

# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Parts 2003 and 3570

RIN 0575-AC10

### Community Facilities Grant Program

**AGENCIES:** Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS or Agency), formerly the Rural Housing and Community Development Service, a successor agency to the Farmers Home Administration, amends its regulations for the Community Facilities Grant Program. The intended effect is to finalize the Community Facilities Grant (CFG) program regulations that enable RHS to provide essential community facilities. RHS is also clarifying and revising its processing procedures and requirements in order to provide better service to rural communities.

**EFFECTIVE DATE:** This rule is effective July 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Barton, Senior Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-3222, telephone (202) 720-1504.

### SUPPLEMENTARY INFORMATION:

#### Classification

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 (OMB).

#### Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It has been 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 of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### Civil Justice Reform

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." In accordance with this rule: (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 this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) 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 UMRA.

#### Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575-0173, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping requirements from those approved by OMB.

#### Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.766 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.

#### Background

On April 7, 1997, RHS published an interim final rule, 7 CFR part 3570, subpart B, in the **Federal Register** (62 FR 16465-16473) implementing the CFG program. This rule added a grant program to the direct and guaranteed programs the Agency currently offers. As with other RHS programs, the CFG program is available to associations, federally recognized Indian tribes, nonprofit corporations, and public bodies serving rural areas. Authority is under section 306(a) of the Consolidated Farm and Rural Development Act. The CFG program was created to promote rural development in poverty areas because Congress recognized that many rural poverty-stricken communities are not eligible for RHS direct or guaranteed Community Facilities (CF) loan programs and, therefore, have no access to assistance for essential community facilities such as health care, public safety, and fire protection services. Many rural communities have suffered such severe economic constraints for so long that they are unable to provide their residents with the basic services

needed to improve their quality of life. RHS CF programs assist poor rural communities with financial resources to develop or improve health care facilities, child care centers, schools, libraries, fire and rescue buildings and equipment, town halls, street improvements, and so on. When these basic services become available to residents, the community becomes stronger and better equipped to continue its economic and community development efforts.

The interim final rule provided that Federal funds cannot exceed 75 percent of the cost of the project. However, we have determined that CFG funds can be used for up to 75 percent of the cost of developing specific essential community facilities in rural areas despite the amount of other Federal funds participating in the project. Therefore, a limit on the overall Federal Government assistance was removed for the final rule. Additionally, section 735 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, temporarily changed the definition of the terms "rural" and "rural area" back to the definition in effect prior to April 4, 1996, for fiscal year 1999. For fiscal year 1999, any city or town with a population of 20,000 or less inhabitants is considered rural or in a rural area for the CF program. Also, for fiscal year 1999, there is no limitation placed on the population in open rural areas.

When RHS published the interim final rule, the Agency asked for comments on or before June 6, 1997. RHS received five written comments. The commentators were representatives from Rural Development staff and an Indian tribe. These comments were considered and were the basis of several changes in the final regulation.

Many administrative changes were made in the regulation, the grant agreement, and the forms administering the program. Some changes were made based on RHS's experience in operating the program. Major comments and other changes are noted below:

1. Since the objective of this program is to fund the minimum amount sufficient for feasibility, the regulation now requires that an applicant's available excess funds be used to supplement eligible project costs. RHS emphasizes the funding of smaller projects in the minimum amount to ensure feasibility and adequate operating reserves. The "eligible applicant" criteria were expanded to include applicants who do not have the authority to borrow funds, but own, operate, and maintain a facility such as

a public body with limited funds and no taxing authority. Additionally, all applicants must own the facility if CFG funds are being used to purchase equipment or obtain or improve real property.

2. Section § 3570.62 has been expanded to delineate eligible purposes for CFG funds. In the interim final rule, applicants were referred to 7 CFR part 1942, subpart A, for eligible purposes. Employees from Federal Agencies requested this information be included in the final rule. For consistency, CF uses the same purposes for all its programs. For the CFG program, RHS has decided to emphasize the funding of smaller projects.

