

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

Concurred in this 1st day of July 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965, and 1980

RIN 0575-AB45

Loan Assessment, Market Placement, and Graduation of Direct Loan Borrowers

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

ACTION: Interim rule with request for comments.

SUMMARY: The issuing USDA agencies are amending the direct and guaranteed farm loan regulations to implement changes to the Consolidated Farm and Rural Development Act (CONACT) as a result of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and the Agricultural Credit Improvement Act of 1992 (1992 Act). These amendments implement and coordinate "loan assessment," "market placement," and the "graduation of seasoned direct loan borrowers to the loan guarantee program." The intended outcome is to improve the success rate of borrowers receiving Farm Service Agency (FSA) assistance and to facilitate their transitions to commercial credit.

DATES: Effective July 9, 1996. Comments must be submitted by October 7, 1996.

ADDRESSES: Submit written comments to Steven R. Bazzell, Senior Loan Officer, Farm Credit Programs Loan Making Division, Farm Service Agency (FSA) United States Department of Agriculture (USDA), Ag Box Code 0522, Room 5438 South Building, 14th Street and Independence Avenue, SW., Washington, DC. 20250-0522. Written comments made pursuant to this rule will be available for public inspection at the above address between 8:15 am and 4:45 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bazzell of the Farm Credit Programs Loan Making Division at telephone (202) 720-3889, fax (202) 690-1117, or e-mail sbazzell@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined "not significant" for the purpose of complying with Executive Order 12866, and therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

1. For the reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has complied with the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Federal Assistance Programs

These changes affect the following FSA Farm Credit programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly affect the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the National Appeals Division appeal regulations at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection or recordkeeping requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575-0134, 0575-0061, 0575-0141, 0575-0085, 0575-0083, 0575-0090, 0575-0093, 0575-0079 and 0575-0111 in accordance with the Paperwork Reduction Act of 1995. This interim rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

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

Discussion of the Interim Rule

On December 30, 1993, the Farmers Home Administration (FmHA) published a proposed rule in the Federal Register (58 FR 69274-69298) with a comment period that ended February 28, 1994. The purpose of this interim rule is to implement statutory provisions on loan assessment, market placement, and graduation of seasoned direct loan borrowers to the guaranteed loan program. These provisions were contained in the 1990 Act and the 1992 Act and affect former FmHA Farmer Programs. Due to the reorganization of USDA, responsibility for administering FmHA Farmer Programs has been transferred to FSA. Other loan programs formerly administered by FmHA will only be affected by general, conforming administrative revisions made to the regulations on receiving and processing applications and analyzing credit needs and graduation of borrowers. These programs include: Rural Housing loans now administered by the Rural Housing Service (RHS), Water and Waste Facility loans now administered by the Rural Utilities Service (RUS), and Business and Industrial loans and Intermediary Relending Program loans now administered by the Rural Business-Cooperative Service (RBS). FSA, RHS, RUS, and RBS are jointly issuing this interim rule since substantial administrative revisions have been made to regulations affecting their programs in an effort to reduce Agency regulations.

The issuing agencies are publishing these regulations as an interim rule and providing a 90-day comment period. The comment period will provide the public, including Agency field staff, the opportunity to use and evaluate the new

processes from a practical standpoint. We expect this will provide the Agency with many more valuable suggestions to consider prior to issuance of the final rule.

Discussion of Comments

In response to the proposed rule, 14 respondents provided 25 specific comments. Since few of the comments addressed the same issue, they have been grouped by the general regulatory areas to which they pertain, as follows: Borrower supervision and planning, chattel loan security, graduation to commercial credit, and guaranteed loans.

Borrower Supervision and Planning

One respondent stated that each borrower should submit the year's actual production and financial information, in addition to the projected budget, when the projected budget is being submitted for review and reclassification purposes only. The Agency has revised the regulations to require that actual production and financial performance information be submitted along with the borrower's projections. FSA agrees with the rationale that actual performance should be obtained whenever financial information is obtained from borrowers in order to monitor their financial progress. This is in line with the practices of commercial lenders and the goals of FSA's borrower training.

One respondent stated that the year-end analysis should ideally be done prior to the beginning of the next production cycle, but not later than 60 days after the end of the previous production cycle. FSA has revised the regulations to state that, whenever possible, the year-end analysis should be scheduled and completed not later than 60 days after the end of the borrower's business year or farm budget planning period. This change was made in recognition of the uncertainties of Agency staffing and the fluctuating nature of the demand for FSA Farm Credit assistance. It is impracticable to mandate that the year-end analysis be completed within the 60-day timeframe, without exception.

One respondent stated that a year-end analysis should be required on all recently serviced loans under subpart S of part 1951. The proposed regulations require that a year-end analysis be completed for all first-time, annual operating, delinquent, and limited resource interest rate borrowers. All other FSA Farm Credit borrowers were to receive a year-end analysis at the discretion of the Agency based upon the "assessment" of the needs and risks

associated with each individual farming operation. In response to this comment, the Agency has revised the regulation to broaden coverage to require a year-end analysis the first year after the borrower: (1) Receives a new loan, chattel subordination or restructuring; (2) is determined delinquent or financially distressed; (3) has a loan deferred; or (4) receives limited resources interest rates. This change expands year-end analysis coverage to chattel subordinations and restructurings while mandating that it be performed only the first year when most problems arise. Chattel subordinations and restructurings will trigger a year-end analysis in the first year because of the increased risk to the Government. Thereafter, the Agency has the flexibility to perform the year-end analysis on a case-by-case basis based on the individual needs of each borrower.

One respondent stated that Exhibit A, Attachment 1, of subpart B of part 1924 of this chapter should be modified to inform the farm borrower that budget plans other than the Form FmHA 432-1, "Farm and Home Plan," may be used. This Exhibit A letter is, however, used exclusively to inform borrowers of their rights and responsibilities in regard to the disposition of security. Since Exhibit A does not pertain to farm budgeting, no changes will be made in response to this comment. The Agency plans to remove this exhibit from the regulations in the final rule.

Three respondents made a general statement that there are inadequate staff resources at the county office level to carry out the provisions of these regulations in a timely manner. The Agency has eliminated several regulatory requirements to provide expanded discretion to county office personnel, such as the elimination of mandatory accounting updates and field visits. Such administrative procedures have been removed from the regulations, but will be addressed in internal agency instructions. Additional administrative reductions may be considered for future regulatory revisions, after the Agency has empirical evidence to determine the effectiveness of the current regulatory changes. Therefore, no changes will be made by the Agency at this time.

One respondent stated that FSA should accept an applicant's self-certification with regard to environmental compliance. Currently, Agency personnel, or lenders in the case of guaranteed loans, are required to make a visual inspection of the farming operation as part of the environmental compliance process. Generally, environmental statutes place the burden

on the Federal Government for compliance. This responsibility cannot be delegated to individual applicants without statutory authority. No change will be made.

One respondent stated that "production cycle," as the term is used in conducting the year-end analysis under § 1924.55(d)(1) should be defined as the completion of the farm budget planning period. The Agency agrees that this could be potentially confusing and has revised § 1924.55(d)(1) to clarify "production cycle" to mean "farm budget planning period."

Chattel Loan Security

One respondent stated that § 1924.56(b)(5) should be clarified to state that during an appeal, FSA will release normal income security to allow the borrower to pay essential family living and farm operating expenses, except for the expenses which are the subject of the appeal. The Agency agrees that this could be misunderstood and has referenced this paragraph back to subpart A of part 1962.

Three respondents stated that the FSA regulations require that notices be filed (for lien perfection) under both the Uniform Commercial Code (UCC) and Central Filing System (CFS), where implemented, which in their opinion has no significant benefit. The respondents stated that filing under both systems should be used on a discretionary basis for problem accounts only. The most common practice among commercial lenders is to file notices under both the UCC and CFS. FSA will follow this same conventional practice, and no changes will be made in Agency procedure. Section 1962.5, describes which filing procedures for financing statements and other internal procedures for handling security instruments, has been removed but will be covered by internal Agency instructions.

One respondent stated that § 1924.57 should be revised to state that Agency personnel may provide credit counseling rather than will provide credit counseling. This suggestion is not being adopted in internal agency instructions since it is the Agency's responsibility to provide credit counseling as needed by individual farm borrowers. This administrative section has been removed from the regulations.

One respondent stated that the regulations should allow more Agency discretion on conducting field visits, year-end analyses, credit counseling, etc. The Agency has already eliminated required numbers of field visits, collateral inspections (when justified

and documented in the case file), accounting updates, etc., and has directed that these activities be derived directly from the farm assessment. No further changes in this regard will be made until empirical evidence can be examined by the Agency with regard to the effectiveness of the current revisions.

One respondent stated that borrowers who are not required to undergo a year-end analysis should only be required to submit an annual balance sheet and that it is unreasonable to require these borrowers to submit a projected cash flow for the upcoming year for borrower classification purposes. FSA is required by the 1992 Act to reclassify "seasoned direct borrowers" for the purpose of graduation, and the projected cash flow is needed to classify borrowers; therefore, FSA will make no changes with respect to the financial information needed. However, FSA has revised the regulations to require these "classification only" borrowers to submit their full set of financial statements only every 2 years. In intervening years when financial statements are not obtained, the Agency will make a desk review of the borrower's case file and determine whether graduation efforts should be pursued according to internal Agency instructions. Full financial information will be required automatically only every 2 years because based on past experience a borrower's ability to graduate generally does not change significantly from 1 year to the next. This will meet the requirements of the statute, while reducing the burden on field staff resources and borrowers. The Agency expects this approach to actually enable the county offices to graduate more direct borrowers to commercial credit because there will be more time available to perform a more thorough graduation review and to more vigorously pursue graduation through Market Placement.

Two respondents commented that § 1924.56 needs clarification, especially with regard to the derivation and use of production yields. FSA agrees and has revised this regulation to clarify that 5 years of actual production history will be used as a guide when preparing and evaluating a farm business plan. This clarification has been made to stress that, while historical information is extremely useful, the analysis of an agricultural operation's production trends and current capabilities must be considered.

One respondent suggested that the existing Form FmHA 431-2, "Farm and Home Plan," be revised to incorporate Form FmHA 1962-1, "Agreement for

Use of Proceeds/Release of Chattel Security." FSA will give this suggestion consideration for future improvements, but no changes will be made at this time. Form FmHA 1962-1 has been removed as an exhibit to part 1962, subpart A, but will be available in any Agency office.

