

(8) A description of buildings or other major structures, including dimensions, to be constructed or modified;

(9) A statement of whether the presence of wetlands or existing agricultural operations are present at the project site (7 CFR part 1794); whether properties listed or eligible for listing in the National Register of Historic Places are on or near the project site; whether threatened or endangered species or critical habitat are on or near the project site (16 U.S.C. 1531 *et seq.*);

(10) The general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated (7 CFR part 1794); and

(11) A copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from state, local or other Federal agencies. Such material, to the extent relevant, may be used to fulfill the requirements of this section.

(c) The Administrator may request additional environmental information in specific cases to satisfy § 1703.32.

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§ 1703.45 Review and analysis of applications.

Completed applications received at RUS by the 14th day of the month will be considered at the first selection date which occurs at least 40 days after the application was received. Completed applications received at RUS after the 14th day of a month will be either be held for the next application period or returned to the borrower, at the borrower's option. The review period of at least 40 days should allow sufficient time for state and local governments to review the proposed projects under the intergovernmental review process, as set forth in 7 CFR part 3015, and to provide sufficient time for the Administrator to fully review and analyze these applications. In the event state and local government review has not been completed, the Administrator's approval may be contingent upon the

review being satisfactorily documented. The Administrator reserves the discretion to consider applications outside the normal selection period.

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in §§ 1703.17 and 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. The Administrator will not consider applications that do not conform with all of the provisions of this subpart, as determined by the Administrator. The Administrator will make the determination of all numbers, dollars, levels and rates, as well as the nature, costs, location and other characteristics of the proposed project, to calculate the number of points assigned to an application for each selection factor. Applications for zero-interest loans and grants will be ranked separately. In addition, applications requesting less than 5 percent of the total project costs as provided in § 1703.25 will be ranked separately, subject to § 1703.46(j). The Administrator will select applications that receive the greatest number of total points under paragraphs (f) and (g) of this section, subject to available funds and the provisions of §§ 1703.25, 1703.46(i), and 1703.46(j).

(b) After reviewing an application, the Administrator may decline to select an application:

(1) That would result in a conflict of interest or the appearance of a conflict of interest;

(2) Based on the management and financial situation of the borrower applying for the zero-interest loan or grant. In determining the borrower's financial situation, the Administrator will consider, among other things, the borrower's existing and projected cash flows, equity to asset ratios, times interest earned ratios, debt service coverage ratios, the level of its investments, the level of its cash and other liquid assets, its working capital and repayment of its debts;

(3) Based on a determination that limitations under state laws will lessen the likelihood of repayment of the RUS

zero-interest loan in the event that the borrower does not receive funds from the project necessary to cover the RUS zero-interest loan payments;

(4) Based on the unwillingness of the borrower applying for the zero-interest loan or grant to exercise diligence in repaying RUS loans or loan guarantees, and comply with RUS's legal documents and regulations;

(5) For an otherwise eligible project when any of the revenues of the project are derived from a legalized gambling activity; or

(6) For any illegal activity.

(c)(1) The Administrator will first evaluate the application and the project with respect to the three factors in this paragraph. The Administrator will not select applications requesting funds for projects that in the Administrator's best judgment have a low probability of:

(i) Being a viable business or operation;

(ii) Being successful as measured by long-term job creation or retention; and

(iii) Producing long-term economic development in rural areas.

(2) The Administrator's determination in paragraph (c) of this section will be based on the ultimate recipient's feasibility studies, income statements, cash flow statements, existing and projected balance sheets, market research, job creation potential, industry trends, and current economic conditions given the nature of the project. Long-term job creation and economic development in rural areas as used for this factor will mean jobs or economic development that would generally be expected to last at least five years.

(d) The Administrator will not award points under the selection factors in paragraphs (f) and (g) of this section for applications that:

(1) Involve the purchase land that will not be developed or used as a site for a project structure during the current phase of the project, as determined by the Administrator;

(2) Will be used for residential purposes or entertainment purposes at the residential level, such as residential dwellings and land sites, facilities to provide entertainment television, or personal, non-business related vehi-

cle(s); however, nursing homes providing medical care, as determined by the Administrator, will not be considered to be residential dwellings;

(3) Will be used primarily to finance the purchase of an established business or operation rather than for economic development in rural areas or job creation purposes; or

(4) Will be used primarily to transfer property or real estate between owners without making any improvements or additions that will promote economic development in rural areas or job creation.

