Plant Variety Protection Office with a copy of the current plant variety protection laws and regulations for the country of which the applicant is a national and an accurate English translation of such laws and regulations.

* * * * *

3. Section 180.5(c) is revised to read as follows:

* * * * *

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, Livestock, Meat, Grain, and Seed Division, AMS, USDA, Room 500, National Agricultural Library Building, Beltsville, Maryland 20705.)

* * * * *

4. Section 180.7 paragraph (a)(7) and paragraph (b) are revised to read as follows:

§ 180.7 Statement of applicant.

(a) * * *

(7) He or his privies have not offered for sale or marketed the variety, with the agreement of the breeder, in a foreign state for longer than 6 years in the case of vines, forest trees, fruit trees, and ornamental trees, including, in each case, their rootstocks, or for longer than 4 years in the case of all other plants.

(b) If the same variety has been marketed with the agreement of either the applicant or his privies, the applicant shall state the names of the countries in which the variety was marketed and give the day, month, and year of first marketing in each country.

* * * * *

Done at Washington, D.C.: June 29, 1983.

Kenneth Latcholia,

Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-18092 Filed 7-5-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 924

Fresh Prunes Grown in Designated Counties in Washington, and in Umatilla County, Oregon; Amendment of Prune Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This action increases the surface color requirement of fresh prunes shipped from the production area from prunes having at least two-thirds purplish color to at least three-fourths purplish color. This change is necessary to assure shipment of mature prunes in the interest of producers and consumers.

DATES: July 6, 1983 through August 31, 1983; comments which are received by August 5, 1983 will be considered prior to issuance of a final rule to become effective September 1, 1983.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the fresh prune crop for the benefit of producers and consumers and will not substantially affect costs for the directly regulated persons.

This amendment to Prune Regulation 19 is issued under Marketing Order No. 924 (7 CFR Part 924), regulating the handling of fresh prunes grown in designated counties in Washington, and in Umatilla County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as Amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Washington-Oregon Fresh Prune Marketing Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The terms of this amendment would be effective July 6, 1983 through August 31, 1983. The final rule will be effective on and after September 1, 1983.

The regulation currently in effect (Prune Regulation 19) was issued on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. The committee will continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington-Oregon fresh prunes. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will review committee recommendations and information submitted by the Committee, and other available information, and determine whether modification, suspension or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The committee met on May 25, 1983, to consider supply and market conditions bearing on the marketing of the fresh prune crop. The committee reports that there is a tendency for some handlers to ship immature prunes to take advantage of the high prices early in the season. This has resulted in consumer dissatisfaction and such disatisfaction has been reflected in reduced demand. The current regulation requires that at least two-thirds of the surface of the prune shall be purplish in color. Purplish color is an indicator of maturity of fresh prunes and unless the fruit is mature it will not properly ripen. The committee unanimously recommended that the regulation be amended to specify that at least three-fourths of the surface of the prune shall be purplish in color. This amendment is designed to assure that shipments of fresh prunes are properly mature. Except for the changes in surface color requirements, the current grade requirement applicable to fresh prune shipments would remain unchanged.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. Handlers have been apprised of such provisions and the effective date.

List of Subjects in 7 CFR Part 924

Marketing agreements and orders, Prunes, Washington, Oregon.

PART 924—[AMENDED]

Therefore, § 924.319 is revised by amending that part of paragraph (a)(1) which precedes the word *Provided* to read as follows:

§ 924.319 Prune Regulation 19.

(a) * * *

(1) Such prunes grade at least U.S. No. 1, except that at least three-fourths of the surface of the prune is required to be purplish in color, and such prunes

measure not less than 1¼ in diameter as measured by a rigid ring: * * *

* * * * *

(Secs. 1–19, 48 Stat. 31, as Amended; 7 U.S.C. 601–674)

Dated: June 30, 1983.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-18091 Filed 7-5-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1901, 1944, 1948, 1980 and 1990

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its General and Business and Industrial Loan Program (B&I) regulations pertaining to the administration of the guaranteed loan programs. The changes are classified into two categories: those that are contained in various sections of the regulations which may affect the public and those which are administrative and involve internal Agency procedures which do not affect the public. These amendments relate to factors FmHA considers to be appropriate to assure more viable projects and to eliminate various loopholes and terminology which has caused the Agency considerable time and expense and increased potential liability for losses in the event of default. These actions are being taken in response to recommendations made to the Agency and program managers to correct these deficiencies. The effect of these actions is to strengthen overall credit factors, evaluations and servicing requirements of the FmHA B&I guaranteed loan program specifically and other FmHA guaranteed programs generally.

In addition, FmHA is removing from the Code of Federal Regulations (CFR) its regulations regarding loans for Biomass Energy and Alcohol Fuel Loans and Guarantees (BEAF) set forth under Part 1990 of this Chapter. This regulation is being removed because it is not needed and no use for it is anticipated in the future. The intended effect of this action is to remove an unneeded regulation from the CFR.

EFFECTIVE DATE: Effective July 6, 1983; however, these amendments shall not apply to any loan(s) where a Conditional Commitment for Guarantee was issued by FmHA and accepted by the lender prior to date of publication.

FOR FURTHER INFORMATION CONTACT: Thomas D. Campbell, Supervisory Loan Specialist, Business and Industry Loan Division, USDA, FmHA, Washington, DC 20250, telephone: (202) 475–3812.

SUPPLEMENTARY INFORMATION: The final action in Part 1980 has been reviewed under USDA procedures established in the Secretary's Memorandum 1512–1 to implement Executive Order 12291 and has been determined "non-major".

The action on Part 1990 has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements since it is an internal agency management action to remove unneeded regulations from the CFR.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemptions in 5 U.S.C. 553 with respect to such rules. The action to remove Part 1990, however, is not published for proposed rulemaking since the purpose of the action is administrative in nature and publication for comment is unnecessary.

The BEAF program regulations were published in the **Federal Register** in 45 FR 72049, on October 30, 1980, pursuant to the Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96–294, Title II). The Agency believes that to maintain this regulation is not cost effective for the following reasons:

(1) No projects have been funded under the BEAF program since its inception October 30, 1980, and the Administration does not expect to receive any applications before the act expires on September 30, 1984. The provisions of the Act and subsequent regulations were not as attractive to applicants as the FmHA Business and Industry (B&I) guaranteed loan program regulations.

(2) Applicants who were pursuing alcohol fuel projects were more interested in the B&I regulation provisions; therefore, the Agency processed and funded such applications (15 orginally) under those regulations.

(3) No subsequent appropriations have been provided since the original appropriation for the Energy Act and it is unlikely Congress will provide funding for separate BEAF projects. Current Congressional appropriation actions are recommending that alcohol fuel projects be financed under the current B&I regulations rather than under the original Energy Act.

(4) This final rule amendment incorporates the necessary features in the Subpart E of Part 1980, B&I regulations, to enable the Agency to effectively administer any BEAF type applications. This arrangement is much more cost effective and efficient than trying to administer two similar but separate programs.

(5) To maintain the BEAF program regulations is a costly matter. When a change is made to the other guarantee programs under Part 1980, it almost always impacts the Part 1990 regulation. This continued administrative burden causes delays and increases publishing costs with no offsetting benefits since the program is inoperative.

(6) Finally, the OMB information collection requirements contained in the Part 1990 regulation have expired and to seek approval would not be cost effective at this time.

Subparts A and E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations are revised and Part 1990 is removed. On August 13, 1982, FmHA published in the **Federal Register** (47 FR 35205) a notice of proposed rulemaking setting forth the proposed changes in Part 1980 of the regulations. Interested parties were given the opportunity to submit, not later than October 12, 1982, any comments, views, or recommendations regarding the proposed changes. Having considered those factors, the Administration believes it is in the best interest of the Agency and the public to now proceed with publication of this rule.

This rule is the final action of a series of actions FmHA has taken in response to administrative policy issues identified by program managers during B&I program reviews. The amendment will explain FmHA policy and provide guidance to regulation provisions which were not initially explained in detail. This action will narrow the broad discretion previously permitted by the regulations. FmHA is convinced this amendment is both necessary and desirable to assure fair and consistent loan-making and servicing decisions by FmHA, and thereby protect the public investment. The benefit of such action will apply equally to all applicants, borrowers and lenders. Little additional cost or burden will result from the changes. The impact of the amendment is therefore considered nonmajor.

Discussion of Comments Received

In response to the notice of proposed rulemaking, written comments were received from seventy-three respondents. Twenty-nine of the comments were received following the

October 12 deadline; however, all comments were considered in the final rule.

The final rule contains no major revisions of the proposed rule. The following is a discussion of the comments received and FmHA's response.

Discussion of Final Rule—Subpart A

Section 1980.11 Full Faith and Credit.

FmHA has added a provision which defines the term "negligent servicing." The purpose of this amendment is to provide further guidance to lenders concerning the standard of servicing FmHA has always required. This amendment should also improve the cost effectiveness of the program by reducing argument and litigation concerning the meaning of the term. One respondent, while in favor of the proposed change suggested a slight modification to the proposal. There being no unfavorable comments, the Agency chooses to adopt the proposed rule without change.

Section 1980.13 Eligible lenders.

The change will eliminate FmHA approval of applicants who wish to become lenders. Only those categories of lenders specifically mentioned in the regulations will be considered eligible lenders. Four respondents were not in favor of the proposed changes. However, since performance of some of the prior approved lenders in carrying out their loan servicing functions has been very marginal and in some cases totally inadequate, the Agency has chosen to adopt the proposed rule with only slight modification. Such modification is for the purpose of further clarifying the eligibility requirements and to include Credit Unions for Farmer Program loans. Credit Unions were inadvertently omitted from the proposed change.

Section 1980.41 Equal Opportunity and Nondiscrimination requirements.

The change adds the words "race, color, religion, national origin and age" to paragraph (a) of this section. These words are added for clarification and compliance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act.

Paragraph (b)(6) *Compliance reviews* of this section is amended to clarify the procedure for the making of compliance reviews. Specifically, it directs actions to be completed by the Compliance Review Officer rather than the borrower or lender reporting all facts to FmHA.

Section 1980.60 Conditions precedent to issuing the Loan Note Guarantee.

The change as proposed adds additional conditions precedent to issuing the Loan Note Guarantee. However, the likelihood of success of the project is far greater if the guarantee is not issued until all the conditions are met by the borrower and lender. Since there were no negative responses, the Agency amends § 1980.60 as proposed without change.

Section 1980.62 Lender's sale or Assignment of Guaranteed portion of the Loan.

The change as proposed will eliminate certain lenders from selling or assigning loans that are in default. FmHA proposed to restrict lenders from selling or assigning loans that were in default since it lessened their risks. FmHA never intended to permit lenders to trade negotiable instruments to third parties on loans in default. No comments having been received from the public on this issue, the Agency adopts the proposed rule without change.

Section 1980.80 Method of Review.

In order to prevent the Agency from becoming the arbitrator of disputes between the borrower and lender and to prevent unnecessary appeals, FmHA proposed to strengthen its regulations by requiring that any appeal of an adverse decision must come as a coordinated effort by both the borrower and the lender.

One respondent was not in favor of the proposed change. However, the Agency takes the position that when problems exist between the borrower and lender, the problems need to be resolved between them rather than appealing to FmHA. Thus, the Agency will adopt the proposed rule without change.

