

the Board or otherwise indicates an intention not to continue the prosecution of defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

Rule 32. Remand From Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and tie limitations permit, such orders shall conform to these rules.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Alternative Dispute Resolution

Upon joint motion or with the consent of both parties, the Board may permit the use of methods of Alternative Dispute Resolution (ADR). The Board shall notify parties of the availability of ADR methods by transmitting information with its notice of docking (Rule 3).

Rule 35. Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, allows payment of attorneys' fees and expenses to certain prevailing parties in administrative adjudications with the Government unless the Government's position was substantially justified. Rules governing applications for fees and expenses under EAJA can be found in 7 CFR 1.180 *et seq.*

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

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AUTHORITY: 5 U.S.C. 301; 26 U.S.C. 1391 *et seq.*

SOURCE: 60 FR 6950, Feb. 6, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 25.1 Applicability and scope.

(a) *Applicability.* This part establishes policies and procedures applicable to rural Empowerment Zones and Enterprise Communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Pub. L. 103-66, approved August 10, 1993), which amended the Internal Revenue Code by adding a new subchapter U, relating to the designation and treatment of Empowerment Zones and Enterprise Communities.

(b) *Scope.* This part contains provisions relating to area requirements,

the nomination process for rural Empowerment Zones and rural Enterprise Communities, and the designation of these Zones and Communities by USDA. Provisions dealing with the nominations and designation of urban Empowerment Zones and Enterprise Communities are promulgated by the United States Department of Housing and Urban Development (HUD). USDA and HUD will consult in all cases in which nominated areas possess both rural and urban characteristics and will utilize a flexible approach in determining the appropriate designation.

§25.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in rural areas, to stimulate the creation of new jobs, particularly for the disadvantaged and long-term unemployed, and to promote revitalization of economically distressed areas, primarily by providing or encouraging:

- (a) Coordination of economic, human, community, and physical development plans and related activities at the local level;
- (b) Local partnerships fully involving affected communities and local institutions and organizations in developing and implementing a strategic plan for any nominated rural Empowerment Zone or Enterprise Community;
- (c) Tax incentives and credits; and
- (d) Empowerment Zone/Enterprise Community Social Service Block Grant (EZ/EC SSBG) funds.

§25.3 Definitions.

As used in this part—

Applicant means the lead entity that has prepared and will implement the community's strategic plan, pursuant to the provisions of §25.200(c) of this part, for comprehensive economic, human, community, and physical development within the area; such an entity may include, but is not limited to, state governments, local governments, regional planning agencies, non-profit organizations, community-based organizations, or a partnership of community members and other entities.

Designation means the process by which the Secretary designates rural areas as Empowerment Zones or Enter-

prise Communities eligible for tax incentives and credits established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 et seq.), EZ/EC SSBGS as established by the Department of Health and Human Services (HHS), and for consideration for programs of Federal assistance.

Empowerment Zone means a rural area so designated by the Secretary pursuant to this part. Up to three such zones may be designated.

Enterprise Community means a rural area so designated by the Secretary pursuant to this part. Up to 30 such communities may be designated.

EZ/EC SSBG Funds means grants made by the Secretary of HHS to States containing Empowerment Zones and Enterprise Communities whose strategic plans are qualified plans as defined in section 13761 of the Omnibus Budget Reconciliation Act of 1993.

Indian reservation means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions which is recognized by the Secretary.

Nominated area means an area which is nominated by one or more local governments and the State or States in which it is located for designation pursuant to this part.

Population census tract means a census tract, or, if census tracts are not defined for the area, a block numbering area (BNA).

Poverty means the number of persons listed as being in poverty in the 1990 Census.

Revocation of designation means the process by which the Secretary may revoke the designation of an area as an Empowerment Zone or Enterprise Community pursuant to §25.403 of this part.

Rural area means any area defined pursuant to §25.504 of this part.

Secretary means the Secretary of Agriculture.

State means any State in the United States.

