

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98-035-2]

Importation of Orchids in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are advising the public that we are extending by 30 days the comment period for our proposed rule that would add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. This extension will provide interested parties additional time to prepare their comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 98-035-1 that are received on or before December 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-035-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-035-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD

20737-1236; (301) 734-6799; fax (301) 734-5786; e-mail:

Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1998, we published in the **Federal Register** (63 FR 46403-46406, Docket No. 98-035-1) a proposed rule to amend the regulations governing the importation of plants and plant products to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements.

Comments on the proposed rule were required to be received on or before November 2, 1998. However, in response to requests received following the publication of the proposed rule, we are extending by 30 days the comment period for the proposed rule. Therefore, we will consider all comments that are received on or before December 2, 1998.

Done in Washington, DC, this 23rd day of October, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-28997 Filed 10-28-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

RIN 0575-AC19

Processing Requests for Farm Labor Housing (LH) Loans and Grants

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

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDs), a successor Agency to the Farmers Home Administration (FmHA), proposes to amend its regulations for

the Farm Labor Housing (LH) program. This action is taken to implement a simplified application process in conjunction with an annual competitive funding cycle that will be announced in the **Federal Register**. The intended outcome is a streamlined application process that will be simpler and less costly for the applicant and will enable the Agency to process applications in a more efficient and timely manner.

DATES: Written comments on this proposed rule must be received on or before December 28, 1998.

ADDRESSES: Written comments may be submitted, *in duplicate*, to the Branch Chief, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW, Washington, D.C. 20250-0742. Comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "LH" in the subject. All written comments will be available for public inspection at 3rd floor, 300 E Street, SW, Washington, D.C. 20546 during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Avenue, SW, Washington, D.C. 20250-0781, telephone (202) 720-1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under OMB Control Number 0575-0045. A Notice of Request for Extension of a Currently Approved Information Collection was published in the **Federal Register** (63 FR 28984) on May 27, 1998. This Notice did not contain the new provision of the regulation. Therefore, in accordance with the Paperwork Reduction Act of 1995, RHS is opening a 60-Day

comment period on the paperwork burden associated with this regulation.

Abstract: The Rural Housing Service (RHS) is authorized under Section 514, 516, and 521 of Title V of the Housing Act of 1949, as amended, to make initial and subsequent loans and grants to provide housing and related facilities for domestic farm labor. A loan only can be made to a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing and that is engaged in agricultural or aquacultural farming operations and which will own the housing and operate it on a nonprofit basis. A loan and/or grant can be made to public, private nonprofit organizations for domestic farm labor in areas where need exists. In some cases, rental assistance may be provided to eligible tenants.

RHS has the responsibility of assuring the public that funds for LH projects are financed to build, buy, improve, or repair farm labor housing and related facilities. The facilities financed are to have decent, safe and sanitary living conditions and are managed and operated as mandated by Congress. 7 CFR part 1944, subpart D was issued to set forth the policies and procedures and delegation of authority for making initial and subsequent insured loans under Section 514 and grants under Section 516 to provide housing and related facilities for domestic farm labor and to assure that applicable laws and authorities are carried out as intended.

With the provision of this regulation, RHS will be able to provide the financial assistance and necessary guidance to applicants in the development of their project proposals. It provides the Agency the capacity to meaningfully evaluate the feasibility of the proposed projects RHS will be able to assure Congress and the general public that all LH projects will be operated for purposes that are intended, and for the benefit of those they are mandated to serve.

There are no new requirements with this rule. However, it does restructure the submission of applicant information and supporting documentation for the proposed facility to be financed with RHS assistance. It also changes the timing of the submissions. For example, with a competitive NOFA system, we can be more applicant-friendly by requesting only essential information that responds to the selection criteria up front, relying on applicant certifications for eligibility, market, environmental data, and leverage. Only those applicants preliminarily selected under the competitive process would have to

submit the specific information the agency would use in underwriting and approving the application.

The required information is collected on a project-by-project basis and is done so in accordance with the amended Housing Act of 1949, so that RHS can provide guidance and be assured of compliance with terms and conditions of loan, grant, and or subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 hours per response.