3. A commentator recommended the final rule be revised so that other lenders participating in a CFG project are not restricted to the interest rate they can charge when participating in a project. The Agency does not want CFG funds to subsidize high interest rates. However, the Agency has agreed to change the criteria to state that other lenders participating in the project can charge reasonable rates and terms. Reasonable rates and terms are those customarily charged public and nonprofit borrowers in similar circumstances in the ordinary course of business and are subject to Agency review.

4. Minor changes were made in the population criteria referred to in the grant assistance tiers. This is the result of the reduction in the rural population the Agency can serve in fiscal year 1999 and the Agency's desire to equalize the grant assistance tiers.

5. A number of comments were received requesting clarification on the grant closing process. The regulation was changed to reflect suggestions submitted by employees of Federal Agencies. The regulation was modified to not require loans and grants to close simultaneously. However, loan funds must be advanced before grant funds. The regulation has been changed to reflect these changes.

6. Community Facilities Grant Agreement. Several comments were received stating that this document does not identify or reference property acquired with grant funds or address how it will be disposed. Property acquired with CFG funds are subject to the use and disposition requirements of 7 CFR parts 3015, 3016, or 3019, as appropriate. The "Community Facilities Grant Agreement" was changed to reflect these modifications.

7. A comment from a Native American tribe requested a set-aside be established in this program for Indian Tribes. A set-aside was not established

in the final rule because the Agency always prioritizes its funding of projects based on small communities with low median household incomes. By RHS focusing on low income and sparsely populated areas, this program assists Native Americans and other communities with special economic needs without setting aside funds for specific groups of populations.

#### List of Subjects

##### 7 CFR Part 2003

Organizations and functions (Government agencies).

##### 7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Rural areas, Subsidies.

Therefore, chapters XVIII and XXXV of title 7, Code of Federal Regulations, are amended as follows:

#### PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

#### Subpart A—Functional Organization of the Rural Development Mission Area

##### § 2003.18 [Amended]

2. Section 2003.18(b)(5)(i) is amended by adding the words "and grants" after the word "loans."

3. Chapter XXXV, title 7, Code of Federal Regulations is revised to read as follows:

#### PART 3570—COMMUNITY PROGRAMS

4. The authority citation for part 3570 continues to read as follows:

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

5. Part 3570, subpart B is revised to read as follows:

#### Subpart B—Community Facilities Grant Program

Sec.	
3570.51	General.
3570.52	Purpose.
3570.53	Definitions.
3570.54–3570.60	[Reserved]
3570.61	Eligibility for grant assistance.
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3570.64	Applications determined ineligible.
3570.65	Processing preapplications and applications.
3570.66	Determining the maximum grant assistance.
3570.67	Project selection priorities.
3570.68	Selection process.

- 3570.69 Environmental review, intergovernmental review, and public notification.
- 3570.70 Other considerations.
- 3570.71–3570.74 [Reserved]
- 3570.75 Grantee contracts.
- 3570.76 Planning, bidding, contracting, and construction.
- 3570.77–3570.79 [Reserved]
- 3570.80 Grant closing and delivery of funds.
- 3570.81–3570.82 [Reserved]
- 3570.83 Audits.
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- 3570.85 Programmatic changes.
- 3570.86 [Reserved]
- 3570.87 Grant suspension, termination, and cancellation.
- 3570.88 Management assistance.
- 3570.89 [Reserved]
- 3570.90 Exception authority.
- 3570.91 Regulations.
- 3570.92 [Reserved]
- 3570.93 Regional Commission grants.
- 3570.94–3570.99 [Reserved]
- 3570.100 OMB control number.

### Subpart B—Community Facilities Grant Program

#### § 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making essential Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 1-800-245-6340 (voice) or (202) 730-1127 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to

the provisions of 7 CFR part 1900, subpart D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

(f) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Grant funds may not be used to satisfy the judgment.

