

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

**7 CFR Parts 1775, 1777, 1778, 1780, 1942, 3570, and 4274**

**RIN 0572-AB96**

### Definition Clarification of State Nonmetropolitan Median Household Income (SNMHI)

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

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and the Rural Utilities Service (RUS), agencies delivering the United States Department of Agriculture's Rural Development housing, business, and utilities programs, amend their regulations to reflect the clarification of the definition of Statewide Nonmetropolitan Median Household Income, which shall be defined as "the median household income of the state's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population." This modification will enable Rural Development to more effectively serve communities across rural America. The loan and grant eligibility or priority scoring will be positively impacted for Rural Development Housing, Business, and Utilities Programs.

**DATES:** *Effective Date:*

7 CFR part 1775—November 15, 2004.

7 CFR part 1777—December 15, 2004.

7 CFR part 1778—November 15, 2004.

7 CFR part 1780—November 15, 2004.

7 CFR part 1942—November 15, 2004.

7 CFR part 3570—November 15, 2004.

7 CFR part 4274—November 15, 2004.

### FOR FURTHER INFORMATION CONTACT:

Linda Scott, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235-S, Stop 1570, Washington, DC 20250-1570. Telephone (202) 720-9639. E-Mail: [Linda.Scott@usda.gov](mailto:Linda.Scott@usda.gov).

### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.760—Water and Waste Disposal Systems for Rural Communities; 10.761—Technical Assistance and Training Grants; 10.762 "Solid Waste Management Grants; 10.763—Emergency Community Water Assistance Grants; 10.766—Community Facilities Loans and Grants; 10.767—Intermediary Relending Program; and 10.770—Water and Waste Disposal Loans and Grants (Section 306C). This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402-9325, telephone number (202) 512-1800.

#### Executive Order 12372

The programs described by this rule that are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015, are 10.760—Water and Waste Disposal Systems for Rural Communities; 10.763—Emergency Community Water Assistance Grants; 10.766—Community Facilities Loans and Grants; 10.767—Intermediary Relending Program; and 10.770—Water and Waste Disposal Loans and Grants (Section 306C).

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating any action against the Department or its agencies.

#### Regulatory Flexibility Act Certification

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

#### Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control numbers 0572-0109, 0572-0110, 0572-0112, 0572-0121, 0575-0015, 0575-0173, and 0570-0021 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with states is not required.

**Background**

The purpose of this final rule is to create a standard definition of Statewide Nonmetropolitan Median Household Income (SNMHI) that is more representative of the rural areas in a State. With respect to Rural Utilities Service Water and Environmental Programs (WEP), the definition will be used in priority scoring for WEP Technical Assistance and Training Grants (7 CFR part 1775), Section 306C Water and Waste Disposal Loans and Grants (7 CFR part 1777), and Emergency and Imminent Community Water Assistance Grants (7 CFR part 1778), and for loan and grant eligibility determinations for Water and Waste Loans and Grants (7 CFR part 1780). For the Rural Housing Service Community Facilities (CF) and Rural Business-Cooperative Service Intermediary Relending Programs (IRP), the standard definition will be used in priority scoring for the Community Facilities Loan Program (7 CFR part 1942), Community Facilities Grant Program (7 CFR part 3570) and the Intermediary Relending Program (7 CFR part 4274). Standardizing the definition of SNMHI will allow for more efficient administration of these loan and grant programs consistent with the purposes of the Consolidated Farm and Rural Development Act (codified at 7 U.S.C. 1921 *et seq.*). With respect to 7 CFR parts 1775, 1778, and 1780, 1942, 3570 and 4274, the rule will be effective upon publication in the **Federal Register**. For 7 CFR part 1777, the rule will be effective 30 days after such publication.

Pursuant to 44 U.S.C. 3504(e)(3), 31 U.S.C. 1104(d) and Executive Order No. 10253 (June 11, 1951), the Office of Management and Budget (OMB) defines Metropolitan Statistical Areas (MSA), Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas for use in Federal statistical activities. Once each decade, OMB performs a comprehensive review of statistical area standards and definitions, and publishes a list which includes counties where MSAs are located, with periodic updates between

decennial censuses based on Census Bureau data.

As a consequence of the 2000 census, the definitions of metropolitan areas were revised, resulting in larger geographical areas being considered metropolitan. These enlarged metropolitan areas include areas which are rural areas under the definition of "rural areas" in section 343 (13) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991 *et seq.*). The expansion of the generally more affluent metropolitan areas and their consequent removal from the computation of nonmetropolitan income in the SNMHI caused the SNMHI to increase proportionately less than the increase in median household income experienced by rural communities in the metropolitan areas. While the income characteristics of the rural communities in the metropolitan areas and their need for WEP, CF and IRP assistance may not have changed, the proportionately lesser increase in SNMHI makes it less likely that a rural community in a metropolitan area can successfully compete for such assistance.