Respondents: Farms, Not-for profit Institutions, and State, Local or Tribal Government.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 8,610 hours.

Copies of this information collection can be obtained from Michele Brooks, Regulations and Paperwork Management Branch, Support Services Division, as (202) 692-0036.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michele Brooks, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250.

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 sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken in part as a result of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

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 set forth 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 proposed 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/Discussion

The farm labor housing program has two authorities in Title V of the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. The program also has tenant subsidies (rental assistance, or RA) available through section 521 (42 U.S.C. 1490a). The loans and grants authorized in sections 514 and 516 are the only sources of direct Federal financing available to public and private nonprofit organizations to construct housing and related facilities for America's farmworkers.

Both "off-farm" and "on-farm" housing are financed by the LH program. Off-farm housing is financed with loans and grants to nonprofit organizations (broad based, community development agencies) or to public agencies (such as local housing authorities). Housing built typically looks like conventional apartment complexes; however, occupancy is restricted to farmworkers. Rental assistance is available to occupants to assure unit affordability. On-farm housing is financed only with loans to a farmer or farm entity. Housing built typically is a single family dwelling unit. Occupancy is restricted to farmworkers or a farmworker family with at least one member of the household employed by the farm. No tenant subsidies are available. As provided by the authorizing statute, section 514 loans are subsidized to all borrowers with a one percent interest rate. Occupancy in both types of labor housing is restricted to United States citizens or legally admitted aliens.

The Rural Housing Service (RHS) proposes to revise current regulations for the LH program by establishing a competitive selection process for

awarding funds to applicants for off-farm housing complexes. As the demand for program funds has steadily increased, it has become apparent that the first-come, first-served funding process in the current regulations is no longer a practical way of allocating funds for the construction of new off-farm units. It precludes setting priorities in awarding funds and has created long waiting periods by applicants for funds. On-farm housing will continue to be funded on a first-come, first-served basis, as the demand for these funds is more limited. Subsequent loans for repair and rehabilitation of existing LH facilities will be funded from a National Office reserve as needed.

Several factors have contributed to the increasing disparity between available funding in the LH program and demand. First, there is a large unmet demand for the program. Second, the Agency's efforts to encourage the development of LH units in underserved areas through technical assistance contractors has increased the number of applications from areas with a high farmworker population and limited housing. And finally, a growing number of existing LH units need upgrading and repair. Rehabilitation needs further strain the Agency's capacity to respond to requests for new facilities.

In the early 1990's, the application process took from 12 to 18 months from initial contact to obligation of funds. The increasing number of applications and declining amount of funds has increased the waiting period from initial contact to obligation of funds for some applicants. While the proposed regulations will not change the fact that some applicants may have to wait a year or more for funding, they will allow the Agency to prioritize funding to assure the highest priority applicants are funded as quickly as possible and reduce the burden on those not selected by returning applications not likely to be funded.

The Agency has spent considerable time assessing the different approaches to a competitive process and has informally solicited views from potential applicants on the proposed process. Potential applicants have indicated that they have limited funds to develop applications and do not have the resources to spend on market analyses, architectural and engineering services, and purchase of land unless they can be reimbursed for these expenses in a timely manner. Generally, these costs are eligible for inclusion in the loan or grant. Accordingly, RHS proposes to improve the application process by establishing a system that will move quickly to determine the

highest priority proposals to be funded, to underwrite the application, and then to obligate funds within the same fiscal year.

Concerning the selection criteria within the competitive process, current and potential applicants and others familiar with the program have offered the following views which have been taken into account in the proposed regulation:

- Funds must continue to be available to serve areas with traditionally high use of the program and high farmworker populations based on local studies.
- Areas without a large concentration of farmworkers may have an unmet need for housing for farmworkers.
- Leveraged funds are needed to stretch LH resources and must be available within a timely manner to assure project feasibility.
- Not all areas or applicants have access to other resources, so other criteria are needed to balance leveraging.
- Community support is important for leveraging and zoning, but such support should not be a selection criterion.
- Given fund availability, the selection process should be done at the National level.

