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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN: 0570-AA30

**Methodology and Formulas for Allocation of Loan and Grant
Program Funds**

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final Rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is publishing this final rule for allocating program funds to its State Offices. This final rule adds two programs - the Rural Energy for America Program (REAP) and the Intermediary Relending Program (IRP). In addition, this final rule revises State allocation formulae to account for changes in data reported by the U.S. Bureau of the Census'

decennial Census. Finally, this final rule revises the weight percentages associated with each of the allocation criteria; provides flexibility in determining when not to make State allocations for a program; restricts the use of the transition formula and changes the limitations on how much program funds can change when the transition formula is used; adds provisions for making State allocation for other RBS programs, including new ones; and provides consistency, where necessary, in the allocation of RBS program funds to State Offices.

EFFECTIVE DATE: This rule is effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Chad Parker, Deputy Administrator Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3220, 1400 Independence Avenue, SW., Washington, DC 20250-3225; e-mail: chad.parker@wdc.usda.gov; telephone (202) 720-7558.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866 and has

not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers for the programs affected by this action are 10.352, Intermediary Relending Program; 10.768, Business and Industry Guaranteed Loan Program; 10.769, Rural Business Enterprise Grant Program; 10.773, Rural Business Opportunity Grant Program, 10.868, Rural Energy for America Program.

Executive Order 12372, Intergovernmental Consultation

This final rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this final 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.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

This final 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 final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The Agency made this determination based on the fact that this action only impacts internal Agency procedures for determining how much of available program funds are allocated to each State. Small entities will not be impacted to a greater extent than large entities.

Executive Order 13132, Federalism

The policies contained in this final 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.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order 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. Thus, this final rule is not subject to the requirements of Executive Order 13175.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this final rule.

E-Government Act Compliance

Rural Development 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 citizens to access Government information and services electronically.

I. Background

On March 18, 2014, RBS published a notice in the Federal Register (79 FR 15052) proposing to amend its

regulations for allocating program funds among its State Offices. RBS proposed this action, in part, in order to provide a regulatory basis for allocating funds for REAP, Value-Added Producer Grant Program VAPG, and IRP. In addition, because of changes to the reporting of data by the Census Bureau, RBS needed to revise data sources to be used for income and unemployment rates. The other changes proposed were mainly administrative in nature.

The comment period for the proposed rule closed on May 19, 2014. RBS received comment letters from three entities - two national trade organizations and one individual. Their comments and the RBS responses to those comments are presented below.

II. Summary of Changes to the Proposed Rule

For the reasons discussed in the following section, RBS made one change to the proposed rule in response to comments from the public. RBS also made two additional changes. One change provides additional flexibility in determining which 5-year data set in the American Community Survey (ACS) would be used. This change occurs in § 1940.588(a)(2)(ii)(B) and § 1940.589(a)(2)(ii)(B). The other change removes from § 1940.588(a)(5) and § 1940.589(a)(5) the sentence "Jurisdictions receiving

administrative allocations do not receive base allocations." This change allows a jurisdiction to receive the base allocation whenever the administrative allocation is less than the base allocation.

III. Summary of Comments and Responses

RBS received three comment letters in response to the proposed rule. Two of the commenters are national stakeholder organizations; the third commenter is an individual. The comments made by the two stakeholder organizations and RBS' response are presented below. The third commenter did not specifically address the issues announced in the proposed rule and therefore RBS is not responding to this commenter.

Comment: Two commenters objected to making State allocations for VAPG and recommended that VAPG be removed from the rule. The commenters provided the following reasons:

- VAPG is a national competitive grant program and should be administered like one, including establishing as quickly as possible a robust peer review evaluation process;
- Administering the program at the State level is inefficient;

- The current multi-tiered review system involving federal, State, and independent review is critical to the program's success and should not only be maintained but enhanced;
- Current funding levels are not enough to sustain an effective competitive grants program if implemented at the State level;
- The proposed split application review process would be complicated and would inevitably lead to confusion for agency staff and for applicants and reviewers; and
- The idea of finalizing a rule for a brand new State allocation system and then perhaps not using the new system is unconvincing.

Response: In consideration of these comments, RBS has decided not to include the VAPG program in this rulemaking. While VAPG is not included in this rulemaking, RBS notes that the provisions of § 1940.593 enables RBS to establish a state allocation process for the VAPG program as well as for any other existing RBS program and any new RBS program in the future.

List of Subjects for 7 CFR part 1940

Administrative practice and procedure, Agriculture,

Allocations, Grant programs - Housing and community development, Loan programs - Agriculture, Rural areas.

For the reasons set forth in the preamble, part 1940 of title 7 of the Code of Federal Regulations is amended as follows:

Part 1940 - GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart L - Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.588 is revised to read as follows:

§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Enterprise Grants, Rural Business Opportunity Grants, and Intermediary Relending Program.