Strategic plan means a strategy developed by the applicant, with the participation and commitment of local governments, State government(s), private sector, community members and others, pursuant to the provisions of § 25.200(c) of this part. The plan must include written commitments from the local governments and State(s) that they will adhere to the strategy.

USDA means the U.S. Department of Agriculture.

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants in accordance with § 25.200 of this part. The Secretary will designate up to three rural Empowerment Zones and up to 30 rural Enterprise Communities.

(b) *Period of designation.* The designation of a rural area as an Empowerment Zone or Enterprise Community shall remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(1) The close of the tenth calendar year beginning or after the date of designation;

(2) The termination date designated by the State and local governments in their application for nomination; or

(3) The date the Secretary revokes or modifies the designation, in accordance with § 25.402 or § 25.403 of this part.

§ 25.5 Waivers.

The Secretary may waive any provision of this part in any particular case subject only to statutory limitations, for good cause, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

Subpart B—Area Requirements

§ 25.100 Eligibility requirements and data usage.

Eligibility Criteria. A nominated rural area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population of 30,000;

(b) Is one of pervasive poverty, unemployment, and general distress, as described in § 25.102 of this part;

(c) Does not exceed one thousand square miles in total land area;

(d) Be located entirely within no more than three contiguous States; if it is located in more than one State, the area must have one continuous boundary; if located in only one State, the area may consist of up to three noncontiguous parcels;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination;

(f) Does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the individual poverty rate of each population census tract in the district is not less than 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community; and

(g) Does not include any area within an Indian reservation.

§ 25.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to the criteria described in § 25.102 of this part shall be based on the 1990 Census, and from information published by the Bureau of Census and the Bureau of Labor Statistics. The data shall be comparable in point or period of time and methodology employed.

(b) *Use of statistics on boundaries.* The boundary of a rural area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of census tracts, or, where tracts are not defined, with block numbering areas.

§ 25.102 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Conditions of poverty must be reasonably distributed throughout the entire nominated area. The degree of poverty shall be demonstrated by citing available statistics on low-income population and levels of public assistance. Poverty is demonstrated by poverty data from the 1990 census.

(b) *Unemployment.* The degree of unemployment shall be demonstrated by the provision of information on the number of persons unemployed, underemployed (those with only a seasonal or part-time job) or discouraged workers (those capable of working but who have dropped out of the labor market—hence are not counted as unemployed), increase in unemployment rate, job loss, plant or military base closing, or other relevant unemployment indicators having a direct effect on the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, per capita property tax base, average years of school completed; outmigration and population decline from 1980–1990, and a high or rising incidence of crime, narcotics use, abandoned housing, deteriorated infrastructure, school dropouts and illiteracy are examples of appropriate indicators of general distress. The data and methods used to produce such indicators that are used to describe general distress must all be stated.

§ 25.103 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following criteria:

(1) In each census tract within a nominated area, the poverty rate shall be not less than 20 percent; and

(2) For at least 90 percent of the population census tracts within the nominated area, the poverty rate shall not be less than 25 percent; and

(3) For at least 50 percent of the population census tracts within the nominated area, the poverty rate shall be not less than 35 percent.

(b) *Special rules relating to the determination of poverty rate—(1) Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate that meets the standards of paragraphs (a)(1) and (a)(2) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(3) of this section.

(2) *Census tracts with populations of less than 2,000.* A population census tract with a population of less than 2,000 shall be treated as having a poverty rate that meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zone for commercial or industrial use.

(3) *Adjustment of poverty rates for Enterprise Communities.* For Enterprise Communities only, the Secretary has the discretion to reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the census tracts, or, if fewer, five population census tracts in the nominated area:

(i) The 20 percent threshold in paragraph (a)(1) of this section;

(ii) The 25 percent threshold in paragraph (a)(2) of this section; and

(iii) The 35 percent threshold in paragraph (a)(3) of this section; *Provided that*, the Secretary may in the alternative reduce the 35 percent threshold by 10 percentage points for three population census tracts.

(4) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percentage point or more up to the next highest whole percentage point figure.

