

Table I.—Comparative Similarities and Differences—Continued

FmHA	SBA
Loan Limits	
1. In addition to the ceiling limitations listed herein, the extent of loan assistance is also limited by the amount of actual loss, potential repayment ability, collateral available, the applicant's needs and other credit factors.	1. Home Loans—No statutory limit; however, the following administrative limits have been established: (a) \$50,000 for real estate, (b) \$10,000 for personal property, or (c) \$55,000 for combined purposes and up to \$50,000 for eligible refinancing.
(a) There is a statutory limit of \$500,000 per disaster per applicant for Actual Loss Loan assistance for both those who can obtain and those who cannot obtain their credit elsewhere.	2. Business Loans, Physical Disasters—No statutory limit for disasters commencing prior to enactment of Public Law 96-302, i.e., July 2, 1980; however, a \$500,000 administrative limit was in effect; exceptions permitted by SBA Regional Administrator to avoid undue financial hardship.
(b) Administrative ceilings for those who cannot obtain credit elsewhere have been established as follows:	For disasters commencing on or after July 3, 1980, the statutory limit is \$500,000 per disaster per borrower.
(1) Actual Loss Loan—\$500,000 per applicant per disaster designation for disasters occurring on or after October 1, 1978.	Limit may be waived by Administrator if applicant is a major source of employment in an area suffering a major disaster declared by the President.
(2) \$250,000 per applicant per disaster designation for disasters occurring through September 30, 1978.	3. Business Loans, Economic Injury—No statutory limit, the amount of economic injury determines the size of the loan.
(3) Annual Production and/or Major Adjustment Loans—\$1,500,000 outstanding principal balance authorized per EM borrower, regardless of the number of disasters. A further sub-limitation setting a \$300,000 maximum outstanding principal balance on Major Adjustment Loans for refinancing debts, which are secured by real estate, is established within the above \$1,500,000 ceiling. However, borrowers indebted for an EM Loan(s) on or before December 15, 1979, who cannot obtain credit elsewhere, may receive subsequent Annual Production Loans in amounts necessary to continue their normal operation(s) without regard to this indebtedness ceiling.	
Graduation Policy	
1. Reviewed to determine ability to obtain credit from other credit sources after a three (3) year period following receipt of the initial EM loan, and every two (2) years thereafter, until graduation is achieved or the loan(s) is paid in full. Refinancing, when available is mandatory for borrowers who, when they received their initial loans, were unable to obtain credit from other sources.	1. Business loan applicants, who can obtain credit elsewhere (loans approved at formula rate), will be reviewed for graduation three years after a Physical Disaster Business Loan is fully disbursed, and every two years thereafter for the term of the loan. Refinancing when available, is mandatory.
Economic Injury Loans	
1. EM loans for annual production purposes are similar.	1. SBA is authorized to make Economic Injury Disaster Loans to small business concerns that have suffered cash flow problems related to the disaster. These loans are for working capital only and do not allow for any expansion.

Exhibit C*Memorandum of Understanding Between Agricultural Stabilization and Conservation Service and Farmers Home Administration on Disaster Assistance***I. General**

Federal agencies that provide financial assistance to farmers suffering losses as a result of a declared or authorized disaster are required to ensure that there is not duplication of benefits under other programs. Within USDA it is very important that the Agricultural Stabilization and Conservation Service (ASCS) and the Farmers Home Administration (FmHA) maintain close coordination of their assigned disaster programs.

II. Purpose

The purpose of this memorandum of understanding is to coordinate certain ASCS disaster activities with the FmHA actual loss emergency loan program.

III. ASCS and FmHA Coordination on Disaster Activities to Farmers and Ranchers

The amount of any benefits received from ASCS disaster programs, including disaster payments and cost-sharing payments under the Emergency Conservation Program Emergency Feed Program, will be considered by FmHA in determining the maximum amount of an actual loss emergency loan that a farmer can receive. This will be done in accordance with FmHA regulations.

IV. Understanding Reached

A. FmHA County Supervisors prior to determining the maximum amount of any actual loss emergency loan, will consult with ASCS County Executive Directors regarding ASCS disaster benefits provided or to be provided to FmHA emergency loan applicants.

