

days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions (Texas).

For the reasons set forth in the preamble, 7 CFR Part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 959.229 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 959.229 Expenses and assessment rate.

Expenses of \$379,675 by the South Texas Onion Committee are authorized and an assessment rate of \$0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: February 10, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-3555 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[AMS-FV-88-050FR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to: (1) Allow handlers credit against their assessments for payments for in-store supermarket advertising using fixed position (i.e., stationary) display advertisements, or video media; and (2) remove restrictions on a provision which allows handlers to receive 150 percent credit for handler payments to the Almond Board of California (Board) for the Board's use for generic promotion and paid advertising. These changes were recommended by the Board, the

agency responsible for local administration of the order, and will give handlers additional flexibility in obtaining credit against their advertising assessments under the order.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action allows handlers of California almonds to receive credit against their assessments under the order for payments for certain types of in-store supermarket advertising. This action also relaxes restrictions on a provision which allows handlers to

receive 150 percent credit against their assessments for direct payments to the Board by removing volume limitations on the use of the provision and by allowing handlers to make payments on an installment basis over a longer time period. This action relieves restrictions on handlers by providing additional opportunities to handlers to receive credit against their advertising assessments, while not imposing any additional costs on handlers.

This action revises § 981.441 of Subpart—Administrative Rules and Regulations and is based on recommendations of the Board and upon other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against those portions of such handlers' assessment obligations which are designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) provides that before crediting is undertaken, and once a recommendation is received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion which includes paid advertising. This final rule amends § 981.441(c) concerning crediting for paid advertising and § 981.441(e) which allows handlers to receive a 150 percent credit against their advertising assessments for payments to the Board for the Board's generic promotion and paid advertising program.

Section 981.441(c) describes requirements which specifically apply to crediting for paid advertising. This final rule amends § 981.441(c) by adding a new provision to § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for in-store supermarket generic or brand advertising using fixed position or video media. Such in-store supermarket advertising will have to be conducted through an advertising firm. The advertising firm will pay the supermarket for displaying the advertisements. Therefore, the payment to the supermarket would not come directly from the handler who owned

the brand or the product. Provision for advertising directly between a handler and a supermarket would not allow the Board to separate the costs for advertising and shelf space as these are usually consolidated under the general heading "advertising" on the invoice from the retailer. Therefore, the rule requires documentation from an advertising firm which would allow the Board to ascertain amounts spent on advertising as distinct from amounts spent for shelf space. Fixed position advertisements, which are stationary display advertisements, must include at least two of the following: (1) Processed color displays enclosed in frames and mounted on supermarket shopping carts; (2) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (3) processed color advertisements enclosed in frames and mounted on a supermarket shelf. Two of the three methods are required in each store or supermarket as the Board believes this to be the most effective method of utilizing fixed position advertisements. Video advertisements must be shown on video monitors running television commercials, or "infomercials" (informative commercials), for specific products on a rotating basis. Handlers must submit to the Board a copy of the agency invoice to the supermarket, a copy of the actual advertisement or video tape, a published rate card from an advertising firm, and a copy of the agency invoice to the handler. This action could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments, allow more handlers to take advantage of crediting under current rules and regulations, and increase almond sales through additional promotions.

Section 981.441(e) currently allows a handler to receive credit for 150 percent of payments made to the Board against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by such a handler during a crop year. In addition, the poundage limit is reduced by any poundage on which a handler incurs an obligation and receives 150 percent credit pursuant to the provisions for credit on distribution of sample packages. This action removes these weight limitations and allows handlers to receive 150 percent credit for an unlimited tonnage of almonds, subject to the conditions provided for in § 981.41(c), concerning creditable expenditures. These changes could give some handlers additional

opportunities to obtain credit against their advertising assessments.

This action also permits handlers to make payments for 150 percent credit to the Board in installments between January 31 and June 30 of each crop year. Payments will have to be made on a quarterly basis with payments made on or before January 31, March 31, May 31, and June 30, respectively. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline, credit for payment will revert to the 100 percent basis. Currently, the full amount must be paid by January 31. In order to provide handlers with ample time during this crop year to file claims based upon the provisions in this final rule, handlers will be permitted to file new or supplementary claims with the Board on or before March 31, 1989. Payments for these claims must be made as follows: One-third on or before March 31, 1989; one-third on or before May 31, 1989; and one-third on or before June 30, 1989. In addition, this action allows handlers to utilize the 150 percent provision in conjunction with a deferment provision contained in paragraph (b) of § 981.441. Paragraph (b) provides that handlers may receive 100 percent credit against their creditable assessment obligations for their own advertisements published, broadcast, or displayed and other marketing promotion activities conducted during the crop year for which credit is requested (July 1-June 30) except that handlers may receive 100 percent credit up to a maximum of 40 percent of their creditable assessment obligations for such advertising and promotion activities deferred until no later than December 31 of the subsequent crop year. This action will allow handlers to receive 100 percent credit for up to 40 percent of their creditable assessment obligations for their own advertising and promotion activities deferred until no later than December 31, while also receiving 150 percent credit for direct payments made to the Board in installments between January 31 and June 30 of each crop year.

These changes will give handlers additional flexibility in meeting their assessment obligations and should be particularly beneficial to small handlers. The action will also benefit handlers who, because they have no brand name or because they do not market their almonds in retail outlets, find the rules concerning crediting for marketing promotion and paid advertising less advantageous to their marketing strategies than handlers who do have a

brand name or market their almonds in retail outlets.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have frequently been added to the rules. The Board has attempted to add new activities which benefit a wide range of handlers who market their almonds in different types of outlets. It is the AMS's view that this action will reduce the costs to handlers of meeting their creditable assessment obligations by making more creditable activities available to more handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations to be revised by the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0071.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the *Federal Register* on August 29, 1988, (53 FR 32909). Written comments were invited from interested persons until September 28, 1988. Three comments were received from Frank S. Swain, Chief Counsel for Advocacy for the U.S. Small Business Administration; Brian C. Leighton, an attorney representing independent almond handler Cal-Almond, Inc.; and Steven W. Easter, Vice President for Member and Government Relations for Blue Diamond Growers, a cooperative handler.