Section 1980.84 Replacement of FmHA Forms 449-34, "Loan Note Guarantee," or Form FmHA 449-36, "Assignment Guarantee Agreement."

A new section was proposed to be added in the regulations to address the occasional problem arising when there has been a loss, theft, destruction, mutilation or defacement of either the Loan Note Guarantee or the Assignment Guarantee Agreement.

There were no comments received from the public; therefore, the Agency chooses to adopt the proposed rule by adding this new section.

Appendix A—Form FmHA 449-34, "Loan Note Guarantee"

The form is revised for consistency with regulations. Such revisions clarify the describing of notes and amounts when the multi-note system is used; voids the guarantee when notes contain provisions for paying interest on interest; prohibits the disbursal of loan funds other than for purposes approved in the Conditional Commitment; defines negligent servicing; prohibits FmHA paying interest on a note to the holder(s) after 90 days from the date of the demand letter from the lender or FmHA to the holder(s) requesting tender of the guaranteed portion of the loan. There were two respondents who objected to the proposal of not allowing the charging of interest upon interest. However, all other comments were generally in favor of the proposed changes; thus, FmHA will adopt the proposed rule without change.

Appendix B—Form FmHA 449-35, "Lender's Agreement"

The Form FmHA 449-35 is revised to reflect changes in the regulations. These changes include the following:

1. The guarantee will be void when the guaranteed notes contain provisions for assessment of interest upon interest.

2. The guarantee will be unenforceable when loan funds are disbursed by the lender for purposes other than those approved by FmHA in its Conditional Commitment for Guarantee or if negligent servicing as defined in the regulations has occasioned a loss.

3. The lender may not sell or assign any portion of a loan which is in default. Nor may a lender cure a default in order to facilitate a sale.

4. The lender will be required to notify the borrower and FmHA of any noncompliance with covenants and provisions governing the loan.

5. The words "County Supervisor" are removed and replaced with the phrase "FmHA office servicing such borrower."

6. The lender must notify FmHA when a borrower is 30 days (90 days for a guaranteed rural housing loan) past due on a payment.

7. Requires the lender to obtain FmHA concurrence for proposed subsequent loans, and temporary reductions in interest rates.

8. Prohibits the assessment of interest on guaranteed loans after 90 days from the date of demand letter of the lender or FmHA to the holder(s) requesting tender of the guaranteed portion.

9. Requires servicing fees assessed by the lender against a holder(s) to be

collected only from installments received by the lender from the borrower.

10. Requires the lender to advise FmHA in writing of its proposed method of liquidation of a guaranteed loan, and requires FmHA's written response, and provides for negotiations between lender and FmHA in case of disagreements.

11. Requires the lender to apply liquidation proceeds in calculating an estimated loss payment against the outstanding principal balance owed on the guaranteed debt when the lender is conducting liquidation and is requesting an estimated loss settlement from FmHA.

12. Requires that the lender not release the borrower from the debt when FmHA pays a loss.

13. Clarifies the section on liquidation costs.

Again there were two respondents who took exception to the proposed change in the Lender's Agreement. However, the exceptions were focused upon the provisions of prohibiting interest charged upon interest. FmHA will adopt the changes as proposed.

Appendix C—Form FmHA 449-36, "Assignment Guarantee Agreement"

This form is revised to reflect changes in the regulations. The changes are as follows:

1. Requires the holder(s) of the guaranteed portion of the loan to provide written notice to the lender in the event the holder(s) wishes to resell the assigned portion of the loan.

2. Provides that the Loan Note Guarantee will not cover note interest on guaranteed loans to the holder(s) after 90 days from the date of the demand letter of the lender or FmHA to the holder(s) requesting the holder(s) to tender the guaranteed portion.

3. Removes the words "County Supervisor" from the Form and replaces the words "FmHA Office Servicing the Borrower."

The proposed revision drew negative comments from two respondents.

The respondents suggested that the 90-day requirement should be applicable only when the demand is made by FmHA. This position would allow interest to continue to run indefinitely if the lender was making the demand. Since FmHA might ultimately be responsible for part of this additional interest, the suggestion was not adopted.

Discussion of Proposed Rule Subpart E

Section 1980.411 Loan Purposes.

Since no comments were received, this section has been revised as proposed to specifically define agricultural production and prohibit the use of loan funds for working capital and debt refinancing of integrated poultry and livestock operations.

Section 1980.412 Ineligible Loan Purposes.

The Agency received four responses within the scheduled comment period to the proposal for amending section 1980.412. Response varied from favoring the proposal to substantial opposition to such change. Unfavorable comments focused primarily upon the issue of FmHA no longer guaranteeing loans for tourism and recreation. Some rural areas depend upon recreation and tourism as the major industry for their economy. The potential for recreational employment opportunity was significant to rural economic development in these areas.

Existing B&I regulations have few restrictions on types of business or purposes that are ineligible for financial assistance. Agency experience during the past seven years has disclosed major problems with certain businesses in which FmHA has issued guarantees. The final rule will:

1. Define agricultural production, prohibit use of loan funds for agricultural production, and cite specific exceptions to the definition. Such action will clarify an issue which has arisen on numerous occasions since the program's inception. The Agency received no unfavorable comments to this change.

2. Eliminate as eligible for assistance:

(a) Charitable and education institutions; these institutions are predominantly nonprofit oriented and often sectarian in nature. FmHA does not believe loans to these types of institutions are cost effective.

(b) Churches and fraternal organizations; such applicants (churches, organizations affiliated with or sponsored by churches and fraternal organizations) do not fall within the confines of the authorizing legislation for the program.

(c) Lending and investment institutions and insurance companies; B&I program loan requests from these applicants usually include "working capital" which would in turn be used to lend to others. The Agency has always taken the position that use of such loan funds would not meet eligibility requirements for project purposes. Relending could allow guaranteed loan funds to be passed through to ineligible borrowers. No unfavorable comments were received on item 2 (a), (b), and (c).

(d) Hotel and motel projects; Agency experience indicates that most of these projects have been tax shelters for the wealthy and the principals do not want to personally guarantee the loans. FmHA has a high concentration of these projects in its loan portfolio and has found that such projects employ few people (many of whom are part-time) in relation to loan amount requested. There were four responses which were unfavorable to the Agency's position. The respondents were concerned generally with the overall importance of hotels and motels to the local economy. However, this concern did not outweigh FmHA's concern as to the cost effectiveness of this program.

(e) Recreational-type businesses; FmHA has found through experience that this type of applicant hires primarily seasonal employees. These projects also depend upon a stable economy. The Agency has found success with these projects to be marginal. FmHA considered more than 40 responses to the proposed change on recreational-type businesses. Over 90 percent of these respondents specifically addressed the ski industry and its importance to the local and national economy. Most responses did not take exception to the factors which resulted in the Agency experience with such projects. However, respondents asked that ski projects not be precluded from the program.

Since almost all the respondents represented the ski industry and FmHA experiences with this industry have not been favorable, the Agency does not believe it would be fair to all other recreation-type businesses if the ski industry were to be exempt from the rule; therefore, the proposed amendment is adopted unchanged.

(f) Government and military personnel when they are the major owners, directors, and officers involved in the business. These applicants were excluded to eliminate the possibility of conflict of interest. No unfavorable responses were received to this item.

(g) Any business activity where 10 percent or more of the annual revenues are derived from legalized gambling. There were only two responses which took exception to the limitations where revenues come from legalized gambling. Activities of this type are generally recreational in nature. As a result, the agency adopts the rule as proposed.

The Agency has chosen to adopt corrective actions to provide greater objectivity concerning eligibility of particular loan purposes and lessen inconsistencies in the evaluation process. In the past, numerous requests for program assistance have been for purposes which have been determined to be ineligible from the standpoint of rural development and/or agricultural production. Over the years, the Agency has accumulated enough experience with the above-mentioned business types to determine that, for the purposes of the B&I program, they should be ineligible for program assistance and, therefore, adopts the proposed rule without change.

Section 1980.413 Transactions which will not be guaranteed.

Existing regulations have never addressed the issue of loan size. The program has continued to receive large loan applications; thus, the average size loan for the program continues to increase. By continuing to make larger loans to fewer businesses, the risk increases for higher loss of jobs and increased cost to the Government should a business default.

Because of reduced program funding levels and increased demand for the limited Federal resources, it becomes increasingly necessary to preclude the possibility of a few large projects utilizing the entire allocation. Since there were no unfavorable responses to the proposed change, the Agency will adopt the proposed rule without change.

Section 1980.423 Interest rates.

Current regulations provide for the use of variable interest rates for loans guaranteed by the Agency. However, regulations are silent on the amortization of the loan in relation to the fluctuation of interest with the variable rate loan. Because of the lack of specific guidance concerning loan amortization, the Agency has become aware of loans which were not being amortized properly and are, therefore, in violation of FmHA regulations.

In order to correct the problem, regulations are revised to specifically address the use of a variable interest rate. The Agency received no unfavorable responses to the proposed change; thus, FmHA will adopt the proposed rule without change.

Another revision to this section is the removal of reference to certain loans at an interest rate of five (5) percent per annum. The revision makes reference to certain loans at a rate prescribed in FmHA Instruction 440.1 Exhibit B, a copy of which is available in any FmHA office. This Instruction is revised as interest rates for FmHA loans change.

Section 1980.424 Terms of Loan Repayment.

Two changes have been added to § 1980.424. The first deals with prohibiting the approval of any guaranteed loan when the promissory note or any other document provides for the payment of interest upon interest.

The second change to this section focuses upon loan maturities being based upon the useful life of the collateral for the loan rather than the maximum maturities as provided in existing regulations. There were no unfavorable comments received to either of these proposed changes.

Based upon past experience with the program, the change is most cost effective in that the collateral position of the lender will be substantially improved, thus resulting in overall greater recovery in the event of liquidation. The Agency will adopt the proposed rule without change.

Section 1980.434 Equal Opportunity and Nondiscrimination Requirements.

Current regulations refer to the "County Supervisors" in reporting noncompliance to the Administrator. The proposed change removes the words "County Supervisor" and inserts the words "FmHA official." Having received no unfavorable comments, the proposed rule will be adopted without change.

Section 1980.442 Feasibility Studies.

Current regulations permit flexibility concerning requirements for feasibility studies. On loans of $1 million or more, it has always been the intent of the Agency to require feasibility studies as part of the application.

In order to strengthen the regulation, the word "ordinarily" is removed so that the instruction will read "will be required."

Another change in the feasibility section deals with "technical feasibility." This paragraph has been revised to include an "analysis of the environmental impact" of the planned project on the loan proposal. Existing regulations do not specifically require an environmental impact analysis in the feasibility studies. Since no adverse comments were received, the Agency has chosen to strengthen the regulation to specifically address the environmental issue by adopting the proposed rule without change.

Section 1980.443 Collateral, personal and corporate guarantees, and other requirements.

FmHA has clarified paragraph (b) by including a statement that FmHA is not a coguarantor with the personal or corporate guarantors to make it clear that the personal and corporate guarantors are separate from FmHA's involvement in the case. In addition, a statement is added to specifically state that the personal and corporate guarantees of the borrower are considered collateral for the loan. This should eliminate any misunderstanding of FmHA's intent that these guarantees are to be pursued by the lender in liquidation and the proceeds derived from such liquidated guarantees are to be applied against the outstanding guaranteed loan balance when calculating the Report of Loss claim. Having received no unfavorable comments, the proposed rule is adopted without change.