B. ASCS County Executive Directors, at the request of the FmHA County Supervisor, will provide FmHA with the following information from ASCS county office records: farmland and cropland acreages on the applicant's farm(s), production on crops, and amounts of payments or assistance provided or to be provided by ASCS to such applicant. Form FmHA 1945-29, "ASCS Verification of Farm Acreage, Production, and Benefits," will be used for this purpose.

C. FmHA County Supervisor will, in a timely manner, provide ASCS county offices with the names and addresses of farmers or ranchers who have had an actual loss emergency loan approved.

D. ASCS County Executive Directors will consult with FmHA County Supervisors before issuing disaster payments to farmers or ranchers for whom Form FmHA 1945-29 has been received. Sight drafts for payments of ASCS disaster benefits for farmers and ranchers whose FmHA loan application has been approved, will be prepared to show FmHA as joint payee and forwarded to the FmHA county office.

V. Superseding

This memorandum of understanding supersedes the one signed by the Administrator of FmHA on April 18, 1975, and the Administrator of ASCS on April 23, 1975.

VI. Amendment

This memorandum of understanding may be amended at any time by mutual consent of the agencies involved.

Dated: November 8, 1979.

Ray V. Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

Dated: October 30, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-32995 Filed 10-21-80; 8:45 am]

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7 CFR Part 1980**Guaranteed Loan Programs**

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to the administration of all the FmHA guaranteed loan programs. The changes involve defining local lender, requiring the lender to hold a part of the unguaranteed portion of the loan, and restricting the sale of the guaranteed loan to applicants. The intended effect of these changes is to clarify FmHA's position and strengthen the guaranteed programs. This action is taken in response to agency recommendations to correct deficiencies in the regulations as suggested by the Department's Office of Inspector General.

EFFECTIVE DATE: Effective October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Director, Business Management and Development Division, USDA, FmHA, Washington, D.C. 20250, Telephone: (202) 447-4150.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, 14th and Independence Ave. SW., Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant". Section 1980.13(a) and parts of Appendix B of Subpart A of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations have been amended. These

changes are made by FmHA to strengthen the Business and Industry (B&I) program. On November 23, 1979, FmHA published [in the Federal Register (44 FR 67134)] a notice of proposed rulemaking setting forth the proposed changes to the regulations. Interested parties were given an opportunity to submit, not later than January 21, 1980, any comments, views or recommendations regarding the proposed changes.

Discussion of Comments

The first issue dealt with redefining local lender. The FmHA indicated the proposed change will broaden lender eligibility within its guaranteed programs and should not adversely affect small local lenders participation in the program. A total of nine comments were received with majority in favor of the change. Several respondents recommended that the changes be effected only on loans closed under commitments issued after the date of publication of the final rules in the Federal Register. FmHA agrees with this recommendation. Two respondents suggested the 100-mile limit be expanded to the boundaries of a State. FmHA believes the lender should be located fairly close to the borrower's place of business if it is to carry out its responsibilities for servicing the loan. Having considered all comments FmHA will adopt the proposed rule without change by amending Section 1980.13(a).

The second issue involves an amendment to restrict the lender from selling a portion of the loan to the applicant or other parties which would have a vested interest. This provision is necessary to eliminate any possible conflict of interest the applicant would have when a loan is guaranteed by the Government. The respondents were unanimous in their comments recommending that FmHA implement this amendment. Therefore, FmHA will adopt without change the amendment of paragraph III A of Appendix B, Form FmHA 449-35, "Lender's Agreement."