• Preference needs to be given to outstanding applications in the initial years of the new application process.

The Agency is particularly interested in comments and recommendations on the selection criteria and their relative weights. With a national competitive process, selection criteria would ideally compare different states and communities within the states and their relative needs for farmworker housing. However, reliable sources of national data are limited and, in order for the selection criteria to remain objective, the applicant's proposal must be able to be substantiated by reasonably available data. The proposed approach relies on the state's Consolidated Plan (used by states for housing needs funded by HUD), the state government's assessment of need for farmworker housing within the state, or other indicators of need identified in the notice of funding availability (NOFA). In the absence of state support and identification of need for such housing, are there other sources of information and indicators of need that the Agency could use as a fair selection criteria so that the program will reach proposals for high need areas within the state?

The Agency is interested, as well, in comments on the selection criterion providing 10 additional points to applications with leveraged funds from agriculture producers. Its purpose is to

encourage partnerships and support from the producers, who benefit by having good housing available to their farmworkers, even though no preference can be given to the workers of any individual producer or group of producers.

Under the proposed regulations, the Agency outlines a three-part process under a NOFA system. Annually, the Agency will announce the availability of funds and provide a timeframe for applicants to submit proposals (generally ranging from 45 to 90 days, depending on when funds are appropriated). The proposal must contain basic information on the applicant and the proposed housing complex to assure the applicant is eligible and the proposal feasible. Also, applicants will be asked to provide information that responds to the selection criteria. Points will be awarded for the selection criteria as specified in the regulation, and applications will be ranked in point score order. Those meeting the basic eligibility and feasibility requirements and ranking high enough to fall within the available funds will be requested to submit an initial application. Upon review and approval of the initial application, which includes comprehensive detail on the housing proposal, the Agency will request final documentation for application approval. Through this process, only applicants with a high potential for funding approval will be developing a complete application. Moreover, funding should be available within the fiscal year for all applicants invited to develop a complete application. However, to assure full use of funds, some applicants will also be selected as back-ups in case the selected proposals cannot meet the application submission schedule or are disapproved upon review of their application. Those applicants not selected will be advised of the reasons why and will be given the opportunity to reapply the following year.

Implementation Proposal

When the final rule becomes effective, the Agency will change from its current method of accepting loan requests to a NOFA system. The Agency anticipates publishing a final rule as soon as possible in FY 1999 to use FY 1999 funding. Under the current method, loan requests may be submitted throughout the year and are kept on hand until funds are available. Under the NOFA system, the amount of funds and application deadlines will be announced each funding cycle in the **Federal Register**. Loan requests will be reviewed and selected based on

objective criteria in accordance with the revised regulations. Loan requests not selected for funding will be returned to the applicant.

The Agency proposes to advise LH applicants that have an unfunded application on hand at the end of FY 1998 that they are subject to the competitive process. The Agency requests comments on its intention to give points under the selection criteria for two years to applications that were issued an AD-622, "Notice of Preapplication Review Action," inviting a formal application or had been reviewed and authorized by the National Office as of the publication date of this proposed rule. Furthermore, if a new proposal is submitted that ranks higher than an existing application or proposal under the selection criteria, the Agency will select it over the existing one.

Proposals on hand that have not been issued an AD-622 or reviewed and authorized by the National Office as of the publication date of this proposed rule will be returned to the applicant. Loan requests thus returned may, of course, be submitted for consideration when the NOFA is published.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

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

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

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.579 is revised to read as follows:

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a

National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

PART 1944—HOUSING

3. 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

4. Section 1944.153 is amended in the definition of "Domestic farm laborer" by revising the words "FmHA or its successor agency under Public Law 103-354" to read "Rural Development"; in the definition of "Farm owner" by revising the words "subpart A of part 1944" to read "this section"; in the definition of "Self-employed" by revising the words "District or State Director" to read "Loan Official or State Director" and the words "FmHA or its successor agency under Public Law 103-354" to read "Rural Development"; in the definition of "Substantial portion of income" by revising the two occurrences of the words "FmHA or its successor agency under Public Law 103-354" to read "Rural Development"; and by adding in alphabetical order definitions to read as follows:

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

* * * * *

Consolidated Plan. A plan developed by a community or state, addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

* * * * *

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

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HUD. The U.S. Department of Housing and Urban Development.