Section 1980.451 Filing and Processing Applications.

Several changes have been made for this section. They are as follows:

A preapplication may be filed by the lender under current regulations. This may be done in the form of a letter containing certain basic information concerning the project. A change on preapplications adds a sentence requesting certain basic information when the borrower is a corporation.

Another change in the preapplication section clarifies what is meant by a current balance sheet and latest profit and loss statement. The proposed change states specifically that such current documents will be no more than 60 days old.

The Agency also clarifies the phrase "any credit reports obtained by the lender of FmHA." The new language change will read: "any credit reports obtained by the lender or FmHA on the borrower, its principals and parent, affiliate and subsidiary firms."

Another change to section 1980.451 concerns language in the loan agreement between the lender and the borrower which deals with the FmHA requirement for an annual audited statement.

The change will include the requirement for an annual audited statement. The change specifically identifies what an acceptable audit is and provides clarification on opinions expressed by the auditor.

Another paragraph has been added to this section which addresses requests for debt refinancing. This change will require the lender, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). It will also require the lender to obtain additional adequate collateral for the guaranteed loan when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current financial position. There were no unfavorable comments received concerning this section; therefore, the proposed rule is adopted with slight editorial corrections added.

A change has also been made in the Administrative provisions to this section to provide FmHA personnel with a list of the forms and documents used in a complete application and where such material is filed in the loan docket.

Section 1980.452 FmHA Evaluation of Applications.

The revision of this section specifically requires that the planned use of loan proceeds be documented in the Form FmHA 449–14 as reflected in the application, Form FmHA 449–1. Several small modifications to the administrative obligation process have been added. There were no unfavorable comments received concerning this section; thus, the Agency adopts the rule as proposed.

Section 1980.454 Conditions Precedent to Issuance of the Loan Note Guarantee.

This section has been revised as follows:

1. *Transfer of lenders.* A paragraph has been added to provide guidance concerning the transfer of lenders when FmHA has an outstanding Conditional Commitment for Guarantee and the Loan Note Guarantee has not yet been issued. The change is permitted between eligible lenders, upon justification for the requested change, when there are no changes in the borrower's ownership or control, loan purposes, scope of project, loan terms, or loan conditions.

2. *Substitution of borrowers.* FmHA amends its regulations to prohibit the issuance of the Loan Note Guarantee if there has been an alteration of the originally approved ownership except when the only change is that the originally approved ownership is replaced with substantially the same individuals and interests as identified on the application.

3. *Change in terms and conditions in Form FmHA 449–14.* The Agency amends this section by identifying specifically when changes in terms and conditions will be allowed. It is the intent of FmHA that once the "Conditional Commitment for Guarantee" (Form FmHA 449–14) is issued and has been accepted by the lender, no modification is to be made as to the scope of the project, overall facility concept and design, project purpose, or use of proceeds.

4. *Preguarantee review.* A requirement has been added to require the lender to contact FmHA and provide documentation and certification to FmHA coincident to or immediately after loan closing to assure FmHA there are no adverse changes. Only when these actions have been taken will the Loan Note Guarantee be issued.

5. *Loan closing.* This paragraph has been revised to strike the words "County Supervisor" and refer to an "FmHA representative" instead since the County Supervisor no longer has a major responsibility for B&I loan processing and servicing.

6. *Working capital.* A final paragraph to the section has been added to prohibit the issuance of a Loan Note Guarantee for working capital prior to the completion of construction as development of the project continues.

There were no unfavorable comments received concerning this section. Thus, the Agency adopts the rule as proposed.

Section 1980.475 Bankruptcy.

A section has been added to the regulations concerning bankruptcy.

The new section to the regulation further amplifies and details the lender's responsibilities for preserving the interests of itself and FmHA during bankruptcy. Further, the regulation will provide for the reimbursement of certain fees and expenses, incurred by the lender to be deducted from liquidation value of the collateral. There were no unfavorable coments received concerning this section; thus, the Agency adopts the rule as proposed.

Section 1980.476 Transfer and assumptions.

The Agency has chosen to amend its regulations to include a new paragraph on transfer and assumptions for less than full loan and provide for the lender, if it is the holder, to file an estimated Report of Loss to recover its pro rata share of the actual loss at the time of transfer. There were no unfavorable comments received concerning this section. Thus, the Agency adopts the rule as proposed.

Section 1980.488 Guaranteed industrial development bond issues.

This section is revised to prohibit the use of loan funds for debt refinancing, working capital, and other miscellaneous charges or services in connection with guaranteed loans to public bodies. Such loans will only the used for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing. The lessee must provide necessary capital and sufficient strength to provide for a sound project. There were no unfavorable comments received concerning this section. Thus, the Agency adopts the rule as proposed.

Section 1980.495 FmHA forms and guides.

This is a new paragraph and includes Forms FmHA 449–1, "Application for Loan and Guarantee." Form FmHA 449–1 will now be referred to as "Appendix A" and the Certificate of Incumbency and Signature as "Appendix B."

In order to implement the new regulation changes, the Agency had to revise its Form FmHA 449–1, "Application for Loan and Guarantee" The changes are mostly cross reference and editorial. The Form FmHA 449–1 is referred to as "Appendix A."

Appendix E was inadvertently not included in this subparagraph and has been added.

The new regulation changes also caused the Agency to revise its Form FmHA 449–14, "Conditional Commitment for Guarantee." Since this form is the document which commits the Agency to the project, sets forth the terms and conditions for issuance of the Loan Note Guarantee and is used by the Agency in its obligation procedures, the form should be published and incorporated as a part of the regulations. Therefore, the Form FmHA 449–14 has been designated as "Appendix F."

In the proposed rule a new paragraph was included to add Appendix C, D, and E which were incorporated as part of the regulations for the purpose of processing loans for alcohol fuel production facilities projects. No unfavorable comments were received concerning these appendices. However, the Agency will adopt them with minor changes primarily editorial and for purposes of clarification. Such changes include:

Appendix C, provides further clarification of a "positive energy balance".

Appendix D (1) refers to "the lender" along with the borrower and/or FmHA throughout the appendix, (2) requires that an independent engineer be acceptable to the Lender and FmHA when the borrower or project engineer has designed or constructed any portion of the project, (3) requires lender and FmHA concurrence in certain leasing arrangements, (4) provides further clarification on specifications and contract documents, (5) clarifies requirements for performance and payment bonds, (6) provides guidance involving changes in the project which require lender and FmHA approval, (7) discusses certain covenants of a lease agreement or contract which is essential to the successful operation of the project during the life of the loan, and (8) clarifies the requirements on guarantees and warranties on equipment.

Appendix E removes references to clearinghouse comments in Number XI and replaces such language with "Consultation Requirements." On July 14, 1982, the President signed Executive

Order 12372, "Intergovernmental Review of Federal Programs." The order directs revocation of OMB Circular A-95, and provides for a new intergovernmental consultation system that is consistent with the President's policies concerning Federalism and regulatory relief. Under the order, States and localities will take the initiative for establishing review procedures and priorities. State and local elected officials, not the Federal Government, will determine what Federal programs and activities to review and the procedures by which the review will take place.

General Administration

The General Administrative Section is revised to incorporate administrative procedures for loan applications being reviewed by FmHA Regional Attorneys. There is also some modification to the internal process for obligating and announcing the approval of loans. These changes were not part of the Proposed Rule; however, the changes are administrative and do not affect the public.

Miscellaneous Revisions

In order to implement the amendments in Subpart A—General, certain sections contained in Part 1980 Subpart D which cross reference Subpart A are revised to conform to the changes. The two issues involve the Full Faith and Credit Provisions and the Eligible Lenders section. These changes have been added to this Amendment.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required. Approval has been received from the Office of Management and Budget for the reporting and recordkeeping requirements contained herein.

It is the policy of this Administration to remove wherever practical public burden. By removing and reserving the Part 1990 regulation, a needless regulation is removed from the CFR.

The FmHA guaranteed programs are subject to consultation with State and local governments as required by Executive Order No. 12372. OMB Bulletin No. 82015 provides interim policy guidance governing consultation with State and local governments prior to adoption of new regulations implementing Executive Order 12372. Such programs are outlined in the Catalog of Federal Domestic Assistance (CFDA) and include: CFDA Number 10.422 Business and Industrial Loans, 10.404 Emergency Loans, 10.413 Recreation Facility Loans, 10.416 Soil and Water Loans, 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, 10.428 Economic Emergency Loans, 10.429 Above-Moderate Income Housing Loans, and No. 10.432, Biomass Energy and Alcohol Fuels Loans and Loan Guarantees.

List of Subjects

7 CFR Part 1980

Loan programs, Energy, Agriculture, Rural areas, Loan programs—Business and industry, Rural development assistance loan programs—Housing and community development.

7 CFR Part 1990

Loan programs—Energy.

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

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart A—Loan and Grant Approval Authorities

§§ 1901.2 and 1901.5 [Amended]

1. Sections 1901.2 and 1901.5 are amended by removing the reference to Exhibit E in each of the Sections.

PART 1944—HOUSING

Subpart K—Technical and Supervisory Assistance Grants

§ 1944.533 [Amended]

2. Section 1944.533(e) is amended by removing the words "Form FmHA 071-1, "Project Information Card," and inserting in their place the words "Exhibit A to FmHA Instruction 2015-C (available in any FmHA Office)."

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants

§ 1948.35 [Amended]

3. Section 1948.35(e) is amended by removing the words, "Form FmHA 071-1, "Project Information Card," and inserting in their place the words "Exhibit A to FmHA Instruction 2015-C (available in any FmHA Office)".

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

§ 1948.92 [Amended]

4. Section 1948.92(f) is amended by removing the words, "Form FmHA 071-1, "Project Information Card," and inserting in their place the words, "Exhibit A to FmHA Instruction 2015-C (available in any FmHA Office)."

5. Subpart A to Part 1980 is revised to read as follows:

PART 1980—GENERAL

Subpart A—General

Sec.
Guarantee" or Form FmHA 449-36, "Assignment Guarantee Agreement."
1980.85-1980.99 [Reserved]
1980.100 OMB Control Number.
Appendix A—Form FmHA 449-34, Loan Note Guarantee.
Appendix B—Form FmHA 449-35; Lenders Agreement.
Appendix C—Form FmHA 449-36, Assignment Guarantee Agreement.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Sec. of Agr., 7 CFR 2.23; delegation of authority by the Asst. Sect. for Rural Development, (7 CFR 2.70)

Subpart A—General

§ 1980.1 Purpose.

This Subpart contains the general regulations and prescribed forms which are applicable to the Farmers Home Administration (FmHA) guaranteed loan programs authorized in Part 1980. Additional regulations for these programs are found in the various Subparts of Part 1980. These additional regulations apply to lenders, holders, borrowers, and other parties involved in making, guaranteeing, insuring (if applicable), holding, servicing or liquidating such loans.

§§ 1980.2-1980.5 [Reserved]

§ 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the Subparts relating to the particular type of loan involved.

(1) *A-95. Agency.* Office of Management and Budget Circular A-95 establishes project notification and review system to coordinate planning of Federal programs and projects with State and local agencies. Such agencies are referred to in this regulation as A-95 agencies.