(c) *Noncontiguous areas.* There can be no more than 3 noncontiguous areas if the nominated area is located within one state; noncontiguous areas are not allowed in the multistate area. Each such parcel must separately meet the poverty criteria set forth in this section.

(d) *Areas not within census tracts.* In the case of an area that does not have population census tracts, the block numbering area shall be used for purposes of determining poverty rates.

Subpart C—Nomination Procedure

§ 25.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the State or States in which an area is located must nominate such area for designation as an Empowerment Zone or Enterprise Community, if:

(1) The rural area meets the requirements for eligibility described in § 25.100 and § 25.103 of this part;

(2) The rural area is entirely within the jurisdiction of the nominating State or States and local government(s); such governments must have the authority to nominate the area for designation and provide written assurances satisfactory to the Secretary that the strategic plan described in paragraph (c) of this section will be implemented;

(3) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(4) The State(s) and local government(s) certify that no portion of the area nominated is already included in an Empowerment Zone or Enterprise Community under this Act or in an area otherwise nominated to be designated under this section.

(b) *Nomination for designation.* No rural area may be considered for designation pursuant to subpart D of this part unless the application for designation:

(1) Demonstrates that the nominated rural area satisfies the eligibility criteria set forth at § 25.100 of this part;

(2) Includes a strategic plan, as described in paragraph (c) of this section; and

(3) Includes such other information as may be required by USDA in a Notice Inviting Applications, to be published in the FEDERAL REGISTER.

(c) *Strategic plan.* Each application for designation must be accompanied by a strategic plan, which must be developed in accordance with four key principles that will be utilized to evaluate the plan. These key principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, and training for jobs that offer upward mobility;

(2) Sustainable community development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development;

(3) Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning, and other community institutions and individual citizens; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(d) *Elements of strategic plan.* The strategic plan should:

(1) Indicate and briefly describe the specific groups, organizations, and individuals participating in its production, and describe the history of these groups in the community;

(2) Explain how participants were selected and provide evidence that the participants, taken as a whole, are broadly representative of the entire community;

(3) Describe the role of the participants in the creation and development of the plan and indicate how they will participate in its implementation;

(4) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved;

(5) Explain how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provide evidence that key participants have the capacity to implement the plan;

(7) Provide a brief explanation of the community's vision for revitalizing the area;

(8) Explain how the vision creates economic opportunity, encourages self-sufficiency and promotes community development;

(9) Identify key community goals and the barriers that restrict the community from achieving such goals, including a description of poverty and general distress, barriers to economic opportunity and development, and barriers to human development;

(10) Discuss how the vision is related to the assets and needs of the area as well as to the surrounding community;

(11) Describe the ways in which the community's approaches to economic development, social/human services, transportation, housing, community development, public safety, drug abuse prevention and educational and environmental concerns will be addressed in a coordinated fashion; and explain how these linkages support the community's vision;

(12) Indicate how all EZ/EC SSBG funds for the designated Empowerment Zone or Enterprise Community will be utilized.

(i) In doing so, the strategic plan shall provide the following information:

(A) A commitment by the applicant, as well as by the nominating state-chartered economic development corporation or State government(s), and local government(s), that the EZ/EC SSBG funds will be used to supplement, not replace, other Federal or non-Federal funds available for financing services or activities which can be used to achieve or maintain the goals outlined in paragraph (d)(12)(ii) of this section;

(B) a description of the entities that will administer the EZ/EC SSBG funds;

(C) a certification by such entities that they will provide periodic reports on the use of the EZ/EC SSBG funds; and

(D) a detailed description of all the activities to be financed with the EZ/EC SSBG funds and how all such funds will be allocated.