Graduation to Commercial Credit

One respondent stated that only borrowers classified as commercial should be considered candidates for graduation to commercial credit. No change will be made since the Consolidated Farm and Rural Development Act section 333A(f) (7 U.S.C. 1983a(f)) specifies that both commercial and standard classified borrowers be considered for graduation.

One respondent stated that the proposed regulations require all commercial and standard classified borrowers to have an assessment completed or updated. The respondent recommended that an assessment not automatically be required. The respondent suggested that a current balance sheet, actual performance for the most recent year, and a projected farm budget should instead be used to determine graduation potential and for preparation of the prospectus to lenders. FSA agrees with the logic of this recommendation and has revised § 1951.262 and the definition of "prospectus." Many graduation candidates will not need a complete or updated assessment, as described under subpart B of part 1924, when the sole purpose is pursuing graduation to commercial credit.

One respondent stated that the language "reasonable rates and terms" should not be changed to "prevailing rates and terms" in subpart F of part 1951 because the former language is defined by regulation and it is contained in various loan documents, particularly in the Community and Business Programs. FSA agrees and will not delete "reasonable rates and terms" from this regulation.

One respondent stated that farm borrowers should be charged commercial interest rates when it appears that they are able to graduate to commercial credit. Otherwise, the respondent stated, there is no incentive for borrowers to graduate. Subpart A of part 1951 presently requires that direct borrowers be charged FSA's "regular" interest rate when they attain a 10-percent repayment margin. This interest rate is comparable to commercial lending rates, therefore, no change will be made.

Guaranteed Loans

The last respondent stated that under § 1980.113, the term "current balance sheet" should be defined as one that is less than 90 days old on the date the Agency receives a complete application. FSA agrees that this should be clarified and has revised the regulation accordingly.

Miscellaneous Changes

In addition to the changes made as a result of public comments, FSA has made several changes to further streamline or, in some cases, clarify the intent of the regulations as discussed below.

The 5-year budget project projection also is being eliminated as a general requirement for all FCP borrowers and applicants. The 5-year budget will instead be used as a counseling tool by the Agency, as appropriate, under internal Agency instructions. This change is in keeping with the Agency's movement toward fewer regulatory requirements and more discretion for Agency personnel.

Section 1924.55 is being clarified to state that many components of the assessment will be inapplicable to the Youth Loan program since these applicants and borrowers are not conducting farming or ranching operations. Year-end analyses for Youth loans are also being made a discretionary activity for Agency personnel since these loans are used to make small purchases for mainly educational purposes, e.g., raising and selling one pig or cow for a 4-H project.

"Flagged Accounts" are being eliminated as needing mandatory year-end analyses under § 1924.55. Flagged accounts include such accounts as bankruptcies and foreclosure actions pending. In such cases, contact with the borrower may be constrained by a court, or the farming operation may be in some stage of liquidation and, therefore, no longer an ongoing business concern. Therefore, flagged accounts will have a year-end analysis performed only at the discretion of the Agency.

Section 1924.55 also has been revised to state that in the case of existing borrowers, an assessment should be made at the time of the year-end analyses if no assessment has yet been done. An earlier assessment would have been done if the borrower had been found eligible for another loan, for example. The mandatory assessment provision was removed for existing borrowers in order to permit an administrative phase-in of the assessment process over a three year period for most existing borrowers.

Borrowers with flagged accounts would receive assessments only when and if year-end analyses were performed in accordance with this revised section. (The reason for the flagged account exception is discussed above.) This policy is permissible under CONACT section 360 which only requires initial assessments of eligible applicants and follow-up reviews of the new borrowers. The phase-in will promote high quality assessments by field offices and allow them to focus on new borrowers. The Agency is unable because of fiscal constraints to take advantage of its statutory authority to contract out loan assessments.

A minor revision was made with regard to the market placement regulations in the guaranteed loan program. The requirement for the submission of the applicant's or borrower's assessment to the lender was deleted since the Agency will prepare the guaranteed application on the lender's behalf. The Market Placement Application described under § 1980.113 also was revised to make it more concise. Upon further Agency review, it was determined that the individual line items describing the application were unnecessary. This now states Form FmHA 1980-25, which is the guaranteed loan application, along with all other items listed in this section with the exception of the loan or line of credit agreement, are required. The loan assessment is prepared by the Agency as part of the items required in the narrative summary under § 1980.113(a)(12).

Section 1910.4 has been revised to implement a requirement of the Federal Debt Collection Act of 1990. Under this statute, an applicant is ineligible for a loan if the applicant has an outstanding recorded judgment against them by the United States in a Federal Court other than the United States Tax Court.

Section 1910.5 has been revised to clarify how bankruptcy is used in determining the acceptability of an applicant's credit history. The key is not the bankruptcy itself, but rather the circumstances behind it. If they were beyond the borrower's control, then they are not considered an indication of unacceptable credit history.

References to the FmHA County Committee and its certification of a borrower or applicant's farm loan eligibility for five years have been removed. FmHA County Committees and the mandate to make 5 year certifications of eligibility were abolished by section 227(b) of the Department of Agriculture Reorganization Act of 1994. The functions performed by the FmHA

County Committee in relation to Farmer Programs loans now will be performed by the Agency. "Agency" has been defined in the regulations to include FSA county or area committees established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)). Loan eligibility will be determined for each loan application.

Regulations being changed to implement loan assessment, market placement, and graduation policies also were substantially revised to remove administrative procedures. These procedures instead will be covered solely by the Agency's internal instructions.

The Agency intends to remove exhibits being revised by this interim rule in the final rule. Any substantive policy will be covered in the regulation text. Forms will remain available in any Agency office.

List of Subjects

7 CFR Part 1910

Agriculture, Applications, Credit, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Housing and community development, Loan programs—Low and moderate income housing.

7 CFR Part 1941

Agriculture, Crops, Livestock, Loan programs—Rural areas, Youth.

7 CFR Part 1943

Agriculture, Credit Loan Programs—Recreation and recreation areas, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs.

7 CFR Part 1951

Account servicing, Agriculture, Credit, Debt restructuring, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

7 CFR Part 1955

Government acquired property, Government property management.

7 CFR Part 1962

Agriculture, Crops, Government property, Livestock, Loan programs—Rural areas.

7 CFR Part 1965

Agriculture, Foreclosure, Loan programs—Rural areas.

7 CFR Part 1980

Agriculture, Loan programs. Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 is revised to read as follows:

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

Subpart A—Receiving and Processing Applications

2. Section 1910.1 introductory paragraph is amended:

a. by removing the phrase "Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354)" and adding the words "Farm Service Agency (FSA) and Rural Housing Service (RHS)" in its place;

b. by removing the words "Farmer Programs" and adding the words "Farm Credit Programs" in its place;

c. by removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph (a) and adding the words "FSA and RHS" in its place; and revising paragraph (c) and adding paragraph (e) to read as follows:

§ 1910.1 General.

* * * * *

(c) FmHA forms are available in any Rural Development (RD) or FSA office.

* * * * *

(e) As used in this subpart in relation to Farm Credit Programs loans, *Agency* means the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

3. In § 1910.3:

a. the introductory text and paragraph (a), introductory text, are amended by removing the phrase "FmHA or its successor agency under Public Law 103-354" and adding the words "FSA or RHS" in their place;

b. all references to "or its successor agency under Public Law 103-354" in paragraphs (a)(1), (a)(2), and (a)(4)(i) are removed; and references to "FmHA or its successor agency under Public Law 103-354" are removed and "RD" is added in their place, the first time it

appears in paragraph (a)(4)(i) and in paragraph (a)(4)(ii).

4. Section 1910.4 is amended by:

- a. removing paragraph (h);
- b. redesignating paragraphs (c) through (g) as (d) through (h), respectively;
- c. removing the words "Farmer Programs" in redesignated paragraphs (d), (k) introductory text and (k)(3) and adding the words "Farm Credit Programs;" in its place;
- d. removing the words "FmHA or its successor agency under Public Law in paragraph (k)(4) and adding the words "the Agency" in its place; and
- e. removing the language appearing in the parentheticals in redesignated paragraphs (d)(3)(i), introductory text, (d)(3)(iii), introductory text, (d)(3)(v) and (k)(4).

5. Section 1910.4 paragraphs (k)(1), (k)(4) and redesignated (d)(1), (d)(3)(i), (d)(3)(iii), introductory text, and (d)(3)(v) are amended by removing the phrase "or its successor agency under Public Law 103-354."

6. In § 1910.4 paragraph (k)(3) the reference "paragraph (c)" is removed and the reference "paragraph (d)" is added in its place; removing and reserving paragraph (j); revising redesignated paragraphs (e), (f), (g), and (h), and paragraphs (b), (i)(1), (i)(1)(i), (i)(1)(ii)(B), (i)(5) and adding new paragraph (c) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) *Completed Farm Credit Programs applications and additional FSA responsibilities.* All persons requesting an application will be provided Exhibit A (available in any office). The County Supervisor will provide assistance as necessary to help applicants complete their applications. Complete applications will be processed in the order of date received, except as outlined in Section 1910.10 of this subpart. If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form FmHA 410-1 and enter the date in the "Application Received" and "Application Completed" fields in the Application Processing Module of the Management Records Systems (MRS.) On the date all information necessary to process an application is received, a County Office official will send the applicant FmHA Guide Letter 1910-A-3 (available in any office) notifying the applicant that the application is considered complete. The date entered in the "Application Completed" field in the Application Processing Module of MRS will establish the 30-day and 60-day

timeframes for determining eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant, and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Additional information may be obtained and verified by County Office records, personal contacts, and visits to the applicant's operation. A complete Farm Credit Programs application requires fulfillment of both the applicant and FSA responsibilities. Once this information is received and the application is considered complete, FSA has additional responsibilities before loan approval is determined. The various responsibilities are as follows:

Applicant's Responsibilities for a Complete Application

(1) Completed Form FmHA 410-1, "Application for FmHA Services," including a signed Form FmHA 410-9, "Statement Required by the Privacy Act."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief written description as to the farm training and/or experience of the applicant and the individual members of an entity applicant (new applicants only). If a waiver from the training required in Section 1924.74 of subpart B of part 1924 of this chapter is

requested, provide verification of any courses taken which covered production and/or financial management concepts, and/or a statement explaining how the applicant's proven performance based on 5-year production records demonstrates production ability.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may be provided by the applicant when other financial records are not available.

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

(7) A brief written description of the proposed operation and the proposed size of the operation (required for new applicants and existing borrowers with significant changes in their operations).