* * * * *
LH. Farm Labor Housing.

* * * * *
MFH. Multi-Family Housing.

* * * * *
Needs assessment. A housing needs assessment completed by the state government.

* * * * *
NOFA. Notice of funds availability.

* * * * *
Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

* * * * *
RHS. Rural Housing Service.

* * * * *
5. Section 1944.164 is amended in the introductory text of paragraph (d) in the first sentence by revising the words "District Director" to read "Loan Official" and the words "FmHA or its successor agency under Public Law 103-354" to read "RHS"; in paragraph (d)(1)(i) by revising the words "FmHA or its successor agency under Public Law 103-354" to read "RHS"; and by revising paragraph (b) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *
(b) *Maximum amount of grant.* The amount of any grant may not exceed the lessor of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals within the reach of low-income farmworker families. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

* * * * *
6. Section 1944.169 is amended by revising paragraph (a)(1) to read as follows:

§ 1944.169 Technical, legal, and other services.

(a) * * *

(1) When real estate is taken as security, the property will be appraised by a RHS employee authorized to make real estate appraisals.

* * * * *

7. Section 1944.170 is amended by redesignating paragraphs (b) and (c) as (f) and (g) respectively; in newly

redesignated paragraph (f) by revising all occurrences of the words "District Director" to read "Loan Official" and revising the two occurrences of "an" to read "a"; in newly redesignated paragraph (g)(5)(i) by revising the reference "§ 1944.164(b)(2)" to read "§ 1944.164(b)"; in newly redesignated paragraph (g)(5)(ii)(B) by revising the words "an LH loan" to read "a LH loan"; in newly redesignated paragraph (g)(5)(ii)(C) by revising the reference "paragraph (c)(5)(ii)(A)" to read "paragraph (g)(5)(i)"; and by revising the heading, the introductory paragraph, paragraph (a), and newly redesignated paragraph (g)(7), and by adding new paragraphs (b) through (e) to read as follows:

§ 1944.170 Application requirements and processing.

A three-stage application process will be used for new units in off-farm facilities. The first stage consists of a project proposal submitted by the applicant when the availability of funds is announced in the **Federal Register**. The project proposal is basic information that is used by the Agency to score and rank proposals and to determine preliminary eligibility. Applicants with the highest ranked proposals will be requested to submit a preapplication with more detailed information for underwriting (stage two). If the preapplication is determined eligible and feasible, the applicant will be invited to submit an application package (stage three). Loan requests for repair and rehabilitation of off-farm units and new units of on-farm housing will begin with the preapplication stage in accordance with paragraph (f) of this section. On-farm housing proposals will be processed on a first-come, first-served basis. Subsequent loans for repair and rehabilitation of existing LH facilities will be funded from a National Office reserve as needed.

(a) *Project proposals for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the **Federal Register** with deadlines for submitting project proposals. The notice will include the amount of funds available, any limits on the amount of individual loan and grant requests, the Agency's approach to assuring geographic diversity in the use of loan and grant funds, and the loan scoring criteria.

(2) Project proposals will be submitted in accordance with NOFA. Applicants will be required to provide the following information to describe their proposal and organizational structure which will be used by the Agency to determine preliminary

eligibility and to score and rank proposals:

(i) Description of the project, including:

(A) The location of the project, including a description of the site, the availability of water, sewer, and utilities, and proximity to community facilities and services.

(B) Description of the proposed development, including the number of units by bedroom type, amenities such as carpets and drapes, related facilities such as a laundry room or community room, and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility.

(C) An economic feasibility analysis demonstrating the financial viability of the proposal, including the proposed rent structure, loan and grant ratio and need for rental assistance.

(D) Development time line.