The final issue deals with requiring the lender to hold in their own portfolio a minimum of 10 percent of each loan for Farmer Program Loans and five percent of the total loan for other loan programs. The respondents held a variety of views concerning this issue. The majority did favor the change with modification. Those respondents who did not favor the amendment represented two groups. The National Association of Home Builders expressed their concern that such a shared risk concept would have an adverse impact upon guaranteed housing loans. Four other respondents, all Mortgage Bankers, opposed the

change since they do not generally invest in long-term loans. For B&I loan purposes, Mortgage Bankers represent only two percent of the lenders involved in the program. FmHA believes the shared risk concept is a key factor in strengthening the overall guaranteed programs. However, we recognized that the guaranteed housing loan program will need the backing of the Mortgage Bankers if the program is to continue to grow. Therefore, FmHA will amend its proposed rule regarding paragraph III A 3 b of Appendix B, Form FmHA 449-35 to exclude the housing program from the shared risk requirement. In addition an administrative clarification has been made in paragraph XII B, to indicate FmHA, "at its option", will proceed with liquidation.

Accordingly, § 1980.13(a) and parts of Appendix B of Subpart A of Part 1980 are amended as follows:

1. Section 1980.13(a) is amended and reads as follows:

§ 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in (1), (2), and (3) below FmHA will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. FmHA will use the lender as the point of contact for the administration of the program.

FmHA may also permit a lender to be the lender for the loan without being local if:

- (1) The lender normally makes loans in the region or geographic location in which the applicant's project being financed is located; or
- (2) The lender has specific expertise in loans for the proposed project and provides evidence of such expertise to the satisfaction of FmHA; or
- (3) (For B&I loans only), the lender has provided, in the past, to the applicant a substantial portion of the applicant's credit requirement on a regular basis.

PART 1980—APPENDIX B [AMENDED]

2. Paragraphs III A, III A 3 b and the third sentence of Paragraph of XII B of Appendix B of Subpart A of Part 1980 are amended and read as follows:

Appendix B—Form FmHA 449-35, Lender's Agreement, United States Department of Agriculture, Farmers Home Administration

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The lender may retain all of the guaranteed loan. The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families, its officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan, the lender may proceed under the following options:

3. Participation.

(b) The lender is required to hold in its own portfolio or retain a minimum of 10% for Farmer Program loans and 5% for Business and Industry program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan except for Farmer Program loans only through participation. However, the lender will always retain the responsibility for loan servicing and liquidation.

XII. Liquidation.

B. FmHA's response to Lender's liquidation proposal.

Should FmHA and the Lender not agree on the Lender's liquidation proposal, FmHA at its option will proceed with the liquidation as follows:

Note.—This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, P.L. 91-190, an Environmental Impact Statement is not required.

[7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sect. 209, Title II, P.L. 95-334, 92 Stat. 432; Sect. 10, P.L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7

CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: May 19, 1980.

Alex P. Mercure,

Assistant Secretary for Rural Development.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations governing discipline in adjudicatory hearings, 10 CFR 2.713, to (1) reiterate the standard of conduct expected of participants in proceedings; (2) clarify who may appear before NRC in a representative capacity; (3) clarify and bolster the authority of the presiding officer, Appeal Board, and Commission to suspend any party or representative of a party from participation in a particular proceeding where, as a result of the party's or representative's conduct, this is necessary for the orderly conduct of the proceeding; and (4) specify special interlocutory appeal procedures governing suspensions from participation.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce A. Berson, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492-7678.

SUPPLEMENTARY INFORMATION: On January 18, 1980, the Nuclear Regulatory Commission published in the *Federal Register* (45 CFR 3594) a proposed amendment to its regulations, 10 CFR Part 2—"Rules of Practice for Domestic Licensing Proceedings," regarding representation and conduct of attorneys in adjudicatory proceedings. Interested persons were invited to submit comments for consideration in connection with the proposed amendment by March 3, 1980.

Four comment letters were received from interested persons during the 45 day comment period. The comments addressed the following issues:

1. The necessity for the rule;
2. The standards of conduct;
3. Representation at NRC proceedings;

4. The process of appealing suspensions; and

5. Referral of suspended attorneys to the state bar.

After careful consideration, the Commission has determined that no changes to the proposed rule based on the comments are necessary. However, the Commission has revised and broadened the process of appealing suspensions and made two other minor clarifications to the rule based upon its own review. The clarifications (1) add the words "or officer" to the second sentence of § 2.713(b) following "duly authorized member" to reflect actual practice and the intent of the rule; and (2) provide for mandatory referral of an attorney suspended for more than 1 day to the appropriate state bar even in the absence of an appeal. (Issues 3 and 5 below). The revision to the process of appealing suspensions is discussed below (Issue 4).