(e) After the above determinations, the Administrator will evaluate the applications and assign points with respect to the factors in paragraph (f) of this section. Applications evaluated under paragraph (f) of this section that do not receive at least 35 points or are not within the top 75 percent when all applications being assigned points are ranked from high to low by total number of points will not be evaluated with respect to the factors in paragraph (g) of this section. The only exception to this evaluation process would be the Administrator's determination that additional applications must be selected in accordance with §1703.14. After such a determination, the remaining applications evaluated in paragraph (f) of this section will be also evaluated under the factors in paragraph (g) of this section.

(f) *Selection factors pertaining to the type of project.* The number of points assigned for each selection factor will be determined as follows:

(1) *Nature of the project.* The extent to which the nature of the project will promote economic development in rural areas and/or job creation—up to 50 points. The determination for this factor will be based on whether the project:

(i) Is considered a start-up, expansion, or enhancement of a business, a business incubator, an industrial building or park, infrastructure necessary to connect these types of projects to existing infrastructure, necessary for the development and operation of these types of projects, or, in the Administrator's determination, basic infrastructure necessary for successful businesses in the rural economy;

(ii) Will provide technical assistance to rural businesses or rural residents, train or educate rural residents, promote economic development in rural areas on a non-profit basis, or provide medical care to rural residents; and

(iii) Will succeed as envisioned in the application, and the possibility that the owners or operators may become delinquent on their loan payments.

(2) *Job creation project.* The extent to which the project will directly lead to job creation given the size of the project and the amount of RUS funds requested or the project is necessary for job creation—up to 25 points. As part of the determination, the Administrator will consider whether the project will provide long-term employment for rural residents. For industrial parks, industrial buildings, and similar projects, the Administrator will consider whether the application includes information on businesses or tenants that will occupy the building(s) and the nature and extent of the commitments to use the buildings in determining the number of points to award. The Administrator will also consider the probability that the project will not result in job creation as envisioned in the application in terms of both the number of jobs and the duration of the jobs.

(3) *Long-term improvements in economic development.* Projects that lead directly to an increase in long-term productivity and per capita income in rural areas—up to 25 points. The Administrator's determination will be based on the extent to which the project will improve the productive potential of the labor force, industrial plant, natural resources, institutions, and infrastructure necessary for economic development and job creation by utilizing advanced technology, creating higher skilled occupations, creating jobs with higher career potential or jobs that are considered part to be of a knowledge intensive industry, or adding higher value to natural resources. In considering infrastructure projects, the Administrator will award points only for the facilities, such as water and sewer facilities, that will serve and are necessary for commercial activities described under this factor.

(4) *Diversifying the rural economy or alleviating underemployment.* Projects

that in the judgement of the Administrator will diversify the rural economic base or assist in alleviating chronic underemployment for rural residents—10 points. The Administrator will assign points only to the extent the application contains convincing evidence pertaining to this factor.

(g) *Other selection factors.* The number of points assigned for each selection factor will be determined as follows:

(1) *Supplemental funds.* (i) A determination of the amount of supplemental funds provided or to be provided to the project from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower or other sources of funds. The supplemental funds used in this calculation must be disbursed to the project during the period covering six months prior to the receipt of the application by RUS and two years after the first advance of RUS funds for the project. Supplemental funds must be committed to the project before RUS will advance its funds. RUS loan or grant funds from the borrower or RUS loan or grant funds from any other organization will not be included in the calculations. The Administrator will determine what constitutes expenditures on the project. If supplemental funds as a percentage of the RUS zero-interest loan and/or grant to be provided to the project is:

(A) Equal to 20%—10 points, the minimum number of points;

(B) Equal to 100%—20 points;

(C) Equal to 500%—30 points, the maximum number of points.

(ii) Ratios of supplemental funds to RUS funds falling between these levels will be assigned points based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(2) *Economic conditions and job creation.* (i) A comparison will be made of the unemployment rate in the county where the project will be located to the state and national unemployment rates.

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(A) If the unemployment rate in the county where the project will be located exceeds the National unemployment rate by 30 percent or more—10 points, the maximum number of points awarded.

(B) If the unemployment rate in the county where the project will be located is equal to the National unemployment rate—5 points.

(C) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the National unemployment rate—0 points.