Frank S. Swain of the U.S. Small Business Administration, requested that the Department of Agriculture (Department) perform a regulatory flexibility analysis before issuing a final rule on this matter. Mr. Swain made several points in support of this position, as discussed below.

Mr. Swain's comment outlined the structure of the almond industry, almond supplies and dispositions, major provisions of the almond order, and rules and regulations established under the order concerning crediting for marketing promotion and paid advertising. While some of the statistics concerning the almond industry quoted by Mr. Swain do not reflect the statistics and information available to and used by the AMS, this does not affect the substance of Mr. Swain's comments relative to this action. Specifically, Mr. Swain stated that paragraph (a) of § 981.41 of the order provides that the Board may use monies collected from a

handler's assessments to fund the brand advertising of another handler. There is no such authority in either the order or the administrative rules and regulations established under the order. Paragraph (a) of § 981.41 provides that the Board, with the approval of the Secretary of Agriculture, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising. That paragraph also provides that the Board may credit the pro rata expense assessment obligations of a handler with such portion of that handler's direct expenditures for marketing promotion and paid advertising as may be authorized. In other words, a handler's own advertising assessments may be credited if the handler conducts authorized advertising for its own brand name or generic advertising. There is no provision in the order to permit the advertising assessments of other handlers to be used to support brand name advertising of another handler.

Mr. Swain disagreed with a statement in the proposed rule that "marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf." He noted that the changes made by this action were recommended by the Board, and that a majority of the Board's members are affiliated with Blue Diamond, which is not a small entity. The order, which includes provisions for establishing the Board, apportioning representation on the Board among various segments of the industry, and empowering the Board to make rules and regulations to effectuate the terms and provisions of the order, was, after a lengthy process involving public hearings and a referendum of all California almond producers, voted into effect by a two-thirds majority of almond producers, the vast majority of which may be classified as small entities. Therefore, the marketing order is brought about by the action of essentially small entities.

Mr. Swain objected to the removal of weight limitations on the use of a provision which allows handlers to receive 150 percent credit against their assessments for payments to the Board. He stated that this action will be of no benefit to the majority of independent handlers because the tonnage of almonds upon which those handlers pay assessments is less than the weight limitations currently in effect. It is true that only handlers receiving more than 4,000,000 kernel weight pounds of almonds may avail themselves of the

increased ability to receive 150 percent credit. However, this action has no adverse impact on small handlers, and to the extent that increased funds are paid to the Board and utilized in its promotional activities which increase the market for almonds, this action would benefit all handlers of almonds.

Mr. Swain stated that the proposed rule did not explain how the changes would benefit handlers who do not have a brand name. Many small handlers who do not have a brand name utilize the order provision which allows 150 percent credit for payments to the Board, and these handlers will benefit by more flexible payment terms. Mr. Swain stated that payments made to the Board do not benefit handlers without a brand name because such handlers do not sell their almonds to consumers. However, a significant portion of the assessments paid to the Board under the 150 percent provision are used by the Board to increase sales of almonds to industrial users (i.e., food manufacturers). Moreover, the AMS believes that the Board's generic program benefits all handlers by increasing demand for all almonds.

Mr. Swain concluded his comment by requesting that the AMS perform a regulatory flexibility analysis which examines the true costs and benefits of the assessments for advertising and develops alternatives which will provide options for handlers who do not sell almonds at retail. Mr. Swain disagreed with the AMS's certification that this action "will not have a significant economic impact on a substantial number of small entities" and stated that the AMS has not followed the provisions of the RFA.

Section 605(b) of the RFA provides that a regulatory flexibility analysis is not necessary if the head of an agency has certified that a rule will not have a "significant economic impact on a substantial number of small entities." That section further requires the agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. The majority of handlers and producers in the California almond industry may be classified as small businesses. This action does not impose any additional costs on those small businesses and, therefore, is not expected to have a significant economic impact on them. For these reasons, the Administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities.

This certification meets the requirements of the RFA.

For the reasons stated above, Mr. Swain's objections are denied.

Brian C. Leighton, representing Cal-Almond, Inc., objected to the proposed rule for several reasons as discussed below.

Mr. Leighton opposed the proposed rule because he believes that the Act and the order preclude the Board from imposing creditable assessments on almonds which are ultimately disposed of in reserve outlets. Mr. Leighton cited a portion of section 610(b)(2)(ii) of the Act and stated that this section precludes the Department from imposing assessments on almonds held for the account of the Board.

Mr. Leighton cited § 981.52 of the order, which states that handlers must hold at all times a quantity of almonds necessary to meet their reserve obligations "in proper storage for the account of the Board" and § 981.81 of the order, which states that "each handler shall pay to the Board on demand by the Board, from time to time, such sum less any amounts credited pursuant to § 981.41, based on such rate per pound of almonds, kernel weight basis, received by him for his own account * * *." Mr. Leighton stated that almonds cannot be held for both a handler's own account and for the account of the Board, and that since assessments can only be imposed on almonds held for a handler's own account, reserve almonds are not assessable. A handler receives almonds and, subsequently, if a reserve percentage is in effect, the handler's reserve obligations is determined based on the kernel weight of almonds received by the handler. Section 981.81 provides that assessments shall be based on all almonds received by a handler for such handler's own account, regardless of whether or not a handler may subsequently be required to hold a percentage of those almonds as a reserve for the account of the Board.

Mr. Leighton further opposed the proposed rule because he believes that those provisions of the order and the rules and regulations established under the order which authorize promotion and paid advertising and permit handlers to receive credit against a portion of their assessments for specified promotion and paid advertising activities are unconstitutional. Mr. Leighton believes that those provisions violate the First Amendment right to free speech because they force handlers to speak (i.e., advertise almonds). The research and promotion provisions of the almond

marketing order are promulgated pursuant to authority in the Act. Neither the order issued pursuant to that authority nor the regulations issued pursuant thereto require regulated parties to advertise to take advantage of the credit provisions contained in this rule. Any generic advertising or promotion into which the Board enters with the payment of assessments is clearly contemplated by the enabling statute and supported by an administrative rulemaking record and works to the benefit of all handlers by increasing market opportunities for all almonds. For these reasons, the assessments are constitutional.