(ii) The EZ/EC SSBG funds must be used to achieve or maintain the following goals through undertaking one of the below specified program options. The goals may be achieved by undertaking one or more of the following program options:

(A) The goal of economic self-support to prevent, reduce or eliminate dependencies, through one of the following program options:

(1) Funding community and economic development services focused on disadvantaged adults and youths, including skills training, transportation services and job, housing, business, and financial management counseling;

(2) Supporting programs that promote home ownership, education or other routes to economic independence for low-income families, youths, and other individuals;

(3) Assisting in the provision of emergency and transitional shelter for disadvantaged families, youths, and other individuals;

(B) The goal of self-sufficiency, including reduction or prevention of dependencies, through one of the following program options:

(1) Providing assistance to non-profit organizations and/or community and junior colleges that provide disadvantaged individuals with opportunities for short-term training courses in entrepreneurial, self employment, and other skills that promote individual self-sufficiency, and the interest of the community;

(2) Funding programs to provide training and employment for disadvantaged adults and youths in construction, rehabilitation or improvement of affordable housing, public infrastructure and community facilities; and,

(C) The goal of prevention or amelioration of the neglect, abuse, or exploitation of children and/or adults unable to protect themselves; and, where appropriate, the goal of preservation or rehabilitation of families, through one or more of the following program options:

(1) Providing support for residential or non-residential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women, and mothers, and their children;

(2) Establishing programs that provide activities after school hours, including keeping school buildings open during evenings and weekends for mentor and study programs.

(iii) Designated Empowerment Zones and Enterprise Communities may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii)(A) and (B) of this section by using EZ/EC SSBG funds to capitalize revolving or

micro-enterprise loan funds which benefit low-income residents of the designated Empowerment Zones or Enterprise Communities. Similarly, grantees may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii)(A) and (B) of this section by using the EZ/EC SSBG funds to create jobs and promote economic opportunity for low-income families and individuals through matching grants, loans, or investments in community development financial institutions.

(iv) If the applicant intends to use the EZ/EC SSBG funds for program options not included in paragraph (d)(12) of this section, the strategic plan must indicate how the proposed activities meet the goals set forth in paragraph (d)(12)(ii)(B) of this section, and the reasons the any approved program options were not pursued.

(v) To the extent that the EZ/EC SSBG funds are used for the program options included in paragraph (d)(12)(ii)(B) of this section, the applicant may use EZ/EC SSBG funds for the following activities, in addition to those activities permitted by §2005 of the Social Security Act (42 USC 1397d):

(A) To purchase or improve land or facilities;

(B) To make cash payments to individuals for subsistence or room and board;

(C) To make wage payments to individuals as a social service;

(D) To make cash payments for medical care; and

(E) To provide social services to institutionalized persons.

(vi) The State must obligate the EZ/EC SSBG funds to in accordance with the strategic plan within 2 years from the date of payment to the state, or remit the unobligated funds to the Secretary of Health and Human Services (HHS).

(vii) The Strategic Plan must indicate how the EZ/EC SSBG funds will be invested and used for the 10 year period of designation. The EZ/EC SSBG funds may be used to promote economic independence for low-income residents, such as capitalizing revolving or micro-enterprise loan funds for the benefit of residents. The EZ/EC SSBG funds may also be used to create jobs and promote economic opportunity for

low-income families and individuals through matching grants, loans, or investments in community development financial institutions.

(viii) The strategic plan must indicate how all the EZ/EC SSBG funds will be used or invested for the period of designation of the Empowerment Zone or Enterprise Community.

(ix) The strategic plan must provide for periodic reporting of information by the relevant State.

(13) Indicate how tax benefits for designated zones and communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(14) Indicate a level of commitment necessary to ensure that these resources will be available to the area upon designation;

(15) Identify the Federal resources applied for or for which applications are planned;

(16) Identify private resources and support, including assistance from businesses, non-profit organizations, and foundations, which are available to be leverage with public resources; and provide assurances that these resources will be made available to the area upon designation.

(17) Identify changes requested in Federal rules and regulations necessary to implement the plan, including specific paperwork or other Federal program requirements that must be altered to permit effective implementation of the strategic plan;

(18) Identify specific regulatory and other impediments to implementing the strategic plan for which waivers are requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes;

(19) Demonstrate how State and local governments will reinvent themselves to help implement the plan, by identifying changes that will be made in State and local organizations, processes and procedures, including laws and ordinances;

(20) Explain how different agencies in State and local governments will work

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together in new responsive ways to implement the strategic plan;

(21) Identify the specific tasks necessary to implement the plan;

(22) Described the partnerships that will be established to carry out the plan;

(23) Explain how the plan will be regularly revised to reflect new information and opportunities; and

(24) Identify baselines, benchmarks and goals that will be used in evaluating performance in implementing the plan.

