

# Rules and Regulations

Federal Register

Vol. 70, No. 127

Tuesday, July 5, 2005

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 Business-Cooperative Service

#### Rural Utilities Service

#### 7 CFR Part 4274

RIN 0570-AA42

#### Intermediary Relending Program

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) amends its regulations for the Intermediary Relending Program (IRP), 7 CFR 4274, subpart D. This action is needed to correct several problems that RBS has observed in the program operation. The intended effect of this action is to provide clarification and guidance and to allow the program to operate more efficiently and effectively.

**DATES:** This direct final rule is effective August 19, 2005 unless RBS receives written adverse comments or written notices of intent to submit adverse comments on or before August 4, 2005. If RBS receives such comments or notices, RBS will publish a timely document in the **Federal Register** withdrawing the direct final rule.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Agency Web site:* <http://rdinit.usda.gov/regs/>. Follow instructions for submitting comments on the Web site.
- *E-Mail:* [comments@usda.gov](mailto:comments@usda.gov). Include the RIN No. 0570-AA42 in the subject line of the message.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch

Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Lori A. Washington, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250-3225, telephone (202) 720-9815, e-mail [lori.washington@usda.gov](mailto:lori.washington@usda.gov).

#### 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).

##### Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.767, Intermediary Relending Program.

##### Intergovernmental Review

The IRP is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR 3015, subpart V.

##### Civil Justice Reform

This direct final 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 this rule, and (3) administrative proceedings in

accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### Unfunded Mandates

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, RBS 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 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS 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 UMRA.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this regulation

only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants. Therefore, a regulatory impact analysis was not performed.

#### **Executive Order 13132, Federalism**

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### **Paperwork Reduction Act**

This rule does not revise or impose any new information collection or recordkeeping requirements.

#### **Background**

A complete rewrite of the program regulations for the IRP was published on February 6, 1998. RBS has identified issues and requirements in the regulations that need further clarification for proficient administration of the program and to obtain maximum benefit of allocated funds. This action amends specific provisions of the regulation.

Currently, the regulation states that RBS is to take a security interest in all assets currently in or hereafter placed in the intermediary's IRP revolving fund. Recent enactment of the new Uniform Commercial Code provision has provided a control agreement with the depository bank, which is sufficient to protect RBS's security interest in the IRP bank account.

RD Instruction 4274, subpart D, § 4274.331(a)(3)(i) provides that in order to apply for and be considered for subsequent IRP loans, an intermediary must use at least 80 percent of its approved loan funds to be eligible. The purpose of this requirement is to help prevent an intermediary from borrowing more than it can use promptly and thereby holding or reserving funds that could otherwise be loaned to other intermediaries. RBS is changing this requirement to ease restrictions on intermediaries that have received multiple loans that serve different service areas. For example, an intermediary that normally serves several counties and has one loan to serve the entire area, may obtain a second loan from Empowerment Zone/Enterprise Communities and Rural Economic Area Partnership Zones (EZ/EC/REAP) earmarked funds to serve the

area within an EZ/EC/REAP. The intermediary may not be able to use the EZ/EC/REAP funds as rapidly as the unrestricted funds. The current regulation prevents the intermediary from qualifying for a subsequent loan to meet the need for loans outside the EZ/EC/REAP until it is able to use the EZ/EC/REAP funds. This requirement appears to be an excessive burden on intermediaries, and the change removes this inequity.

Some intermediaries have received several loans over a period of years. Questions have been raised as to whether such an intermediary must have used 80 percent of the total funds received or 80 percent of each loan. This change clarifies the regulation by explaining that at least 80 percent of each prior Agency IRP loan approved for the intermediary must have been disbursed to eligible ultimate recipients, or that the subsequent loan will serve a different service area. If the intermediary has received multiple loans, at least 80 percent of each previous loan must have been disbursed.

To comply with the Environmental Policy Act, IRP regulations at § 4274.337(b) require Rural Development staff to complete a Class II Environmental Assessment for each IRP application from an intermediary. Since most intermediaries do not know, at the application stage, the ultimate recipients, the type of business, or where the business will be located, the assessment is of a generalized nature, and no public notices are issued. When the intermediary is ready to actually approve loans to specific ultimate recipients, RBS conducts an environmental review of each ultimate recipient loan. A program review by an RBS management control team has recommended the Class II Environmental Assessment not be required for a subsequent loan to an intermediary.

Normally, the factors to be assessed are the same for a subsequent loan as they were for the initial loan. RBS has decided to consider subsequent loans to an intermediary a categorical exclusion for environmental review, rather than a Class II action, provided the service area, eligibility requirements, and eligible purposes for loans to ultimate recipients will be the same for the subsequent loan as were considered in the previous environmental assessment.

The current priority scoring system allows points for the intermediary's equity contribution to the IRP revolving fund. It also allows points for other funds known as project contribution funds, to be provided by the

intermediary to help meet ultimate recipient credit needs. The intermediary can contribute funds to, and receive points for, both categories. However, this is not well understood by RBS staff or applicants. Verbiage has been provided in RD Instruction 4274, subpart D, § 4274.344(c)(1)(ii) to better define the point structure.