The public comments and changes made by the Commission are discussed below.

1. Necessity for the rule: Two commenters believe the rule is unnecessary. One suggests that the presiding officer has adequate existing authority under 10 CFR 2.718, "Power of the Presiding Officer," to control the conduct of the proceeding and the other states that local authorities could be called if a true disturbance were created. Although disciplinary authority may be implied from 10 CFR 2.718(e), the Commission believes it is preferable to specifically codify such authority and the associated procedures after public notice and opportunity for comment. The Commission also believes presiding officers and other NRC tribunals should have specific authority to discipline representatives in NRC proceedings, when necessary, without routinely requesting (or waiting for a situation to require) the assistance of local law enforcement authorities, as suggested by the second commenter.

2. Standards of conduct: Three commenters express the view that the types of conduct enumerated in proposed § 2.713(c)(1) which may result in the suspension of a representative from a proceeding are vague, overly broad, or subject to abuse by a presiding officer. One commenter also states that the meaning and consequence of "censure" are not defined.

The rule is designed to be read and applied in light of its purpose. Therefore, presiding officers will generally apply judicially developed precedents governing contempt in imposing and fashioning appropriate disciplinary sanctions. Since the presiding officer is charged with conducting a fair

proceeding in a reasonable and even-handed manner, he or she is expected to apply the provisions of this rule in a similar fashion. The Commission recognizes that a presiding officer might, on occasion, erroneously suspend a representative from a proceeding for conduct not warranting such action. The appeal process provided in the rule would correct any such error. Therefore, the Commission expects no abuse of the disciplinary standards.

The Commission believes the meaning and consequence of censure are self-explanatory. Censure, public or private, is generally a more appropriate remedy for an isolated instance of misconduct than suspension. In addition, the rule makes clear what conduct is expected of representatives. (See generally, ABA Code of Professional Responsibility and Ethical Considerations, EC-7-34 through and including 7-39 and 8-5.)

3. Representation at NRC proceedings: One commenter suggests that "the restriction of attorney-at-law to only those admitted to the bar of U.S. or District of Columbia Courts or the highest court of any State, territory, or possession of the United States may well work to deprive public-interest intervenors of otherwise well-qualified counsel or other legal representation." The Commission believes the restriction is appropriate because admission before one of the specified courts is generally required before an attorney may be licensed to engage in the practice of law in a particular jurisdiction.

The Commission has determined that the words "or officer" should be added to the second sentence of § 2.713(b), following "duly authorized member." The clarification makes clear that a partnership, corporation or unincorporated association may be represented by a duly authorized officer, as well as by a member or attorney and reflects both actual practice and the intent of the rule.

4. Process of appealing suspensions: The provisions for appealing suspensions received a number of comments. Two commenters express concern that the appeals process requires a suspended individual to overcome a presumption of guilt and establish his or her innocence. The Commission disagrees with the characterization. Although there is some presumption that the action of a lower administrative tribunal is correct, the Commission or an Atomic Safety and Licensing Appeal Board need not accede to a lower board's decision simply because it is supported by "substantial evidence" or is not "clearly erroneous." See *Duke Power Company* (Catawba

Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397 (1976).

Another commenter recommends that a proceeding be automatically stayed whenever a representative is suspended, even for one day or less. The commenter notes that disciplinary action normally focuses on the conduct of the representative rather than the party and recommends that the "necessary to prevent injustice" standard governing the granting of a stay in § 2.714(c)(2) be deleted. She recommends instead that the party be given the option of electing either an automatic stay pending completion of the suspension (or final disposition of the appeal, if appealed) or a stay for a reasonable period of time in which to secure other representation.