(e) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from an area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted, if:

(1) The establishment of a new branch affiliate or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity conducts business operations.

(f) *Implementation of strategic plan.* The strategic plan may be implemented by the State government(s), local governments, regional planning agencies, non-profit organizations, community-based organizations, and/or other nongovernmental entities. Activities included in the plan may be funded from any source, Federal, State, local, or private, which agrees to provide assistance to the nominated area.

(g) *Elements of the strategic plan.* A strategic plan may include, but is not limited to, activities that address:

(1) Economic problems, through measures designed to create employment opportunities; support business startup or expansion; or development of community institutions;

(2) Human concerns, through the provision of social services, such as rehabilitation and treatment programs or

the provision of training, education or other services within the affected areas;

(3) Community needs, such as the expansion of housing stock and homeownership opportunities, efforts to reduce homelessness, to promote fair housing and equal opportunity, to reduce and prevent crime and improve security in the area; and

(4) Physical improvements, such as the provision or improvement of public infrastructure, or the provision or improvement of recreational, transportation, or other public services within the affected area.

§ 25.201 Evaluating the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated rural areas described in § 25.301 of this part. On the basis of this evaluation, USDA may request additional information pertaining to the plan and the proposed area and may, as part of that request, suggest modifications to the plan, proposed area, or term that would enhance its effectiveness. The effectiveness of the strategic plan will be determined in accordance with the four key principles set forth in § 25.200(c) of this part. USDA will review each plan submitted in terms of the four equally weighted key principles, and of such other elements of these key principles as are appropriate to address the opportunities and problems of each nominated area, which may include:

(a) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship will increase within the zone or community;

(2) The extent to which residents will achieve a real economic stake in the zone or community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic and community development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire area and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the zone or community

interrelates with the broader regional economies; and

(6) The extent to which lending and investment opportunities will increase within the zone or community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(b) *Sustainable community development.*

(1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating localities and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the zone or community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection and the vitality of life of the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner consistent that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted, and the extent to which young people will be provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding.

(7) *Education goals.* The extent to which schools, religious organizations, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contribu-

tors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse.* The extent to which the plan addresses levels of drug abuse and drug-related activity through the expansion of drug treatment services, drug law enforcement initiatives, and community-based drug abuse education programs; and

(10) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated zone or community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, national origin, gender, handicap or age in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or the forms of compensation, or use of facilities. Applicants must comply with the provisions of Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as implemented by USDA.

(c) *Community-based partnerships.* (1) *Community partners.* The extent to which residents of the strategic plan and their commitment to implementing it. The extent to which community-based organizations in the nominated area have participated in the development of the nominated area have participated in the development of the plan, and their record of success measured by their achievements and support for undertakings within the nominated area:

(2) *Private and non-profit organizations as partners.* The extent to which partnership arrangements include commitments from private and non-profit organizations, including corporations, utilities, banks and other financial institutions, and educational institutions

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supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which State(s) and local governments are committed to providing support to the strategic plan, including their commitment to “reinventing” their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the zone or community’s designation.

(d) *Strategic vision for change.* (1) *Goals and coordinated strategy.* The extent to which the strategic plan reflects a projection for the community’s revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets; and

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

§ 25.202 Submission of nominations for designation.

(a) *General.* A separate nomination for designation as an Empowerment Zone and/or Enterprise Community must be submitted for each rural area for which such designation is requested. The nomination shall be submitted in a form to be prescribed by USDA in the Notice Inviting Applications published in the FEDERAL REG-

ISTER, and must contain complete and accurate information.