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431-2, "Farm and Home Plan," or other similar plans of operation acceptable to FSA.

(10) Applicable items required in Exhibit M of subpart G of part 1940 of this chapter including SCS Form CPA-026, "Highly Erodible Land and Wetland Conservation Determination," Form AD-1026, "Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification," and Form FmHA 1940-20, as required by subpart G of part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement.

(12) Form FmHA 440-32, "Request for Statement of Debts and Collateral," when applicable.

(13) Forms FmHA 1945-22, "Certification of Disaster Losses," and FmHA 1940-38, "Request for Lender's Verification of Loan Application," (EM loans only).

FSA's Responsibilities for a Complete Application

(14) Send Form FmHA 410-7, "Notification to Applicant on Use of Financial Information from Financial

Institution," to the applicant when applicable.

(15) Form FmHA 1945-26, "Calculation of Actual Losses" (EM loans only).

(16) Credit reports as provided in subparts B and C of this part.

(17) Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," (EM loans only).

(18) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each application and copies of the screens must be attached to the applicant's file.

(19) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in § 1941.15. This information will be presented on reports generated on the automated Farm and Home Plan system, or in other plans or documents consistent and acceptable to the Agency.

Additional FSA Farm Credit Responsibilities

(20) Form FmHA 1924-1, "Development Plan," if necessary.

(21) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Class I and Class II assessment, whichever is applicable.

(22) Real estate and chattel appraisal, when applicable.

(23) Completion of the assessment in accordance with § 1924.55.

(c) *Notifying applicants that direct loan eligibility is subject to the unavailability of guaranteed financing.* If the assessment, completed in accordance with § 1924.55 concludes that guaranteed assistance may be available, with or without interest assistance, a prospectus will be sent to area lenders in accordance with § 1951.262 (f) as appropriate. If a lender indicates interest in providing financing with a Farm Credit Programs loan guarantee, refer to § 1980.113 (c) for handling as a market placement application. No direct loan to a current borrower will be approved until the process outlined in this paragraph has been concluded.

* * * * *

(e) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after an application for OL, FO, SW, or

EM assistance is received, the County Supervisor will send a letter similar to Guide Letter 1924-B-1 to the applicant telling the applicant about Limited Resource loans.

(f) *Notifying socially disadvantaged applicants regarding the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of Agency acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers Regarding the Availability of Acquired Farmland," to the applicants. Exhibit B will also be presented to all socially disadvantaged individuals at the time they make their initial contact regarding Agency credit services. Socially disadvantaged applicants are defined in Section 1943.4 of subpart A of part 1943 of this chapter.

(g) *Notifying Borrowers about Farm Credit Programs (FCP) Borrower Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower Exhibit C of this subpart, "Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Programs Loans."

(h) *Determining eligibility.* The Agency will determine eligibility of all Farm Credit Programs applicants including those who are already indebted for a Farm Credit Programs loan. The Farm Credit Programs application does not need to be complete before it is reviewed; however, all information relative to the eligibility decision must be received. The Rural Housing Service will determine eligibility for all RH loan applicants.

(1) The Agency will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farm Credit Programs loan making regulation. An eligible Operating Loan (OL) or Farm Ownership (FO) Loan applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority in accordance with § 1955.107 (f). In addition, it is the responsibility of the Agency to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of Agency credit assistance on eligible rates and

terms to purchase suitable farmland. The loan approval official will determine the applicant's projected repayment ability, the adequacy of collateral equity to secure the requested loan, and the feasibility of the proposed operation.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. Agency loan or grant funds may not be used to satisfy the judgment.

(i) * * *

(1) *Farm Credit Programs (FCP) applications.* Each application must be approved or disapproved and the applicant notified in writing of the action taken, not later than 60 days after receipt of a complete application. The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within the timeframes outlined in this section.

(i) Receipt by the applicant of a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," will be considered written notice of loan approval.

(ii) * * *

(A) * * *

(B) Every week the District Director will generate a report, using the FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each county office MRS data base. The District Director will note each complete application pending more than 45 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

* * * * *

(5) *Adverse decisions.* If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in Subpart B of Part 1900 or 7 CFR part 780, as appropriate. The letter will contain the ECOA statement set forth in Section 1910.6(b)(1) of this subpart.

* * * * *

7. Section 1910.5 is amended:

a. by removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph (c)(1) and adding the word "Agency," in its place;

b. removing the word "bankruptcy" in paragraph (c)(4) introductory text, and

c. revising paragraph (c)(5) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(c) * * *

(5) Non-payment of a debt due to circumstances beyond the applicant's or borrower's control. However, non-payment of a debt due to circumstances within an applicant's or borrower's control may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section. The mere fact that an applicant or borrower filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt, i.e., whether nonpayment was beyond the applicant's or borrower's control, however, are proper considerations.

* * * * *

§§ 1910.6 through 1910.9 [Removed and Reserved]

8. In part 1910 §§ 1910.6 through 1910.9 are removed and reserved.

§ 1910.10 [Amended]

9. Section 1910.10(b) is amended by removing the words "Farmer Program" and adding the words "Farm Credit Programs (FCP)" in its place.

10. Section 1910.11 is revised to read as follows:

§ 1910.11 Special requirements.

(a) *Servicemen's Readjustment Act of 1944*. Section 512(a)(D) of the Servicemen's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Department of Veterans Affairs (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Department of Veterans Affairs Loan Guaranty Officers may, therefore, require VA loan applicants to apply to the agency for loan assistance.

(b) *Veterans determined ineligible by the Agency*. If the veteran is unable to obtain a loan, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by the Agency of the veteran's application and the specific reasons for rejection.

PART 1924—CONSTRUCTION AND REPAIR

11. The authority citation for part 1924 is revised to read as follows:

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

Subpart B—Management Advice to Individual Borrowers and Applicants

12. Section 1924.51 is revised and §§ 1924.54 and 55 are added to read as follows:

§ 1924.51 General.

This subpart contains policies for providing management advice to all Farm Credit Programs direct loan applicants and borrowers. Forms and Farm Assessment and Supervision Reference handbooks are available in any Agency county office.

§ 1924.54 Definitions.

As used in this subpart, the following definitions apply:

Agency. This term refers to the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Commercial classified. The Agency's highest quality Farm Credit programs accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Assessment and Supervision Reference. This reference provides guidance to field staff on conducting assessments, year-end analyses, and general borrower supervision.

Farm business plan. The automated or manual Farm and Home Plan system which contains a projection that accurately reflects the borrower's plan of operation for the production or marketing cycle. The annual plan may cover a period of more or less than 12 months. A normal year's plan, as defined in this section, will be used when the annual plan does not reflect typical income, expenses, and debt payments. The Agency will accept farm business plans other than the Farm and Home Plan if they provide sufficient information to enable Agency officials to render a sound credit decision in accordance with Agency regulations.

Farm Credit Programs loan. Includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO) and Softwood Timber (ST) loans. Also included are Rural Housing loans for farm service buildings (RHF), and Rural Housing (RH) loans where the borrower is also indebted for

an Agency direct farm loan that is not a collection only or judgment account. Non-Program loans, which are defined in § 1951.451(a), are excluded.

Financially viable operation. A financially viable operation projects that it can generate sufficient income to meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable non-farm income, provide for the replacement of capital items, and provide for long-term financial progress to enable the operator to obtain commercial credit.

Individual. The term "individual" is used throughout this subpart to refer to the person receiving Agency supervision and management advice. If an applicant or borrower applies as an individual applicant, the term "individual" means the operator. In the case of an eligible corporation, cooperative, partnership, or joint operation, the term "individual" means the entity members with the primary responsibility for making management decisions and carrying out the day-to-day physical tasks.

Normal year plan. A projected farm business plan most representative, or typical, of an operation's normal income, expenses (including family living expenses), and capital debt payments.

Prospectus. Consists of a transmittal letter similar to FmHA Guide Letter 1951-F-3 with a current balance sheet and projected year's budget attached. The applicant or borrower name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific direct loan applicants and borrowers. The prospectus will provide information regarding the availability of Agency loan guarantee and interest assistance.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full.

§ 1924.55 Assessment of the agricultural operation.

Assessments will be completed for direct Farm Credit Programs loan applicants. An assessment is a comprehensive evaluation of the components of an operation, the identification and prioritization of training and supervisory needs, and the resulting plan of supervision to assist

the borrower in achieving financial viability. The assessment is the central foundation upon which to build strategies for planning, credit and management counseling, loan controls, analysis, borrower training, and all other needed supervision. An assessment will include thorough inspections of the operation and face-to-face meetings and discussions with all key individuals. At least semi-annual reviews of progress will be performed in accordance with paragraph (e) of this section.

(a) *Agency evaluation.* The Agency will assess each of the areas described in paragraph (b) of this section in close cooperation with the applicant or borrower. As part of that assessment, the Agency will determine whether the proposed budget is feasible on a direct or guaranteed loan basis, the type and nature of any material financial or production management weaknesses in the operation, and the specific strategy needed, including timeframes, to effect improvements and control risks. Material weaknesses are those that have a significant impact on the net income of the operation and need to be corrected to enable the borrower to progress financially and eventually graduate from FSA farm credit programs. Examples of material weaknesses include, but are not limited to: lack of a farm recordkeeping system, obsolete or inadequate facilities, and use of outdated production practices. In the case of Youth loans, it is recognized that most of the component areas will be "Not Applicable" since there is no full-scale farming operation to consider.

(b) *The assessment is an evaluation, conducted with an applicant or borrower, of the following components:*

- (1) Type of operation.
 - (2) Goals.
 - (3) Real estate, including facilities.
 - (i) Location and size.
 - (ii) Proposed and existing improvements.
 - (iii) Presence of environmental hazards.
 - (iv) Conservation practices and measures.
 - (v) Adequacy and continued availability of real estate.
 - (vi) External factors, such as urban encroachment and zoning changes.
 - (4) Chattel property used in the operation.
 - (5) Farm business organization and key personnel.
 - (6) Historical financial data.
 - (7) Projected budget.
 - (8) Planned changes.
 - (9) Ability to obtain guaranteed credit.
- (c) *Supervision and training.* Appropriate supervisory oversight and

training recommendations will be developed based on the Agency's evaluation of the strengths and weaknesses of the operation in accordance with paragraphs (a) and (b) of this section and § 1924.59.

