

federal register

WEDNESDAY, JANUARY 29, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 20

PART II



DEPARTMENT OF LABOR

Office of the Secretary



RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS

Review and Certification Procedures

Title 29—Labor

SUBTITLE A—OFFICE OF THE
SECRETARY OF LABOR

PART 75—DEPARTMENT OF LABOR REVIEW AND CERTIFICATION PROCEDURES FOR RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT OF 1972

On October 23, 1974, at 39 FR 37650, the Secretary of Labor proposed that the procedures set forth there be followed in the discharge of his responsibilities under section 310B(d) of the Consolidated Farmers Home Administration Act of 1961 as amended, 7 U.S.C. 1932. The proposed procedures were developed in light of the experience gained under interim procedures which have been followed since the first certifications in December 1973.

A number of comments were received and, as a result of them, one substantive change has been made: In § 75.11(b) (3) a sentence has been added to provide an applicant with the opportunity to respond to any adverse comment received by the Secretary after publication of the fact that the application is pending. Other changes of an editorial nature have also been made.

Under the Act, individuals and public and private organizations may apply to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or finance business, industry or improve the economic or environmental climate of rural communities. It is not a prerequisite of such assistance that the applicant be unable to obtain credit through normal channels of finance or that he refinance the assistance if such credit becomes available.

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in 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.

In determining whether the applications should be approved or denied, the

following factors will be taken into consideration by the Secretary of Labor.

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon the impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

The Act allows the Secretary of Labor 60 days within which to make each determination. The Conference Committee on the Rural Development Act of 1972 (Pub. L. 92-419), which gave this responsibility to the Secretary, reported, however, that it felt "strongly that except in unusual circumstances the Secretary of Labor would and should act within not more than 30 days" of receipt of an application. H. Rep. 92-1129, 1972 U.S.C. Cong. & Admin. News 3182.

In order to discharge his responsibilities under the Act within a time period consistent with both the 60-day statutory maximum and the 30-day limit desired by the Congress, the Secretary has determined that the certification procedures set forth below shall be followed.

The new Part 75, which shall be effective February 28, 1975, reads as follows:

Sec.

75.1 Introduction.

75.11 Standards for the review of applications.

AUTHORITY: Sec. 118, Pub. L. 92-419, 86 Stat. 663 (7 U.S.C. 1932)

§ 75.1 Introduction.

(a) Section 118 of the Consolidated Farm and Rural Development Act authorizes the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture to make or guarantee loans to finance industrial and business activities in rural areas (broadly defined to include any place with a population of less than 50,000), 7 U.S.C. 1932(d). The Act also permits FmHA to make grants to public bodies for measures designed to facilitate the development of private business enterprises and for pollution control and abatement projects.

(b) As a prior condition for the approval of such loans, guarantees and grants, the Act further specifies that the Secretary of Labor must certify to the Secretary of Agriculture within 60 days after referral, that the loan or grant is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in 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. Responsibility within the Department of Labor (DOL) for the review and certification process has been assigned to the Manpower Administration (MA).

(c) The following procedures have been established by the Department of Labor in consultation with the Department of Agriculture for the issuance of labor certifications under this program. These procedures are designed to insure the orderly and expeditious review of the applications, with the objective of complying with the intent of the Congress that most applications will be acted upon by the Department of Labor (DOL) within 30 days after they have been received from the Department of Agriculture. It is anticipated that the procedure will permit completion of all cases within the 60-day legal maximum processing period permitted under the law.

§ 75.11 Standards for the review of applications.

(a) Applications to be routinely approved without field review. The following types of applications will be routinely approved and certified by the Manpower Administration (MA), provided that the required information is submitted by the applicant:

(1) Loans which involve the change of ownership from one person or group to another or the refinancing of an existing loan; Provided, That such loans will not result in any transfer from one area to another of any employment or business activity provided by operations of the applicant and are not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprise. In transmitting such applications to MA, FmHA will include:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan, and certifying that the loan is either for the purpose of financing the sale of the business or for the purpose of refinancing a loan and is not calculated to or likely to result in the transfer or expansion of employment or operations:

(ii) Three copies of Form FHA 449-22, Certification of Non-Relocation; and

(iii) Three copies of Form FHA 449-23, Data Information Sheet. MA will issue an affirmative certification on such applications, without further review, within 10 working days.