(b) *Certifications.* Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(1) The nominated area satisfies the boundary tests of §25.100(d) of this part;

(2) The nominated area is one of pervasive poverty, unemployment, and general distress, as described by §25.102 of this part;

(3) The nominated area satisfies the poverty rate criteria set forth in §25.103 of this part;

(4) The nominated rural area contains no portion of an area that is either already designated as an Empowerment Zone and/or Enterprise Community or is otherwise included in any other area nominated for designation as a Empowerment Zone and/or Enterprise Community;

(5) Each nominating governmental entity has the authority to:

(i) Nominate the rural area for designation as an Empowerment Zone and/or Enterprise Community;

(ii) Make the State and local commitments required by §25.200(d) of this part; and

(iii) Provide written assurances satisfactory to the Secretary that these commitments will be met;

(6) Provide assurances the amounts provided to the State for the area under section 2007 of Title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of section 2007;

(7) Provide that the nominating governments or corporations agree to make available all information requested by USDA to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of EZ/EC SSBG funds; and

(8) Provide assurances that the nominating State(s) agrees to distribute the EZ/EC SSBG funds in accordance with the strategic plan submitted for the designated zone or community.

(c) *Maps and area description.* Maps and a general description of the nominated area shall accompany the nomination request.

Subpart D—Designation Process

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of application as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the FEDERAL REGISTER.

(b) *Acceptance for processing.* USDA will accept for processing those applications as Empowerment Zones or Enterprise Communities which USDA determines have met the criteria required under this part. USDA will notify the State(s) and local government(s) whether or not the nomination has been accepted for processing. The criteria for acceptance for processing is that the application as an Empowerment Zone or Enterprise Community must be received by USDA on or before the close of business on the date established by the Notice Inviting Applications published in the FEDERAL REGISTER. The applications must be complete and must be accompanied by a strategic plan, as required by § 25.200(c) of this part and the certifications required by § 25.202(b) of this part.

(c) *Evaluation of applications.* In the process of reviewing each application accepted for processing, USDA may undertake a site visit(s) to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated rural areas, and/or period during which designation is in effect.* Subject to the limitations imposed by § 25.100 of this part, USDA may request additional information pertaining to the plan and proposed area and may, as a part of that request, suggest modifications to the plan that would enhance its effectiveness.

(e) *Publication of designations.* Final determination of the boundaries of areas and the term for which the designations will remain in effect will be made by the Secretary. Announcements of those nominated areas designated as Empowerment Zones of Enterprise Communities will be made by publication of a Notice in the FEDERAL REGISTER.

§ 25.301 Selection factors for designation of nominated rural areas.

In choosing among nominated rural areas eligible for designation, the Secretary shall consider:

(a) The effectiveness of the Strategic plan, in accordance with the key principles set out in § 25.201 of this part.

(b) The effectiveness of the assurances made pursuant to § 25.200(a)(2) of this part that the strategic plan will be implemented.

(c) The extent to which an application proposes activities that are creative and innovative.

(d) Such other factors as established by the Secretary, which include the degree of need demonstrated by the nominated area for assistance under this part and the diversity within and among the nominated areas. If other factors are established by USDA, a FEDERAL REGISTER Notice will be published identifying such factors, along with an extension of the application due date if necessary.

§ 25.302 Number of Rural Empowerment Zones and Enterprise Communities.

The Secretary may designate up to three rural Empowerment Zones and up to thirty rural Enterprise Communities.

Subpart E—Post-Designation Requirements

§ 25.400 Reporting.

USDA will require periodic reports for the Empowerment Zones and Enterprise Communities and other applicants designated pursuant to this part. These reports will identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones and Enterprise Communities as USDA shall request from time to time shall be submitted promptly. On the basis of this information and of on-site reviews, USDA will prepare and issue periodic reports on the effectiveness of the Empowerment Zones/Enterprise Communities Program.

§ 25.401 Periodic performance reviews.

