

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

#### **§ 718.306 Finality.**

(a) A determination by a State or county FSA committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

#### **§ 718.307 Special relief approval authority for State Executive Directors.**

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than \$20,000 (including in

that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than \$5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than \$1,000,000.

(b) *Report of the exercise of the power.*

A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that the program participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative in accordance with the provisions of this subpart, or that the producer otherwise failed, in good faith, to fully comply with the requirements of the program and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable

authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under \$20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.

Signed in Washington, DC, on October 28, 2002.

**James R. Little,**

*Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 02-27683 Filed 10-30-02; 8:45 am]

BILLING CODE 3410-05-P

## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

### **Rural Business-Cooperative Service**

### **Rural Utilities Service**

### **Farm Service Agency**

### **7 CFR Part 1944**

**RIN 0575-AC25**

### **Farm Labor Housing Technical Assistance**

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS) is amending its regulations for the Farm Labor Housing (FLH) program. The Housing Act of 1949 authorizes the RHS to provide financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The nonprofit agencies that receive this financial assistance, in turn, provide "technical assistance" to other organizations to assist them in obtaining loans and grants for the construction of farm labor housing. The intended effect of this action is to amend the regulations to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and how the financial assistance will be made available by the RHS.

**EFFECTIVE DATE:** December 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Douglas MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250-0781, Telephone (202) 720-1604.

**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).

## Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575-0181, in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements from those approved by OMB.

## Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

## Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS 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. Therefore, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

## 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 the states is not required.

## Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants.

## Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.

## Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS 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.

## Regulatory Flexibility Act

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 nor does it require any more action on the part of a small business than required of a large entity.

## Background

Farmworkers are among the lowest paid workers in the United States and often lack decent, safe, sanitary, and affordable housing. RHS's FLH program provides loans and grants for farmworker housing and related facilities.

The FLH program is authorized by title V of the Housing Act of 1949 under section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Section 516 also authorizes the RHS to provide financial assistance (not

more than 10 percent of the section 516 funds) to encourage the development of domestic and migrant farm labor housing projects.

RHS's FLH program provides funding for both "on-farm" and "off-farm" housing. The housing may also be for either seasonal or year-round occupancy. Off-farm housing, typically apartment complexes, is open to farmworkers who work at any farming operation. On-farm housing provides housing for the workers of only one farm and is typically designed as single family dwellings. Occupancy of both types of housing is restricted to United States citizens or permanent resident aliens.

Off-farm migrant housing serves farmworkers who perform agricultural work at one or more locations away from their home base throughout the year for periods ranging from a few weeks to several months. Rental assistance is available to many tenants of off-farm housing to make rents affordable. Off-farm housing is financed with section 514 loans and section 516 grants to nonprofit organizations and public agencies such as local housing authorities, and with section 514 loans to limited partnerships in which the general partner is a nonprofit entity.

On-farm housing loans are made to farmers or farm entities to provide housing for farmworker families employed by the farm. On-farm housing is financed with section 514 loans and is not eligible for 516 grants. The tenants (farmworkers) who live in on-farm housing are not eligible for rental assistance.

RHS also provides financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The services that are provided by these non-profit agencies pursuant to section 516(i) are commonly referred to as "technical assistance."

Prior to Fiscal Year (FY) 2000, RHS awarded technical assistance "contracts." These contracts were awarded for one year periods with four option periods that could be exercised at the discretion of the Government. In FY 2000, RHS changed the way that FLH technical assistance funds were awarded. During FY 2000, RHS awarded technical assistance "grants" rather than "contracts."

On June 21, 2000, a Request for Proposals (RFP) was published in the **Federal Register** requesting "grant" proposals from private and public nonprofit agencies. The RFP outlined the application requirements and the criteria that would be used to select proposals for funding. The RFP also

established three FLH technical assistance grant regions (the Eastern, Central, and Western grant regions) and contained the terms of the grants.