Mr. Leighton stated that the cut-off date by which handlers must make payments to the Board to receive 150 percent credit against the creditable portion of their assessments should be changed from January 31 of each crop year to the December 31 following the end of each crop year rather than to the installment method in the proposed rule.

Mr. Leighton stated that the December 31 date should be used because handlers have until December 31 to publish, broadcast, or display advertising for which credit may be received, and he believes that it would be equitable for the same date to apply to payments made to the Board. The administrative rules and regulations established under the order provide that handlers may defer advertising for which they wish to receive credit from June 30 (the last day of the crop year) to the succeeding December 31 for a maximum of only 40 percent of their creditable assessment obligations. This final rule would allow handlers to use the 40 percent deferment in conjunction with the 150 percent credit provision. Deadlines for payments to the Board are earlier than deadlines for creditable advertising because handlers making payments to the Board are turning over the responsibility for advertising and promotion to the Board. The earlier cut-off date for direct payments to the Board provides time for the Board to ascertain the amounts available for generic advertising and to plan and conduct advertising and promotion based upon known revenue.

Mr. Leighton also objected to the in-store advertising provisions in the proposed rule. Mr. Leighton stated that § 981.441 currently is devoid of provisions providing opportunities to receive credit which will benefit those handlers who do not have a brand label or who do not sell their almonds in the retail market. Mr. Leighton believes that the proposed in-store advertising provisions also will only benefit those handlers who have a brand to advertise.

Section 981.441, however, has been amended thirteen times since its inception in 1972, and many of those amendments have added provisions designed to provide opportunities for handlers who do not have a brand name to receive credit. Moreover, it is the AMS's view that all almond advertising and promotion activities benefit all handlers by increasing demand for all almonds.

Mr. Leighton also stated that permitting credit for in-store advertising would conflict with § 981.441(c)(5)(iii) of the rules and regulations established under the order unless such advertising is restricted to stores where only the advertising handler's brand is available. Section 981.441(c)(5)(iii) provides that advertisements which direct consumers to one or more named retail outlets, other than handler operated, shall not be eligible for credit. There is no conflict between § 981.441(c)(5)(iii) and the in-store advertising provision; handlers whose in-store advertising directed consumers to specific retail outlets, other than handler operated, would not be eligible for credit.

For the reasons stated above, Mr. Leighton's objections are denied.

In his comment, Steven W. Easter of Blue Diamond supported the amendments proposed by the August 29, 1988, rule. Mr. Easter believes that in-store advertising is an important new method for reaching the consumer and retail trade and should be encouraged. The commenter stated that there are only two or three companies that provide the type of in-store advertising envisioned by the Board. The commenter pointed out that the advertising offered by these companies is similar to national network television advertising in that they both have published rate cards, reach and frequency data, and are national in scope. Mr. Easter also stated that in-store advertising may be purchased through those companies for specific retail stores within a region.

After consideration of all relevant matter presented, including the Board's recommendation, the comments received, and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraph (c)(3)(i) and redesignating the current (c)(6)(v) as (c)(6)(vi); adding a new paragraph (c)(6)(v); and revising paragraph (e) to read as follows:

Note: The following sections will be published in the annual Code of Federal Regulations.

§ 981.441 Crediting for marketing promotion including paid advertising.

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium: (A) For a generic advertisement of California almonds; (B) for an advertisement of the handler's brand of almonds; (C) when either of these advertisements includes reference to a complementary commodity or product; (D) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler; or (E) for in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm: (1) Fixed position advertisements must include at least two of the following: (i) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts; (ii) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (iii) processed color advertisements enclosed in frames and mounted on a supermarket shelf; (2) Video advertisements must be shown on a fixed video monitor running television commercials, or infomercials for specific products on a rotating basis.

(6) * * *

(v) For in-store supermarket advertising, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

(e) Credit shall be granted for payments made to the Board for use by the Board for generic marketing promotion including paid advertising subject to the following conditions:

(1) A handler may receive credit for 150 percent of a payment made to the Board against the creditable assessment obligation.

(2) When a handler elects to use this method of crediting for all or a portion of such handler's assessment obligation, the handler may use the extension provided for pursuant to paragraph (b) of this section for the handler's deferred advertising and promotion obligation.

(3) Handlers must file claims with the Board on ABC Form 31 in order to receive credit for payments made to the Board. No credit shall be granted unless a claim is filed on or before January 31 of the then current crop year: *Provided*, That for the 1988-89 crop year for claims not previously filed on or before January 31, 1989, a claim or supplementary claim must be filed with the Board on ABC Form 31 on or before March 31, 1989. Payments must be made as follows: One-fourth of total claim on or before January 31; one-fourth on or before March 31; one-fourth on or before May 31; and one-fourth on or before June 30 of the then current crop year: *Provided*, That for the 1988-89 crop year, payments not previously made on or before January 31, 1989, must be made as follows: One-third on or before March 31, 1989; one-third on or before May 31, 1989; and one-third on or before June 30, 1989. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline of this paragraph, credit for payment shall revert to the 100 percent basis.

Dated: February 10, 1989.

Robert C. Keener,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-3554 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1700

Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Chapter XVII by adding a new subsection 1700.3d to 7 CFR Part 1700. The publication of 7 CFR Part 1709 elsewhere in this issue implements a program for rural development

mandated by a 1987 amendment to the Rural Electrification Act (RE Act). The amendment to 7 CFR Part 1700 reflects the addition of this new program in the Agency's rule on its procedures.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT:

Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9552.