The inclusion of these rural areas within the enlarged metropolitan areas, and the consequent effect on the SNMHI, affects the eligibility of some WEP applicants for grant and lower interest rate loans. Based upon a review of applications on hand, and using the 2000 census median household income data for nonmetropolitan counties, there was an approximately 25 percent reduction in the number of communities eligible for grants, and a 50 percent reduction in the number of communities eligible for reduced interest rates. Additionally, priority scoring for all WEP programs is affected by the comparison of an area's income with the SNMHI.

The inclusion of these rural areas within the enlarged metropolitan areas did not affect the eligibility of these rural areas for CF and IRP assistance. However, applicants for CF and IRP assistance (*see* 7 CFR 1942.1(c)(2)(iii)(C)(2) for CF and 7 CFR 4274.344(c) for IRP) receive priority points in application selection criteria based on a comparison of the area's income with the SNMHI. The assignment of priority points may be negatively affected by the comparison of these rural areas within the enlarged metropolitan areas with the SNMHI.

The SNMHI calculations resulting from this definition modification will greatly reduce the negative impacts to numerous rural communities, and will enable such communities to continue to be eligible and receive priority points

for WEP, CF and IRP loan and grant programs.

A proposed rule was published in the **Federal Register** on Monday, August 9, 2004, at 69 FR 48174. The comment period lasted 30 days and ended on September 8, 2004. Five comments were received. Each of the five comments supported the definition clarification of State Nonmetropolitan Median Household Income (SNMHI). Four of these favorable comments were from local towns, and one was from an engineering and architectural firm.

**List of Subjects****7 CFR Part 1775**

Business and industry; Community development; Community facilities; Grant program—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

**7 CFR Part 1777**

Community development; Community facilities; Grant programs—housing and community development; Loan programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

**7 CFR Part 1778**

Community development; Community facilities; Grant programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

**7 CFR Part 1780**

Community development; Community facilities; Grant programs—housing and community development; Loan programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

**7 CFR Part 1942**

Community development; Community facilities; Loan program—Housing and community development; Loan security; Reporting and recordkeeping requirements; Rural Areas; Waste treatment and disposal—Domestic; Water supply—Domestic.

**7 CFR Part 3570**

Accounting; Administrative practice and procedure; Conflicts of interests; Environmental impact statements; Foreclosure; Fair Housing; Grant programs—Housing and community

development; Loan programs—Housing and community development; Rural areas; Subsidies.

#### 7 CFR Part 4274

Community development; Economic development; Loan programs—business; Reporting and recordkeeping requirements; Rural areas.

■ For reasons set forth in the preamble, RUS amends 7 CFR chapters XVII, XVIII, and XXIV as set forth below:

### CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 1775—TECHNICAL ASSISTANCE AND TRAINING GRANTS

■ 1. The authority citation for part 1775 continues to read as follows:

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

■ 2. Amend § 1775.4 by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

#### § 1775.4 Definitions.

\* \* \* \* \*

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### PART 1777—SECTION 306C WWD LOANS AND GRANTS

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

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

■ 4. Amend § 1777.4 by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

#### § 1777.4 Definitions.

\* \* \* \* \*

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

■ 5. The authority citation for part 1778 continues to read as follows:

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

■ 6. Amend § 1778.4 by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

#### § 1778.4 Definitions.

\* \* \* \* \*

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### PART 1780—WATER AND WASTE LOANS AND GRANTS

##### Subpart A—General Policies and Requirements

■ 7. The authority citation for part 1780 continues to read as follows:

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

■ 8. Amend § 1780.3 (a) by revising the definition for “Statewide Nonmetropolitan Median Household Income” to read as follows:

#### § 1780.3 Definitions and grammatical rules of construction.

(a) \* \* \*

*Statewide nonmetropolitan median household income* means the median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

### CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS—COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

#### PART 1942—ASSOCIATIONS

##### Subpart A—Community Facility Loans

■ 9. The authority citation for part 1942 continues to read:

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

■ 10. Amend subpart A by adding a new § 1942.21 to read as follows:

#### § 1942.21 Statewide Nonmetropolitan Median Household Income.

*Statewide Nonmetropolitan Median Household Income* means the median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of

cities, towns or places, of 50,000 or more population.

### CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 3570—COMMUNITY PROGRAMS

##### Subpart B—Community Facilities Grant Program

■ 11. The authority citation for part 3570 continues to read:

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

■ 12. Amend § 3570.53 by revising the definition for “State nonmetropolitan median household income” to read as follows:

#### § 3570.53 Definitions.

\* \* \* \* \*

*State nonmetropolitan median household income.* The median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

### CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 4274—DIRECT AND INSURED LOANMAKING

##### Subpart D—Intermediary Relending Program (IRP)

■ 13. The authority citation for part 4274 continues to read:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

■ 14. Amend § 4274.302 (a) by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

#### § 4274.302 Definitions and abbreviations.

(a) \* \* \*.

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

Dated: November 5, 2004.

**Gilbert G. Gonzalez,**

*Under Secretary, Rural Development.*

[FR Doc. 04–25245 Filed 11–12–04; 8:45 am]

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