On September 27, 2000, three technical assistance grants were awarded. Two of the grants were awarded for the Western grant region and the other was awarded for the Central grant region. No grant proposals were received for the Eastern grant region. Each of the grants has a three year grant period.

When the RFP was published, comments and suggestions were received from interested parties. Some suggested that more than one FY's funding should be made available during the three year grant period. Another issue was that the Central grant region received less funding than the Eastern and Western grant regions. Lastly, one commentator expressed that it was unfair to consider an applicant's experience if such experience was gained outside of the grant region or to give equal weight to an applicant's experience in developing non-farmworker multifamily housing to an applicant's experience in developing farmworker housing.

In the future, RHS intends to periodically publish RFPs that are similar to the one that was published on June 21, 2000. When published, RHS will have the opportunity to make changes to the way funds are distributed, to the minimum performance requirements that must be met, or to other terms of the grants. RHS will at that time consider the suggestions that have been made. However, this revision to the regulation only implements the statutory authority for awarding grants. It does not establish the application requirements, the selection criteria, the performance standards that must be met, or how funds will be distributed when grants are awarded.

On June 1, 2001, the Agency published a proposed rule in the **Federal Register** (66 FR 29739) to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and to establish how the financial assistance will be made available by RHS. By this final rule, the Agency is also adding a definition of the term "Technical assistance" for clarity.

#### Discussion of Comments

Two commentators responded during the comment period. The Agency wishes to thank the respondents for their comments and suggestions. The comments we received are summarized and discussed below.

#### Eligibility Is Limited to Private or Public Nonprofit Agencies

One commentator suggested that "for profit" organizations should be eligible to receive technical assistance grants. However, the statutory authority for awarding technical assistance grants (section 516(i) of the Housing Act of 1949—42 U.S.C.1486(i)) only authorizes assistance to be provided to private or public nonprofit agencies.

#### Paperwork Requirements and the Application Process

One commentator suggested that RHS had greatly increased the paperwork requirements and the application process. This rule, however, does not set forth the application requirements. As stated in the proposed rule, "Requests for Proposals (RFP) may be periodically published in the Federal Register" and "RFPs will contain the amount of funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee."

#### List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended to read as follows:

#### PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

#### Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

2. Section 1944.151 is revised to read as follows:

##### § 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart

involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

3. Section 1944.153 is amended by adding, in alphabetical order, a definition for "technical assistance" to read as follows:

##### § 1944.153 Definitions.

\* \* \* \* \*

*Technical assistance.* The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

- (1) Performing outreach efforts to inform and recruit potential LH applicants.
- (2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.
- (3) Preparing market analyses, feasibility analyses, and financial proformas.
- (4) Packaging LH loan and grant applications, as well as applications from other funding sources.
- (5) Estimating construction costs and providing oversight during construction periods.

\* \* \* \* \*

4. Section 1944.157 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

##### § 1944.157 Eligibility requirements.

\* \* \* \* \*

(c) *Eligibility of applicant for an LH technical assistance grant.* To be eligible for an LH technical assistance grant, the applicant must:

- (1) Be a private or public nonprofit agency;
- (2) Have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for LH under the section 514 and 516 programs; and,
- (3) Possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met.

Nonprofit agencies acting on behalf of the grantee must also meet the above stated eligibility requirements.

\* \* \* \* \*

5. Section 1944.158 is amended by adding a new paragraph (o) to read as follows:

**§ 1944.158 Loan and grant purposes.**

\* \* \* \* \*

(o) Encourage the development of farm labor housing. RHS may award "technical assistance" grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. Technical assistance services may not be funded under both this paragraph and paragraph (i) of this section. In addition, technical assistance may not be funded by RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Requests for Proposals (RFP) may be periodically published in the **Federal Register** by RHS inviting eligible nonprofit organizations to submit LH technical assistance grant proposals. RFPs will contain the amount of available funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee.