(d) *Performing the year-end analysis.* A year-end analysis is required for borrowers (except for Youth loans and loans flagged as having bankruptcy, foreclosure, or other action pending) the first year after an initial or subsequent loan, chattel subordination, or restructuring is received, borrowers who are financially distressed or delinquent, borrowers who have loans deferred, and borrowers who are receiving limited resource interest rates. All other borrowers (including flagged accounts) will receive a year-end analysis at the discretion and judgment of the Agency. However, at least every two years, the borrower will provide upon Agency request, a year-end balance sheet, actual financial performance, and a projected farm budget so that the borrower can be classified for graduation purposes in accordance with subpart F of part 1951. The year-end analysis should coincide with the borrower's farm budget planning period. The borrower will work with the Agency to:

- (1) Complete the year-end analysis, whenever possible, within the 60-day period after completion of the borrower's business year or farm budget planning period.
- (2) Complete and review the "actual" columns on the farm business plan and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," if applicable.
- (3) Develop a farm business plan for the next production cycle in accordance with § 1924.56.

(4) Reach agreement on key management issues. Any such agreements will be documented for the borrower case file and signed by the borrower.

(e) *For all borrowers, the assessment described under this section will be reviewed on at least a semi-annual basis to monitor progress.* The borrower will consult with the Agency official in person, or if that is not possible, by telephone, or in writing. A meeting must be scheduled as soon as practicable to determine corrective options if: the borrower is, or expects to be, delinquent; the borrower is experiencing difficulties; or other significant changes have occurred. The year-end analysis under this section may be treated as one of the required assessment reviews.

13. Sections 1924.56 through 1924.60 are revised to read as follows:

§ 1924.56 Farm business planning.

The automated Farm and Home Plan system is the primary tool used by the Agency to evaluate loan feasibility and prospects for achieving financial viability. Other manual or automated business planning systems may be used with the consent of the Agency.

(a) [Reserved].

(b) *Documentation and revision of plans.* Individuals must submit a farm business plan to the Agency, upon request, for loan approval and servicing purposes. An individual may request the assistance of the Agency official, as needed, in completing the plan. Farm business plans will be based only on accurate, verifiable information. If the Agency official and the individual cannot reach agreement, on the farm business plan, then the Agency will make loan approval and servicing determinations based on the Agency's separate, revised farm business plan. The individual will have the right to appeal any resulting adverse decision.

(1) Historical information will be used as a guide to evaluate the feasibility of projected farm business plans. Individuals must provide the Agency with their previous 5-year production history, if available. Positive and negative trends, mutually agreed upon changes and improvements, and current input prices, will be taken into consideration when arriving at reasonable projections.

(i) For individuals with less than a 5-year history, actual production records from an operation to be taken over by the individual will be considered, whenever available.

(ii) In the absence of the information listed in paragraph (b)(1)(i) of this section, other reliable data sources that may be used include: FSA Farm Programs (formerly Agriculture Stabilization and Conservation Service) actual yield records and county or State averages.

(iii) This paragraph applies when an accurate projection cannot be made because the individual's production history in any or all of the previous 5 years has been substantially affected by a disaster that has been declared by the President or designated by the Secretary of Agriculture. This paragraph also applies to those individuals who would have had a qualifying physical or production loss, as defined in § 1945.154(a), from such a disaster, but who were not located in a designated or declared disaster area.

(A) If the individual's disaster years yields are less than the county average yields, county average yields will be used for those years. If county average

yields are not available, State average yields will be used.

(B) In calculating a baseline average yield, the individual may exclude the production year with the lowest actual or county average yield, providing the individual's yields were affected by disasters during at least 2 of the 5 years.

(2) Unit prices for agricultural commodities as published in the State supplement will generally be used. However, regional or county unit prices may be used when there are transportation costs or other significant factors that cause a difference in commodity prices within the State. Individuals who can provide reliable evidence that they will receive a premium price for a commodity will be allowed to use the higher price for farm planning. The determination of disaster years will be based on the 5-year history of disaster declarations or designations for all counties contained in the State supplement.

(3) When the Agency official and individual revise the farm business plan, the plan will be signed and initialed by both parties. Form FmHA 1962-1 (available in any Agency office) will be revised whenever significant changes occur during the year that will affect repayment ability. It is the individual's responsibility to notify the Agency of any necessary changes. If the changes would result in a major change in the operation, a completely new farm business plan must be developed. The individual and Agency official will initial and date revisions to the Form FmHA 1962-1.

(4) If the borrower and Agency cannot reach an agreement on revisions to the farm plan and an adverse decision results, the borrower may appeal. During an appeal, the Agency will make releases of normal income security for essential family living and farm operating expenses in accordance with § 1962.17. If the borrower refuses to execute Form FmHA 1962-1 as finally determined by the Agency after an appeal, the account will be serviced under § 1962.18. If the borrower does not appeal, the planned releases documented on Form FmHA 1962-1 are binding.

§ 1924.57 [Reserved].

§ 1924.58 Recordkeeping.

(a) All borrowers must have a recordkeeping system, which must be documented as part of the assessment under § 1924.55.

(b) The selected recordkeeping system must provide information similar to that contained in Forms FmHA 431-2, FmHA 432-1, "Farm Family Record

Book," and FmHA 432-2, "Five Year Inventory Record." The recordkeeping system must enable borrowers to make informed management decisions and allow the Agency to render loan making and servicing decisions in accordance with Agency program regulations.

(c) Borrowers must maintain accurate records and submit financial information to the Agency when required. Failure to do so will result in the borrower's ineligibility for future Agency financing and loan servicing and may result in acceleration and collection action.

§ 1924.59 Supervision.

The Agency's supervision is based on the information and evaluation resulting from the assessment of the operation. The borrower is required to:

(a) Cooperate with the Agency and comply with all supervisory agreements, farm plans, and all other loan-related requirements.

(b) Promptly notify the Agency of any significant change in the business or family expenses or the development of problem situations.

(c) Maintain and protect the collateral for Agency loans and promptly report to the Agency any losses or other significant changes in the collateral.

(d) Complete any training required by § 1924.74.

§ 1924.60 Nonfarm enterprises.

A nonfarm enterprise is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. The borrower responsibilities in § 1924.59 (a) also apply to nonfarm enterprises.

§§ 1924.61 through 1924.73 [Removed and Reserved.]

14. In part 1924 §§ 1924.61 through 1924.73 are removed and reserved.

§ 1924.74 [Amended]

15. Section 1924.74 is amended by:
a. Removing all references to "FmHA or its successor agency under Public Law 103-354" and adding the word "Agency," in its place;

b. Removing the words "Farmer Programs" and adding the words "Farm Credit Programs" in its place; and

c. Removing the phrase "Form FmHA or its successor agency under Public Law 103-354" wherever it appears and

adding the words "Form FmHA" in its place.

16. Section 1924.74 is amended by:
a. removing the ninth and twelfth sentences of introductory paragraph (b)(1) and the second sentence of paragraph (b)(1)(i);

b. removing in the eighth sentence of paragraph (b)(1) the phrase "Form FmHA or its successor agency under Public Law 103-354 1924-23, "

c. removing the words "County Committee," "Committee," in paragraphs (b)(1), (b)(1)(i), (b)(1)(ii) and (b)(2) and adding the word "Agency" in their place; and

d. removing the words "County Committee's" in paragraph (b)(3), introductory text, and paragraph (b)(4) and adding the words "the Agency's" in their place.

17. Section 1924.100 is revised to read as follows:

§ 1924.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0560-0154.

18. Exhibit A is amended by redesignating all text following the closure "County Supervisor" as attachment 1 to exhibit A; removing all references to "FmHA or its successor agency under Public Law 103-354" and adding the word "Agency" in its place; by removing the references "Form 1962-1" and adding "Form FmHA 1962-1" in its place; and revising the first paragraph of redesignated attachment 1 to read as follows:

Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

* * * * *

Attachment 1 to Exhibit A

Periodically, you will be asked to complete Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," which will document the agreement between you and the Agency as to how proceeds from the sale of chattel property which serves as security for your Agency loans will be released. You will also need to list those buyers to whom you plan to sell your farm products. This plan will give you and the Agency a clear idea of what income you expect from your operation and how those proceeds will be used. The plan will set forth the amount of money required for paying essential family living, farm operating expenses, and debt service payments. You and the

Agency must agree on how much money will be released from your crop proceeds. Such releases must be in accordance with Agency regulations.

* * * * *

PART 1941—OPERATING LOANS

19. The authority citation for part 1941 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 [Amended]

20. Section 1941.1 is amended by removing the words “Farmers Home Administration (FmHA)” and adding the words “Farm Service Agency (FSA)” in its place in the fourth sentence and removing “FmHA” and adding the word “Agency” in its place.

§ 1941.4 [Amended]

21. Section 1941.4 is amended by adding the definition for “Agency” after the definition for “Additional security.”

* * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1941.15 [Amended]

22. Section 1941.15 paragraph (e) is amended by:
 a. removing the reference to “§ 1924.57” and adding “§ 1924.56” in its place;
 b. removing the phrase “for County Committee review”;
 c. removing the phrase “FmHA or its successor agency under Public Law 103–354” in paragraphs (c), (e)(2), (f)(3), (j), and the heading of paragraph (i) and adding the word “Agency” in its place;
 d. by removing the words “FmHA or its successor agency under Public Law 103–354’s” in paragraphs (e)(3) and (j) and adding the words “the Agency’s” in its place.

23. Section 1941.15 is amended by:
 a. removing the second sentence in paragraph (a);
 b. removing the phrase “FmHA or its successor agency under Public Law 103–354-assisted” in the first sentence of paragraph (a) and paragraph (h)(2) introductory text;
 c. removing the phrase “FmHA or its successor agency under Public Law 103–354 regulations setting forth” in the last sentence of paragraph (f)(2);
 d. removing the words “County Committee” and adding the word “Agency” in its place in paragraph (h)(1); and
 e. removing the phrase “subpart B of part 1900 of this chapter” and adding “7

CFR part 780” in its place in paragraph (h)(3); and
 f. revising paragraph (k) to read as follows:

§ 1941.15 Special beginning farmer or rancher OL loan assistance.

* * * * *

(k) *Agency certification.* A special beginning farmer OL application will only be considered after the applicant submits a complete 5-year plan of operation and a projection of the financial status of the operation as set forth in paragraph (e) of this section. In addition to the requirements of § 1941.30, the following conditions apply:

- (1) Agency certifications of eligibility under paragraph (b) of this section are effective throughout the commitment period.
- (2) For subsequent loan requests during the commitment period, the Agency will certify as to the applicant meeting the eligibility requirements for the regular direct or guaranteed OL loan programs, as appropriate. Such certification is unnecessary if a 5-year eligibility certification has not yet expired unless the County Supervisor has determined that the applicant’s situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan will be made under the commitment and the commitment will be revoked in accordance with paragraph (h) of this section.