(g) Grants made under this subpart will be administered under, and are subject to, 7 CFR parts 3015, 3016, or 3019, as appropriate.

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, this will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

(i) CFG funds can be used for up to 75 percent of the cost to develop the facility, notwithstanding that other contributions may be from other Federal sources.

#### § 3570.52 Purpose.

The purpose of CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

#### § 3570.53 Definitions.

*Agency.* The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

*Approval official.* An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

*CF.* Community Facilities.

*CFG.* Community Facilities Grant.

*Essential community facilities.* Those public improvements requisite to the beneficial and orderly development of a community that is operated on a nonprofit basis. (See § 3570.62(a)(1)). An essential community facility must:

(1) Serve a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

*Facility.* The physical structure financed by the Agency or the resulting service provided to rural residents.

*Grantee.* An entity with whom the Agency has entered into a grant agreement under this program.

*Instructions.* Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

*Minor part.* No more than 15 percent of the total floor space of the proposed facility.

*Nonprofit Corporations.* Any corporation that is not organized or maintained for the making of a profit and that meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

*Processing office.* The office designated by the State program official to accept and process applications for CF projects.

*Project cost.* The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

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

*Public body.* Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or federally recognized Indian tribe in rural areas.

*Reasonable rates and terms.* The rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and subject to Agency review.

*RHS.* The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

*Rural and rural area.* For fiscal year 1999, the terms "rural" and "rural area" include a city or town with a population of 20,000 or less inhabitants according to the latest decennial census of the United States. There is no limitation placed on population in open rural areas. After fiscal year 1999, the terms "rural" and "rural area" include a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

*Rural Development.* A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

*RUS.* The Rural Utilities Service, an agency of USDA or a successor agency.

*Service area.* The area reasonably expected to be served by the facility.

*State.* The term "State" means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

*State Director.* The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

*State nonmetropolitan median household income.* The median household income of all rural areas of a State as reported by the U.S. Census Bureau.

*State strategic plan.* A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

#### §§ 3570.54–3570.60 [Reserved]

#### § 3570.61 Eligibility for grant assistance

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b)).

(a) *Eligible applicant.* An applicant must be a:

(1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(3) Federally recognized Indian tribe in a rural area.

(b) *Eligible facilities.* Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere.* The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility.* All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility.* Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at

reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use.* All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

#### § 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;

(vi) Telecommunications equipment as it relates to medical and educational telecommunications links;

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;

(viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including

access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) "Otherwise improve" includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

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

(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

#### § 3570.63 Grant limitations.

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2).

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of

grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) 15 percent when the proposed project is:

(i) Located in a rural community having a population of 50,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.

(5) Grant assistance cannot exceed the applicable percentages contained in this section and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66.

#### § 3570.64 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 applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

#### § 3570.65 Processing preapplications and applications.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared

and submitted. Preapplications and applications for grants will be developed in accordance with applicable portions of 7 CFR 1942.2, 1942.104, and 3575.52.

(a) *Preapplications.* Applicants will file an original and one copy of "Application for Federal Assistance (For Construction)," with the appropriate Agency office. This form is available in all Agency offices. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

(1) All preapplications shall be accompanied by:

- (i) Evidence of applicant's legal existence and authority; and
- (ii) Appropriate clearinghouse agency comments.

(b) *Application processing.* Upon notification on "Notice of Preapplication Review Action" that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

- (1) Updated "Application for Federal Assistance (For Construction)."
- (2) Financial feasibility report.

(c) *Discontinuing the processing of the application.* If the applicant fails to submit the application and related material by the date shown on "Notice of Preapplication Review Action" (normally 60 days from the date of this form), the Agency will discontinue consideration of the application.

**§ 3570.66 Determining the maximum grant assistance.**

(a) *Responsibility.* State Directors are responsible for determining the applicant's eligibility for grant assistance.