SUPPLEMENTARY INFORMATION: 7 CFR Part 1709, published elsewhere in this issue, implements the provisions of section 313, Cushion of Credit Payments Program, added to the RE Act on December 21, 1987. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of REA to utilize funds in this subaccount to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

Two periods for public comment were provided before 7 CFR Part 1709 became effective. The advance notice of proposed rulemaking published on April 7, 1988, at 53 FR 11511 and the proposed rule published on October 27, 1988, at 53 FR 43442 both noted periods for public comment. This new rule 7 CFR 1700.3d is simply a technical amendment reflecting the addition of 7 CFR Part 1709 and, therefore, requires no public comment period of its own.

List of Subjects in 7 CFR Part 1700

Community development, Grand programs, Loan programs, Rural areas.

For the reasons set forth in the preamble, Part 1700 of Title 7 Code of Federal Regulations is amended to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read:

Authority: 7 U.S.C. 901-950(b); Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1979.

2. The following new section is added after § 1700.3c:

§ 1700.3d Loans and grants pursuant to section 313 of the Rural Electrification Act as amended December 21, 1987.

General. These zero interest loans and grants are made to borrowers under the Rural Electrification Act for the

purpose of promoting rural economic development and rural job creation projects. Selection and approval of applications for zero interest loans and grants rests solely within the discretion of the Administrator, and preference shall be given to providing borrowers with zero interest loans rather than grants under this program.

Dated: February 9, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-3447 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1709

Rural Development

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding a new Part 1709, Rural Development, and adding Subpart B, Rural Economic Development Loan and Grant Program. The new part contains REA's policies, requirements and procedures covering rural development programs. The new subpart establishes policies, requirements and procedures that implement a rural economic development loan and grant program established by section 313 of the Rural Electrification Act of 1938, as amended (7 U.S.C. 901 et seq.) (the "RE Act"). The program provides zero interest loans and grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT:

Mark Wyatt, Assistant to the Assistant Administrator—Management, Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9552. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing the rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulations. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant

adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.853, Rural Economic Development Loan and Grant Program.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the Act. The OMB approval number for these requirements is 0572-0086.

Public reporting burden for this collection of information is estimated to average 1.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0086), Washington, DC 20503.

Background

On December 21, 1987, section 313, Cushion of Credit Payments Program, was added to the RE Act. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of REA to utilize funds in this subaccount to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

On April 7, 1988, REA published an advance notice of proposed rulemaking in an effort to obtain public comments on all aspects of this new program. REA received a total of 54 written comments. These comments were taken into account in preparing the proposed rule.

On October 27, 1988, REA published a proposed rule at 53 FR 43442 to amend 7 CFR Chapter XVII by adding a new Part 1709, Rural Development, and adding Subpart B, Rural Economic Development Loan and Grant Program. REA invited interested parties to file comments on or before December 28, 1988.

Comments

REA received 39 written comments from the following:

- (1) Pennsylvania Rural Electric Association
- (2) North Central Electric Cooperative, Inc.
- (3) Grundy Electric Cooperative, Inc.
- (4) East River Electric Power Cooperative
- (5) Sunflower Electric Cooperative, Inc.
- (6) Mountrail Electric Cooperative, Inc.
- (7) North Dakota Association of Rural Electric Cooperatives
- (8) James Valley Electric Cooperative, Inc.
- (9) McLean Electric Cooperative, Inc.
- (10) Sheyenne Valley Electric Cooperative, Inc.
- (11) Plains Electric Generation and Transmission Cooperative, Inc.
- (12) Wolverine Power Supply Cooperative, Inc.
- (13) Choctaw Electric Cooperative, Inc.
- (14) Claiborne Electric Cooperative, Inc.
- (15) South Louisiana Electric Cooperative Association
- (16) Georgia Electric Membership Corporation (Legislative Director)
- (17) Georgia Electric Membership Corporation (Exec. Vice President)
- (18) James Valley Cooperative Telephone Company
- (19) Terril Telephone Company
- (20) National Rural Utilities Cooperative Finance Corporation
- (21) National Cooperative Bank
- (22) First Security National Bank
- (23) West Central Wisconsin Community Action Agency, Inc.
- (24) Green River Area Development District
- (25) Georgia Department of Community Affairs
- (26) Makah Tribe
- (27) Draketown Gas, Inc.
- (28) Georgia Power
- (29) Dixie Electric Membership Corporation
- (30) Edison Electric Institute
- (31) National Telephone Cooperative Association
- (32) National Rural Electric Cooperative Association
- (33) Greater Minnesota Corporation
- (34) Cajun Electric Power Cooperative, Inc.
- (35) Lake Region Co-op Electrical Association
- (36) Utilicorp United, Inc.
- (37) South Carolina Electric and Gas Company
- (38) Central Power Electric Cooperative, Inc.
- (39) Teche Electric Cooperative, Inc.

Overall, REA received widespread support for the proposed rule. Thirty-four organizations comprised of REA borrowers, electric and telephone utility trade organizations, cooperative banks, economic development organizations

and state governments supported the new program. One gas company and one electric and gas investor-owned utility expressed adamant opposition to the new program. An additional three investor-owned electric utilities suggested modifications in the program.

Most of the organizations made specific comments on the proposed rule. These comments will be addressed in the following paragraphs by first discussing REA's modifications to the proposed rule and then discussing the remaining suggested modifications. REA considered all comments in preparing the final rule.

REA received numerous comments on the section of the proposed rule which discussed the eligibility of a borrower that is not current on its RE Act financing or is in bankruptcy proceedings. There were comments both supporting and opposing the eligibility section. The organizations opposed to this section felt that areas served by borrowers that would not be eligible under this section of the proposed rule could benefit from rural economic development under this program. They suggested that REA consider whether the borrower is working in good faith with REA on repayment matters. Current federal policy, as set forth in OMB Circular A-129, Managing Federal Credit Programs, dated November 25, 1988, restricts further financial assistance to applicants who are delinquent on a Federal debt. Therefore, REA is retaining the section in the rule on the eligibility of borrowers with some modifications. REA would like to point out that if one distribution borrower of a generating and transmission system is ineligible for funds under this program that does not mean the generating and transmission system itself or the other distribution members are ineligible. In addition to the eligibility section, REA has also added under paragraph (m) of § 1709.17, Selection of recipients of zero interest loans and grants, a consideration of the Borrower's management and financial situation which will be important to the success of the program.