§ 1941.16 [Amended]

24. Section 1941.16 paragraph (k) is amended by removing the words “Agricultural Stabilization and Conservation Service (ASCS)” and adding the words “FSA Farm Programs (formerly Agricultural Stabilization and Conservation Service)” in its place.

§ 1941.18 [Amended]

25. Section 1941.18 is amended:
 a. In paragraph (a), introductory text, by removing “FmHA” and adding the words “the Agency” in its place and
 b. In paragraph (a)(2), by removing the reference to “§ 1924.60” and adding “§ 1924.55” in its place.

§ 1941.19 [Amended]

26. Section 1941.19 paragraph (f)(1) is amended:
 a. by removing the phrase “FmHA or its successor agency under Public Law 103–354 for any other farmer programs” and adding the phrase “the Agency for any other farm credit programs” in its place and
 b. by removing paragraphs (g) through (j).

§ 1941.30 [Removed and Reserved]

27. In part 1941 § 1941.30 is removed and reserved.

§ 1941.33 [Amended]

28. Section 1941.33 is amended:
 a. by removing the words “County Committee” in paragraph (b)(1)(i) and adding the word “Agency” in its place,
 b. by removing paragraph (b)(1)(ii),
 c. by redesignating paragraphs (b)(1)(iii) through (vii) as (b)(1)(ii) through (vi), respectively;
 d. by removing the second reference to “FmHA” in paragraph (b)(2)(i), and
 e. by removing the words “(see subpart B of part 1900 of this chapter)” from paragraph (c)(2).

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

29. The authority citation for part 1943 is revised to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 [Amended]

30. Section 1943.1 is amended by removing the words “Farmers Home Administration (FmHA)” and adding the words “Farm Service Agency (FSA)” in its place and § 1943.2 is amended by removing “FmHA” and adding the word “Agency” in its place.

§ 1943.4 [Amended]

31. Section 1943.4 is amended in the definition of *primary security* by removing “and/or” and adding “and” in its place, and also by adding the following definition after the definition of *additional security*.

* * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1943.18 [Amended]

32. Section 1943.18(b)(3) is amended by removing the reference to “§ 1924.60” and adding “§ 1924.55” in its place.

§ 1943.29 [Amended]

33. Section 1943.29 (c) is amended by removing the references to “FmHA” and adding the words “the Agency” in its place.

§§ 1943.30 and 1943.32 [Removed and Reserved]

34. In part 1943 §§ 1943.30 and 1943.32 are removed and reserved.

§ 1943.33 [Amended]

35. Section 1943.33 is amended by:

- a. removing and reserving paragraph (b)(2);
- b. removing paragraph (c);
- c. removing the words "County Committee" in paragraph (b)(1)(i) and adding the word "Agency" in its place; and
- d. removing paragraph (b)(1)(ii); and redesignating paragraphs (b)(1)(iii) through (vii) as (b)(1)(ii) through (vi) respectively.

Subpart B—Direct Soil and Water Loan Policies, Procedures and Authorizations

§§ 1943.80 and 1943.82 [Removed and Reserved]

36. In part 1943 §§ 1943.80 and 1943.82 are removed and reserved.

§ 1943.83 [Amended]

- 37. Section 1943.83 is amended by:
 - a. removing the words "County Committee" in paragraph (b)(1)(i) and adding the word "Agency" in its place;
 - b. removing paragraph (b)(1)(ii); and redesignating paragraphs (b)(1)(iii) through (vii) as paragraphs (b)(1)(ii) through (vi) respectively; and
 - c. removing and reserving paragraph (b)(2); and removing paragraph (c).

PART 1945—EMERGENCY

38. The authority citation for part 1945 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1980.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§§ 1945.151 and 1945.152 [Amended]

39. Sections 1945.151 and 1945.152 are amended by removing the words "Farmers Home Administration (FmHA)" and adding the words "Farm Service Agency (FSA)" in its place and by removing "FmHA" and adding the word "Agency" in its place.

§ 1945.154 [Amended]

40. Section 1945.154 (a) is amended in the definition of *Feasible Plan* by removing words "§ 1924.57(c)(5) of" and also by adding the following definition after the definition of *Additional security*.

* * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

41. Section 1945.163 is amended by:

- a. removing all references to "Form FmHA or its successor agency under Public Law 103-354 and adding the words "Form FmHA" in their place;
- b. removing the reference to "FmHA" in the last sentence of introductory text;

and adding the words "the Agency" in its place; and

- c. by removing and reserving paragraph (a)(2)(ii) and revising paragraph (a)(1) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(a) * * *

(1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant must select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises (i.e., all crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. Applicants will identify the production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record sources for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records.* If actual yields are not available for all of the 5 crop years, the applicant will use a combination of actual records and other data as specified in paragraphs (a)(1)(ii) and (iii) of this section.

(ii) *FSA Farm Programs (formerly ASCS) "actual yields."* When this production record source is used, the applicant must obtain the information and submit it with the application. The disaster year actual yield will be used as the yield for those years for which the applicant has no production records to determine the normal year's yields.

(iii) *The county or State average yields.* These average yields are located in the State supplement. However, these production figures can be substituted only when an applicant has insufficient records for certain commodities and years.

(iv) *State Director determination.* When an applicant's production loss is on new land being developed, or to young perennial crops such as fruits and nuts, which have not reached their mature production potential, the Agency will establish the normal yields to be used.

* * * * *

§ 1945.166 [Amended]

42. Section 1945.166 is amended by removing "FmHA" in the last sentence of paragraph (c)(4) and adding the word "Agency" in its place.

§ 1945.167 [Amended]

43. Section 1945.167 is amended by removing paragraph (g); removing paragraph (h); redesignating paragraphs (i) through (k) as (h) through (j), and removing "FmHA" wherever it appears in redesignated paragraph (h) and adding the word "Agency" in its place.

44. Section 1945.167 is amended by:

- a. removing the words "crop(s)" and "disaster(s)" in paragraph (a) and adding the words "crop" and "disaster" in their place respectively;

- b. removing the words "FmHA or its successor agency under Public Law 103-354" in the heading of paragraph (b) and adding the word "Agency" in its place; and removing the words "FmHA or its successor agency under Public Law 103-354 farmer programs" in paragraph (b) and adding the words "Farm Credit Programs" in its place;

- c. removing the word "purpose(s)" in the heading of paragraph (c) and adding the word "purposes" in its place; removing the word "operation(s)" in paragraph (c) and adding the word "operation" in its place.

§ 1945.168 [Amended]

- 45. Section 1945.168 is amended:
 - a. by removing "FmHA" in the first sentence of paragraph (a) and adding the words "the Agency" in its place; and
 - b. by removing the words "loan(s)", "reason(s)" and "lien(s) in paragraphs (b)(1)(i) and (ii) and adding the words "loans", "reasons" and "lien" in their place, respectively.

§ 1945.169 [Amended]

46. Section 1945.169 is amended by removing and reserving paragraphs (n), (o), and removing (p)(3), and (p)(4).

§ 1945.173 [Amended]

47. Section 1945.173 is amended by removing "FmHA" in paragraph (b)(2)(ii) and adding the word "Agency" in its place.

§§ 1945.180 and 1945.182 [Removed and Reserved]

48. In part 1945 §§ 1945.180 and 1945.182 are removed and reserved.

§ 1945.183 [Amended]

49. Section 1945.183 is amended by removing and reserving paragraphs (a)(1) through (3), (a)(4)(i) and (ii); and removing (c) through (e).

50. Section 1945.183 is amended:

- a. by removing the words "County Committee" in paragraph (b) introductory text, and paragraph (b)(1) and adding the word "Agency" in its place;

- b. by removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraphs (a)(4)(iii), (b)(7)

and (b)(8) and adding the word "Agency" in its place;

c. by removing the word "loan(s)" in paragraphs (b)(4) and (b)(8) and adding the word "loan" in its place;

d. by removing the word "certification(s)" in paragraph (b)(6) and adding the word "certifications" in its place; and

e. by removing the words "Form FmHA or its successor agency under Public Law 103-354" wherever it appears and adding the words "Form FmHA" in its place.

PART 1951—SERVICING AND COLLECTIONS

51. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

52. Sections 1951.251 through 1951.300 are revised to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's needs for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term "Agency" used in this subpart refers to the Farm Service Agency (FSA) including its county and state committees and their personnel), Rural Utilities Service (RUS), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein.

§ 1951.252 Definitions.

Commercial classified. The Agency's highest quality Farm Credit Programs (FCP) accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Credit Programs (FCP) loans. FSA Farm Ownership (FO), Operating

(OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Graduation, FCP. The payment in full of all FCP loans or all FCP loans of one type (i.e., all loans made for chattel purposes or all loans made for real estate purposes) by refinancing with other credit sources either with or without an Agency loan guarantee. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan's funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

Graduation, other programs. The payment in full of any direct loan for Community and Business Programs, and all direct loans for housing programs, before maturity by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property. Graduation, for other than FCP, does not include credit which is guaranteed by the United States.

Prospectus, FCP. Consists of a transmittal letter with a current balance sheet and projected year's budget attached. The applicant's or borrower's name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific Agency direct loan applicants and borrowers. The prospectus will provide information regarding the availability of an Agency loan guarantee and interest assistance.

Reasonable rates and terms. Those commercial rates and terms which borrowers are expected to meet when borrowing for similar purposes and similar periods of time. The "similar periods of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan. In the case of Multi-Family Housing (MFH) loans, "reasonable rates and terms" would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other multi-family housing.

Servicing official. The district or county office official responsible for the immediate servicing functions of the borrower.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high

probability that all loans will be repaid as scheduled and in full.

§ 1951.253 Objectives.

(a) [Reserved]

(b) Borrowers must graduate to other credit at reasonable rates and terms when they are able to do so.

(c) If a borrower refuses to graduate, the account will be liquidated under the following conditions:

(1) The borrower has the legal capacity and financial ability to obtain other credit.

(2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH), and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be canceled when the loan is paid in full.

(d) The Agency will enforce borrower graduation.

§ 1951.254 [Reserved]

§ 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

§§ 1951.256—1951.261 [Reserved]

§ 1951.262 Farm Credit Programs—graduation of borrowers.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) *Graduation candidates.* Borrowers who are classified "commercial" or "standard" are graduation candidates. At least every 2 years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate.