The current regulation is silent regarding the timing of advancement of funds after closing the IRP loan. Outstanding obligations on IRP loans that are not advanced in a timely manner impact loan performance. This, in turn, negatively affects the program's subsidy rate resulting in increased administrative costs and reducing availability of funds for relending. Therefore, RBS will require that the intermediary initially draw up to 25 percent of the loan funds, or, have at least one ultimate recipient loan application ready to close upon closing of the IRP loan.

#### **List of Subjects in 7 CFR 4274**

Community development, Economic development, Loan programs—business, rural areas.

■ For reasons set forth in the preamble, Chapter XLII, title 7, of the Code of Federal Regulations is amended as follows:

#### **PART 4274—DIRECT AND INSURED LOANMAKING**

■ 1. The authority citation for part 4274 continues to read as follows:

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

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

■ 2. Section 4274.326 is amended by adding paragraph (a)(3) to read as follows:

#### **§ 4274.326 Security.**

(a) \* \* \*

(3) In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to RBS. The control agreement does not have to require RBS signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the depository account to RBS and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402-1, "Deposit Agreement," or similar form developed by the State Regional Office of the General Counsel is acceptable.

\* \* \* \* \*

3. Section 4274.331 is amended by revising paragraph (a)(3)(i) and paragraph (a)(4) to read as follows:

**§ 4274.331 Loan limits.**

(a) \* \* \*

(3) \* \* \*

(i) At least 80 percent of each of an intermediary's IRP loans, except those earmarked for special purposes, must have been disbursed to eligible ultimate recipients or the subsequent loan will serve a geographic area not included in an area currently served.

\* \* \* \* \*

(4) Subsequent loans will not exceed \$1 million each and not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the request is from an IRP earmark.

\* \* \* \* \*

4. Section 4274.337(b)(2) is amended by revising the first sentence and adding a sentence at the end of the paragraph to read as follows:

**§ 4274.337 Other regulatory requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) For each application for an initial loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. \* \* \* An application for a subsequent loan to an intermediary may be considered a categorical exclusion for environmental review, rather than a Class II action, provided the service area, eligibility requirements, and eligible purposes for loans to ultimate recipients will be the same for the subsequent loan as were considered in the previous environmental assessment, and the purpose of the loan is not environmentally controversial.

\* \* \* \* \*

5. Section 4274.338 is amended by revising paragraph (a)(5)(i) and by revising the last sentence in paragraph (b)(4)(i)(B) to read as follows:

**§ 4274.338 Loan agreements between the Agency and the intermediary.**

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(i) The intermediary may initially draw up to 25 percent of the loan funds or, the intermediary must have at least one ultimate recipient loan application ready to close. Upon requesting a disbursement, the intermediary must provide documentation showing that its equity contribution has been deposited into the IRP revolving loan fund

account. The initial draw must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed and must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) \* \* \* Intermediaries covered by OMB Circular A-133 should submit audits made in accordance with that circular.

\* \* \* \* \*

6. Section 4274.344 is amended by revising the first sentence of the introductory text of paragraph (c) and by revising paragraph (c)(1)(ii) introductory text to read as follows:

**§ 4274.344 Filing and processing applications for loans.**

\* \* \* \* \*

(c) *Loan priorities.* A point system will be used to determine an eligible applicant's priority for available loan funds. \* \* \*

(1) \* \* \*

(ii) The intermediary will provide loans to ultimate recipients from its project contribution funds to pay part of the costs of ultimate recipient projects. Project contribution funds must be separate and distinct from any loan or grant dollars provided to the intermediary under the IRP, as well as the intermediary's equity contribution. When evaluating an application for initial or supplemental funding, the Agency will consider the level of the applicant's project contribution and award points as follows:

\* \* \* \* \*

Dated: May 19, 2005.

**Peter J. Thomas,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 05-13144 Filed 7-1-05; 8:45 am]

**BILLING CODE 3410-XY-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2005-20870; Directorate Identifier 2004-NM-180-AD; Amendment 39-14174; AD 2005-13-37]

**RIN 2120-AA64**

**Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires repetitive inspections for damage of the drive rod assembly of the aileron tab on each aileron actuator; repetitive measurements of the clearance between the aileron hydraulic lines and the drive rod; and related investigative and corrective actions if necessary. This AD is prompted by a report of an aileron 2 fault caused by severe wear of the polyamide washer that is part of an anti-rotation bush assembly in the aileron attachment lug. We are issuing this AD to prevent excessive wear of the polyamide washer of the aileron actuator bush assembly, which could result in aileron flutter and loss of control of the airplane.

**DATES:** This AD becomes effective August 9, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 9, 2005.

**ADDRESSES:** For service information identified in this AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2005-20870; the directorate identifier for this docket is 2004-NM-180-AD.