The Commission believes that the proposed rule adequately protects the interests of an affected party by permitting a stay for a reasonable period of time in order to obtain other representation if necessary to prevent injustice. Whether a stay should be granted in a particular case should be left to the discretion of the presiding officer, since that individual will be most familiar with the procedural posture of the proceeding and the impact of the suspension upon the parties. Under the commenter's proposal, a lengthy suspension could translate into a day-for-day stay of the entire proceeding, even though alternative representation might be available much sooner. This could add unnecessary delay to licensing proceedings.

The commenter also suggests the establishment of an alternative appeals process in cases in which the Commission itself orders a suspension so that the Commission does not also function as the appellate body. Since the Commission acts as a collegial body in licensing proceedings, there will be no further administrative appeal of suspensions it orders. Judicial review would be available to a suspended representative. Therefore, the Commission believes an alternative appeals process is unnecessary.

One commenter suggests that the rule be amended to require the completion of an appellate hearing within 10 days of the imposition of the suspension or else the suspension should be revoked, not merely lifted. According to the commenter, this change is designed to prevent an automatic 10-day non-reviewable suspension. The Commission notes that it may not always be practical to complete a hearing within 10 days of the imposition of a suspension because the rule provides 10 days for filing an appeal. Since proposed § 2.713(c)(3) directs that a necessary

hearing shall commence as soon as possible after the filing of an appeal, the Commission believes that the intent of the comment is met.

However, after its own further review, the Commission has decided to broaden and revise the process for appealing suspensions in three respects. First, an appeal of a reprimand, censure, or suspension not exceeding 1 day is authorized. The proposed rule limited review to suspensions exceeding 1 day. The Commission believes that a right to appeal any sanction imposed pursuant to this section is desirable because, at least in the case of an attorney, an administratively unappealable sanction may saddle an individual with an irrevocable, and possibly unjustified, professional "black mark." In the District of Columbia, for example, an applicant for admission to the bar must state whether he or she has been suspended, reprimanded or censured as an attorney.

Second, the Commission has revised the proposed rule to delay the effectiveness of suspensions exceeding 1 day for a period of 72 hours from the time of the suspension order to permit the suspended individual to request a stay of the sanction from the reviewing tribunal pending appeal. A timely stay request will stay the imposition of the sanction until the reviewing tribunal rules on the motion. Ten days are provided for the Commission or Appeal Board, as appropriate, to rule on the motion. All time limits will be computed in accordance with 10 CFR 2.710. Responses to the stay request from other parties will not be entertained since they have no substantial interest in the disposition of the motion. In ruling on the motion, the reviewing tribunal will consider only the first two stay factors specified in 10 CFR 2.788(e) (whether the moving party has made a strong showing that it is likely to prevail on the merits and whether the party will be irreparably injured unless a stay is granted). The third and fourth factors (harm to other parties and the public interest) are excluded because each has little bearing on the proper disposition of the motion. This mechanism is provided in a new § 2.713(c)(4).

Finally, the Commission has modified the third sentence of proposed § 2.713(c)(3) to require an Atomic Safety and Licensing Appeal Board or the Commission, as appropriate, to consider each appeal on the merits. The modification will ensure that an appeal would not be declared moot if the suspension has been "served" prior to appellate consideration.

5. Referral to the state bar: One commenter recommends deletion of the

provision of proposed § 2.713(c)(3) relating to notification of the appropriate state bar(s) if an attorney's suspension is upheld at the conclusion of the appeal, since no corresponding sanctions are imposed on non-lawyers and no pattern of attorney misconduct is cited. The Commission does not agree with this recommendation. Attorneys have an independent ethical obligation under the American Bar Association's Code of Professional Responsibility to refrain from engaging in undignified or discourteous conduct when appearing before a court or administrative tribunal. (DR 7-106(c)(6)). Therefore, referral to the state bar(s) is appropriate in such cases.

However, proposed § 2.713(c)(3) implies that if an attorney receives a suspension exceeding 1 day and does not appeal, there is no referral to the state bar. The Commission has clarified the rule by requiring mandatory referral of attorneys whose suspensions exceed 1 day even when no appeal is taken. Referral should not depend upon whether an appeal is taken. Logic teaches that a suspended attorney who does not appeal may be more guilty than his peer who elects to appeal; therefore, both attorneys should be referred to the state bar if the suspension exceeds 1 day.