(f) *Sending prospectus information to lenders.* (1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing only with the borrower's written permission. If more than one lender indicates an interest in providing credit, the borrower has the right to select a lender.

(2) If any borrower does not consent to the Agency contacting lenders directly on their behalf, the borrower must make formal application to at least

two local lenders who typically finance operations similar to that of the borrower. The borrower is responsible for any application fees. Letters of denial or rejection from lenders without formal application being made will not be accepted by the Agency. The borrower has 60 days from the date the borrower receives the prospectus information to make application and receive a response from lenders. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

§ 1951.263 Graduation of non-Farm Credit programs borrowers.

(a) [Reserved].

(b) [Reserved].

(c) *The thorough review.* Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, the financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower's fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower's own format if the borrower's financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(d) [Reserved].

(e) *Requesting the borrower to graduate.* (1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type borrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency, showing:

(i) The names of other lenders contacted;

(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

§ 1951.264 Action when borrower fails to cooperate, respond or graduate.

(a) When borrowers with other than FCP loans fail to:

(1) Provide information following receipt of both FmHA Guide Letters 1951-1 and 1951-2 (available in any Agency office), or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters 1951-F-5 and 1951-6 (available in any Agency office), or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.

(b) If an FCP borrower fails to cooperate after a lender expresses a willingness to consider refinancing the Agency loan, the account will be referred for legal action.

§ 1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be

considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

§ 1951.266 Special requirements for MFH borrowers.

All requirements of subpart E of part 1965 must be met prior to graduation and acceptance of the full payment from an MFH borrower.

§§ 1951.267-1951.299 [Reserved]

§ 1951.300 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0093.

Exhibit A of Subpart F—[Removed and Reserved]

53. Exhibit A of subpart F is removed and reserved.

Subpart S—Farmer Program Account Servicing Policies

54. Section 1951.906 is amended by revising the definitions of "Feasible plan," "Financially distressed," and "Good faith" to read as follows:

§ 1951.906 Definitions.

* * * * *

Feasible plan. A feasible plan is a plan based upon the applicant's or borrower's actual records that show the farming operation's actual income, production and expenses. Income tax returns and supporting documents (hereafter called income tax records) must be submitted to verify the actual records. The records, including income tax records, must be for the most recent 5-year period or if the borrower has been farming less than 5 years, the records for the period which the borrower has farmed. For borrowers who have been farming for less than 5 years, the borrower's actual records will be used along with other available records in the order listed in § 1924.56 to complete a 5-year history. Future production yields will be based on a 5-year average of the most recent past 5 years' actual production yields.

Borrowers that have yields affected by disasters in at least 2 of the 5 most recent years' actual production may exclude the crop year with the lowest actual yield. In accordance with § 1924.56, if the applicant's remaining disaster year's yields are less than the county average yield and the borrower's yields were affected by the disaster, county average yields will be used for that year. If county average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned farm program payments, to determine that the income from the farming operation and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and all taxes which are due during the projected farm business accounting period.

* * * * *

(3) Meet up to 105 percent, but not less than 100 percent, of the scheduled payments on all debts, except as provided in § 1941.14 for annual production loans or subordinations made to a delinquent borrower submitting a "NEW APPLICATION." The Agency will assume that a borrower needs up to 105 percent of the scheduled payments on all the debts for the business accounting period in order to meet the obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the projected income is less than 105 percent of the scheduled payments. In no case will a borrower receive restructuring if projected income is less than 100 percent of scheduled payments.

* * * * *

Financially distressed. A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered financially distressed if the borrower will not be able to project a feasible plan of operation for the next business accounting period.

* * * * *

Good faith. An eligibility requirement for Primary Loan Servicing including Net Recovery Buyout, and Leaseback/Buyback. A borrower is considered to have acted in "good faith" if the borrower has demonstrated honesty and sincerity in carrying out the agreements on Form FmHA 1962-1 (available in any Agency office) and any other written agreements with the Agency. Findings of a lack of good faith will be based on violations within the

borrower's control. These actions will demonstrate the borrower's intent to violate written agreements with the Agency. The Agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion by the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack good faith if the sole basis for such determination was the disposition of normal income security, as defined in § 1962.4, prior to October 14, 1988 without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that the Agency could have approved according to § 1962.17.

* * * * *

§ 1951.909 [Amended]

55. Section 1951.909 is amended:
 a. by removing the reference to "§ 1924.60 of subpart B of part 1924 of this chapter" in paragraph (e)(3)(vii) and adding the reference "§ 1924.55," in its place and;

b. by removing the reference "as set forth in subpart B of part 1900 of this chapter" in paragraph (e)(3)(vii).

56. Section 1951.909 is amended:
 a. by removing the phrase "FmHA or its successor agency under Public Law 103-354" in the heading of paragraph (e)(4) and in paragraph (e)(4)(xi) and adding the word "Agency" in its place; and

b. by removing and reserving paragraphs (e)(3)(vi)(B) and (C).

PART 1955—PROPERTY MANAGEMENT

57. The authority citation for part 1955 is revised to read as follows:

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

Subpart B—Management of Property

§ 1955.66 [Amended]

58. Section 1955.66 is amended:
 a. by removing the words "Farmer Program loans" in paragraphs (a)(2)(iii)(A) and adding the words "Farm Credit Programs loans" in their place;

b. by removing the reference "§ 1924.27 of" in paragraph (a)(2)(iii)(B);

c. by removing the phrase "FmHA or its successor agency under Public Law 103-354" in the third sentence of the introductory text and paragraphs (a)(1) and (a)(2)(iii)(C) and adding the words "the Agency" in its place; and

d. by removing the words "Agricultural Stabilization and

Conservation Service (ASCS)" in paragraph (a)(2)(iii)(D) and adding the words "the local FSA Farm Programs (formerly ASCS)" in its place.

PART 1962—PERSONAL PROPERTY

59. The authority citation for part 1962 is revised to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.5 [Removed and Reserved]

60. In part 1962 § 1962.5 is removed and reserved.

61. Section 1962.6 is revised to read as follows:

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by Agency lien.* (1) When additional chattel property not presently covered by an Agency lien is available and needed to protect the Government's interest, the County Supervisor will obtain one or more of the following:

- (i) A lien on such property.
- (ii) An assignment of the proceeds from the sale of agricultural products when such products are not covered by the lien instruments.
- (iii) An assignment of other income, including FSA Farm Programs (formerly ASCS) payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect the Government's interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) [Reserved]

(c) *Assignments of upland cotton, rice, wheat and feed grain payments.* Borrowers may assign FSA Farm Programs (formerly ASCS) payments under upland cotton, rice, wheat and feed grain programs.

(1) *Obtaining assignments.* Assignments will be obtained as follows:

- (i) Only when it appears necessary to collect operating-type loans.
- (ii) Only for the crop year for which operating-type loans are made, and
- (iii) For only the amount anticipated for payments as indicated on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel

Security," of the applicable upland cotton, rice, wheat and feed grain programs.

(2) *Selecting counties.* The County Supervisor then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them no later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form ASCS-36, "Assignments of Payment," which will be obtained from FSA Farm Programs.

(3) *Releasing assignments and handling checks.* (i) The County Supervisor will inform FSA Farm Programs that releasing its assignment whenever a borrower pays the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made only to the Agency, and the proceeds used as indicated on Form FmHA 1962-1.

§ 1962.8 [Amended]

62. Section 1962.8 is amended by removing and reserving paragraphs (a) and (b).

§ 1962.9 and 1962.12 [Removed and Reserved]

63. In part 1962 §§ 1962.9 and 1962.12 are removed and reserved.

64. Section 1962.13 is revised to read as follows:

§ 1962.13 Notification to potential purchasers.

(a) In States without a Central Filing System (CFS), all Farm Credit Programs borrowers prior to loan closing or prior to any servicing actions which require taking a lien on farm products, such as crops or livestock, must provide the names and addresses of potential purchasers. A written notice will be sent by the Agency, certified mail, return receipt requested, to these potential purchasers to protect the Government's security interest.

(1) The name and address of the debtor, with signature.

(2) The name and address of any secured party.

(3) The Social Security number or tax ID number of the debtor.

(4) A description of the farm products given as security by the debtor, including the amount of such products where applicable, the crop year, the county in which the products are located, and a reasonable description of the farm products.

(5) Any payment obligation imposed on the potential purchaser by the secured party as a condition for waiver or release of lien. The original or a copy of the written notice also must be sent to the purchaser within 1 year before the sale of the farm products. The written notice will lapse on either the expiration period of the Financing Statement or the transmission of a letter signed by the County Supervisor and showing that the statement has lapsed or the borrower has performed all obligations to the Agency.

(b) Lists of borrowers whose chattels or crops are subject to an Agency lien may be made available, upon request, to business firms in a trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. These lists will exclude those borrowers whose only crops for sale require FSA Farm Programs (formerly ASCS) marketing cards. The list is furnished only as a convenience and may be incomplete or inaccurate as of any particular date.

(1) [Reserved]

(2) [Reserved]

65. In § 1962.14 all references to "FmHA or its successor agency under Public Law 103-354" are removed and the words "the Agency" are added in their place.

66. Section 1962.16, introductory text is added and paragraph (a) is revised to read as follows:

§ 1962.16 Accounting by the borrower.

The Agency will maintain a current record of each borrower's security. Whenever an inspection is performed, the borrower must advise the Agency of any changes in the security and will complete and sign Form FmHA 1962-1 in accordance with § 1924.56 if it has not been previously completed for the year.

(a) *Agency responsibilities.* Chattel security will be inspected annually except in cases where the Agency official has justified in assessment or analysis review that no undue risk exists. An FO borrower who has been current with the Agency and who has provided chattels as additional security is an example of a case where an inspection may not be needed. All inspections will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less than 1 full crop year. The Agency official will discuss the provisions of §§ 1962.17 and 1962.18 and assist the borrower in completing the form. If a borrower does not plan to dispose of any chattel security, the form should be

completed to show this and should be signed. When the Agency official has other contacts with the borrower, the official should also check for dispositions and acquisitions of security. Changes will be recorded on the form, dated and initialed by the borrower and the agency official. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

* * * * *

67. Section 1962.17, paragraph (a), is revised to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General.* (1) The borrower must account for all security. When the borrower sells security, the property and proceeds remain subject to the Agency's lien until the lien is released. All checks, drafts, or money orders which the borrower receives for the sale of collateral listed on Form FmHA 1962-1 (available in any Agency office) must be payable to both the borrower and the Agency unless all Agency loan installments for the period of the form have been paid including any past-due installments. If the borrower disposes of collateral or uses the proceeds in a way not listed on Form FmHA 1962-1, the borrower will have violated the loan agreement, and the Government will not release its security interest in the collateral. Releases of sales proceeds will be terminated when the borrower's accounts are accelerated.

