

from the listing for the Department of Health and Human Services, the Bureau of Mines and the Office of Territorial and International Affairs from the listing for the Department of the Interior, the United States Savings Bonds Division from the listing for the Department of the Treasury, and the Offices of the United States Marshal (94) (and related footnote 5) from the listing for the Department of Justice; and

C. Redesignating footnote 6 as footnote 5.

[FR Doc. 97-12898 Filed 5-15-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 1941

RIN 0560-AE99

#### Implementation of the Boll Weevil Eradication Loan Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This action is being taken to implement provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (Act). The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. The intended effect is to comply with the Act, assist in boll weevil eradication, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

**DATES:** Effective May 16, 1997. Comments must be submitted by July 15, 1997.

**ADDRESSES:** Submit written comments to the Director, Farm Loan Programs Loan Making Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-0522.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Hinton, Branch Chief, Funds Management/Direct Loans Branch, FSA. Telephone: 202-720-1472; facsimile: 202-690-1117; or e-mail: mhinton@wdc.fsa.usda.gov

#### SUPPLEMENTARY INFORMATION

##### Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this program. The administration certifies that this program will not have a significant economic impact on a substantial number of small entities. By statute this program applies only to State chartered non-profit organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Small entity farmers may be indirectly impacted by the program through lower producer assessments for boll weevil eradication, but the impact will be the same for large entity and individual producers.

#### Environmental Evaluation

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program". An environmental assessment (EA) has been completed. The EA found no significant environmental impact of the boll weevil eradication loan program. The record of decision and FONSI were published in the **Federal Register** on April 21, 1997.

#### Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. In accordance with section 212 (e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Farm Service Agency (FSA) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

The Agency has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR section 1320.3(c)(4), there are fewer than 10 persons or organizations from whom a collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do they meet the rule of general applicability. The Agency determined that the regulatory provisions of 5 CFR part 1320 do not apply to this rule; therefore, it was not reviewed by the Office of Management and Budget.

#### Background

The Boll Weevil Eradication Program is a cooperative program between the Federal and State governments and the cotton industry. The Animal and Plant Health Inspection Service (APHIS) provides eligible grower organizations: (1) Equipment; (2) technical and administrative support; and (3) cost-sharing not to exceed 30 percent of the program costs. The portion of program costs not provided for by APHIS are paid by the eligible grower organizations through the collection of producer assessments. The high initial costs of eradication programs result in levels of assessments which create significant financial hardship on many producers.

The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. By implementing the Boll Weevil Eradication Loan Program, FSA will provide loans to eligible grower organizations for the purpose of spreading initial startup costs over a period of several years, which will reduce the initial annual assessment

producers are required to pay. The end result will be a financially feasible program.

The determination of whether or not an organization is an eligible organization to receive APHIS cost share money is a determination made solely by APHIS. FSA will rely on that determination, in part, in determining whether or not a producer organization is an eligible organization to receive a boll weevil eradication loan from FSA. Because this determination is solely an APHIS determination it will be subject to any APHIS review rights but will not be subject to any FSA appeal rights in accordance with 7 CFR parts 11 or 780. Denial of a boll weevil eradication loan on other bases will be subject to FSA review rights.

The Act requires the Secretary to establish terms and conditions including repayment schedules, interest rates, and collateral requirements that best meet the needs of the borrowers. FSA has established the rates, terms, and collateral requirements of this regulation to allow for maximum flexibility. These requirements are negotiable to a large extent, but the loan will be adequately secured.

Cotton grower organizations which are involved in eradication programs have an urgent need for the new FSA loans. This need affects two critical areas: existing programs, and new expansion programs for 1997.

Existing programs in Texas and the Southeast are experiencing challenges regarding cashflow. Payroll expenses and the expense of ordering equipment and supplies for the coming season require significant resources immediately. These ongoing programs are not scheduled to collect grower assessments for the 1997 season until late spring or even mid-summer. Without the loan program to supplement APHIS grant money, they will not be able to meet their current operating expenses and the programs will be forced to be suspended due to a lack of financial resources. Their cashflow needs are critical.

In addition, several new areas have conducted referenda to determine areas of program expansion in 1997. Western Louisiana and most of Mississippi have held affirmative referenda and are moving toward starting their programs in the coming season. Large quantities of capital equipment and supplies will need to be ordered immediately to ensure delivery prior to the start of these two programs.

