

(5) *Fifty or more employees and contract or subcontract exceeds \$50,000.* If the contract or subcontract is more than \$50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD-425 provides guidelines for the contractor or subcontractor in developing such a program.

(6) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender (when inspections are made), will be shown on Form FmHA or its successor agency under Public Law 103-354 424-12, "Inspection Report." If there is any evidence of non-compliance, the borrower or lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(7) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with FmHA or its successor agency under Public Law 103-354.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the

alleged discrimination, unless the time for filing is extended by FmHA or its successor agency under Public Law 103-354 for good cause shown by the complainant.

[48 FR 30947, July 6, 1983, as amended at 49 FR 28039, July 10, 1984; 50 FR 39884, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 52 FR 6500, Mar. 4, 1987; 56 FR 11504, Mar. 19, 1991; 61 FR 67633, Dec. 23, 1996]

#### § 1980.42 Flood or mudslide hazard area precautions.

(a) *Project location.* Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development may be financed under this subpart only:

(1) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan in paragraph (a)(1) of this section.

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

(b) *Flood insurance.* If project is located in a special flood or mudslide hazard area and if flood insurance is available it will be purchased by the borrower prior to loan closing. (See Part 1806, Subpart B of this chapter.) (FmHA or its successor agency under Public Law 103-354 Instruction 426.2.)

[48 FR 30947, July 6, 1983, as amended at 49 FR 3764, Jan. 30, 1984]

#### § 1980.43 Clean Air Act and Water Pollution Control Act requirements.

(a) *Conditions.* As a condition for FmHA or its successor agency under Public Law 103-354's making or guaranteeing a loan in excess of \$100,000 and unless otherwise exempted, an applicant for a loan will:

(1) Comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C-9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318) relating to inspection,

monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 16, 1975.)

(2) Notify the FmHA or its successor agency under Public Law 103-354 of the receipt of any communication from the EPA indicating that a facility to be utilized in the carrying out of the FmHA or its successor agency under Public Law 103-354 program loan purposes is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to the making of the loan.)

(3) Certify that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

(4) Include, or cause to be included, the criteria and requirements contained in this section in every non-exempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(5) Secure the service of a contractor who agrees to comply with the provisions in paragraph (a) of this section.

(b) *Solicitation.* Lender will cause to be included in all solicitation and contract provisions the stipulations contained in paragraph (a) of this section, provided the loan amount is \$100,000 or more and not otherwise exempted.

(c) *Facility.* The term "facility", as used in this section only, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, co-operator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that inde-

pendent facilities are located in one geographical area.

(d) *Exemptions—(1) Transactions \$100,000 and under.* Any contracts, subcontracts, loans, and subloans not exceeding \$100,000 are exempt.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including but not limited to time and material contracts, requirements contracts, and basic ordering agreements), this section shall be applicable unless the applicant or borrower has reason to believe that the amount to be ordered in any year under such contract will not exceed \$100,000.

(3) *Authority of the Administrator.* When the Administrator of the FmHA or its successor agency under Public Law 103-354 determines that the paramount interest of the United States so requires, he may exempt any individual loan, contract or subcontract for a period of 1 year, and by rule or regulation any class of loans or contracts following consultation with EPA. In the case of an individual exemption, the Administrator shall notify the Director, Office of Federal Activities, EPA, as soon before or after granting the exemption as practicable. The justification for such an exemption or any renewal thereof shall fully describe the purpose of the loan or contract and shall indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(4) *Facilities located outside the United States.* This section shall not apply to the use of facilities outside the United States. The term "United States" as used herein includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

**§ 1980.44 National Historic Preservation Act of 1966.**

As a condition for FmHA or its successor agency under Public Law 103-354 making or guaranteeing a loan, the applicant will provide a written statement to FmHA or its successor agency under Public Law 103-354 of the effect,