(D) If the unemployment rate in the county where the project will be located exceeds the state unemployment rate by 30 percent or more—8 points, the maximum number of points awarded.

(E) If the unemployment rate in the county where the project will be located is equal to the state unemployment rate—4 points.

(F) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the state unemployment rate—0 points.

(G) For both the state and national unemployment rate calculations, rates falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the average of the most recent twelve months of unemployment rates it has obtained from the Bureau of Labor Statistics, U.S. Department of Labor or other government sources and processed into a suitable format.

(ii) A comparison will be made of the per capita personal income in the county where the project will be located to the state and national per capita personal income levels.

(A) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the National per capita personal income level—10 points, the maximum number of points awarded.

(B) If the per capita personal income level in the county where the project will be located is equal to the National per capita personal income level—5 points.

(C) If the per capita personal income level in the county where the project will be located exceeds the National per capita personal income level by 15 percent or more—0 points.

(D) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the state per capita personal income level—8 points, the maximum number of points awarded.

(E) If the per capita personal income level in the county where the project will be located is equal to the state per capita personal income level—4 points.

(F) If the per capita personal income level in the county where the project will be located exceeds the state per capita personal income level by 15 percent or more—0 points.

(G) For both the state and national per capita personal income calculations, incomes falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format.

(iii) A calculation will be made of the change in total population over the most recent two-year period in the county where the project will be located. The population change will be based on the total percentage change over the two-year period calculated as follows: the population for the most recent year less the population as of two years prior to that year with the difference being divided by the population as of two years prior to the most recent year.

(A) If the percentage growth over the two-year period is negative 2.00 percent

or higher negative amount (a population decline)—8 points, the maximum number of points.

(B) If the percentage growth over the two-year period is equal to zero or is positive (population increase)—0 points.

(C) Population growth percentages falling between these levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent population data for all counties it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format. The data provide one population figure for the year.

(iv) The number of long-term jobs that the project will directly create in rural areas.

(A) For five or more direct long-term jobs per \$100,000 of total project costs—15 points, the maximum number of points awarded.

(B) For two direct long-term jobs per \$100,000 of total project costs—8 points.

(C) For no direct long-term jobs—0 points.

(D) Direct, long-term jobs under this factor are jobs that would generally be expected to last at least five years. Long-term jobs that would provide 6 months per year of equivalent full-time employment will be counted under this factor. Long-term jobs that would provide fewer months of employment would be given points based on the ratio of the number of months per year of employment to 12 months. Jobs of at least 20 hours per week will be counted under this factor. For construction of an industrial building, extension of water and/or sewer lines to a building, or a similar project, the Administrator will require a reasonable analysis of the number of jobs that will be created before awarding points for this factor. The Administrator reserves the right to adjust the number based on its analysis of the project, the explanation in the application of the businesses that

will locate in the building(s), and any commitments from businesses to locate in the building(s). This factor will not count indirect job creation that results from an overall increase in the local economy once the project is completed. If total project costs per job falls between these levels, points will be assigned based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(v) Projects that are part of a local, community-based rural economic development program that would improve the local economy and enhance the well-being of rural residents—10 points. The determination will be based on information submitted by the borrower in its application and other information the Administrator considers appropriate.

(vi) Projects that have a written plan to provide opportunities or incentives to improve marketable skills for rural residents through training and/or education, or projects which consist of providing this training and/or education—5 points.

(3) *Location.* Projects that will be physically in a rural area—20 points.

(4) *Support for program—cushion of credit payments.* (i) Applications submitted by borrowers that have made cushion of credit payments as set forth in section 313 of the Act based on the following:

(A) If the borrower has \$300,000 or three percent of total assets, whichever is less, in cushion of credit payments—15 points;

(B) If the borrower has \$100,000 or one percent of total assets, whichever is less, in cushion of credit payments—10 points;

(C) If the borrower has at least \$5,000 or 0.5 percent of total assets, whichever is less, in cushion of credit payments—5 points.

(ii) The amount of cushion of credit payments will be based on the amount at the time the Administrator evaluates the project. The calculation of a borrower's total assets will be based on RUS's most recently published Statistical Report, Rural Electric Borrowers (RUS Informational Publication 201-1) or Statistical Report, Rural Telephone

Borrowers (RUS Informational Publication 300–4). These publications are available from the Rural Utilities Service, Administrative Services Division, Washington, DC 20250. If the amount of cushion of credits payments falls between these levels, points will be based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(5) *Demonstration project.* If the application contains a written commitment from the owner(s) of the project that the project will be a demonstration project—5 points.