(E) A description of the intended market area and a need and demand analysis in accordance with paragraph I.B. of Exhibit A-1 of this subpart.

(F) Development budget, including total and per unit cost.

(G) Evidence of site control, such as an option or sales contract.

(H) Description of any anticipated environmental issues based on a preliminary review.

(ii) Description of proposed financing, including:

(A) Amount of Agency funds requested.

(B) Information on leveraged funds, including the source, type, amount, rates and terms, and commitment status. To count as leveraged funds for purpose of the selection criteria:

(1) The funding date of the leveraged funds will permit processing of the loan request within the current funding cycle (the latest funding date for leveraged funds will be announced in NOFA), and

(2) The interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(3) For donated land to be scored as leveraged assistance, all of the following conditions must be met:

(i) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(ii) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(iii) The overall cost of the project is reduced by the donation of the land.

(iii) Preliminary documentation of the applicant's eligibility, including:

(A) Applicant name and type of organization, including contact person and title.

(B) Statement by applicant of its general financial condition.

(C) Statement of housing experience.

(iv) Any additional information specified in NOFA necessary to score and rank the applicant's proposal under the selection criteria.

(b) *Preliminary eligibility assessment of project proposals.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The project proposal was received by the submission deadline specified in NOFA;

(2) The project proposal is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking project proposals.* The Agency will score and rank off-farm project proposals for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria as specified in NOFA will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program eligible tenants at basic rents comparable to those if RHS provided full financing. Eligible types of leveraged assistance include loans and grants from other sources, contributions from the borrower, and tax abatements or other savings in operating costs provided that, when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Scoring will be based on the presence and extent of leveraged assistance for each proposal compared to the other proposals being reviewed, computed as a percent of the total development cost of the units. A total monetary value will be determined for leveraged assistance such as tax abatements or services in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. (0 to 20 points)

(ii) The proposed units will be developed in a place identified in the state Consolidated Plan, a needs assessment prepared by the state government, or other indicator of need

(as published in NOFA) as a high need community for farmworker housing. (20 points)

(iii) The loan request is in support of an Agency initiative announced in NOFA. (0 to 20 points)

(iv) The housing proposal includes support services (such as health or child care) on-site, or the proposed housing complex is planned to be adjacent to such services in the community and the services are made available to the residents at an affordable cost under a cooperative agreement. (5 points for one service; 10 points for two or more services)

(v) The proposal reflects a minimum of 10 percent private agriculture producer contribution to the total development cost as leveraged funds (meeting the same timing and commitment requirements as other leveraged funds). (10 points over and above the points awarded under paragraph (c)(1)(i) of this section)

(vi) Projects whose occupants will derive the highest percentage of their income from on-farm agriculture work, compared to the other proposals being reviewed. (0 to 10 points)

(vii) Market areas not previously served by LH projects. (10 points)

(viii) Seasonal, temporary, or migrant housing. (5 points for up to 50 percent of the units; 10 points for 51 percent or more)

(ix) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or loan requests that were issued an AD-622, "Notice of Preapplication Review Action," inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (10 points)

(2) The Agency will rank project proposals by point score. In the case of a point-score tie for proposals from the same State, the proposal offering the most support services will be given priority. Further same-State ties will be resolved by lottery.

(d) *Selection of project proposals for further processing.* (1) States will make a preliminary eligibility assessment and submit the proposals with their review comments to the National Office for selection through the National Office selection process.

(2) The National Office will score and rank the project proposals using the project selection criteria. For the purpose of achieving geographic or program diversity, the Agency reserves the right to select a loan request with a lower point score, as published in NOFA.

(3) The Agency will not select a proposal for a new LH loan in an area

with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) The National Office will notify States of the proposals that have been selected and those that may be held as a back-up in the event a selected proposal is later withdrawn or rejected.

(5) Preapplications submitted by selected applicants will be processed in accordance with paragraph (f) of this section. If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not received within the timeframe established in the NOFA, the Agency will select the next ranked proposal for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be sent a letter inviting them to submit a preapplication package consisting of SF 424.2, "Application for Federal Assistance (For Construction)," and the information outlined in exhibit A-1 or A-2 of this subpart, as applicable. The applicant should be advised not to prepare a final application until notified to proceed.