(2) Section 1924.56 requires that there must always be a current Form FmHA 1962-1 in the file of a borrower with a loan secured by chattels. If a borrower asks the Agency to release proceeds from the sale of chattels and there is a current Form FmHA 1962-1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given attachment 1 of exhibit A of subpart S of part 1951 of this chapter, a written explanation of the reasons for the denial, and the opportunity for an appeal in accordance with 7 CFR part 780. Immediately upon determining that the borrower does not have a current Form FmHA 1962-1 in the file, the County Supervisor will immediately contact the borrower to develop one.

(3) If the borrower requests a change(s) to Form FmHA 1962-1, and the County Supervisor can approve the change(s), the borrower and the County Supervisor will initial and date each

change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962-1. The form will be marked "Revised" and the borrower will be notified in writing confirming that the change(s) has been approved.

* * * * *

68. Section 1962.17 is amended by:
- a. removing the phrase "or its successor agency under Public Law 103-354" wherever it appears;
 - b. removing the word "FmHA," except when it refers to "Form FmHA," the second time it appears in paragraph (a)(1), in paragraphs (a)(2), (b)(2), (b)(2)(v), the second time it appears in paragraph (b)(2)(vii), in paragraphs (b)(2)(viii)(B), (b)(3), (b)(5), (c)(2)(i), in the first and last sentences of paragraph (d)(2)(ii), and in paragraphs (e)(1)(i) through (e)(1)(iii) and adding the words "the Agency" in its place;
 - c. removing the word "FmHA," except when it refers to "Form FmHA," in the first and second sentences of paragraphs (b)(1) and in paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(vii), (c)(2), (c)(2)(ii), (c)(4), (c)(5), (d), (f) and (g) and adding the word "Agency" in its place;
 - d. removing the reference to "1924.57(d)" in the last sentence of paragraph (b)(5) and adding the reference "1924.56" in its place;
 - e. removing the words "Farmer Programs" in paragraph (c)(5) and adding the words "Farm Credit Programs" in its place; and
 - f. removing the words "Farmers Home Administration" in paragraph (d)(2)(ii).

* * * * *

§ 1962.34 [Amended]

69. Section 1962.34 is amended by:
- a. removing paragraphs (f) through (h);
 - b. removing the phrase "FmHA or its successor agency under Public Law 103-354's" in paragraph (b)(1) and adding the words "the Agency's" in its place;
 - c. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraphs (b)(2), (b)(4), and (d), and the first word at the beginning of the first sentence and the second, fourth, and fifth sentences of paragraph (b)(3) and adding the word "Agency" in its place;
 - d. removing the phrase "Form FmHA or its successor agency under Public Law 103-354 1964-13" in paragraph (b)(3) and adding the words "Form FmHA 1965-13" in its place;
 - e. removing the words "Farmer Programs" in paragraphs (b)(3) and (d) and adding the words "Farm Credit Programs" in its place; and
 - f. by revising paragraph (e) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

- (e) *Agency actions.*
 - (1) *Transfer to eligible applicant.* The Agency will determine the transferee's eligibility for the type of loan to be assumed.
 - (2) *Release from liability.* If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:
 - (i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,
 - (ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and
 - (iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

* * * * *

§ 1962.40 [Amended]

70. Section 1962.40 is amended by:
- a. adding the words "subpart A of" immediately preceding the reference "part 1965" in paragraph (c);
 - b. removing the word "insured" in the heading of paragraph (d) and adding the word "direct" in its place; removing the words "an insured" in the first sentence of paragraph (d) and adding the words "a direct" in its place; and by removing the phrase "to FmHA or its successor agency under Public Law 103-354" in the first sentence of paragraph (d);
 - c. removing the phrase "FmHA or its successor agency under Public Law 103-354's" in the second sentence of paragraph (d) and in paragraph (e)(1) and adding the word "Government's" in its place;
 - d. removing all references to "FmHA or its successor agency under Public Law 103-354" in paragraphs (e)(1)(i) and (e)(2) and adding the words "the Agency" in their place; and
 - e. removing and reserving paragraph (e)(4).

§ 1962.43 [Removed and Reserved]

71. In part 1962 § 1962.43 is removed and reserved.

§ 1962.44 [Amended]

72. Section 1962.44 is amended by removing and reserving paragraphs (a) and (c); and by removing all references to "FmHA or its successor agency under Public Law 103-354" in paragraph (b)

and adding the words "the Agency" in their place.

§ 1962.46 [Amended]

73. Section 1962.46 is amended by:
- a. removing the words "an insured" in the fourth sentence of the introductory text of paragraph (c) and adding the words "a direct" in its place;
 - b. removing all references to "FmHA or its successor agency under Public Law 103-354" and adding the words "the Agency" in their place, and
 - c. by removing all references to "FmHA or its successor agency under Public Law 103-354's" in paragraphs (b) through (d) and adding the words "the Agency's" in their place.

§ 1962.47 [Amended]

74. Section 1962.47 is amended:
- a. by removing the words "an insured" in the first sentence of paragraph (b)(2)(iv) and adding the words "a direct" in its place;
 - b. by removing references to "FmHA or its successor agency under Public Law 103-354" in paragraphs (a)(3)(i), (b), introductory text, (b)(2)(i), (b)(2)(iv), and (c) introductory text, and adding the words "the Agency" in its place; and
 - c. by removing the phrase "or its successor agency under Public Law 103-354 1965-14" in the first sentence of paragraph (b)(2)(i).

Exhibit F of Subpart A—[Removed and Reserved]

75. Exhibit F of Subpart A is removed and reserved.

PART 1965—REAL PROPERTY

76. The authority citation for part 1965 is revised to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farm Credit Program Loans and Certain Note—Only Cases

§ 1965.13 [Amended]

77. Section 1965.13 is amended by:
- a. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph (f)(4)(ii) and adding the words "FSA Farm Credit Programs" in its place; and
 - b. removing the references to "§ 1924.57(c)(5)" and "§ 1924.57(b)" in paragraphs (f)(4)(ii)(A) and (B) and adding "§ 1924.56" in their place.

PART 1980—GENERAL

78. The authority citation for part 1980 is revised to read as follows:

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

Subpart B—Farm Credit Programs Loans

§ 1980.101 [Amended]

79. Section 1980.101 is amended by:
a. removing the words "Farmers Home Administration or its successor agency under Public Law 103-354" in the first sentence of paragraph (a);

b. removing all references to "FmHA or its successor agency under Public Law 103-354" in paragraphs (a) and (b) and adding the word "Agency" in their place;

c. adding and reserving paragraphs (c)(1) and (c)(2);

d. removing the words "Farmer Programs" in paragraphs (a) and (b) and adding the words "Farm Credit Programs" in its place;

e. removing the phrase "or its successor agency under Public Law 103-354" in paragraph (e)(1), and

f. by revising paragraph (e)(2) to read as follows:

§ 1980.101 Introduction.

* * * * *

(e) * * *
(2) *Contract of Guarantee (Operating Loans—Line of Credit only).* Lenders desiring a guarantee on a "line of credit" will use the method contained in subpart A of this part. Line of credit loans are guaranteed in accordance with Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)." Line of credit notes and agreements may not be sold by the originating lender, but the originating lender may use participating lenders in accordance with § 1980.119. Any amount advanced by the lender in excess of the line of credit ceiling set forth in the contract is not guaranteed by the Agency.

§ 1980.106 [Amended]

80. Section 1980.106(b) is amended by:

a. removing the words "Farmer Programs" in the definition of "Applicant" and adding the words "Farm Credit Programs" in its place;

b. removing the phrase "FmHA or its successor agency under Public Law 103-354" in the definition of *Approval official* and adding the word *Agency* in its place; and

c. adding the definition of *Agency* before the definition of *Applicant*.

* * * * *

Agency. Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1980.108 [Amended]

81. Section 1980.108 is amended by:
a. removing the phrases "FmHA or its successor agency under Public Law

103-354" and "FmHA or its successor agency under Public Law 103-354's" in paragraph (a)(1)(iii) and adding the words "the Agency" and "the Agency's" in their place respectively, and

b. by revising paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 1980.108 General provisions.

(a) * * *
(1) * * * (i) The lender is responsible for seeing that security is obtained and maintained to protect the interests of the lender and the Agency.

* * * * *
(2) * * * (i) Guarantees of parent, subsidiary, or affiliated companies may be required. Guarantees will be required in an amount which reasonably assures repayment of the loan or line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender or the Agency may require additional personal and corporate guarantees. The lender or the Agency also may require that such guarantees be secured.

* * * * *

82. Section 1980.109 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

* * * * *

(b) *Financing statements.* Commercial financing statement forms that comply with state laws and regulations may be used. If the financing statement does not already contain the following provisions, they must be inserted to meet Agency requirements:

* * * * *

§ 1980.103 [Amended]

83. Section 1980.110 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103-354" in the introductory text, in the first and last sentences of paragraph (a), the second time it appears in paragraph (b) and in paragraph (c) and adding the words "the Agency" and "The Agency" in their place;

b. removing the phrase "FmHA or its successor agency under Public Law 103-354 Instruction 440.1" in the last sentence of paragraph (a) and adding the words "FmHA Instruction 440.1" in its place; and

c. by removing the phrase "Form FmHA or its successor agency under Public Law 103-354 1980-24" in paragraph (b) and adding the words "Form FmHA 1980-24" in its place.

84. Section 1980.113 is amended by:
a. removing the phrase "FmHA or its successor agency under Public Law

103-354" wherever it appears in the introductory text and adding the word "Agency" in its place;

b. removing the phrase "or its successor agency under Public Law 103-354" in paragraphs (a), introductory text, (a)(1), (a)(2), (a)(5), and (b), introductory text;

c. removing the words "cash flow" in the third sentence in the introductory text of paragraph (a)(7) and adding the words "case file" in its place;

d. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph (a)(7)(ii) and adding the word "Agency" in its place;

e. removing the words "a disaster(s)" in the introductory text of paragraph (a)(7)(ii)(D) and adding the word "disasters" in its place;

f. revising paragraphs (a)(6), (a)(7)(i)(B), (a)(7)(ii)(B) and (C), (a)(7)(ii)(D)(1), and (a)(11)(ii) and (iii); and

g. adding new paragraphs (a)(12) and (c) to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

(a) * * *
(6) *Proposed loan agreement or line of credit agreements between the applicant and lender.* Loan agreements or line of credit agreements will address at least the following:

(i) Improved management or production practices to be implemented.