Any delay in obtaining FSA loans could seriously restrict current operations and spring activities in the existing program areas. Such delay

could also cripple program expansion into new areas, and possibly even delay program implementation for at least one year. Publication of this rule for immediate effect without prior notice and comment as an interim final rule, therefore, is warranted. Despite the need for the program to be effective upon publication of this interim rule, FSA will accept comments for a 60 day comment period after publication to determine if the program should be subsequently modified.

#### List of Subjects in 7 CFR Part 1941

Loan programs/agriculture, Pesticides and pests, Cotton.

For reasons set out in the preamble, 7 CFR chapter XVIII is amended as set forth below.

#### PART 1941—OPERATING LOANS

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

**Authority:** 5 U.S.C 301, 7 U.S.C. 1989, Pub. L. 104-180.

2. Subpart C is added to read as follows:

##### Subpart C—Boll Weevil Eradication Loan Program

Sec.

1941.970	Introduction.
1941.971	Definitions.
1941.972	[Reserved]
1941.973	[Reserved]
1941.974	[Reserved]
1941.975	Loan eligibility requirements.
1941.976	Eligible loan purposes.
1941.977	Environmental requirements.
1941.978	Equal opportunity and non-discrimination requirements.
1941.979	Other Federal, State, and local requirements
1941.980	Interest rates, terms, security requirements, and repayment.
1941.981	Economic feasibility requirements.
1941.982	[Reserved]
1941.983	[Reserved]
1941.984	[Reserved]
1941.985	[Reserved]
1941.986	Application processing.
1941.987	Loan approval and obligation of funds.
1941.988	Funding applications.
1941.989	Loan closing.
1941.990	Loan monitoring.
1941.991	Loan servicing.

##### Subpart C—Boll Weevil Eradication Loan Program

###### § 1941.970 Introduction.

The regulations of this subpart set forth the terms and conditions under which loans are made under the Boll Weevil Eradication Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and

liquidating these loans. The program objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

###### § 1941.971 Definitions.

As used in this subpart, the following definitions apply:

*APHIS* means the Animal and Plant Health Inspection Service, or any successor Agency.

*Extra payment* means a payment which was derived from sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan will not be considered as an extra payment.

*FSA* means the Farm Service Agency, its employees, and any successor agency.

*Non-profit corporation* means a private domestic corporation created and organized under the laws of the States in which the entity will operate whose net earnings are not distributable to any private shareholder or individual and which qualify under Internal Revenue Service code.

*Program subsidy account* means a budget account established under the Credit Reform provisions of the Omnibus Budget Reconciliation Act of 1990 to cover all credit-related budgetary outlays for a specific loan or guarantee program.

*Restructure* means to modify the terms of a loan. This includes modification of the interest rate or repayment term of the loan.

*Security* means assets pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

###### §§ 1941.972–1941.974 [Reserved]

###### § 1941.975 Loan eligibility requirements.

(a) An eligible organization must:

- (1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept APHIS' determination as to an organization's qualification);
- (2) Have appropriate charter and legal authority as a non-profit corporation to operate a boll weevil eradication program in any State and biological or geographic region of any State in which it operates;

- (3) Possess the legal authority to enter into contracts, including debt instruments;

- (4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-

eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;

(5) Be unable to obtain, and certify in writing, that credit from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time is not available; and

(6) Have the legal authority to pledge producer assessments as collateral for loans from FSA.

(b) Individual producers are not eligible for loans.

**§ 1941.976 Eligible loan purposes.**

(a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:

(1) Purchase or lease of supplies and equipment;

(2) Operating expenses, including but not limited to, travel and office operations;

(3) Salaries and benefits;

(b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

**§ 1941.977 Environmental requirements.**

No loan will be made until all Federal and state statutory and regulatory environmental requirements have been complied with.

**§ 1941.978 Non-discrimination requirements.**

No recipient of a boll weevil eradication loan will directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

**§ 1941.979 Other Federal, State, and local requirements.**

(a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.

(b) Borrowers are required to comply with all applicable:

(1) Federal, State, or local laws;

(2) Regulatory commission rules; and

(3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(i) Borrowing money, pledging security, and raising revenues for repayment of debt;

(ii) Accounting and financial reporting; and

(iii) Protection of the environment.

**§ 1941.980 Interest rates, terms, security requirements, and repayment.**

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested, and the impact of interest rate spreads on the amount to be charged to the program subsidy account at the time the loan is obligated.