(2) Applicants selected as back-ups will be sent a letter advising them that their proposal will be kept on hand in the event a selected proposal is withdrawn or rejected in the current funding cycle. Back-ups not processed in the current cycle will be returned to the applicant.

(3) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet the NOFA requirements, or those that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

* * * * *

(g) * * *

(7) After completing review of the preapplication material and determining

the amount of grant, the State Director will notify the Loan Official of the State Director's determination and authorize the Loan Official to prepare and execute Form AD-622. The Loan Official will forward the original to the applicant, a copy to the State Director, and a copy to the case file.

8. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

* * * * *

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. A notice of the availability of funds (NOFA) for off-farm facilities will be announced annually in the **Federal Register**, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

9. Exhibit A-1 to subpart D is amended by revising the introductory paragraph of section I.B. and paragraph I.B.3 to read as follows:

Exhibit A-1 to Subpart D—Information to be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. *Information to be submitted with SF 424.2 (for preapplication submission).*

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

Dated: October 22, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98-28995 Filed 10-28-98; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) requests public comment on development of a system of "prompt corrective action" to be taken by NCUA when a federally-insured credit union becomes undercapitalized. A new provision of the Federal Credit Union Act, as added by the Credit Union Membership Access Act, requires the NCUA Board to adopt, by regulation, a system of prompt corrective action indexed to each of five capital categories which the new provision establishes for federally-insured credit unions. Much of the system of prompt corrective action either is already prescribed by the new provision itself or is required to be comparable with the system Congress established for other federally-insured financial institutions in 1991. However, Congress has left to NCUA the responsibility to develop implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions. Information and comments from interested parties on these specific components will assist NCUA in carrying out its mandate to implement a system of prompt corrective action.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the above address or telephone (703) 518-6362; or Steven W. Wideman, Trial Attorney, Office of General Counsel, at the above address or telephone (703) 518-6557.

SUPPLEMENTARY INFORMATION:

A. Background

On August 7, 1998, Congress enacted the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105-219, 112 Stat. 913 (1998). Section 103 of CUMAA added a new section 216 to the Federal Credit Union Act (FCUA), to be codified as 12 U.S.C. 1790d. New section 216(b)(1) requires the NCUA Board to adopt by regulation a system of "prompt corrective action" to be taken by NCUA when a federally-insured "natural person" credit union becomes undercapitalized. Congress requires NCUA's system of prompt corrective action to be "comparable" to the system it prescribed for the other federally-insured financial institutions in 1991 under section 38 of the Federal Deposit Insurance Act (FDIA § 38), 12 U.S.C. 1831o, as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102-242, 105 Stat. 2236 (1991).

Many of the regulations that will comprise NCUA's system of prompt corrective action are not open to substantive discretion in rulemaking. Section 216 (c) through (i) itself prescribes the substance of much of NCUA's system of prompt corrective action. To satisfy the requirement of "comparability" with FDIA § 38, NCUA's regulations will generally parallel those adopted by the other Federal banking agencies pursuant to FDIA § 38,¹ to the extent such regulations are applicable to credit unions. However, Congress has left to NCUA the responsibility for originating implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions and, thus, were not addressed in FDIA § 38. New § 216 (b)(2) and (d). The components on which NCUA seeks comment are:

1. The definition of a "complex" credit union;
2. The design of a "risk-based net worth requirement" to apply to "complex" credit unions;
3. The design of an alternative system of prompt corrective action for "new" credit unions (defined as less than 10 years old and having less than \$10 million in assets); and
4. The criteria for an acceptable Net Worth Restoration Plan for undercapitalized credit unions.

¹ The Federal banking agencies consist of the Federal Reserve Board, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision. New § 216(o)(1) incorporating 12 U.S.C. 1813(z). Their Joint Final Rule establishing a system of prompt corrective action pursuant to FDIA § 38 is published at 57 FR 44886 (Sept. 29, 1992).