(ii) Requirements for accounting, recordkeeping, and financial reporting.

(iii) Limitations on the purchase or sale of capital assets.

(iv) Prohibitions against incurring additional debt or cosigning for the liabilities of others.

(v) Limits on family living expenses.

(vi) Insurance requirements and collateral inspections.

(vii) Purposes for which loan or line of credit funds can be used.

(viii) Interest rates and terms; how and when the rate may fluctuate; term of loan; and conditions related to the repayment, renewal, etc., of loans with balloon payments.

(ix) Credit ceiling, special limitations, and conditions precedent to annual readvancement or continuation of loans or lines of credit.

(x) Limitations on salaries paid to entity members, hired labor, or consultants. Limitations on withdrawals in the case of joint operations and partnerships.

(7) * * *

(i) * * *

(B) Government loan rates, *i.e.*, FSA (formerly ASCS) target prices.

* * * * *

(ii) * * *

(B) For those farmers with less than a 5-year production or yield history, the applicant's available production history will be utilized.

(C) For those farmers whose actual history is insufficient to provide an accurate estimate, consider the use of FSA Farm Programs actual records for specific farms, county averages, State averages, university data, or any other reliable sources of information that are acceptable to the lender, applicant, and the Agency.

(D) * * *

(I) County average yields will be used for disaster years in developing an historical base yield. If the applicant's disaster years are less than the county average yields, county average yields will be used for those years. If county average yields are not available, State average yields will be used. Once the yield base has been established, plus or minus adjustments may be made to reflect production trends or changes that will impact expected yields during the projected farm budget period. Adjustments can be made providing there is factual evidence to demonstrate that the yield used in the farm plan is the most reliable.

* * * * *

(11) * * *

(ii) A current, personal balance sheet from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation. To be current, the balance sheet must be no more than 90 days old on the date that the application is completed.

(iii) A current balance sheet of the cooperative, corporation, partnership, or joint operation.

* * * * *

(12) A concise narrative summary of the following items:

(i) The agricultural and nonagricultural enterprises comprising the operation, including any proposed to be added or dropped.

(ii) The real estate used in the operation including significant planned and existing improvements, significant conservation practices in effect, adequacy of facilities, external factors of negative or positive impact.

(iii) Chattel property, including the adequacy of machinery, equipment, and foundation livestock to carry out the existing or proposed operation.

(iv) The farm business organization and key personnel. For example, the legal business structure, roles, functions

and backgrounds of key individuals, the accounting and record keeping system, and agreements for transferring or dissolving the business.

(v) Goals. The short-term and long-term business goals of the operation.

(vi) Historical financial data.

(vii) Planned changes. Changes to overcome negative trends or other aspects of the operation. Consider such items as improved production techniques or management practices.

* * * * *

(c) *Market Placement applications.*

This paragraph explains the requirements for market placement applications for lenders that have expressed interest in financing or refinancing specific direct loan applicants described under § 1910.4 (c), as well as for "commercial" or "standard" borrowers defined under § 1951.252. If more than one lender is interested in providing financing, the direct loan applicant or borrower will rank the lenders in order of preference, and the Agency will present the market placement applications in that order. A market placement application should be ready for immediate acceptance by the lender and approval by the Agency, subject to the terms and conditions of the Request for Obligation of Funds and Conditional Commitment. The items needed for a market placement application are to be packaged by the Agency and consist of the following:

(1) Form FmHA 1980-25 will be prepared using estimated interest rates and terms. All other items required, with the exception of the loan or line of credit agreement, for a complete application under this section will be attached. The lender will submit the loan or line of credit agreement prior to the Agency's issuance of the Conditional Commitment.

(2) Form FmHA 1940-3, "Request for Obligation of Funds—Guaranteed Loans."

85. Section 1980.114 is amended by:

a. removing the introductory text; by removing and reserving paragraphs (a) and (b);

b. by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively;

c. by removing and reserving the ADMINISTRATIVE section;

d. by revising the section heading;

e. by removing and reserving the redesignated paragraph (d); by revising redesignated paragraph (e); and by adding a new paragraph (c) to read as follows:

§ 1980.114 Evaluation and assessment of applications.

* * * * *

(c) *Agency analysis of complete application.* In addition to other applicable requirements under this part, an application for a guarantee must meet the following conditions:

(1) The proposed loan or line of credit is for authorized purposes, and the amounts of borrowed capital are appropriate to successfully carry on the agricultural operation.

(2) The operation's capital position is adequate taking its strengths and weaknesses into consideration.

(3) The applicant has adequate repayment ability and has a reasonable chance of securing non-guaranteed commercial credit for the operation in the future. Developing an acceptable farm plan is the responsibility of the lender and its borrower.

(4) Security is adequate, values are reasonable, and loan terms are consistent with the useful life of the security and Agency regulations.

(5) The projected budget is reasonable in light of the applicant's stated goals.

* * * * *

(e) *Indication of acceptability.* If the Agency's evaluation indicates that the guarantee may be approved, the Agency will consider the guarantee request for eligibility.

§ 1980.115 [Amended]

86. Section 1980.115 is amended by:

a. revising the heading to read

"*Eligibility review.*";

b. removing paragraphs (a) through (d) and the ADMINISTRATIVE section;

c. removing all references in the introductory text to "County Committee" and adding the word "Agency," in their place; and

d. by removing the reference to "FmHA or its successor agency under Public Law 103-354" in the introductory text.

§ 1980.125 [Amended]

87. Section 1980.125 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraphs (a), introductory text, (b)(3), (c) introductory text, (d)(5), and in the seventh and eighth lines of paragraph (d)(4) and adding the words "the Agency" in its place; and

b. by removing the phrase "or its successor agency under Public Law 103-354" from paragraphs (b)(1)(i), (c)(4), (d)(3), (d)(6) and in the second and third lines of paragraph (d)(4).

§ 1980.126 [Amended]

88. Section 1980.126 is amended by removing the phrase "FmHA or its successor agency under Public Law 103-354" in the last sentence and

adding the words "the Agency" in its place.

§ 1980.129 [Amended]

- 89. Section 1980.129 is amended by:
 - a. removing the ADMINISTRATIVE section;
 - b. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph (a) and adding the words "the Agency" in its place; and
 - c. revising the introductory text to read as follows:

§ 1980.129 Planning and performing development.

The lender is responsible for seeing that any buildings or other improvements or major land development to be paid for with loan funds are properly completed within a reasonable period of time. The lender is responsible for perfecting the required lien in the security, which includes ensuring that the security property is free of any mechanic's, materialmen's, or other liens which would affect lien priority. All major construction, major repairs, and major land development must be performed by qualified parties under conditions considered standard and prudent by commercial lenders and their financial regulators. Form FmHA 449-11, "Certificate of Acquisition or Construction," must be completed and submitted to the Agency. In connection with construction, the lender is responsible for:

* * * * *

§ 1980.130 [Amended]

90. Section 1980.130 is amended by removing the ADMINISTRATIVE section.

§ 1980.136 [Amended]

- 91. Section 1980.136 is amended by:
 - a. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraphs (a) and (b) and adding the words "The Agency's" and "Agency" respectively in their place; and
 - b. by removing the word "instrument(s)" in paragraph (d) and adding the word "instruments" in its place.

§§ 1980.148, 1980.149 and 1980.153 [Removed and Reserved]

92. In Part 1980 §§ 1980.148, 1980.149, and 1980.153 are removed and reserved.

§ 1980.175 [Amended]

- 93. Section 1980.175(b) is amended by:
 - a. removing the phrase "FmHA or its successor agency under Public Law

103-354" in the introductory text and adding the word "Agency" in its place the first time it appears and to read "FmHA" the second time it appears and to read "Agency" in paragraph (b)(1)(i);

- b. removing the reference to "§ 1980.106(b)(21)" in the first sentence of paragraph (b)(1)(i) and adding the reference to "§ 1980.106(b)" in its place.

Exhibit A of Subpart B—[Amended]

94. Exhibit A of subpart B is amended by:

- a. removing the phrase "FmHA or its successor agency under Public Law 103-354" in paragraph III.A and adding the words "the Agency" in its place in the next to last sentence and to remove the phrase "or its successor agency under Public Law 103-354" everywhere else it appears in that paragraph;
- b. removing the phrase "or its successor agency under Public Law 103-354" in paragraph III.C; and
- c. by revising paragraph IV to read as follows:

IV. *Agency Actions.* The Agency will complete the evaluation described in § 1980.114 in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. The Agency may request additional information, review the lender's "complete application" file or make an independent evaluation of the application, if needed, to determine whether the applicant is eligible, the loan or line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. The Agency will make the final determinations on the eligibility of applicants for a guaranteed OL loan or line of credit, an SW loan, or FO loan, and the purposes and terms of such loans or lines of credit.

- A. [Reserved].
- B. [Reserved].

Each approved lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement. If liquidation of the account becomes imminent, the Lender will consider the borrower for Interest Assistance and request a determination of the borrower's eligibility by the Agency. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made on the borrower's eligibility to participate in the Interest Assistance Program.

* * * * *

Signed at Washington, DC, on July 2, 1996.
 Eugene Moos,
Under Secretary for Farm and Foreign Agricultural Services.
 Jill Long Thompson,
Under Secretary for Rural Development.
 [FR Doc. 96-17266 Filed 7-8-96; 8:45 am]
BILLING CODE 3410-05-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1765-96]

RIN 1115-AE40

Adding Oakland, California, and Sanford, Florida, to the List of Ports of Entry Accepting Applications for Direct Transit Without Visa

AGENCY: Immigration and Naturalization Service, Justice.
ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by adding Oakland, California, and Sanford, Florida, to the list of ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States for direct transit without visa. This change is necessary to accommodate the increase in international commerce service Oakland, California, and Sanford, Florida.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone number (202) 616-7499.

SUPPLEMENTARY INFORMATION: This final rule adds Oakland, California, and Sanford, Florida, to 8 CFR 214.2(c)(1) as ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Orlando Sanford Airport in Sanford, Florida, will be adding additional international passenger service, specifically arrivals transiting between the United Kingdom and Mexico. By allowing this airport to accept applications for direct transit without visa, the Orlando Sanford Airport will be able to accommodate these transit air