Two organizations suggested that the rule should contain the statutory requirement that REA use the full amount of funds in the Subaccount each year to make zero interest loans or grants. REA has added § 1709.15, Disposition of funds in the Subaccount, which addresses the annual disposition of funds. For administrative purposes, REA must make a determination of the amount held in the Subaccount as of some date prior to the end of the fiscal year. REA would not be able to use

funds repaid into or credited to the Subaccount a few days before the end of the fiscal year in that same fiscal year.

Many organizations commented on the selection factors listed in the proposed rule. REA has made additions to several of the factors based on these comments. Several organizations suggested that REA take into account the outmigration of people and also the underemployment of people in part-time jobs or jobs below their skill level. REA will take these into account when looking at employment levels to the extent the borrower provides satisfactory data on a local basis in the preapplication. There was also a suggestion that REA look at other personal income measurements. As with underemployment and outmigration, REA will also consider other personal income measurements to the extent the borrower provides satisfactory data on a local basis in the preapplication. Several organizations recommended that REA consider the size and nature of the community while considering the number of jobs created to the amount of funds requested. REA has modified this factor to take into account the impact of the number of jobs created on the rural community. One organization suggested that REA consider whether a project will assist a rural community to diversify its economic base. REA has agreed to include this in the list of factors.

Several organizations discussed the size of zero interest loans and grants. One organization suggested that a maximum size should be established due to the limited amount of funds available under this program. REA agrees that given the limited amount of funds available to borrowers under this program and in order to provide funds to more projects it will modify the rule to establish the maximum size of a zero interest loan or grant at \$100,000.

Several organizations discussed the preapplication periods REA established and suggested that REA increase the number per year. REA has modified the rule to provide for six preapplication periods during the year. This should provide a faster turnaround time on requests for funds while retaining a mechanism to provide equitable consideration of all preapplications.

Many organizations discussed whether REA should take into consideration, along with other factors, the borrower's commitment to generating funds for this program through cushion of credit payments. Some organizations were in favor of this consideration; one organization even suggested that REA establish a strong preference for those borrowers making

cushion of credit payments. Other organizations believed that this consideration should be deleted since borrowers serving rural areas that could benefit from economic development might not have the same level of funds available to make cushion of credit payments as other borrowers in more prosperous areas. After considering both arguments, REA has decided that the language in the proposed rule which provides for the Administrator to take into consideration borrowers' cushion of credit payments is appropriate.

One organization believed that the rule should provide for case-by-case discretion to handle a few projects that might require a longer loan repayment period than ten years. The first sentence of the section of the proposed rule outlining the terms of zero interest loans establishes REA's discretion on determining the repayment terms. The Administrator may determine under the language of the proposed rule that in certain situations a longer repayment term is necessary for the success of the project.

REA mentioned in the notice of proposed rulemaking that it had considered including an objective ranking procedure based on assigning a given number of points for each of the selection factors. Four organizations recommended that REA establish a ranking procedure in the rule. After further consideration of this issue, REA has decided to leave the proposed language unchanged. The selection of projects will rest within the discretion of the Administrator. REA needs the latitude to develop its method of evaluating rural economic development projects as it gains experience. The rule as written provides REA the needed latitude while providing a list of selection factors the Administrator will consider to guide borrowers applying for loan or grant funds.

Several investor-owned electric utilities that compete with REA electric borrowers for business in the same service area were concerned about REA borrowers using the funds under this program to offer rate incentives or only submitting preapplications for projects that agreed to take their service. REA deliberately did not set forth language dealing with whether the project was in the REA borrower's service territory or whether it would take service from the REA borrower. The rule was written to encourage economic development in rural areas without regard to service territory. The Administrator will use his discretion to select projects that meet this objective and REA does not believe written requirements are necessary. Additionally, REA cannot, as some

investor-owned electric utilities have suggested, provide funds directly to the economic development project and bypass the REA borrower. The law provides for funds to go to the REA borrowers who in turn will promote rural economic development.

Finally, REA received two comments, one from a gas company and another from an investor-owned electric and gas utility, that expressed adamant opposition to the law establishing the zero interest loan and grant program. The gas company did not believe that the REA program should be expanded while the nation has a budget deficit. It believes private industry could do the job of providing financing for utilities. The gas company does not believe its competitors, the REA electric borrowers, should receive subsidized Government funds. It also believes many REA borrowers are wealthy enough to go to the private markets.

The investor-owned electric and gas utility believes that utilizing the REA borrowers to disburse rural economic development funds will potentially result in an unfair, inequitable and ineffective distribution of funds. It suggests that the state governments disburse the funds. The utility also believes that the REA borrowers receive preferential tax and loan interest rate treatment. It suggested that the rule restrict funds to REA borrowers serving rural areas. REA believes the proposed rule was very clear that the program is to promote economic development in rural areas.

Despite the two organizations' objections, REA must implement this program since it was established by law.

On August 11, 1986, REA published a proposed rule in the Federal Register (51 FR 28722) with the number 7 CFR Part 1709 entitled Primary Support Documents. In accordance with REA's newly developed plan to number parts 7 CFR Part 1700, that proposed rule remains a proposed rule that will be redesignated 7 CFR Part 1716, Subpart A—Power Requirements Studies. The text of that proposed rule remains unaltered by this change in number.

List of Subjects in 7 CFR Part 1709

Rural development.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding the following new Part 1709 to read as follows:

PART 1709—RURAL DEVELOPMENT**Subpart A—[Reserved]**

Sec.