USDA will regularly evaluate the progress in implementing the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and using other information submitted. USDA may also commission evaluations of the Empowerment Zone program as a whole by an impartial third party. Where not prevented by State law, nominating State governments must provide the timely release of data requested by USDA for the purposes of monitoring and assisting the success of Empowerment Zones and Enterprise Communities. The implementing entity for Empowerment Zones/Enterprises Communities will be responsible for EZ/EC program activities and fiscal management of the EZ/EC funds. They must demonstrate continual involvement of all segments of the community, including low income/disadvantaged residents, in the implementation of the Strategic Plan.

§ 25.402 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance review described in § 25.401 of this part, and subject to the provisions relating to the revocation of designation appearing at § 25.403 of this part, USDA will make findings as to the continuing eligibility for the validity of the designation of any Empowerment Zone or Enterprise Community. Determinations of whether any designated Empowerment Zone or Enterprise Community remains in good standing shall be promptly communicated to all Federal agencies providing assistance or administering programs under which assistance can be made available in such Zone or community.

(b) *Modification of designation.* Based on a rural Zone or community's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation appearing at § 25.403 of this part and the requirements as to the number, maximum population and other characteristics of rural Empowerment Zones set forth in § 25.100 of this part, the Secretary may modify designations by reclassifying rural Empowerment Zones as Enter-

prise Communities or Enterprise Communities as Empowerment Zones.

§ 25.403 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of a rural area as an Empowerment Zone or Enterprise Community if the Secretary determines on the basis of the periodic monitoring and assessments described in § 25.401 of this part, that the applicant or the State(s) or local government(s) in which the rural area is located:

(1) Has modified the boundaries of the area;

(2) Has failed to make satisfactory progress in achieving the benchmarks set forth in the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Warning letter.* Before revoking the designation of a rural area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the applicant and the nominating State(s) and local government(s):

(1) Advising that the Secretary has determined that the applicant and/or the nominating local government(s) and/or State(s) has:

(i) Modified the boundaries of the area; or

(ii) Is not complying substantially with, or has failed to make satisfactory progress in achieving the benchmarks set forth in the strategic plan prepared pursuant to § 25.200(d) of this part; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* After allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination pursuant to paragraph (a) of this section, the Secretary may issue a final notice of revocation of the designation of the rural area as an Empowerment Zone or Enterprise Community.

(d) *Notice to affected Federal agencies.* USDA will notify all affected Federal agencies providing assistance in a rural Empowerment Zone or Enterprise Community of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 25.402 of this part.

Subpart F—Special Rules

§ 25.500 Indian reservations.

No rural Empowerment Zone or Enterprise Community may include any area within an Indian reservation.

§ 25.501 Governments.

If more than one State or local government seeks to nominate an area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 25.502 Nominations by economic development corporations.

Any rural area nominated by an economic development corporation chartered by a State and qualified to do business in the State in which it is located, shall be treated as nominated by a State and local governments.

§ 25.503 Use of census data.

Population and poverty rate data shall be determined by the 1990 Census Data.

§ 25.504 Rural areas.

(a) *What constitutes “rural”.* A rural area may consist of any area that lies outside the boundaries of a Metropolitan Area, as designated by the Office of Management and Budget, or, as an area

that is primarily rural and has at least 50 percent of the population of the nominated area residing outside of a Metropolitan Area.

(b) *Exceptions to the definition.* On a case by case basis, the Secretary will grant requests for waiver from the definition of “rural” stated in paragraph (a) of this section upon a showing of good cause. Applicants seeking to apply for a rural designation who do not satisfy the definition in paragraph (a) of this section must submit a request for waiver in writing to the Rural Business and Cooperative Development Service, Empowerment Zone Office, Department of Agriculture, AG Box 3202, 14th Street and Independence Avenue, SW, Washington, DC 20250-3200. Requests must include:

(1) The name, address and daytime phone number of the contact person for the applicant seeking the waiver; and

(2) Sufficient information regarding the area that would support the infrequent exception from the definition.

(c) *The waiver process.* The Secretary, in consultation with the Department of Commerce, will have discretion to permit rural applications for communities that do not meet the above rural criteria.

PART 26 [RESERVED]