(2) *Assignment Guarantee Agreement (Form FmHA 449-36).* The signed agreement among FmHA, the lender, and the holder, setting forth (specifically or by reference) the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

(3) *Borrower.* All parties liable for the loan or any part thereof.

(4) *Conditional Commitment for Guarantee (FmHA Form 449-14).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Guarantee."

(5) *Finance Office.* The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103 (Phone 314-279-4400).

(6) *FmHA.* The United States of America, acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA office or official should be read as prefaced by "FmHA."

(7) *Guaranteed loan.* A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449-35, "Lender's Agreement" and for which FmHA has issued a Form 449-34, "Loan Note Guarantee."

(8) *Hazard insurance.* Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

(9) *Holder.* The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a holder when Form FmHA 449-35, "Assignment Guarantee Agreement," is used.

(10) *Insured loans.* A loan directly made and serviced by FmHA as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

(11) *Joint financing.* Occurs when two or more lenders (or any combination of such lenders) make separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

(12) *Lender.* The person or organization making and servicing the loan which is guaranteed under the provisions of the appropriate Subpart. The lender is also the party requesting a loan guarantee.

(13) *Lender's Agreement (Form FmHA 449-35).* The signed agreement between FmHA and the lender setting forth (specifically or by reference) the lender's loan responsibilities when the Loan Note Guarantee is issued.

(14) *Loan Note Guarantee (Form FmHA 449-34).* The signed commitment issued by FmHA setting forth (specifically or by reference) the terms and conditions of the guarantee.

(15) *Market value.* The amount for which property would sell for its highest and best use at voluntary sale.

(16) *Note.* An evidence of the debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(17) *Principals of borrowers.* Includes owners, officers, directors, entities and others directly involved in the operation and management or control of a business.

(18) *Transfer and assumption.* The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

(b) *Abbreviations.* The following abbreviations are applicable:

(1) *ASCS*—Agricultural Stabilization and Conservation Service.

(2) *B&I*—Business and Industry.

(3) *EDA*—Economic Development Administration.

(4) *EPA*—Environmental Protection Agency.

(5) *EIS*—Environmental Impact Statement.

(6) *EM*—Emergency Loans.

(7) *FO*—Farm Ownership.

(8) *RL*—Recreation loans.

(9) *SW*—Soil and Water.

(10) *OL*—Operating loans.

(11) *OL-Y*—Operating Loans-Youth.

(12) *FDAA*—Federal Disaster Assistance Administration.

(13) *FIA*—Federal Insurance Administration.

(14) *FmHA*—Farmers Home Administration.

(15) *FMI*—Forms Manual Insert.

(16) *OGC*—Office of the General Counsel.

(17) *SBA*—Small Business Administration.

(18) *SBIC*—Small Business Investment Company.

(19) *USDA*—United States Department of Agriculture.

§§ 1980.7–1980.10 [Reserved]

§ 1980.11 Full faith and credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturituy or until final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

§ 1980.12 Case and identification (ID) numbers.

(a) *Case number.* The case number will be the applicant's (borrower's), or transferee's Social Security or Internal Revenue Service (IRS) tax number, whichever is appropriate.

(1) If such party is an individual, his or her Social Security number, will be used. If such party is husband and wife the husband's Social Security number will be used.

(2) If such party is a legal entity, its IRS tax number will be used.

(3) The applicant's Social Security or IRS tax number preceded by State and County Code Numbers will constitute the entire case number to be used on all FmHA forms. The County Supervisor will provide the lender with these numbers.

(b) *ID number of lender and holder.* The lender's and holder's IRS tax number will be used as its ID number in correspondence and FmHA forms relating to the guarantee.

§ 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 paragraphs (a) (1), (2) and (3) of this section, 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 requirements on a regular basis.

(b) *An eligible lender is:* Any Federal or State chartered bank, Federal Land Bank, Production Credit Association, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, mortgage company that is a part of a bank-holding company, or an insurance company that is regulated by the National Association of Insurance Commissioners. The above entities must be subject to credit examination and supervision by either an agency of the United States or a State. (Credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a state agency are eligible lenders only for Farmer Program Guaranteed loans.) Only those lenders listed in this paragraph are eligible to make and service guaranteed loans and such lender must be in good standing with its licensing authority and has met licensing, loanmaking, loan servicing, and other requirements of the State in which the collateral will be located, and the loanmaking and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

(1) *Participation.* Lenders who are not eligible lenders are not barred from participating in loans made by eligible lenders.

(2) *Lender notification.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA in letter form with such proofs as FmHA may require.

(3) *Lender location.* Each lender must maintain an office (either its main or branch office or that of an agent) near enough to the collateral's location so it can properly and efficiently discharge its loanmaking and loan servicing responsibilities.

(4) *Ownership.* All lenders will be owned and controlled as provided in paragraph V of Form FmHA 449-35. However, in a case where a lender has had foreign ownership for at least ten years and has been in operation in the community where the project is or will be located for a similar period of time, such lender may be considered for eligibility under the provisions of this section. If such lender is determined to be eligible by FmHA, paragraph V of the Lender's Agreement will be deleted and initialed by both the lender and FmHA.

(5) *Conflict of interest..* For possible lender-borrower conflict of interest, see paragraph VI of Form FmHA 449-35. All lenders will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent

that the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other. FmHA shall determine whether such ownership is sufficient to likely result in a conflict of interest.

(6) *Debarment.* See Part 1924 Subpart E of this chapater.

(c) *Substitution of lenders.* With written concurrence of FmHA another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment for Guarantee provided the borrower, loan purposes, scope of project and loan terms remain unchanged. (See Part 1980, Subpart E of this chapter).

§§ 1980.14–1980.19 [Reserved]

§ 1980.20 Loan guarantee limits.

The maximum loss covered by the Loan Note Guarantee, Form FmHA 449–34 can never exceed the lesser of: 90 percent of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and 90 percent of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or 90 percent of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicant will propose the percentage of guarantee. The lender and applicant will be informed in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(a) *Applicant's management:* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(b) *Collateral.* Collateral for the loan.

(c) *Financial condition.* Financial condition of applicant or applicants' principals, if appropriate.

(d) *Lender's exposure.* The lender's exposure before and after the loan.

(e) *Trends and conditions.* Current trends and economic conditions.

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be one percent (1%) of the principal loan amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

(b) *Substitution fee.* In the event FmHA agrees to issue a Loan Note Guarantee in substitution for a *Form FmHA 449–17,* "Contract of Guarantee," issued under previous regulations (see § 1980.61(b)(2)) the lender will pay to FmHA at the time the substitution is made a nonrefundable, one-time fee of one percent (1%) of the current principal loan balance multiplied by the percent of guarantee.

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine.* They are routinely made by the lender in all types of loan transactions.

(2) *Payments received.* Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA will not guarantee any loan made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations as defined above may not be used to purchase the guaranteed portion of any FmHA guaranteed loan nor may an FmHA guaranteed loan serve as collateral for a tax-exempt issue as defined above.

(b) The only time FmHA may guarantee a loan for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan has at least a parity security position with the tax-exempt obligation.

§§ 1980.24–1980.39 [Reserved]

§ 1980.40 Environmental impact assessments and statements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA State Director. The determination will be based upon FmHA's review of Form FmHA 449–10, "Applicant's Environmental Impact Evaluation," State and sub-State clearinghouse and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA State Director will coordinate preparation and processing of any required EIS. If joint agency financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases FmHA is responsible for assuring that requirement of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and 7 CFR Subpart G of Part 1901 of this chapter are met.

§ 1980.41 Equal opportunity and nondiscrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–295, the Equal Credit Opportunity Act, neither the lender nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex or marital status with respect to any aspect of a credit transaction. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act. (See 12 CFR Part 202). Such compliance will be accomplished prior to loan closing.

(b) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable to certain cases involving construction as indicated. The borrower is responsible for seeing that the requirements of paragraphs (b)(1) through (5) of this section are met.

(1) *Compliance reports.* No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until he has filed all of the compliance reports required of nim under any previous contracts.

(2) *Equal Opportunity agreement.* Before loan closing, each borrower

whose loan involves a construction contract of more than $10,000 must execute Form FmHA 440-1, "Equal Opportunity Agreement."

(3) *Contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000.

(i) The contractor or subcontractor must submit Form FmHA 400-6, "Compliance Statement," before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract. This clause is incorporated in Form FmHA 424-6, "Construction Contract," which may serve as a guide.

(iii) With notification of the contract award, the contractor must receive:

(A) Form FmHA 400-3, "Notice of Contractors and Applicants," signed by the County Supervisor with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(B) Form AD-425, "Contactor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375," if the contractor or subcontractor is subject to the requirements of paragraph (b)(5) of this section.

(4) *One hundred or more employees and contract or subcontract exceeds $10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000.

(i) In addition to meeting the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must file Standard Form 100, "Equal Employment Opportunity Employer Information Report EEO-1," with the Joint Reporting Committee within 30 days of the contract or subcontract award unless this report has already been submitted within the last 12 months.

(ii) An annual report must be filed on or before March 31, as long as the contractor or subcontractor holds a contract equal to $10,000 or more which is financed with a guaranteed loan.

Failure to file timely, complete and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, DC 20006.

(5) *Fifty or more employees and contract or subcontract exceeds $50,000.* If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD-425 provides guidelines for the contractor or subcontractor in developing such a program.

(6) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender (when inspections are made), will be shown on Form FmHA 424-12, "Inspection Report." If there is any evidence of non-compliance, the borrower or lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(7) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontactors may file a written complaint of discrimination with FmHA.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by FmHA for good cause shown by the complainant.

§ 1980.42 Flood or mudslide hazard area precautions.

(a) *Project location.* Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development may be financed under this subpart only:

(1) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan in paragraph (a)(1) of this section.

(b) *Flood insurance.* If project is located in a special flood or mudslide hazard area and if flood insurance is available it will be purchased by the borrower prior to loan closing. (See Part 1806, Subpart B of this chapter.) (FmHA Instruction 426.2.)

§ 1980.43 Clean Air Act and Water Pollution Control Act requirements.

(a) *Conditions.* As a condition for FmHA's making or guaranteeing a loan in excess of $100,000 and unless otherwise exempted, an applicant for a loan will:

(1) Comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C-9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C., § 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 16, 1975.)

(2) Notify the FmHA of the receipt of any communication from the EPA indicating that a facility to be utilized in the carrying out of the FmHA program loan purposes is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to the making of the loan.)

(3) Certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

(4) Include, or cause to be included, the criteria and requirements contained in this section in every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(5) Secure the service of a contractor who agrees to comply with the provisions in paragraph (a) of this section.

(b) *Solicitation.* Lender will cause to be included in all solicitation and contract provisions the stipulations contained in paragraph (a) of this section, provided the loan amount is

$100,000 or more and not otherwise exempted.

(c) *Facility.* The term "facility", as used in this section only, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are located in one geographical area.

(d) *Exemptions.*—(1) *Transactions $100,000 and under.* Any contracts, subcontracts, loans, and subloans not exceeding $100,000 are exempt.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including but not limited to time and material contracts, requirements contracts, and basic ordering agreements), this section shall be applicable unless the applicant or borrower has reason to believe that the amount to be ordered in any year under such contract will not exceed $100,000.

