

§ 1942.309 [Reserved]

§ 1942.310 Other considerations.

(a) Civil rights compliance requirements. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, and national origin as outlined in subpart E of part 1901 of this chapter. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap, the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age and title III of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. When FmHA or its successor agency under Public Law 103-354 is administering a Federal Regional Commission grant and no FmHA or its successor agency under Public Law 103-354 RBE/television demonstration grant funds are involved, the Federal Regional Commission may make its own determination of compliance with the above Acts, unless FmHA or its successor agency under Public Law 103-354 is designated compliance review responsibilities. FmHA or its successor agency under Public Law 103-354 shall in all cases be made aware of any findings of discrimination or noncompliance with the requirements of the above Acts.

(b) *Environmental requirements*—(1) *General applicability.* Unless specifically modified by this section, the requirements of subpart G of part 1940 of this chapter apply to this subpart. FmHA or its successor agency under Public Law 103-354 will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in subpart G of part 1940 of this chapter. Although the purpose of the grant program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest

lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA or its successor agency under Public Law 103-354's environmental review process by § 1940.310(e)(1) of subpart G of part 1940 of this chapter. However, as further specified in § 1940.330 of subpart G of part 1940 of this chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of subpart G of part 1940 of this chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA or its successor agency under Public Law 103-354 will review the preapplication, supporting materials and any required Forms FmHA 1940-20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA or its successor agency under Public Law 103-

354's approval of this type of grant application does not constitute FmHA or its successor agency under Public Law 103-354's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter, prior to FmHA or its successor agency under Public Law 103-354 providing its consent to the grantee to assist the third party project. If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, FmHA or its successor agency under Public Law 103-354 may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this chapter, and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to third parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(c) *Excess capacity or transfer of employment.* (1) If a proposed grant is for more than \$1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA or its successor agency under Public Law 103-354 which will enable FmHA or its successor agency under Public Law 103-354 to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written indication will consist of a resolution from the applicant and Form FmHA or its successor agency under Public Law 103-354 449-22, "Certificate of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use guide 2 of this subpart as an example in preparing the resolution. Future occupants of the site must be certified by Department of Labor (DOL) as outlined in paragraph (c)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) The State Director will check each document for completeness and accuracy and, submit nine copies of each to the National Office for forwarding to DOL. The submittal to the National Office should be accompanied by a cover memorandum giving the amount and purpose of the grant. Information should *not* be submitted directly to DOL from the applicant or the State Office.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of § 1942.310(c)(1) of this subpart have not been complied with. Information for obtaining this certification will be submitted in writing by the applicant to FmHA or its successor agency under Public Law 103-354. The information will be submitted to DOL by the FmHA or its successor agency under Public Law 103-354 National Office. Grant approval may be given and funds may be obligated subject to the DOL certification being received provided FmHA or its successor agency under Public Law 103-354 has made its own separate determinations of (c)(1)(i) and (ii) of this section when the project is in excess of \$1 million and affects over 50 employees.

(4) When a grant is being administered for a Federal Regional Commission and no FmHA or its successor agency under Public Law 103-354 grant funds are being used, the requirements for DOL determinations may be waived upon written request from the Commission. If the Commission so desires, the request will be included in the letter from the Commission to FmHA or its successor agency under Public Law 103-354 that gives notice of transfer of funds and conditions under which the funds are to be made available to the grantee. In such cases the letter of conditions from FmHA or its successor agency under Public Law 103-354 to the grantee will not include the requirement for DOL determinations.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be admin-

istered under and are subject to 7 CFR part 3015, 7 CFR part 3016, and 7 CFR part 3017, as appropriate, and established FmHA or its successor agency under Public Law 103-354 guidelines.

(e) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this chapter.

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulation.

(g) *Floodplains and wetlands.* All projects must comply with Executive Order 11988 "Floodplain Management" and Executive Order 11990 "Protection of Wetlands."

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA or its successor agency under Public Law 103-354, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

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§ 1942.311 Application processing.

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 424.1, "Application for Federal Assistance (For Non-Construction)," or SF 424.2, "Application for Federal Assistance (For