(b) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

- (1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);
- (2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or
- (3) Either 50 percent of the annual State allocation or \$50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

**§ 3570.67 Project selection priorities.**

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

- (1) 5,000 or less—30 points;
- (2) Between 5,001 and 12,000, inclusive—20 points;
- (3) Between 12,001 and 20,000, inclusive—10 points; or
- (4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

- (1) 60 percent of the State nonmetropolitan median household income—30 points;
- (2) 70 percent of the State nonmetropolitan median household income—20 points;
- (3) 80 percent of the State nonmetropolitan median household income—10 points; or
- (4) 90 percent of the State nonmetropolitan median household income—5 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

- (1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;
- (2) Project is for health care—10 points; or
- (3) Project is for public safety—10 points.

(d) *Discretionary.* (1) The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds, emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

Priority	Points
1 .....	5

Priority	Points
2 .....	3
3 .....	1

**§ 3570.68 Selection process.**

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) *Selection of applications for further processing.* The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

- (1) Scoring of project and scores of other applications on hand;
- (2) Funds available in the State allocation; and
- (3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) *Lower scoring projects.* (1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

**§ 3570.69 Environmental review, intergovernmental review, and public notification.**

All grants awarded under this subpart, including grant-only awards, are subject to the environmental requirements of 7 CFR part 1940, subpart G, to the intergovernmental review requirements of RD Instruction 1940-J (available in any Rural Development office), and the public information process in 7 CFR 1942.17(j)(9).

**§ 3570.70 Other considerations.**

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other

agency or institution having expertise in the planning, operation, and management of similar facilities as required by 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following:

(a) Grants under this subpart are subject to the provisions of 7 CFR 1942.17(k) which include title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, and the regulations issued thereto. Certain housing-related projects, such as nursing homes, group homes, or assisted-living facilities, must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG and grantees. See 7 CFR part 3017 and RD Instruction 1940-M (available in any Rural Development office) for further guidance.

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 7 CFR part 3018.

(d) Civil Rights Impact Analysis, RD Instruction 2006-P (available in any Rural Development office), and "Civil Rights Impact Analysis Certification."

**§§ 3570.71–3570.74 [Reserved]**

**§ 3570.75 Grantee contracts.**

The requirements of 7 CFR 1942.4, 1942.17(e), 1942.17(l), 1942.118, and 1942.119 will be applicable when agreements between grantees and third parties are involved.

**§ 3570.76 Planning, bidding, contracting, and construction.**

Planning, bidding, contracting, and construction will be handled in accordance with 7 CFR 1942.9, 1942.18, and 1942.126.

**§§ 3570.77–3570.79 [Reserved]**

**§ 3570.80 Grant closing and delivery of funds.**

(a) "Community Facilities Grant Agreement" will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as

provided by 7 CFR parts 3015, 3016, or 3019, as subsequently modified.

(c) Agency grant funds will be disbursed and monitored in accordance with 7 CFR 1942.17(p), 1942.123, and 1942.127.

(d) Grant funds will not be disbursed until they are actually needed by the applicant and all borrower, Agency, or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

**§ 3570.81–3570.82 [Reserved]**

**§ 3570.83 Audits.**

(a) Audits will be conducted in accordance with 7 CFR 1942.17(q)(4), except as provided in this section.

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official.

**§ 3570.84 Grant servicing.**

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O.

**§ 3570.85 Programmatic changes.**

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

**§ 3570.86 [Reserved]**

**§ 3570.87 Grant suspension, termination, and cancellation.**

Grants may be suspended or terminated for cause or convenience in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable.

**§ 3570.88 Management assistance.**

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

**§ 3570.89 [Reserved]**

**§ 3570.90 Exception authority.**

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

**§ 3570.91 Regulations.**

Grants under this part will be in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 7 CFR parts 3015, 3016, or 3019.

**§ 3570.92 [Reserved]**

**§ 3570.93 Regional Commission grants.**

(a) Grants are sometimes made by Federal Regional Commissions (designated under Title V of the Public Works and Economic Development Act of 1965) for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Federal Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Federal Regional Commission and RHS for each Commission grant or class of grants administered by RHS.