(3) *Authority of the Administrator.* When the Administrator of the FmHA determines that the paramount interest of the United States so requires, he may exempt any individual loan, contract or subcontract for a period of 1 year, and by rule or regulation any class of loans or contracts following consultation with EPA. In the case of an individual exemption, the Administrator shall notify the Director, Office of Federal Activities, EPA, as soon before or after granting the exemption as practicable. The justification for such an exemption or any renewal thereof shall fully describe the purpose of the loan or contract and shall indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(4) *Facilities located outside the United States.* This section shall not apply to the use of facilities outside the United States. The term "United States" as used herein includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

§ 1980.44 National Historic Preservation Act of 1966.

As a condition for FmHA making or guaranteeing a loan, the applicant will provide a written statement to FmHA of the effect, if any, the project will have on any district, site, or building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Act includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. (See Part 1901 Subpart F of this chapter.)

§ 1980.45 Other Federal, State and local requirements.

In addition to the specific requirements of this Subpart, proposals for facilities financed in whole or in part with an FmHA loan or guarantee will be coordinated with all appropriate Federal, State and local Agencies in accordance with the following:

(a) *Compliance with special laws and regulations.* Applicants and/or lenders will be required to comply with any Federal, State or local laws, regulatory commission rules, ordinances, and regulations which are presently in existence or may be later adopted which affect the project including, but not limited to:

(1) Organization and authority to design, construct, develop, operate, and/or maintain the proposed facilities;

(2) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(3) Land use zoning;

(4) Health, safety, and sanitation standards;

(5) Protection of the environment and consumer affairs.

(b) *In compliance.* The applicant and/or lender will be in compliance with this section effective with the date of issuance of the Loan Note Guarantee.

§ 1980.46 Right to Financial Privacy Act of 1978.

(a) When the applicant is either an individual or partnership of five or fewer members and applies for financial assistance from a lender which applies to FmHA for a guarantee, the following actions must be taken:

(1) Within 3 days of the receipt of a pre-application or complete application from a lender for a guarantee for a loan, FmHA will forward Form FmHA 410-7, "Notification to Applicant on Use of Financial Information From Financial Institution," to those applicants desiring loan assistance. If notification is made upon receipt of a preapplication, notification will not be made upon receipt of an application for the same applicant.

(2) Notification must also be given to the lender and other financial institutions to which FmHA makes a direct request for financial records. The notification to the lender and other financial institutions will read as follows:

"I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95-630 in seeking financial information regarding ——————
(applicant)."
Date ——————
County Supervisor ——————

(b) Under no circumstances may financial information obtained under this Subpart be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Office of Equal Opportunity (OEO)) without express approval of OGC.

§§ 1980.47–1980.59 [Reserved]

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee.

(a) *Lender certification.* Form FmHA 449-34 will not be issued until the lender certifies to FmHA that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee, except those approved in the interim by FmHA in writing.

(2) All planned property acquisition has been completed; all development has been substantially completed in accordance with plans and specifications, and as set out in paragraph II.A.2.g. of Appendix D of Subpart E of this part. All costs have not exceeded the amounts approved by the lender and FmHA. See Appendix D for further guidelines for loans which are not Alcohol Fuel Production Facility Loans. Appendix D is mandatory for Alcohol Fuel Production Facility loans.

(3) Required hazard, flood, or prevention insurance, worker's compensation and personal life insurance when required is in effect.

(4) Truth in lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time.

(6) The loan has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that

cannot be covered initially under State law.

(7) The borrower has title marketable in fact to the collateral then owned by borrower, subject to the instruments securing the loan to be guaranteed and subject to any other exceptions approved in writing by FmHA.

(8) When required, the entire amount of loan for working capital has been disbursed except in cases where the State Director has approved disbursement over an extended time.

(9) When required, personal, partnership or corporate guarantees have been obtained. Copies of the guarantees will be provided to FmHA.

(10) All other requirements of the Conditional Commitment for Guarantee have been met.

(11) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(12) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on Form FmHA 449-1. A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

(13) Equity requirements have been met. A reconciliation of the borrower's net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(14) There has been no adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower and its guarantors not more than 60 days old at time of certification. For purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower.

(b) *Inspections.* The lender will notify FmHA of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. FmHA may attend such field inspections. Any inspections or review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

(c) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 449-35.

(d) *Plans for marketing.* The lender advises FmHA of its plans to sell or assign any part of the loan as provided in Form FmHA 449-35.

(e) *Additional requirements.* See also appropriate Subpart for additional requirements.

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 449-35, "Lender's Agreement." The original will be delivered to FmHA and a signed duplicate original retained by the lender. There will be a Form FmHA 449-35 executed for all loans guaranteed by FmHA. The Lender's Agreement will be executed not later than the time the Loan Note Guarantee is signed and FmHA receives the guarantee fee.

(b) *Loan Note Guarantee.* (1) Upon receipt of the Form FmHA 449-35 and after all requirements have been met, FmHA will execute Form FmHA 449-34. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA.

(2) In the event a lender has made a loan guaranteed by FmHA under previous regulations and has obtained a Form FmHA 449-17, "Contract of Guarantee," the lender may request the State Director to substitute a Loan Note Guarantee governed in all respects by these regulations for the previously issued Contract of Guarantee. The State Director will review the lender's written request for substitution of guarantees and may authorize the issuance of the new Loan Note Guarantee in exchange for the Contract of Guarantee. The lender will:

(i) Prepare and submit to FmHA a written request for such substituted guarantee.

(ii) Certify to FmHA that there is no adverse change in the borrower's financial situation, the collateral and terms of the loan remain the same as under the original guarantee, and the loan is in good standing.

(iii) Pay the required guarantee fee.

(iv) Certify to FmHA the outstanding principal amount of the loan.

(v) Execute Form FmHA 449-35.

(3) If the lender has selected the multi-note system as provided in paragraph III A 2 of the Lender's Agreement, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on Form FmHA 449-34.

(4) If the lender requests a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A 2(b) of the Lender's Agreement, the County Supervisor may reissue the new Loan Note Guarantees in exchange for the original Loan Note Guarantees.

(c) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provisions of the applicable Subpart, the lender, holder, and FmHA will execute Form FmHA 449-36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee.

(d) *Refusal to execute contract.* If FmHA determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA 449-13, "Denial Letter," of the reasons, and give the lender a reasonable period within which to satisfy FmHA objections. If the lender writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Cancellation of obligations.* If the conditions for the loan are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit to the Finance Office, Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation."

(f) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each loan to be guaranteed and deliver the guarantee fee to the FmHA representative who concurrently delivers the Loan Note Guarantee(s).

(g) *Authorized FmHA representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement, Loan Note Guarantee, or Assignment Guarantee Agreement.

§ 1980.62 Lender's sale or asssignment of guaranteed portion of the loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA 449-35. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA 449-35, the lender will provide this information with the application to FmHA.

§ 1980.63 Defaults by borrowers.

Refer to paragraph XI of Form FmHA 449-35.

FmHA may be required to purchase the guaranteed portion of a loan(s) from holder(s) in the event of default or servicing problems. The County Supervisor will coordinate any requests from holder(s) located in close proximity to the local lender. If several holders are located outside the area, the State Director will handle the transaction and notify the County Supervisor. The County Supervisor will prepare a Form FmHA 1980-37, "FmHA Purchase of A Guaranteed Loan Portion," for each holder(s) and follow the instructions on the reverse of the form.

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XII of Form FmHA 449-35.

(b) *Lender's option.* If a lender has made a loan guaranteed by FmHA under previous regulations, and the lender concludes that liquidation of the guaranteed loan is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure, the lender has the option to liquidate the loan under the provisions of this Subpart, or under the provisions of previous regulations. The lender will notify the State Director in writing within 10 days after its decision to liquidate if it desires to proceed under this Subpart.

(c) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

§ 1980.65 Protective advances.

Refer to paragraph XIII of Form FmHA 449-35.

§ 1980.66 Additional loans or advances.

Refer to paragraph XIV of Form FmHA 449-35.

§ 1980.67 Lender's request to terminate Loan Note Guarantee.

The lender may request FmHA to terminate the Loan Note Guarantee(s) provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 449-34). The lender will provide the County Supervisor with a written notice that the loan(s) is paid in full and/or termination of the Loan Note Guarantee(s) enclosing the original Form(s) FmHA 449-34 for cancellation. Within 30 days, the County Supervisor will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) is paid in full," and/or "the Loan Note Guarantee has been cancelled at the request of the lender.".

§ 1980.68-1980.79 [Reserved]

§ 1980.80 Appeals.

(a) *General.* Any adverse decision made by FmHA which affects the borrower or lender may be appealed upon written request of the aggrieved parties in accordance with this section. Only the borrower and lender can appeal an FmHA decision and they must jointly participate in the written request for review of the alleged adverse decision made by FmHA. Parties aggrieved with decisions made prior to the effective date of this provision shall have 30 days to file a request for review under these regulations if neither party has personally filed a request for review.

(b) *Request for review.* The written request for review must be made by the borrower and lender within 30 days of the written notification of the FmHA decision causing the request for an appeal. The written request must contain a full description of the reasons the aggrieved parties believe FmHA's decision is not correct and must contain appropriate documentation and supporting information. Each issue raised by FmHA in its decision will have to be addressed by the aggrieved parties. The aggrieved parties should provide alternative recommendations for FmHA consideration.

(c) *Meetings.* No meeting will be arranged to consider appeals unless FmHA deems it necessary. If a meeting is scheduled by FmHA the aggrieved parties will provide FmHA with any additional written appeal material at least 5 days before the scheduled meeting date in order for FmHA to have time to study the materials.

(d) *Levels of appeals.* (1) The FmHA State Director will review all appeal requests which involve an alleged adverse decision made by the FmHA County Supervisor or District Director. The aggrieved parties will present their request to the State Director within the 30-day time limit set forth in paragraph (b) of this section. The State Director's decision is final and cannot be appealed to the Administrator. The State Director will notify the aggrieved parties of his/her decision in writing within 30 days from date of receipt of the request.

(2) The FmHA Administrator or designee will review all original appeal requests which involve an alleged adverse decision made by an FmHA State Director. The aggrieved parties will send their request to the Administrator with a copy provided the State Director within the 30-day time limit set forth in paragraph (b) of this section. The State Director will furnish a full report on the matter to the Administrator. The Administrator's decision is final and no further consideration will be made once the final decision is made. The Administrator will notify the aggrieved parties of the Administrator's decision in writing within 30 days from date of receipt of the request.

§ 1980.81 Access to records of lenders.

Upon request by FmHA the lender will permit representatives of FmHA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the Lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA finds convenient.

§ 1980.82 State supplements to this regulation.

FmHA State Directors may supplement this regulation subject to National Office review to the extent necessary to properly implement the program in their States.

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this Subpart.* Forms FmHA 449-34, "Loan Note Guarantee," FmHA 449-35, "Lender's Agreement," and FmHA 449-36, "Assignment Guarantee Agreement," are incorporated in this Subpart A, made a part hereof, and appear as appendixes A, B and C in the **Federal Register**. Copies of the forms may be obtained from any FmHA office.