(2) Loans of less than \$100,000 where the loan proceeds are expected to result in the employment of not more than five workers. In such instances, the FmHA

transmittal letter will call attention to the fact that the application involved falls within this category. This should be supported by data in the revised Forms FHA 449-22 and 449-23 to be forwarded in triplicate to the DOL. For loan applications in this category, the FmHA will also attach a certification signed by the State FmHA director indicating that he has reviewed the loan application and certifying that such a loan is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities in the area, 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. Unless there is other evidence to indicate an adverse effect on unemployment or competitive business enterprises, MA will accept this certificate and accompanying forms as the basis for an affirmative certification without further review and will so certify within 10 working days after receipt.

(3) *Grants where there are no known current or future occupants.* In the case of such applications, e.g., a county's proposal to build an industrial park, FmHA will send a transmittal letter to MA stating the name and location of the applicant, and the amount and purpose of the grant, and certifying that there are no known current or future occupants. FmHA will also forward with the letter a resolution or other statement from the local governing body agreeing to a prior review and certification by MA of any person or organization which may occupy all or part of the facility within 3 years from the date of the certification, to insure that the requirements of the Act are being complied with. MA will, within 10 days after receipt of such applications, issue an affirmative certification conditional upon the right of review and certification of each potential occupant within the 3-year period.

(4) *Grants where the occupants are known, and the improvement will not result in a transfer or increase in operations or employment by the occupants.* The FmHA transmittal letter

shall provide, in addition to the information specified in paragraph (a)(3) of this section, the names of the occupants and a statement that this grant is not calculated to or likely to result in a transfer or increase in operations or employment. The applicant shall also be required to submit the same type of resolution as that specified in paragraph (a)(3) of this section. On the receipt of such data, MA will issue a certification on the grant application and will certify the known occupants as well. The certification may require, however, that additional occupants or a change in occupants within the first 3 years after certification is subject to review and a redetermination.

(b) *Applications which will require field or other review.* (1) All loan and grant applications other than those specified in paragraph (a) of this section will be subject to a full review by the MA prior to the issuance of a certification. For each loan application, the FmHA shall submit to MA:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan;

(ii) Six copies of the Certificate of Non-Relocation (Form FHA 449-22);

(iii) Six copies of the Data Information Sheet (Form FHA 449-23); and

(iv) Any supplemental information, including A-95 Clearinghouse reports, which FmHA believes may be of value to MA in evaluating the application. For grant applications, the letter of transmittal shall also provide information about the purpose of the grant. Two copies of a resolution or other statement of the type specified under paragraph (a)(3) of this section shall also be submitted with each grant application.

(2) Upon receipt of applications, MA will review the materials for completeness and will inform FmHA in writing of any missing items within 2 working days after the date of receipt. It is agreed that in such instances the statutory 60-day period will not begin until the file is complete. State Employment Security Agencies will be requested, through the MA regional offices, to provide labor market information needed to determine whether the loan would result in adverse competitive effect upon existing competitive enterprises in the area. Comments will be due in the MA national office 3 weeks after receipt of the request in the MA regional offices.

(3) To assist in the review process, DOL will publish in the FEDERAL REGISTER

a weekly listing of applications received (other than those to be routinely certified). The listing will include the name and location (City and State) of the applicant and the principal product or type of business activity. In the case of grant applications, the listing will also include the name and principal product or business activity of the occupant(s) of the facility for which the grant is being made. All interested parties will be afforded a 2-week period from the date of publication to comment in writing to MA. In the event that adverse comments are received, the applicant will be sent copies of such comments by certified mail, and afforded an opportunity to provide such additional information as the applicant deems appropriate within 2 weeks from the date of transmittal. The Farmers Home Administration will also be provided with copies of such adverse comments.

(4) In some instances, involving particularly complex situations, MA may request the Economic Development Administration (EDA) in the Department of Commerce, or other agencies to provide supplemental data. The number of such requests will depend upon the extent to which the DOL is capable of making resources available to EDA or other agencies to perform this function.

(5) When all the data have been assembled, a determination will be made by MA of whether the requested certifications may be certified or denied. FmHA will be notified in writing of the determination. If DOL's investigation indicates the need for additional information, all material will be returned to FmHA with instructions indicating the additional information needed to make a certification. Continuation of the 60-day time limit will begin again when the additional material is returned to Labor.

(6) All denials will be given additional consideration if the applicant or the Department of Agriculture provides additional evidence which they believe merits further consideration. If the DOL reaffirms its denial after a review of all available facts and such additional investigation as it may make, such denial shall be considered as final.

Signed at Washington, D.C. this 23rd day of January, 1975.

PETER J. BRENNAN,
Secretary of Labor.

[FR Doc.75-2643 Filed 1-28-75;8:45 am]