1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

- 1709.10 Purpose.
- 1709.11 Policy.
- 1709.12 Definitions.
- 1709.13 Source of funds.
- 1709.14 Eligibility
- 1709.15 Disposition of funds in the Subaccount.
- 1709.16 Purposes of zero interest loans and grants.
- 1709.17 Selection of recipients of zero interest loans and grants.
- 1709.18 Preference for zero interest loans over grants.
- 1709.19 Limitation on use of zero interest loan and grant funds.
- 1709.20 Size of zero interest loans and grants.
- 1709.21 Terms of zero interest loan repayment.
- 1709.22 Agreements and security for funds.
- 1709.23 Transfer of employment or business.
- 1709.24 Environmental requirements.
- 1709.25 Other considerations.
- 1709.26 Preapplications and applications.
- 1709.27 Application processing.
- 1709.28 Zero interest loan and grant approval.
- 1709.29 Disbursement of zero interest loan and grant funds.
- 1709.30 Review and other requirements.

Authority: 7 U.S.C. 901 *et seq.*; Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—[Reserved]

§§ 1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program**§ 1709.10. Purpose.**

(a) This subpart sets forth the Rural Electrification Administration's (REA's) policies and procedures for making zero interest loans and grants to Borrowers in accordance with the Cushion of Credit Payments Program authorized in section 313 of the Act.

(b) The zero interest loans and grants are to be provided for the purpose of promoting rural economic development and rural job creation projects.

§ 1709.11 Policy.

(a) It is REA's policy to encourage borrowers to make deposits voluntarily into cushion of credit accounts of the Rural Electrification and Telephone Revolving Fund. Borrowers are also encouraged to use the Rural Economic

Development Loan and Grant Program to promote rural economic development and rural job creation projects that are based on sound economic and financial analysis.

(b) REA will maintain liaison with officials of other federal, state, regional and local rural development agencies to coordinate rural economic development programs.

§ 1709.12 Definitions.

(a) "Act"—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

(b) "Administrator"—the Administrator of the Rural Electrification Administration.

(c) "Associated Utility Organization"—state or regional utility organizations, utility trade organizations or other professional utility organizations of which the Borrower proposing the Project is a member.

(d) "Borrower"—a borrower of funds under the Act.

(e) "Demonstration Project"—a Project for which the owner agrees to provide REA with detailed information on the steps it takes in organizing and operating the Project, will permit REA and REA's guests to make reasonable visits to the Project, and honor any other reasonable REA request to disseminate information on the Project

(f) "Employee Ownership"—owned by the employees of the organization.

(g) "Project"—a rural economic development project or rural job creation project which a Borrower proposes and the Administrator approves to receive benefits of the Rural Economic Development Loan and Grant Program.

(h) "REA"—the Rural Electrification Administration.

(i) "Rural Area"—a rural area as defined in section 13 of the Act.

(j) "Technical Assistance"—Market research, product and/or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural economic development or rural job creation projects.

§ 1709.13 Source of funds.

All funds for zero interest loans and grants provided under this program shall come from interest differential credits to the Rural Economic Development Subaccount (Subaccount), any other funds made available to the Subaccount and from the repayment of zero interest loans into the Subaccount.

§ 1709.14 Eligibility

Zero interest loans and grants may be made to any borrower that is not

delinquent on any Federal debt or in bankruptcy proceedings, both as determined by the Administrator.

§ 1709.15 Disposition of funds in Subaccount.

Zero interest loans and grants shall be made during each fiscal year to the full extent of the amounts held in the Subaccount subject only to limitations imposed by law. For administrative purposes, REA will make a determination of the fiscal year-end amount held in the Subaccount as of a date prior to, but as near as practicable to, the end of fiscal year.

§ 1709.16 Purposes of zero interest loans and grants.

Zero interest loans and grants shall be provided to promote rural economic development and/or job creation projects, including, but not limited to, project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural economic development.

§ 1709.17 Selection of recipients of zero interest loans and grants.

The selection and approval of applications for zero interest loans and/or grants rests solely within the discretion of the Administrator. In making this determination, the Administrator will consider, among other factors, the following:

(a) The amount of supplemental grant or loan funds provided or to be provided to the Project from private sources, state and local government sources, federal government sources, the Borrower(s) or other sources of funds.

(b) A comparison of the unemployment rate in the rural area where the Project will be located to the state and National unemployment rates taking into account outmigration and underemployment.

(c) A comparison of the Per Capita Personal Income or other income measurements in the rural area where the Project will be located to state and National income levels.

(d) A comparison of the number of jobs and employment hours per week that the Project will create in rural areas to the amount of grant and zero interest loan funds requested taking into account the impact on the rural community.

(e) Projects that lead directly to improving marketable skills of people in rural areas or will diversify the rural economic base.

(f) Commitment from the owner(s) of the Project that the Project will be a Demonstration Project.

(g) Projects that will be located in Rural Areas or will provide greater benefit to Rural Areas than other areas.

(h) Projects that have received the endorsement or sponsorship of businesses, local business and community leaders, Associated Utility Organizations, or local, state or federal governmental organizations.

(i) Projects that have received the endorsement of Certified Development Companies approved by the U.S. Small Business Administration.

(j) Projects that will be organized or reorganized on a not-for-profit basis or to provide full or majority Employee Ownership.

(k) Projects that in REA's best judgment have the greatest probability of success as measured by long-term job creation or retention and rural economic development.

(l) Applications submitted by Borrowers that have made cushion of credit payments as set forth in section 313 of the Act.

(m) The management and financial situation of the Borrower applying for the zero interest loan or grant.

§ 1709.18 Preference for zero interest loans over grants.

Selection of applications shall be based on a preference for providing Borrowers zero interest loans rather than grants under this program since the repaid principal of zero interest loans will provide additional funds for new Projects.

§ 1709.19 Limitation on use of zero interest loan and grant funds.

(a) Zero interest loans and grants shall not be used:

(1) To fund or assist projects of which any director, officer, or owner of the Borrower, or close relative thereof, is an owner, or which would create a conflict of interest or would create the appearance of a conflict of interest; provided, however, cooperative members are not to be considered owners of the Borrower in this determination;

(2) For any costs incurred on the Project prior to approval of the Project by REA, except for any costs approved by REA as necessary for the initiation of the Project;

(3) For payment to any owner, partner or beneficiary of any property, building, equipment acquired for the Project when such person will retain any interest in the Project or is an owner, director or officer of the Borrower; provided, however, cooperative members are not to be considered owners of the Borrower in this determination; or

(4) For any purpose not reasonably

related to the Project as determined by the Administrator.