(b) *FmHA forms used for processing and servicing guaranteed loans.* The following FmHA forms will be used in the processing and servicing of all guaranteed loans, including those loans previously closed where FmHA has issued a loan note guarantee. This does not include all FmHA forms that are part of the guarantee loan application which are referenced in this Subpart or appropriate program subparts. Refer to appropriate FmHA program representatives, the forms manual inserts and directions printed on the form for specific details concerning completion of the forms, number of copies, and distributions. Copies of forms may be obtained from any FmHA office.

FmHA Form No.	Title of form	Purpose and code[1]
1980-7	Notification of Transfer and Assumption of a Guaranteed Loan.	Record a transfer and assumption of a guaranteed loan from one borrower to another. (1)
1980-19	Guaranteed Loan Closing Report	Used to pay guarantee fee and establish guarantee loan account. (2)
1980-24	Request Subsidy Payment to Guaranteed Loan Lender.	Request subsidy payment. (3)
1980-37	FmHA Purchase of a Guaranteed Loan Portion	Used to purchase guaranteed portion of loan. (1)
1980-41	Guaranteed Loan Status Report	Used to update FmHA's records of outstanding balance of guaranteed loan. (3)
1980-42	Notice of Substitution of Lenders	Used to change FmHA record of lenders. (1)
1980-43	Lender's Guaranteed Loan Payment	Used by lender to transmit payments due FmHA as a holder. (3)
1980-44	Guaranteed Loan Borrower Default Status	Used by lender to inform FmHA of borrower default. (3)
1980-45	Notice of Liquidation Responsibility	Used by FmHA to indicate to Finance Office liquidation responsibility. (1)
1980-46	Report of Liquidation Expense	Used by FmHA to pay liquidation costs or appraisal fees. (1)
1980-47	Guaranteed Loan Borrower Adjustments	Used by FmHA to adjust guaranteed loan borrower's account. (1)
1980-49	Guaranteed Loan Status Update Adjustment	Used by FmHA to update status elements on guaranteed loans and to adjust subsidy claims. (1)
1980-50	Add, Delete, or Change Guaranteed Loan Borrower Information.	Used by FmHA to update guaranteed loan borrower account information. (1)
1980-51	Add, Change, or Delete Guaranteed Loan Record.	Used by FmHA to update borrower loan record information. (1)
1980-52	Report Request	Used by FmHA to request reports on guaranteed loans. (1)
449-30	Loan Note Guarantee Report of Loss	Used to claim reimbursement for Losses. (2)

[1] Code: (1) FmHA use only, (2) FmHA and lender use, (3) Lender use only.

§ 1980.84 Replacement of loss, theft, destruction, mutilation, or defacement of FmHA Form 449-34, "Loan Note Guarantee," Or FmHa 449-36, "Assignment Guarantee Agreement".

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the FmHA State Director is authorized on behalf of Farmers Home Administration to issue a replacement Loan Note Guarantee(s) or Assignment Guarantee Agreement(s) which may have been lost, stolen, destroyed, mutilated, or defaced to the Lender or Holder upon receipt of an acceptable certificate of loss and an indemnity bond. After the required documentation has been received, the State Director will consult with the Regional Office of General Counsel to assure that all documents are of legal sufficiency before the reissuance of the Loan Note Guarantee(s) or Assignment Guarantee Agreement(s).

(b) *Requirements.* When a Loan Note Guarantee(s) or Assignment Guarantee Agreement(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the State Director for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, who is requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, FmHA case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee and if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement.

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to FmHA (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to FmHA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a State or Territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of Certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and/or payable to the United States of America acting through the Farmers Home Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save FmHA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provisions of paragraph III A. 2. of Form FmHA 449-35, known as the "Multi-Note System", FmHA will not attempt to or participate in the obtaining of replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. (See paragraph III A. 2. b of Form FmHA 449-35, for general conditions for reissued notes.) If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA will replace any instruments.

Administrative

A. State Directors will review all documents when presented by the lender to assure all requirements are met.

B. The State Director will contact the Regional OGC for assistance before new guarantee instruments are issued.

C. If the decision is to reissue Loan Note Guarantee(s) or Assignment Guarantee

Agreement(s) the following procedure will be followed:

(1) *Multi-note system.* A new Form FmHA 449-34 will be prepared using the original face amounts and amounts guaranteed (not outstanding loan balance). At the top of the form type "This Loan Note Guarantee is issued to replace the original dated ——— which was (*insert "lost, stolen, destroyed, defaced or mutilated."*) Only execute an original for the Holder. Copies may be conformed for the lender and FmHA file.

If borrower notes are needed they must be obtained by the holder from the borrower. The indemnity bond must be kept in safekeeping.

(2) *Assignment Guarantee Agreement system.* A new Form FmHA 449-36 will be prepared using the original amounts except the current principal amount of the loan outstanding should be inserted at item 1 on the face of the document. At the top of the form type "This Assignment Guarantee Agreement is issued to replace the original dated ——— which was *lost, stolen, destroyed, defaced or mutilated.*" Only execute an original for the Holder. Copies may be conformed for the lender and FmHA. If a surety bond is isued, it must be kept in safekeeping.

(3) The lender must execute the replacement forms prior to FmHA execution of the same.

(4) Certificates of Incumbency may be provided.

§§ 1980.85–1980-99 [Reserved]

§ 1980.100 OMB control number.

The collections of information requirements contained in this rule have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0024.

BILLING CODE 3410-07-M

APPENDIX A

USDA-FmHA Form FmHA 449-34 (Rev. 5-16-83) Type of Loan: ________ Applicable 7 C.F.R. Part 1980 Subpart ________	LOAN NOTE GUARANTEE	State County Date of Note
Borrower		FmHA Loan Identification Number
Lender		Lender's IRS ID Tax Number
Lender's Address		Principal Amount of Loan $

The guaranteed portion of the loan is $ ____________ which is ____________ (______%)

percent of loan principal. The principal amount of loan is evidenced by ____________ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note

__________ in the face amount of $ ________ and is number ________ of ________.

LENDER'S IDENTIFYING NUMBER	FACE AMOUNT	PERCENT OF TOTAL FACE AMOUNT	AMOUNT GUARANTEED
	$	%	$
TOTAL	$ ________	100%	$ ________

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, P.L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, P.L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et. seq.) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 449-36, "Assignment Guarantee Agreement," is used.

Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

CONDITIONS OF GUARANTEE

1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments.

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. **Lender's obligations.**

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. **Repurchase by Lender for Servicing.**

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guarantee portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. **Custody of Unguaranteed Portion.**

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. **When Guarantee Terminates.**

This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. **Settlement.**

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. **Loan Subsidy.**

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of ____________ percent per year. Payments will be made annually.

15. **Notices.**

All notice and actions will be initiated through the FmHA ______________________________

for ______________________________ (State) with mailing address at the date of this instrument:

____

____

UNITED STATES OF AMERICA
Farmers Home Administration

By: ______________________________

Title: ______________________________

____
(Date)

Assumption Agreement by ______________________________ dated ______________________________, 19____

Assumption Agreement by ______________________________ dated ______________________________, 19____

If not applicable delete paragraph prior to execution of this instrument.

APPENDIX B

USDA-FmHA
Form FmHA 449-35
(Rev. 5-16-83)

FORM APPROVED
OMB NO. 0575-0024
EXPIRES 10-31-85

LENDER'S AGREEMENT

Type of Loan: ______________
Applicable 7 CFR Part 1980 Subpart ______________

FmHA Loan Ident. No.
____

______________________________ (Lender) of

______________________________ has made a loan(s) to

______________________________ (Borrower)

______________________________ in the principal

amount of $ ______________ as evidenced by ______________ note(s)

(include Bond as appropriate) described as follows: ______________

____

____

____

____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not

to exceed ______________ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed ______________ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud of misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. The note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

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, their 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 at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P. L. 96-511.

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449-36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of 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.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon suceed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

VI. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VII. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VIII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

IX. Lender certifies it has paid the required guarantee fee.

X. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $__________ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

5. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains title marketable in fact to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule: __________

__________.

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

XI. Default by Borrower.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for isssuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XII. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the currrent market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses of paid under the guarantee from any party liable.

1. Form FmHA 449-30 Loan Note Guarantee "Report of Loss," will be used for calculations of all estimated and final loss determinations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guaratee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the Lender has submitted the final Report of Loss form.

XIII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be se-secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security.

XIV. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XVI. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XVII. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement

XVIII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. Notices.

All notices and actions will be initiated through FmHA for ______________________________

(State) with mailing address at the date of this instrument ______________________________

____

Dated this ______________ day of ______________, 19 ___.

LENDER:

ATTEST: ______________ (SEAL)

By ______________________________

Title ______________________________

UNITED STATES OF AMERICA
Farmers Home Administration

By ______________________________

Title ______________________________

Position 5

APPENDIX C

USDA-FmHA
Form FmHA 449-36
(Rev. 5-16-83)

FORM APPROVED
OMB NO. 0575-0024
EXPIRES 10-31-85

ASSIGNMENT GUARANTEE AGREEMENT

Type of Loan: ________________
Applicable 7 CFR Part 1980 Subpart ________________

FmHA Loan Identification Number ________________

________________________ of ________________________

(Lender) has made a loan to ________________________

in the principal amount of $ ____________ as evidenced by a note(s) dated ____________.
The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee

(Form FmHA 449-34) with the Lender applicable to such loan to guarantee the loan not to exceed ____________ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein.

________________________ of ________________________

(Holder) desires to purchase from Lender ____________ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $ ____________. Lender hereby assigns to Holder ____________ % of the guaranteed portion of the loan representing $ ____________ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. **Loan Servicing.** The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. **Servicing Fee.** Holder agrees that Lender will retain a servicing fee of ________ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. **Purchase by Holder.** The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 C.F.R. Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. **Full Faith and Credit.** The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

6. **Rights and Liabilities.** The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 449-36 to effectuate the transfer.

This form contains certain agreements which may require future reporting and information from the Lender or FmHA in order to obtain the benefit of the FmHA loan guarantee. This statement is furnished pursuant to P. L. 96-511.

7. **Repurchase by the Lender (Defaults).** The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. **Purchase by FmHA.** If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within 30 days after written demand to FmHA from the Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. **Lender's Obligations.** Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statment certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. **Repurchase by Lender for Servicing.** If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. **Foreclosure.** The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. **Reassignment.** Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. **Notices.** All notices and actions will be initiated through the FmHA ______________________

for ____ (state) with mailing address

at the date of this assignment: ______________________________________

____

Dated this ______________ day of ______________, 19____.

LENDER:

ADDRESS:

ATTEST:

By ____________________

____________________ (SEAL)

Title ____________________

HOLDER:

ADDRESS:

ATTEST:

By ____________________

____________________ (SEAL)

Title ____________________

UNITED STATES OF AMERICA
Farmers Home Administration

ADDRESS: ____________________

By ____________________

____

Title ____________________

BILLING CODE 3410-07-C

Subpart D—Rural Housing Program Loans

6. Section 1980.304 and Administrative is revised and reads as follows:

§ 1980.304 Lenders.

(a) *Eligible lenders.* Eligible Lenders as defined in § 1980.13(b) of Subpart A of this part are eligible for FmHA RH loan guarantees.

(b) *Local lender.* A local lender is defined in § 1980.13(a) of Subpart A of this part and must, at a minimum, be represented in its main branch, or agent's office by a employee or agent authorized to act for the lender. A local lender who "packages" loans for or refers applicant inquiries to the lender does not meet the requirement of a local lender.