(e) When the Agency has funds in the project, no charge will be made for

administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act (31 U.S.C. 1535).

**§§ 3570.94–3570.99 [Reserved]**

**§ 3570.100 OMB control number.**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: June 1, 1999.

**Inga Smulkstys,**

*Deputy Under Secretary, Operations & Management, Rural Development.*

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**FEDERAL ELECTION COMMISSION**

**11 CFR Part 9034**

[Notice 1999–9]

**Matching Credit Card and Debit Card Contributions in Presidential Campaigns**

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Commission has adopted new regulations that allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. “Matchable contributions” are those which, when received by candidates who qualify for payments under the Presidential Primary Matching Payment Account Act, are matched by the Federal Government. The new rules provide that credit and debit card contributions, including those made over the Internet, are matchable to the extent provided by law, provided that controls and procedures are in place to detect excessive and prohibited contributions. Please note that further documentation requirements may be addressed in the Commission’s upcoming final rules governing public financing of presidential primary and general election candidates.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these

regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c).

**FOR FURTHER INFORMATION CONTACT:** N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today revisions to its regulations at 11 CFR 9034.2 and 9034.3 to permit the matching of credit card and debit card contributions, including contributions received over the Internet, under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* (“Matching Payment Act”). Please note that other revisions to the Commission’s rules concerning the public financing of presidential primary and general election campaigns will be addressed in a separate document. In addition, the Commission may address further documentation requirements of these new rules in that document.

Debit card contributions are deducted directly from the contributor’s checking, savings, or other financial account. Credit card contributions are billed to the contributor and are usually processed by a third-party entity.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of \$5,000 in contributions of \$250 or less from residents of each of at least 20 States, the first \$250 of each eligible contribution is matched by the Federal Government. 26 U.S.C. 9033, 9034. In the past the Commission has declined to match credit card contributions, although it has allowed them in other contexts. The Commission has always held contributions submitted for matching to a higher documentation standard, because the matching fund program involves the disbursement of millions of dollars in taxpayer funds. However, the Commission has now determined that such contributions may be matched under certain circumstances.

On December 16, 1998, the Commission published a Notice of Proposed Rulemaking (“NPRM”) in which it sought comments on a wide range of issues involved in the public financing of presidential primary and general election campaigns. 63 FR 69524 (Dec. 16, 1998). While the NPRM did not specifically seek comments on credit card and Internet contributions, it stated that the Commission would welcome comments on “other aspects of the public financing process that could

be addressed in these regulations.” *Id.* at 69532.

In response to the NPRM, several commenters urged the Commission to match qualified contributions made by credit or debit card over the Internet. These commenters included America Online (“AOL”); Aristotle Publishing, Inc.; the Democratic National Committee (“DNC”); the Republican National Committee (“RNC”); and a joint comment by Lyn Utrecht and Eric Kleinfeld of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori. In addition, the Commission held a public hearing on March 24, 1999, at which representatives of AOL, the DNC, the RNC, and Ms. Utrecht testified on this issue. After considering the comments, testimony and other relevant material, the Commission has decided to authorize the matching of such contributions under the circumstances described below.

It is well established that the Administrative Procedure Act (“APA”) requires only that an agency give notice which contains “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. 553(b)(3). Under the APA, the final rule must be a “logical outgrowth” of the proposed rule on which it solicited comments. *Chocolate Manufacturers Ass’n v. Block*, 755 F.2d 1098 (4th Cir. 1985).

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the Matching Payment Act controls the legislative review process. See 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Public Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Matching Payment Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 11, 1999.

**Explanation and Justification**

A matchable contribution for purposes of the Matching Fund Act is generally defined at 26 U.S.C. 9034(a) as “a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address.” The Commission’s regulations at 11 CFR 9034.2(b) define the term *written instrument* to mean a check written on a personal, escrow or trust account representing or containing the contributor’s personal funds; a money