(b) A Borrower may not charge the Project interest for the use of the proceeds of the zero interest loan provided under this program; however, it may charge the Project reasonable loan servicing charges, as determined by the Administrator.

(c) A Borrower must calculate any costs to charge the Project for the use of or in connection with the grant proceeds provided under this program based on 7 CFR Part 3015 and 7 CFR Part 3016.

(d) A Borrower may not make a profit from any zero interest loan or grant provided from the Subaccount.

(e) The Borrower may temporarily deposit the zero interest loan funds into a separate Federally insured account. However, all interest earned on temporarily deposited funds in excess of \$250 per year must be passed on to the Project or returned to the Rural Economic Development Subaccount.

(f) The Borrower may temporarily deposit the grant funds in accordance with 7 CFR Part 3015 and 7 CFR Part 3016.

§ 1709.20 Size of zero interest loans and grants.

The minimum size of a zero interest loan or grant shall be \$10,000 and the maximum size of a zero interest loan or grant shall be \$100,000.

§ 1709.21 Terms of zero interest loan repayment.

(a) REA shall determine the terms and repayment schedule of the zero interest loan to the Borrower based on the nature of the Project. In general, the repayment terms the Borrower sets on zero interest loan proceeds provided to the Project must be at least as generous as the zero interest loan provided to the Borrower but, with the Administrator's approval, may be more generous.

(b) Ordinarily, the terms of the zero interest loan shall not exceed 10 years. The first principal repayment installment on the zero interest loan may be deferred two years or until the project generates sufficient cash to begin repaying its loan to the Borrower, whichever comes first as determined by the Administrator, provided an equivalent deferred repayment schedule is provided on the loan to the Project. The terms of the zero interest loan to the Borrower may provide for either equal periodic principal payments or, if the Administrator determines that it is necessary, a graduated repayment schedule where the first principal repayment will be equal to some fraction of the last principal repayment. If the Borrower receives a graduated

principal repayment schedule it shall provide a comparable graduated repayment schedule to the Project. Ordinarily, monthly principal payments will be established on the note to the Borrower.

§ 1709.22 Agreements and security for funds.

(a) The Borrower and REA shall execute agreements, including any necessary security agreements, covering the repayment of funds from this program.

(b) REA must approve all agreements between the Borrower and the Project, including all:

(1) Grant, loan and security agreements,

(2) Loan notes, and

(3) All subsequent revisions or amendments thereof. (OMB approval number 0572-0086).

§ 1709.23 Transfer of employment or business.

The Project must not result primarily in the transfer of any existing employment or business activity from one area to another, as determined by the Administrator.

§ 1709.24 Environmental requirements.

(a) Prospective recipients of zero interest loans or grants must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and Projects that minimize the potential to adversely affect the quality of the environment.

(b) *Application for Technical Assistance zero interest loans or grants.* The application for a Technical Assistance zero interest loan or grant is generally covered by 7 CFR 1794.31(b) (13) and (14). Consequently, normally no Borrower's Environmental Report or other environmental documentation is required to support such an application. No zero interest loan or grant funds will be available for Technical Assistance for any Project, any portion of which, lies within an area designated for protection under the Coastal Barrier Resources Act.

(2) *Application for zero interest loans or grants other than Technical Assistance.* REA will review supporting materials in the application and initiate its environmental review process pursuant to 7 CFR Part 1794. This process will focus on any environmental concerns or problems that are associated with the Project. The level and scope of environmental review required will be determined in accordance with the National Environmental Policy Act of 1969

(NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500—1508), 7 CFR Part 1794 and other relevant Federal environmental laws, regulations and Executive Orders. No activity related to the Project that would have an adverse effect on the environment shall be undertaken prior to completion of REA's environmental review process.

§ 1709.25 Other considerations.

(a) *Equal opportunity and nondiscrimination requirements.* All zero interest loans and grants made under this Subpart are subject to certain provisions in REA Bulletin 320-19(20-19), Nondiscrimination Among Beneficiaries of the REA Program and REA Bulletin 320-15(20-15), Equal Employment Opportunity in Construction Financed with REA Loans depending on the dollar amount involved and other characteristics (to be codified in 7 CFR Part 1790).

(b) *Architectural Barriers Act of 1968.* All facilities financed with REA zero interest loans or grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this law.

(c) *Flood hazard area precautions.* In accordance with 7 CFR Part 1788, if the Project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (Pub. L. 93-231). The insurance shall cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA shall comply with Executive Order 11988, Floodplain Management, in considering the application for the Project.

(d) *Real property acquisition.* Any acquisition of real property in connection with this program is subject to 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. These regulations require that owners of real property to be acquired for Federal or federally-assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition be provided fair, consistent, and equitable treatment.

§ 1709.26 Preapplications and applications.

(a) Borrowers may file a preapplication during any of six preapplication periods each year. The

preapplication periods will cover the official working days from February 1 through February 14, from April 1 through April 14, from June 1 through June 14, from August 1 through August 14, from October 1, through October 14, and from December 1 through December 14 of each year. The Administrator may establish other special preapplication periods.