Administrative

With prior written approval of the FmHA National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original requirements including all liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when an extreme situation requires a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA 1980-42, "Notice of Substitution of Lenders."

7. Subpart E to Part 1980 is revised to read as follows:

Subpart E—Business and Industrial Loan Program

Authority: 7 U.S.C. 1989; Order of Secretary of Agriculture, 7 CFR 2.23; Order of Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70.

Note.—This subpart supplements the provisions of Subpart A of the regulations with respect to loans guaranteed by the Farmers Home Administration (FmHA).

Subpart E—Business and Industrial Loan Program

§ 1980.401 Introduction.

(a) This subpart supplemented by Subpart A of this part, contains regulations for Business and Industrial (B&I) loans guaranteed or insured by the Farmers Home Administration (FmHA), and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, insuring, holding, servicing, or liquidating such loans.

(b) The purpose of the B&I program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders havings such loans.

(c) The B&I loan program, like other FmHA programs, is administered by the Administrator through a State Director serving each State through a District Director to the County Supervisor. The County Supervisor is the focal point for the program and the local contact person for processing and servicing activities, although this Subpart refers in various places to the duties and responsibilities of other FmHA employees.

(d) Throughout this Subpart there appear Administrative provisions for the State Director, District Director, and County Supervisor. These provisions establish the internal duties, responsibilities and procedures to carry out the requirements of the program. These provisions are identified as "ADMINISTRATIVE" and follow appropriate sections of this Subpart.

§ 1980.402 Definitions.

The following general definitions are applicable to the terms used in this Subpart. Additional definitions may be found in § 1980.6 of this part, Subpart A.

(a) *Applicant (for loan).* An applicant may be a cooperative, corporation, partnership, trust, or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county, or other political subdivision of a State; or an individual. Such applicant must be engaged in or proposing to engage in improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

(b) *Community facilities.* For the purpose of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas, extension or improvement of community transportation systems serving the site, and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

(c) *Development cost.* These costs include, but are not limited to, those for acquisition, planning, construction, repair, or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights-of-way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

(d) *Letter of conditions.* Letter issued by FmHA to a borrower setting forth the conditions under which FmHA will make a direct (insured) loan from the Rural Development Insurance Fund.

(e) *Public body.* A municipality, political subdivision, public authority, district, or similar organization.

(f) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

(g) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(h) *Working capital.* The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

§ 1980.403 Citizenship of applicants.

Loans to individuals will be made or guaranteed only to those who are citizens of the United States or reside in the United States after being legally admitted for permanant residence. At least 51 percent of the outstanding interest in any corporation or organization-type applicant must be owned by those who are either citizens of the United States or reside in the United States after being legallly admitted for permanent residence.

§ 1980.404 [Reserved]

§ 1980.405 Rural area determinations.

FmHA will determine if any area is rural for purposes of the Guaranteed or Insured loan program. The following will be used by FmHA in making area eligibility determinations when it is not clear from the geographical location of the applicant:

(a) Urbanized area immediately adjacent to a city having a population of 50,000 or more: An urbanized area immediately adjacent to a city having a population of 50,000 or more is an area constituting for general social and economic purposes a single community having a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and will extend from the contiguous boundary(ies) to the recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public parks will be disregarded. Outer boundaries of an incorporated community will extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city and recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area as defined in this section are not in a nonrural area.

(b) Urbanizing area: An urbanizing area is one defined as a community which is not now or within the foreseeable future not likely to be clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community will be considered as "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities or public parks will be disregarded. A community will be considered as "independent of" when its social and economic structures (e.g., government; educational, health, and recreational facilities; business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

(c) The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanizing, he must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide him/her with the correct density figure. All such density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census. In making the density calculations, there will be excluded large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries or land set aside for such purposes.

§§ 1980.406–1980.410 [Reserved]

§ 1980.411 Loan purposes.

Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(a) *Private entrepreneurs.* Loans may be for improving, developing, or financing business, industry, and employment and improving the economic and environmental climate, including pollution and abatement control, of rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(2) Purchasing and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(3) Purchasing of equipment, leasehold improvements, machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidental to industrial development.

(6) Startup costs and working capital.

(7) The financing of housing development sites located in open country or cities, towns or villages with populations not in excess of those eligible for FmHA Rural Housing Loans, provided the community demonstrates a need for additonal housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Loans, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Loans may not be guaranteed for agricultural production as defined in § 1980.412(e); however, applicants who are in the business of processing, marketing, or packaging agricultural products, as well as agricultural production, may be eligible for loan assistance for that portion of the business other than agricultural production provided the agicultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such manner as to clearly identify the use of and future accounting

of the loan proceeds and operation of the business.

(9) Loans, other than for working capital or debt refinancing, for commercial custom feedlot operations. As used herein, commercial custom feedlot operations mean those lots primarily feeding, on a custom basis, livestock which belongs to other than the feedlot owner-operator. This would not preclude assistance to those borrowers whose principals or members are farmers and ranchers whose individually owned livestock may be custom fed at the lot; provided, such principals' or members' personal financial conditions are not likely to adversely affect the financial success of the custom operation. In those cases where feedlot operators buy and feed for themselves, records and accounts of such operations shall be maintained in such manner that they may be identified separately from the custom feeding operation, and loan agreements and security instruments will specify that any losses incurred in the owner-operator operation will not be chargeable to the custom feeding operations.

(10) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(11) Feasibility studies.

(12) Debt refinancing. Lenders and FmHA must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the Lender and FmHA that it is necessary to save existing jobs. FmHA will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) Is is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(13) Reasonable fees and charges only as specifically listed below and disclosed on Form FmHA 449-1, "Application for Loan and Guarantee," or on an addendum to the application at the time the request is submitted to FmHA for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA 449-1 and are subject to FmHA review and approval before the application is presented to the FmHA State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(14) FmHA guarantee fee.

(15) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(16) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

(b) *Public bodies.* See § 1980.481 and § 1980.488.

§ 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds $1,000,000 and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds $1,000,000 and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural production which means the cultivation, production (growing), and harvesting either directly or through integrated operations of agricultural products (crops, animals, birds and marine life either for fiber or food for human consumption and disposal (marketing), the raising, breeding, hatching, including the control and management of farm and domestic animals). Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(3) Forestry which includes establishments primarily engaged in the

operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) Loans for commercial custom feedlot operations as identified under eligible purposes.

(6) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes or convention centers.

(n) For any tourist, recreation or amusement facility.

Administrative

Par. (c) and (d). The FmHA State Director will review the criteria in § 1980.412 (c) and (d) and make a written determination with supporting data and reasons as to the determination. Such review must be independent of the D.O.L. certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

§ 1980.413 Transactions which will not be guaranteed.

(a) The following transactions will not be guaranteed by FmHA:

(1) The guarantee of lease payments.

(2) The guarantee of loans made by other Federal Agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, Federal Land Bank, or Production Credit Association.

(3) The guarantee or making of any B&I loan(s) when the total amount requested is in excess of $10 million.

(4) The guarantee of making of any B&I alcohol production facilities loan(s) when the total amount requested is in excess of $20 million.

(b) Guaranteeing of loans involved in tax-exempt obligations is set forth in § 1980.23 of Subpart A of this part.

Administrative

The State Director will consider the overall State allocations of funding authority in recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

§ 1980.414 Fees and charges by lender and others.

[See Subpart A, § 1980.22]

(a) All fees and charges must be specifically documented and justified on the *Form FmHA 449-1* or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(b) Packaging fees include services rendered by the lender or others in connection with perparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to $1 million and on all amounts over $1 million, an additional one-fourth percent up to a total maximum fee of $50,000. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and approval. Loan proceeds may be used to pay fees as specifically authorized under § 1980.411(a) (13) and (14). Packaging fees, investment banker fees, and any other fees or charges shall not be paid from loan proceeds.

§§ 1980.415–1980.418 [Reserved]

§ 1980.419 Eligible lenders.

[See Subpart A, § 1980.13.]

Administrative

A. *Par. (a) of Subpart A, § 1980.13* requires National Office approval for any variations.

B. *Par. (b)(2), (h) of Subpart A, § 1980.13,* State Director submits information to National Office with recommendations.

C. With prior written approval of the FmHA National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations requires a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA 1980-42, "Notice of Substitution of Lender."

§§ 1980.420–1980.422 [Reserved]

§ 1980.423 Interest rates.

(a) *Guaranteed loans.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. Should any part of the loan(s) be sold by the lender, FmHA, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate, and changes can be made no more often than quarterly. There will be no floor or ceiling on variable interest rates. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between FmHA and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form FmHA 449-14, "Conditional Commitment For Guarantee," and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown or an amendment to Form FmHA 449-14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on

the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide FmHA with the overall effective interest rate for the entire loan.

(b) *Insured loans.* (1) Loans for other than those in paragraph (b) (2) of this section will bear interest at a rate prescribed by FmHA, and will be announced periodically. The interest rate for insured loans will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

(2) Loans to public bodies, nonprofit associations, and Indian Tribes used to finance community facilities will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B (available in any FmHA Office).

§ 1980.424 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within three years from the date of the promissory note and at least annually thereafter. Interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected, except for seasonal-type businesses.

(b) The maximum time allowable for final maturity for an FmHA guaranteed B&I loan will be limited to thirty (30) years for land, buildings, and permanent fixtures; the usable life of the machinery and equipment purchased with loan funds, but not to exceed fifteen (15) years; and seven (7) years for the working capital portion of the loan. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(c) The maximum time allowable for final maturity of an FmHA insured loan for community facilities will not exceed forty (40) years.

(d) FmHA will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

Administrative

It is permissible for lenders to structure the borrower's financial proposal under the multi-note option as provided for in Paragraph III A.2. of Form FmHA 449-35, "Lender's Agreement," in the following ways:

A. To treat the entire financial package of the borrower as one loan (i.e., loan purposes may include one or any combination of working capital, machinery and equipment, or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes on the guaranteed portion of the loan.

3. A Form FmHA 449-34, "Loan Note Guarantee," is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in § 1980.423 of this subpart.

5. One of each of the following Forms: FmHA 449-14, "Conditional Commitment for Guarantee," FmHA 1940-1, "Request for Obligation of Funds," 449-35, "Lender's Agreement," and FmHA 1980-19, "Guaranteed Loan Closing Report," is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment, or real estate. As an example, a working capital loan could be structured as follows:

One note for $XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for $XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA 449-34 is attached to all notes, including the unguaranteed note.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in § 1980.423 of this subpart.

4. Separate Forms FmHA 449-14, 1940-1, 449-35, and 1980-19 are required for each loan. If you had two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA 449-36, "Assignment Guarantee Agreement," will never be used when the multi-note option is utilized.

D. *Par. (b).* The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this Subpart.

(b) To be eligible for an insured loan under this Subpart, the applicant must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the applicant's location(s) for loans for similar purposes and period of time. The applicant's inability to obtain such credit elsewhere will be determined in accordance with Subpart A of Part 1942 of this chapter.

§§ 1980.426–1980.431 [Reserved]

§ 1980.432 Environmental impact assessments and statements.

[See Subpart A, § 1980.40.]