(6) *Probability of Success.* (i) The knowledge, experience, education and training of the proposed owners and management of the project—up to 10 points.

(ii) The ultimate recipient's business plan and indications that the project will successfully result in economic development in rural areas and/or job creation—up to 40 points. The Administrator's evaluation of the success of the project will be based on indications in the application and RUS's analysis that the project will be a viable business or operation, be successful in creating or retaining long-term jobs, and be successful in producing economic development that will result in long-term benefits to rural areas. The plan should include:

- (A) A description of the project;
- (B) A description of the business, if applicable, its products and the prospects of the industry;
- (C) What will be produced or accomplished;
- (D) The area to be served;
- (E) Any market research or marketing plan;
- (F) Any operating plan;
- (G) Total project costs and projected use of funds by purpose or category;
- (H) A financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements;
- (I) The source of supplemental funds, the nature and strength of commitments from other sources of financing, and the equity contribution;
- (J) The proposed ownership and management of the project;

(K) A description of any coordination with a local, regional or state development organization; and

(L) Other relevant information.

(iii) The Administrator expects the ultimate recipient's business plan referenced in paragraph (g)(6)(ii) of this section to be comparable to a plan normally submitted to a bank for long-term financing. In evaluating an application for this selection factor, the Administrator will consider the probability that the project will result in long-term economic development in rural areas and/or job creation as envisioned in the application.

(iv) Quality and completeness of borrower's initial application submitted to RUS—up to 10 points. The Administrator's determination will be based on the completeness and quality of the application as measured by the additional information required from the borrower to complete the analysis. For a pass-through loan and grant, the quality of the Borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

(7) *Special economic status.* The Administrator has the discretion to designate special economic status (up to 25 points) to applications submitted by borrowers that have documented one or more of the following four conditions in one or more county(ies) to be served by the proposed project:

(i) A designation of disaster area by the President of the United States which has been so designated within three years prior to applying to RUS;

(ii) The loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the area's most recent unemployment rate compared with the period immediately before the dislocation;

(iii) Chronic or long-term economic deterioration, documented by one or both of the following conditions:

(A) An unemployment level equal to or greater than 1.5 times the National average unemployment percentage from 4 out of the last 5 years, starting with the most current statistics available. The applicant, when calculating

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recent years' unemployment percentages, should compare county statistics with the National Average unemployment for the corresponding year. Statistics on unemployment will be based on figures provided by the U.S. Bureau of Labor Statistics. However, the Administrator may, at his discretion, also consider verifiable, published State statistical data provided by the applicant in situations where county-wide statistical data is not representative of local conditions. Such statistical data must be part of a recognized database which reflects information for other areas within the State;

(B) A 15% loss of population due to out-migration over the most recent 10-year decennial census, based on the U.S. Bureau of the Census decennial data;

(iv) A designation as a Rural Empowerment Zone or Rural Enterprise Community by the Empowerment Zone Program authorized by Section 13301 of the Omnibus Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312), 26 U.S.C. 1391-1393.

(h) *Outline of selection factors.* The selection factors contained in §§1703.46(f) and 1703.46(g) and the maximum number of points that may be assigned to each is listed below:

- (1) *Nature of the project*—50 points;
- (2) *Job creation project*—25 points;
- (3) *Long-term improvements in economic development*—25 points;
- (4) *Diversifying the rural economy or alleviating underemployment*—10 points;
- (5) *Supplemental funds*—30 points;
- (6) *Economic conditions and job creation:*
 - (i) *Unemployment rates*—18 points;
 - (ii) *Per capita personal income*—18 points;
 - (iii) *Change in population*—8 points;
 - (iv) *Number of long-term jobs*—15 points;
 - (v) *Community-based economic development program*—10 points;
 - (vi) *Plan for improving the marketable skills of people in rural areas*—5 points;
 - (7) *Location*—20 points;
 - (8) *Support for program*—cushion of credit payments—15 points;
 - (9) *Demonstration project*—5 points;
 - (10) *Probability of success:*
 - (i) *Owners and management of the project*—10 points;

(ii) *Ultimate recipient's business plan*—40 points; and

(iii) *Completeness of borrower's initial application*—10 points;

(11) *Special economic status*—25 points.