Pursuant to section 161(p) of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552, 553 and 555(b) of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 2 are published as a document subject to codification, to be effective on November 21, 1980.

Section 2.713 is revised to read as follows:

§ 2.713 Appearance and practice before the Commission in adjudicatory proceedings.

(a) Standards of Practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Appeal Boards, the Atomic Safety and Licensing Boards, and Administrative Law Judges function in a quasijudicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-

law. A party may be represented by an attorney-at-law provided the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance which shall state his or her name, address, and telephone number; the name and address of the person on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

(c) Reprimand, Censure or Suspension from the Proceeding.

(1) A presiding officer, an Atomic Safety and Licensing Appeal Board, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who shall refuse to comply with its directions, or who shall be guilty of disorderly, disruptive, or contemptuous conduct.

(2) A reprimand, a censure or a suspension which is ordered to run for one day or less shall be ordered with grounds stated on the record of the proceeding and shall advise the person disciplined of the right to appeal pursuant to paragraph (c)(3) of this section. A suspension which is ordered for a longer period shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal and to request a stay pursuant to paragraphs (c)(3) and (c)(4) of this section. A proceeding may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Atomic Safety and Licensing Appeal Board or the Commission, as appropriate. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Appeal Board or Commission, as appropriate, shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Appeal Board or Commission, as appropriate, may conduct further evidentiary

hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Appeal Board or the Commission, as appropriate, provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, the Appeal Board, or the Commission, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Appeal Board or Commission.

(4) A suspension exceeding 1 day shall not be effective for 72 hours from the date the suspension order is issued. Within this time a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from other parties will be entertained. If a timely stay request is filed, the suspension shall be stayed until the reviewing tribunal rules on the motion. The stay request shall be in writing and contain the information specified in §§ 2.788(b)(1), (2) and (4) of this part. The Appeal Board or Commission, as appropriate, shall rule on the stay request within 10 days after the filing of the motion. The Appeal Board or Commission shall consider the factors specified in §§ 2.788(e)(1) and (e)(2) of this part in determining whether to grant or deny a stay application.

(Sec. 161(p), Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C. this 15th day of October, 1980.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 80-32816 Filed 10-21-80; 8:45]

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0328]

Reserve Requirements of Depository Institutions; Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: Under the Monetary Control Act of 1980, "bankers' banks" are exempt from Federal reserve requirements. The Board has determined that a depository institution will be regarded as a bankers' bank if it meets certain criteria with regard to its ownership and the extent to which it does business with entities other than depository institutions. The Board has also adopted criteria that will be applied in determining whether to grant requests from bankers' banks to act as a correspondent for the pass-through of required reserves of other depository institutions.

DATE: Effective November 13, 1980.

FOR FURTHER INFORMATION CONTACT:

Gilbert T. Schwartz, Assistant General Counsel (202/452-3625), Lee S. Adams, Senior Attorney (202/452-3623), Paul S. Pilecki, Attorney (202/452-3281), or Myron L. Kwast, Economist (202/452-2686), or Paul P. Burik, Economist (202/452-2556), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Under section 19 of the Federal Reserve Act ("Act"), as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221), the Board has adopted the following interpretation, effective November 13, 1980, with regard to the characteristics a depository institution must possess in order to qualify for the "bankers' bank" exemption from reserve requirements contained in section 19(b)(9) of the Act. The Board also established criteria to be applied to determine whether a specific bankers' bank is qualified to act as a pass-through correspondent for nonmember depository institutions that are subject to the Act.

Effective November 13, 1980, pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*), Regulation D (12 CFR Part 204) is amended by adding a new § 204.121 as follows:

§ 204.121 Bankers' banks.

(a) (1) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221), imposes Federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Under section 19(b)(9), however, a depository institution is not required to maintain reserves if it:

- (i) Is organized solely to do business with other financial institutions;
- (ii) Is owned primarily by the financial institutions with which it does business; and

(iii) Does not do business with the general public.

Depository institutions that satisfy all of these requirements are regarded as "bankers' banks."