(b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program and the impact of the loan term on total program costs charged to the program subsidy account at the time of loan obligation, as determined by FSA, but may not exceed 10 years.

(c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security including, but not limited to the following:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;

(ii) Investments and deposits of the applicant; and

(iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

**§ 1941.981–1980.985 [Reserved]**

**§ 1941.986 Application.**

A complete application will consist of the following:

(a) An application for Federal assistance (available in any FSA office);

(b) Applicant's financial projections including a cashflow statement showing the plan for loan repayment;

(c) Copies of the applicant's authorizing State legislation and organizational documents;

(d) List of all directors and officers of the applicant;

(e) Copy of the most recent audited financial statements along with updates through the most recent quarter;

(f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;

(g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;

(h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgements;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

**§ 1941.987 [Reserved]**

**§ 1941.988 Funding applications.**

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

**§ 1941.989 Loan closing.**

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

- (i) Anticipated default on FSA debt;
- (ii) Potential recall vote of an assessment referendum; or
- (iii) Being named as a defendant in litigation;
- (3) Submission of other specific financial reports for the borrower;
- (4) The right of deferral under 7 U.S.C. 1981a; and
- (5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

#### § 1941.990 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that timeframe.

#### § 1941.991 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal. Extra payments will not extend the time for the next scheduled payment. Funds from other payments will be applied first to any advances, then to accrued interest, and when all accrued interest is paid, the remainder of the payment will be applied to loan principal.

(c) *Restructuring.* FSA may restructure loan debts; provided:

- (1) the Government's interest will be protected,
- (2) the restructuring will be performed within FSA budgetary restrictions, and
- (3) the loan objectives cannot be met unless the loan is restructured. The provisions of part 1951, subpart S are not applicable to loans made under this section.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

Signed at Washington, D.C., on May 12, 1997.

**Dallas R. Smith,**

*Acting Under Secretary for Farm and Foreign Agricultural Services.*

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 931 and 934

[No. 97-38]

RIN 3069-AA63

#### Technical Amendment to Definition of Deposits in Banks or Trust Companies

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending the definition of the term "deposits in banks or trust companies" to expressly include a deposit in, or a sale of federal funds to, a branch or agency of a foreign bank located in the United States that is subject to the supervision of the Board of Governors of the Federal Reserve System (Board of Governors), as an investment eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

**EFFECTIVE DATE:** The final rule will become effective on May 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, or Julie Paller, Senior Financial Analyst, Office of Policy, 202/408-2842, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. See 12 U.S.C. 1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. See *id.* 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of assets. *Id.*

Among the assets specified in the Bank Act are "deposits in banks or trust companies." *Id.* 1431(g)(2).

In 1978, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), defined by regulation the phrase "deposits in banks or trust companies" to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of either the Federal Reserve System or the Federal Deposit Insurance Corporation (FDIC). See 43 FR 46835, 46836 (Oct. 11, 1978), *codified at* 12 CFR 521.5 (superseded). When Congress abolished the FHLBB in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition, without any change in substantive or technical matters, to § 931.5 of its regulations. See 54 FR 36757 (Aug. 28, 1989), *codified at* 12 CFR 931.5. This definition remained unchanged until September 1996, when the Finance Board adopted a final rule making clear that the term "banks" includes savings associations and including federal funds transactions as eligible to fulfill the liquidity requirement imposed on the FHLBanks by section 11(g) of the Bank Act. See 61 FR 40311 (Aug. 2, 1996), *codified at* 12 CFR 931.5. In February 1997, the Finance Board published for comment an interim final rule, which became effective upon publication, modifying the definition of "deposits in banks or trust companies" to include a deposit in, or a sale of federal funds to, a branch or agency of a foreign bank located in the United States that is subject to the supervision of the Board of Governors. See 62 FR 6860 (Feb. 14, 1997). The 30-day public comment period closed on March 17, 1997. See *id.* The one comment received in response to the interim final rule is discussed in Part II of the SUPPLEMENTARY INFORMATION.

##### II. Analysis of Public Comments and the Final Rule

For the reasons set forth in detail in the interim final rulemaking, the Finance Board believes that all U.S. branches and agencies of foreign banks should be treated equally, which was not the case under the prior rule. Accordingly, the Finance Board is adopting the amendments to the definition of "deposits in banks or trusts" made by the interim final rule without substantive change. In addition,