(i) Regardless of the number of points assigned to a borrower's application, the Administrator may:

(1) Limit the number of applications selected in any one state during any fiscal year to the ratio of borrowers in that state to the total number of borrowers multiplied by three, or ten percent of the total number selections that have been made during the current fiscal year, or ten, whichever is greatest. The number of borrowers will be determined as of the latest published RUS statistical reports (Statistical Report, Rural Electric Borrowers, RUS Informational Publication 201-1 and Statistical Report, Rural Telephone Borrowers, RUS Informational Publication 300-4. These publications are available from the Rural Utilities Service, Administrative Services Division, Washington, DC 20250);

(2) Limit a borrower to one selected application during any selection period;

(3) Limit the number of applications selected for a particular project;

(4) Allocate available funds between applications from electric and telephone borrowers;

(5) Select an application receiving fewer points than another application if there are insufficient funds during a particular budget period to select the higher ranked application; except that the Administrator may ask the borrower that submitted the higher ranked application if it desires to reduce the amount of its application to the amount of funds available. The reduction may require additional supplemental funds to ensure a successful project. Based on information the borrower provides, the Administrator will re-analyze the project to ensure that the project will still be feasible with reduced funding; or

(6) Select the highest ranking applications for funds to finance projects that the Administrator classifies as project feasibility studies.

(j) During each selection period, the highest ranking application from among the applications requesting less

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than 5 percent of the total project costs as provided in §1703.25 will be considered with the applications requesting 5 percent or more of total project costs.

(k) The Administrator reserves the right to use the region or data it considers most appropriate if “county” data are unavailable for a particular area.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11711, Mar. 14, 1994; 59 FR 38341, July 28, 1994; 59 FR 53931, Oct. 27, 1994]

§§ 1703.47–1703.57 [Reserved]

§ 1703.58 Post selection period.

(a) RUS will inform a borrower whether the Administrator has selected its application. The advance of RUS funds after the selection has occurred is contingent upon the borrower meeting any terms and conditions the Administrator determines are necessary. A borrower that submitted an application which was not selected will be asked to inform RUS whether it desires to be reconsidered at a later date. The borrower may modify the application after it has been considered without resubmitting all the required material in an application, except if it changes the request from a grant to a zero-interest loan it must submit information necessary for the Administrator to evaluate a loan proposal as set forth in §§1703.35 and 1703.36 and submit a new board resolution requesting a loan. If the borrower so desires, the Administrator will consider an application for up to one year after the date RUS originally received the application. A borrower may submit new applications as often as it desires.

(b) During the period between the selection of the application and the execution of RUS’s legal documents, the borrower must inform the Administrator if the project is no longer viable or the borrower no longer desires a zero-interest loan or grant for the project. Upon a determination by the Administrator to that effect, the selected application will be considered cancelled.

(c) If an application has been selected and the nature of the project changes, as determined by the Administrator, the borrower may be required to sub-

mit a new application to RUS for consideration. The selection may not be transferred to another project, as determined by the Administrator. At any time after the selection of an application, the Administrator may, upon a request from the borrower and receipt of any documentation the Administrator considers necessary, approve changes in the method of carrying out the purpose of the project as long as the overall purpose of the project remains the same, revise the amount of the zero-interest loan and/or grant, revise the loan maturity date and principal deferment period and make other adjustments. The Administrator may reduce the amount of the RUS loan or grant to reflect reductions in the amount of supplemental funds to be provided to the project. For substantial reductions in amount of supplemental funds to be provided to the project, the Administrator may require the borrower to re-apply for the RUS loan or grant funds.

(d) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within three months of the Administrator’s selection of the application, the Administrator may consider the selection of the application cancelled.

§ 1703.59 Final application processing and legal documents.

(a) After a borrower has submitted all information the Administrator determines is necessary for the selected application, RUS will send the necessary legal documents to the borrower to execute and return to RUS. The legal documents will include a letter of agreement and any legal documents the Administrator deems appropriate, including any loan agreements, notes, security instruments, certifications or legal opinions. The letter of agreement will, among other things, constitute the Administrator’s approval of funds for the project subject to certain terms and conditions as determined by the Administrator, and include a project description, approved purposes of the zero-interest loan and/or grant, the maximum amount of zero-interest loan and/or grant, supplemental funds to be provided to the project and certain