(2) In its application of these requirements to specific institutions, the Board will use the following standards:

(i) A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in paragraph (a)(2)(iii) of this section.

(ii) A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 per cent or more of its capital is owned by other depository institutions. The 75 per cent or more ownership rule applies regardless of the type of depository institution.

(iii) A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 per cent of total assets, and the extent to which it receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 per cent of total liabilities (or net worth if the institution does not receive deposits).

If a depository institution is unable to meet all of these requirements on a continuing basis, it will not be regarded as a bankers' bank and will be required to satisfy Federal reserve requirements on all of its transaction accounts and nonpersonal time deposits.

(b) (1) Section 19(c)(1) of the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) provides that Federal

reserve requirements may be satisfied by the maintenance of vault cash or balances in a Federal Reserve Bank. Depository institutions that are not members of the Federal Reserve System may also satisfy reserve requirements by maintaining a balance in another depository institution that maintains required reserve balances at a Federal Reserve Bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility if the balances maintained by such institutions are subsequently passed through to the Federal Reserve Bank.

(2) On August 27, 1980, the Board announced the procedures that will apply to such pass-through arrangements (45 FR 58099). Section 204.3(i)(1) provides that the Board may permit, on a case-by-case basis, depository institutions that are not themselves required to maintain reserves ("bankers' banks") to act as pass-through correspondents if certain criteria are satisfied. The Board has determined that a bankers' bank may act as a pass-through correspondent if it enters into an agreement with the Federal Reserve to accept responsibility for the maintenance of pass-through reserve accounts in accordance with Regulation D (12 CFR 204.3(i)) and if the Federal Reserve is satisfied that the quality of management and financial resources of the institution are adequate in order to enable the institution to serve as a pass-through correspondent in accordance with Regulation D. Satisfaction of these criteria will assure that pass-through arrangements are maintained properly without additional financial risk to the Federal Reserve.

(3) In order to determine uniformly the adequacy of managerial and financial resources, the Board will consult with the Federal supervisor for the type of institution under consideration. Because the Board does not possess direct experience with supervising depository institutions other than commercial banks, and does not intend to involve itself in the direct supervision of such institutions, it will request the National Credit Union Administration to review requests from credit unions that qualify as bankers' banks and the Federal Home Loan Bank Board to review requests from savings and loan associations that qualify as bankers' banks, regardless of charter or insurance status. (The Board, itself, will consider requests from all commercial banks that qualify as bankers' banks.) If the Federal supervisor does not find the institution's managerial or financial resources to be adequate, the Board will

not permit the institution to act as a pass-through correspondent. In order to assure the continued adequacy of managerial and financial resources, it is anticipated that the appropriate Federal supervisor will, on a periodic basis, review and evaluate the managerial and financial resources of the institution in order to determine whether it should continue to be permitted to act as a pass-through correspondent. It is anticipated that, with respect to state chartered institutions, the Federal supervisor may discuss the request with the institute State supervisor. The Board believes that this procedure will promote uniformity of treatment for all types of bankers' banks, and provide consistent advice concerning managerial ability and financial strength from supervisory authorities that are in a better position to evaluate these criteria for depository institutions that are not commercial banks.

(4) Requests for a determination as to whether a depository institution will be regarded as a bankers' bank for purposes of the Federal Reserve Act or for permission to act as a pass-through correspondent may be addressed to the Federal Reserve Bank in whose District the main office of the depository institution is located or to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The Board will act promptly on all requests received directly or through Federal Reserve Banks.

By order of the Board of Governors of the Federal Reserve System, October 14, 1980.

Theodore E. Allison,
Secretary of the Board.

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FARM CREDIT ADMINISTRATION

12 CFR Part 611

Powers, Duties, and Responsibilities of District Farm Credit Boards

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration publishes an amendment to its regulation pertaining to the powers, duties and responsibilities of district Farm Credit boards. Under the new amendment, the personnel policies adopted by the boards for the Farm Credit institutions will include all elements of a modern human resources management program.

EFFECTIVE DATE: October 22, 1980.