential projects filed pursuant to 7 CFR 1777, 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 the inception of the 7 CFR 1777 grant program for colonias in 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 households in colonias areas. This has allowed affected colonias to connect 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. 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 those colonias 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 reviewed 7 CFR 1777 as it pertains to projects serving colonias.

Purpose of this document

The purpose of this document is to make a minor clarification change to 7 CFR 1777.12 and to revise 7 CFR 1777.13. 7 CFR 1777.12 is revised to include specific information on documentation to support a determination of a significant health risk. The revision to 7 CFR 1777.13 focuses specifically on the priority point system used in selecting projects for 306C funding, in order to ensure that colonias that lack access to water and/or waste disposal systems, and that are facing significant health problems, are given priority consideration for 306C funding.

This document also seeks comment on potential incentives to encourage established regional or other rural water systems, in good financial standing and with sufficient operating capacity, to extend service to colonias that have no access to water and/or waste disposal services.

Additionally, this document is a request for comments regarding the communities on the U.S.-Mexico border designated as colonias. In particular, RUS seeks comment regarding how its programs and other federal, state and local government programs might be leveraged to better serve these areas and create sustainable communities. Any individual or entity with comments concerning the Water and Waste Disposal (WWD) Loans and Grants program or other comments regarding colonias-related issues is asked to provide comments to RUS as specified above.

Discussion of proposed changes

1. RUS proposes to amend 7 CFR 1777.12(b) to add specific requirements regarding the type of documentation that will support a determination of a significant health risk.

2. Currently, 7 CFR 1777.13 allocates 50 points to projects that serve colonias. RUS proposes to amend 7 CFR 1777.13 by including language that allows for additional priority points to be given to colonias that lack any access to water and/or waste disposal systems, and to those that are facing significant health risk. This is intended to ensure that RUS is reaching those colonias with the most need. Specifically, projects proposing to serve colonias that either lack access to community systems that supply water meeting Safe Drinking Water Act standards or that lack waste disposal services (unserved),

resulting in a documented significant health or sanitary risk, would receive 40 points.

Projects proposing to serve colonias that lack access to community systems that supply water meeting Safe Drinking Water Act standards and that lack waste disposal services (unserved), resulting in a documented health or sanitary risk, would receive 50 points.

Projects proposing to serve colonias that have access to community systems that supply water meeting Safe Drinking Water Act and waste disposal services, but are facing documented health or sanitary risks, would receive 15 points. These changes allow for the differentiation between those colonias that are seeking funding for additional improvements or expansion, and those that lack basic water and waste disposal systems and/or that face significant health risks.

3. RUS proposes to amend 7 CFR 1777.13 by removing all occurrences of the word “preapplication” and replacing it with the word “application”. This will reflect a change in RUS procedure implemented several years ago which eliminated the use of preapplications.

4. RUS proposes to remove text in 1777.13 (b) and (d) that are internal instructions.

Request for comments

USDA is also seeking input on potential amendments to 7 CFR 1777.11 that would provide incentives for county, regional and other established and successful eligible water and waste systems to provide service to colonias areas that have no in-home access to community water and/or waste disposal infrastructure. In some areas

without access, there is a lack of managerial, technical and financial capacity to operate and maintain rural water and waste facilities. One way to bring reliable, affordable service to such an area would involve the expansion of a neighboring established county, regional or other rural water or waste disposal system.

1. The Agency seeks comment on the possibility of incentivizing the expansion of existing systems into colonias areas by providing loan and grant funds to eligible, qualified existing entities who are seeking to serve an existing colonia. This determination would be based on the ability of the proposed service area to repay debt rather than on the repayment ability of the entire system. The Agency seeks comment on whether this approach would be effective in encouraging these entities to provide service to unserved colonias areas.

2. The Agency seeks comment regarding what safeguards might be needed to ensure that the limited grant funding available to service colonias is applied *only* where it is critically needed. Should proposed service areas considered under such a proposal be at or below per capita poverty income level for the state? Should this approach only be available to those areas with no access? Should it exclude expansion within an existing colonia to unserved houses? Should fully improved Colonias lose the “colonias” designation?

3. The Agency seeks additional suggestions on how to encourage the provision of sustainable service in the colonias. Suggestions may range from additional modifications of regulations to specific technical assistance and training programs for colonias areas. To facilitate the discussion, RUS has developed the following questions. What are the primary challenges to establishing and sustaining rural water and waste

disposal services in colonias areas? Should alternative technology for services be considered in the colonias? Are appropriate governance structures in place to support local services? What type of technical assistance is needed in colonias without access to water and waste services? What local and/or regional partners can help facilitate or promote sustainable water and waste systems in colonia areas?

List of Subjects

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, RUS proposes to amend 7 CFR 1777 as follows:

PART 1777 – SECTION 306C WWD LOANS AND GRANTS

1. The authority citation for part 1777 continues to read as follows:

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

2. Amend section 1777.12 by revising paragraph b to add a sentence to the end and subparagraphs (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 section 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 that 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 the Agency's and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc.

Date: February 29, 2012

Jonathan Adelstein
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Rural Utilities Service

[FR Doc. 2012-5627 Filed 03/08/2012 at 8:45 am; Publication Date: 03/09/2012]