(b) Preapplications shall consist of:

(1) An application form, "Application for Federal Assistance," Standard Form 424;

(2) A board resolution requesting a zero interest loan and/or grant, specifying any commitment from the Borrower to the owner of the proposed Project and stating that the proposed Project will not violate the limitations in § 1709.19, Limitation on use of zero interest loan and grant funds; and

(3) A brief written narrative containing, but not limited to, the following:

(i) Proposed rural economic development and job creation Project including location, primary beneficiaries, number and type of jobs to be created, and, if available, various employment and personal income measurements for the rural area in which the Project will be located;

(ii) Amount of zero interest loan and/or grant requested;

(iii) General description of conditions and terms to be placed on ultimate recipient of funds, including collateral;

(iv) Source and amount of any supplemental grant or loan funds to be provided to the Project from private sources, governments, the Borrower or any other source. The conditions, terms, interest rate, etc. of the supplemental funds shall be detailed;

(v) Any commitment from the owner of the Project that the Project will be a Demonstration Project;

(vi) Any endorsements of Associated Utility Organizations, businesses, local leaders, local or state governments, a SBA-approved Certified Development Company and any specific commitments, either financial or otherwise, from these parties;

(vii) Depending on the stage of development of the Project, any budgets, pro forma operating reports and balance sheets, market research, etc.;

(viii) Description of the entity which will own, construct or operate the Project, including but not limited to: (A) The form of organization (i.e., corporation, nonprofit corporation, cooperatives, partnership, sole proprietor), (B) the owners and officers and (C) any Employee Ownership; and

(ix) Any other information that the Borrower believes is relevant. (OMB approval number 0572-0086).

(c) REA may request additional information from the Borrower deemed relevant.

(d) During the preapplication review process, the Borrower may change the amount of the zero interest loan or grant funds requested, if approved by the Administrator.

(e) REA will prepare a written notification for each preapplication indicating whether or not it has been selected. Selected applicants will be provided with environmental information, requirements and guidelines for filing a complete application. A Borrower that submitted a preapplication that was not selected will be asked whether it desires to be considered during the next period. The Borrower may modify its preapplication after it has been considered without resubmitting all material required in a preapplication. If the Borrower so desires, REA will consider a preapplication that has not been substantially modified or updated, as determined by the Administrator, for up to one year. A Borrower may submit new or updated preapplications as often as it desires. (The information collection requirements contained in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0348-0043.)

§ 1709.27 Application processing.

Upon selection of a Project to receive a zero interest loan and/or grant, REA will prepare a Letter of Agreement setting forth conditions under which the zero interest loan or grant will be made and send it to the Borrower. The Borrower will sign the Letter of Agreement and return it to REA. The Letter of Agreement will include, among other things, the maximum amount of zero interest loan or grant, Project description and approved use of zero interest loan and/or grant funds, supplemental funds to be provided, any agreements or conditions the Borrower proposed in the preapplication, any special conditions REA establishes, and any loan/grant agreement, other legal documents or certifications the Borrower will be required to sign.

§ 1709.28 Zero interest loan and grant approval.

All zero interest loans and grants made under this subpart will be approved by the Administrator, or designee.

§ 1709.29 Disbursement of zero interest loan and grant funds.

REA shall disburse grant funds to the Borrower and the Borrower shall disburse grant proceeds to the Project in accordance with the provisions of 7 CFR Part 3015 and 7 CFR Part 3016. REA shall disburse zero interest loan funds to the Borrower and the Borrower shall disburse zero interest loan proceeds to the Project in accordance with REA regulations.

§ 1709.30 Review and other requirements.

(a) REA will review Borrowers receiving zero interest loans or grants, as necessary, to ensure that funds are expended for approved purposes. Borrowers receiving zero interest loans or grants shall monitor the Project to the extent necessary to ensure the Project is in compliance with all applicable regulations, including ensuring that funds are expended for approved purposes.

(b) Borrowers receiving zero interest loans shall have prepared a financial report and general accounting of all zero interest loan funds in accordance with the provisions of 7 CFR Part 1789.

(c) Grants provided under this program will be administered under and are subject to 7 CFR Part 3015 and 7 CFR Part 3016, as appropriate. The Borrower that receives a grant shall be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits. (The information collection and the recordkeeping and recording requirements contained in paragraph (c) were approved by OMB under the following control numbers: Budget Information—Nonconstruction, Standard Form 424A (OMB control number 0348-0044), Budget Information—Construction, Standard Form 424C (OMB control number 0348-0041), Assurances—Nonconstruction, Standard Form 424B (OMB control number 0348-0040), Assurances—Construction, Standard Form 424D (OMB control number 0348-0042), Financial Status Report—Long Form, Standard Form 269 (OMB control number 0348-0039), Financial Status Report—Short Form, Standard Form 269A (OMB control number 0348-0039), Request for Advance and Reimbursement, Standard Form 270 (OMB control number 80-R0183), Outlay Report and Request for Reimbursement for Construction Programs, Standard Form 271 (OMB control number 80-R0181), Federal Cash Transactions Report, Standard Form 272 (OMB control number 80-R0182).)

Dated: January 24, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-3416 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration**7 CFR Part 1822****Section 502 Rural Housing Weatherization Loans**

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations by removing section 502 Rural Housing Weatherization Loan program. This action is necessary due to unappropriated funds by Congress since 1983, and, there are no allocation of funds for this program in the 1989 fiscal year budget. The intended effect of this action is to remove this regulation from the CFR.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, room 5346, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202)475-4209.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal agency management, making publication for comment unnecessary.

Program Affected

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410 Low Income Housing Loans, No. 10.411 Rural Housing Site Loans and No. 10.417 Very Low-Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from Executive Order 12372 which

requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA 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. 91-90, an Environmental Impact Statement is not required.

Background

Current FmHA Regulations (7 CFR Part 1822, Subpart B) provides policies and procedures and delegates the authority for processing and approving section 502 Rural Housing Weatherization (RHW) loans made under title V, of the Housing Act of 1949, as amended. However, Public Utilities companies in many areas of the nation have programs to provide low interest loans, often times lower than the FmHA rate, to consumers to weatherize their homes. State and local governments also have agencies that provide assistance to residents for weatherization of their homes.

Since this program has not been funded and there are agencies available to provide individuals assistance in weatherizing their homes often at lower rates and shorter terms, FmHA eliminates this program.

List of Subjects in 7 CFR Part 1822

Energy conservation, Home improvement, Loan program—Housing and community development, Low- and moderate-income housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70 unless otherwise noted.

Subpart B—[Removed and Reserved]

2. Subpart B of Part 1822, consisting of §§ 1822.21 through 1822.26 and Exhibit A are removed and reserved.

Date: December 29, 1988.

La Verne Ausman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-3514 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-07-M