The Agency will allocate funds to the States each Federal fiscal year for the programs identified in this section using the procedures specified in paragraph (a) of

this section. If the Agency determines that it will not allocate funds to the States for a program identified in this section in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the Federal Register. The conditions under which the Agency will not allocate a program's funds to the States are identified in paragraph (b) of this section.

(a) Procedures for allocating funds to the States.

Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make the allocation calculation each Federal fiscal year.

(1) Amount available for allocations. See

§ 1940.552(a) of this subpart.

(2) Basic formula criteria, data source and weight.

See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of national nonmetropolitan unemployment.

(ii) The data sources for each of the criteria identified in paragraph (a) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent Bureau of Labor Statistics data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the Federal Register.

$$SF = (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) + (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) + (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent})$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section

each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) Basic formula allocation. See § 1940.552(c) of this subpart.

(4) Transition formula. The transition provisions specified in § 1940.552(d) of this subpart apply to the programs identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) Base allocations. See § 1940.552(e) of this subpart.

(6) Administrative allocations. See § 1940.552(f) of

this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(7) Reserve. See § 1940.552(g) of this subpart.

(8) Pooling of funds. See § 1940.552(h) of this subpart.

(9) Availability of allocation. See § 1940.552(i) of this subpart.

(10) Suballocation by the State Director.

Suballocation by the State Director is authorized for each program covered by this section.

(b) Conditions for not allocating program funds to the States. The Agency may elect to not allocate program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to a program identified in this section are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for any program identified in this section and that the exercise of this determination is not in conflict with applicable law.

3. Section 1940.589 is revised to read as follows:

§ 1940.589 Rural Energy for America Program.

The Agency will allocate funds to the States each Federal fiscal year for renewable energy system and energy efficiency improvement projects under the Rural Energy for America Program (REAP) using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for REAP in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the Federal Register. The conditions under which the Agency will not allocate the program's funds to the States are identified in paragraph (b) of this section.

(a) Procedures for allocating funds to the States.

Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make this calculation each Federal fiscal year.

(1) Amount available for allocations. See

§ 1940.552(a) of this subpart.

(2) Basic formula criteria, data source, and weight.

See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of energy cost.

(ii) The data sources for each of the criteria identified in paragraph (a)(2)(i) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent U.S. Energy Information Administration data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the Federal Register.

SF = (criterion (a) (2) (i) (A) × 25 percent) + (criterion (a) (2) (i) (B) × 50 percent) + (criterion (a) (2) (i) (C) × 25 percent)

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a) (2) (i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) Basic formula allocation. See § 1940.552(c) of this subpart.

(4) Transition formula. The transition provisions specified in § 1940.552(d) of this subpart apply to the program(s) identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a) (2) (iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to

decrease for a State will be 10 percent from its previous year's allocation.

(5) Base allocations. See § 1940.552(e) of this subpart.

(6) Administrative allocations. See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) Reserve. See § 1940.552(g) of this subpart.

(8) Pooling of funds. See § 1940.552(h) of this subpart.

(9) Availability of the allocation. See § 1940.552(i) of this subpart.

(10) Suballocation by the State Director. Suballocation by the State Director is authorized for this program.

(b) Conditions for not allocating program funds to the States. The Agency may elect to not allocate REAP program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to REAP are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best

financial interest of the Federal Government not to make a State allocation for REAP and that the exercise of this determination is not in conflict with applicable law.

4. Section 1940.593 is revised to read as follows:

§ 1940.593 Other Rural Business-Cooperative Service Programs.

If the Agency determines that it is in the best interest of the Federal government to allocate funds to States for existing RBS programs other than those identified in §§ 1940.588 and 1940.589 of this subpart and for programs new to RBS (e.g., through new legislation), the Agency will use the process identified in paragraph (a) or (b) of this section.

(a) If the Agency determines that one of the State allocation procedures in § 1940.588 and § 1940.589 is appropriate for the program, the Agency will publish a Federal Register notice identifying the program and which State allocation procedure will be used for the program.

(b) If the Agency determines that none of the procedures specified in § 1940.588 and § 1940.589 is appropriate for the program, the Agency will implement the following steps:

(1) The Agency will either develop a preliminary

state allocation formula and administrative procedures specific to the requirements of the new program or use whichever of the procedures in § 1940.588 and § 1940.589 the Agency determines most closely matches the purpose of the program. The Agency will publish in the Federal Register the State allocation formula and administrative procedures that it will use initially for the new program.

(2) The Agency will develop a State allocation formula and administrative provisions specific to the new program and publish them as a proposed rule change to this part in the Federal Register for public comment.

(3) Until the program's State allocation formula and administrative requirements are finalized, the Agency will use the preliminary State allocation formula established under paragraph (b) (1) of this section to make State allocations and administer the new program.

August 1, 2014

Doug O'Brien
Acting Under Secretary
Rural Development

Date

September 3, 2014

Michael Scuse
Under Secretary
Farm and Foreign Agricultural Services

Date

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