Dated: October 24, 2002.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

[FR Doc. 02-27681 Filed 10-30-02; 8:45 am]

**BILLING CODE 3410-XV-P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 26**

**[NUREG-1600]**

#### **Revision of the NRC Enforcement Policy**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement: revision.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG-1600) (Enforcement Policy or Policy) to include an interim enforcement policy regarding enforcement discretion for certain fitness-for-duty issues.

**DATES:** This revision is effective on December 30, 2002, while comments are being received. Submit comments on or before December 2, 2002.

**ADDRESSES:** Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD.

**FOR FURTHER INFORMATION CONTACT:** Garmon West, Jr., Office of Nuclear Security and Incident Response, Senior Program Manager, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-1044, ([fitnessforduty@nrc.gov](mailto:fitnessforduty@nrc.gov)) or Renee Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2742, e-mail ([RMP@nrc.gov](mailto:RMP@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** A proposed amendment to the NRC's fitness-for-duty (FFD) regulations (10 CFR Part 26) was published on May 9, 1996 (61 FR 21105). When the NRC sought clearance from the Office of Management and Budget (OMB) to publish a final rule, stakeholders expressed a number of concerns about the rule and its implementation. Given the significance of stakeholder concerns, the NRC concluded on October 3, 2001, that it should: (1) Withdraw the OMB clearance request; (2) request additional public comment on all of the rule's provisions; and (3) conduct stakeholder meetings concerning a combined access authorization and FFD guidance document. As a result of public meetings with stakeholders, the NRC learned of licensee practices in two FFD areas, "suitable inquiry" and "pre-access testing," that did not meet the current Part 26 requirements.

#### **Current FFD Requirements**

Among its other provisions, the FFD rule provides drug- and alcohol-related requirements for authorizing individuals for unescorted access to nuclear power plant protected areas or for performing activities related to Strategic Special Nuclear Materials. Under the FFD rule, to grant authorization to an individual who has not been employed in the nuclear industry before, licensees must:

(1) Conduct a "suitable inquiry" into the individual's employment history for the past five years to identify if the individual had any substance abuse problems;

(2) Ask the individual to provide a "self-disclosure" of any substance abuse problems;

(3) Perform a "pre-access" drug and alcohol test and verify that the results are negative; and

(4) Provide training to the individual regarding the effects of drugs and alcohol on job performance and the requirements of the licensee's FFD program.

To maintain authorization, individuals must:

(1) Be subject to "behavioral observation" by supervisors who are trained to detect signs of possible impairment and changes in behavior;

(2) Report any drug- or alcohol-related arrests; and

(3) Be subject to random and "for-cause" drug and alcohol testing with negative test results.

Other requirements for authorizing individuals for unescorted access to nuclear power plant protected areas are defined in 10 CFR 73.56, "Personnel Access Authorization Requirements for Nuclear Power Plant Personnel." NRC Regulatory Guide (RG) 5.66 (1991), "Access Authorization Program for Nuclear Power Plants," provides guidance for implementing § 73.56. One requirement in § 73.56 is that licensees must conduct a background investigation with former employers to determine whether an individual is trustworthy and reliable. Licensees typically ask employers the FFD suitable inquiry questions at the same time.

Although the FFD regulations (10 CFR part 26) and the access authorization regulations (§ 73.56) are intended to assure that nuclear personnel are trustworthy and reliable, there are some differences between them. One important difference is that the access authorization regulations and RG 5.66 address licensees authorizing unescorted access for individuals who are transferring between licensee sites and have interruptions in their authorization. The FFD regulations are less clear on the subject of transfers and short breaks in authorization. For example, the only provision in the current FFD regulations that indirectly addresses these situations allows licensees to rely on a pre-access drug and alcohol test that was performed by another licensee within the past 60 days. Therefore, if the individual had a negative result from another licensee's drug and alcohol test within the past 60