Administrative

State Director will review Form FmHA 449-10, "Applicant's Environmental Impact Evaluation," submitted by the applicant and a Form FmHA 440-46, "Environmental Impact Assessment," prepared by the County Supervisor or State Director designee. The State Director will indicate his/her decision in the Form FmHA 440-46. If the State Director determines that an EIS is required, he/she will notify the applicant and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

[See Subpart A, § 1980.42]

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to Subpart B of Part 1806 of this chapter [FmHA Instruction 426.2].

§ 1980.434 Equal opportunity and nondiscrimination requirements.

[See Subpart A § 1980.41.]

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of noncompliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA Official in writing to the Administrator, ATTN: Equa' Opportunity Officer.

§ 1980.435–1980.440 [Reserved]

§ 1980.441 Applicant equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for insured loans at loan closing or at the time the Loan Note Guarantee is issued for guaranteed loans. However, balance sheet equity in the amount of at least 20–25 percent will be required under the following circumstances.

(1) For new businesses since they do not have a history of proven operations and such businesses generally experience unforeseen startup expenses which may deplete the available cash resources.

(2) For businesses where the applicant does not or cannot offer a limited or full personal or corporate guarantee as required in § 1980.443 and thereby weakens the financial soundness of the loan.

(3) For energy related businesses since these types of projects may be technically feasible, but in many instances are more susceptible to higher risk and a higher equity position will assure management's commitment to the project.

FmHA may also require more than a 10 percent equity investment in projects other than those in paragraphs (a)(1), (2), and (3) if the reviewing official makes a written determination that special circumstances necessitate this course of action. Special circumstances are limited to credit factors which negatively affect the financial soundness of the loan, the chances of the project's success, or the repayment ability of the borrower. Such determination will be in writing by the reviewing official and explain fully what the special circumstances are and how FmHA decided upon the percentage of equity investment to be required in the individual case.

(b) FmHA will require the applicant to contribute all of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. Appraisal surplus and/or subordinated debt cannot be used in the calculation of the equity requirements.

Administrative

The State Director will be selective in approving loan applicants for new business ventures involved in unproven products, services, or markets. Should such businesses be considered by the State Director, feasibility studies as outlined in § 1980.442 and additional equity will usually be required.

§ 1980.442 Feasibility studies.

FmHA may require an applicant to provide a feasibility study prepared by an independent recognized consultant. The cost of such study will be borne by the applicant and may be paid from funds included in the loan. On loans of one million dollars or more, feasibility studies by recognized independent consultants will be required. However, FmHA may make an exception to this requirement when the financial history of the business, the current financial condition and guarantees or other collateral are more than adequate to indicate the feasibility of the enterprises. The feasibility study outlines will be approved by FmHA. FmHA personnel may not recommend consultants but may provide the applicant with a list of consultants who have performed satisfactorily on previous projects. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility.* Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility.* Information on the sales organization and management, nature and extent of market and market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility.* Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility.* An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility.* Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

§ 1980.443 Collateral, personal and corporate guarantees, and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and applicant's prospective earnings. Collateral may include, but is not limited to the following: land, buildings, machinery, equipment, furniture, fixture, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities, and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(b) *Personal and corporate guarantees.* (1) Unconditional personal guarantees (i.e., absolute guarantees of full and punctual payment and performance by the borrower) from owners or major stockholders as determined by FmHA and all partners of partnerships unless restricted by law *will* be required unless exempted as provided for in paragraph (b)(2) of this section. Guarantees of parent, subsidiaries, or affiliated companies and/or secured guarantees may also be required. FmHA is not a co-guarantor with the personnal or.corporate guarantors. The personal and corporate guarantees are part of the collateral for the loan.

(2) An exception to the requirement for personal or corporate guarantees may be made by FmHA when requested by the lender and if:

(i) The applicant has a satisfactory and current (not over 90 days old) credit report, proven management, evidence of the market necessary to support projections, profitable historical performance of no less than 3 years, abundant collateral to protect the lender and FmHA, sufficient cash flow to service its debts, and meets key industry standards such as those of Robert Morris Associates, Dun and Bradstreet, or the like; or

(ii) The applicant's stock is widely enough held so that no one individual can exercise control. Examples of control would include but are not limited to: holding sufficient proxies and maintaining sufficient family or special interest voting blocks; or

(iii) An applicant which has a parent, subsidiary, or affiliate which is legally restricted from guaranteeing, or if the guarantee would conflict with existing contractual obligations. Examples of existing contractual obligations include but are not limited to restrictions in loan agreements or in credit lines which may preclude guaranteeing.

(3) Unsecured personal guarantees, while collateral, will not be considered for purposes of adequacy of security. Personal guarantees will be secured by collateral when business collateral offered is determined by FmHA to be insufficient or when the applicant's credit does not meet the program's normal requirements.

(4) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors, which make a clear disclosure of community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

(iii) When applicable, provide written evidence to FmHA of their inability to provide a guarantee because of existing contractual arrangements or legal restrictions.

(c) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, pubic liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the collateral.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower and will be assigned or pledged to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workmen's compensation insurance is required in accordance with State law.

Administrative:

A. *Par (a)(2).* FmHA's credit analysis of collateral will consist of the following:

(1) Little or no value will be assigned to unsecured personal or corporate guarantees.

(2) A maximum of 80 percent of current market value will be given to real estate. Special purpose real estate should be assigned less value.

(3) A maximum of 70 percent of book value will be assigned to accounts receivable (dependent upon analysis of collectibility) and inventory.

(4) Collateral value assigned to machinery and equipment, furniture and fixtures will be based upon its marketability, mobility, useful life and alternative uses, if any.

B. *Par. (b).* The State Director will assure that the collateral values and personal and corporate guarantees are fully reviewed, analyzed and the loan file is documented as to the facts and reasons for decisions reached.

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral on loans in excess of $350,000 or where there is a specialized facility or specialized machinery and equipment or if loan funds are to be used to refinance lender's existing debts to the applicant. On loans of $350,000 or less, the lender will be responsible for assuring that appropriate appraisals are made by either independent fee appraisers or qualified appraisers on the lender's staff. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used.

(b) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. The lender will consult with FmHA for its recommedations before having the appraisal made.

(c) The lender will determine that the fees or charges of appraisers are reasonable.

(d) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application. (See § 1980.451 (i)(6) of this subpart).

(e) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant changes in collateral, then the FmHA State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of havng a new appraisal prepared.

§§ 1980.445–1980.450 [Reserved]

§ 1980.451 Filing and processing applications.

(a) *Applicants' and lenders' contact.* Applicant and lenders desiring FmHA assistance as provided in this subpart may file preapplications or applications with the County Supervisor servicing the area in which the project is to be located. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. The FmHA County Supervisor will promptly arrange an early meeting with the applicant and lender representatives to discuss assembly, preparation, and processing of preapplications and applications.

(b) *Applications from cooperatives.* Applicants eligible for loans from the Bank for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See FmHA Instruction 2000–Q available in any FmHA office for Memorandum of Understanding between FmHA and Farm Credit Administration).

(c) *Applicants eligible for Small Business Administration (SBA)* *assistance.* All applicants for loan guarantees eligible for SBA assistance will be advised by FmHA at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See FmHA Instruction 2000–P available in any FmHA office for Memorandum of Understanding between SBA and FmHA).

(d) *Loan priorities.* Applications and preapplications received by FmHA will be considered in the order received. Priority will be given to projects located in areas and cities having a population of less than twenty-five thousand.

(1) FmHA will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's stategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(3) In assigning priorities to applications and in selecting projects for funding, FmHA will consider State development strategies and clearinghouse (A–95 Agency) comments and recommendations. Funds (Insurance or guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs. Priorities will be assigned by the FmHA State Director in accordance with the following:

(i) Those projects which will save existing jobs.

(ii) Those projects which will enlarge, extend, or otherwise improve existing business and industries.

(iii) Those which will create the highest number of permanent employment opportunities.

(iv) Those projects which will contribute to the overall economic stability of the rural areas but generate little or no permanent employment opportuntites beyond the entrepreneur himself.

(e) *Filing preapplications and applications.* Applicants or lenders may file preapplications as described in paragraph (f) of this section if they desire an expression of FmHA interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications.* Applicants may file preapplications with the County Office including:

(1) A letter prepared by the applicant and the lender which shall include:

(i) Applicant's name, address, contact person, and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products, and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of applicant's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availability of raw materials and supplies.

(ix) If a corporation, names and addresses of applicant's parent, affiliates and/or subsidiary firms and a brief description of relationship, products, and ownership among applicant, parent, affiliates and subsidiary firms.

(2) Form FmHA 449–22, "Certification of Non-Relocation and Market and Capacity Information Report."

(3) Form FmHA 449–4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee, and stockholders holding 20 percent or more interest in the applicant except for those corporations listed on a major stock exchange and for those so listed if required by FmHA. Forms FmHA 449–4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA's not making or guaranteeing the loan.

(4) A record of any pending or final regulatory or legal (civil or criminal) action against the applicant, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers, and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate, and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings, and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Comments of substate and State A–95 agencies except that loans for small or local enterprises with no significant economic or environmental impact are exempt from A–95 review regulations. However, a notice of approval for information purposes will be sent to the A–95 agency. If such comments are not immediately available, they may be forwarded to the County Office after submission of the preapplication. Applicants requesting Federal assistance are required to notify the A–95 clearinghouse in the jurisdiction where the project is to be located. Normally, the preapplication material excluding financial information is submitted for A–95 review.

(g) *Preliminary determination by FmHA.* If preapplication information indicates the project will not meet FmHA's minimum credit standards for a sound loan, is ineligible, does not have sufficient priority, or that funds or guarantee authority are not available for the project, FmHA will so inform the applicant. The applicant will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, FmHA will inform the lender and applicant in writing and request that they complete the application.

(h) *Department of Labor certifications.* FmHA will submit Form FmHA 449–22 to the Department of Labor for the necesssary certification that the proposal will not be in conflict with § 1980.412 (c) and (d).

(i) *Applications will consist of:*

(1) Form FmHA 449–1, "Application for Loan and Guarantee."

(2) Form FmHA 449-2, "Statement of Collateral."

(3) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses, a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. If debt refinancing is requested, a debt schedule is to be prepared (correlated to the latest balance sheets) reflecting the debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status, and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, projected cash flow (monthly first year, quarterly for two additional years) and projected earnings statements for three years supported by a list of assumptions showing the bases for the projections.

(9) Any credit reports obtained by the lender or FmHA on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form FmHA 400-1, if construction costing more than $10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in § 1980.443.

(13) Proposed loan agreement. (See paragraph VIII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449-14 including the requirements for periodic financial statements and recordkeeping. There must be provisions for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. However, FmHA will not accept a limitation to the scope of the audit. Compilation or reviews do not satisfy the audit requirement. The loan agreement must also include but is not limited to the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender and FmHA.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and FmHA with personal and/or corporate financial statements. (See § 1980.443)

(14) A complete feasibility study when required. (See § 1980.442)

(15) Any additional information required by FmHA.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10-K, "Annual Report Pursuant to Section 13 or 15 D of the Act of 1934."

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(i) If the applicant is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and FmHA solicits personal information for him/her, the individual will be provided Form FmHA 410-9, "Statement Required by the Privacy Act."

(ii) If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410-10, "Privacy Act Statement to References."

(19) On any request for refinancing of existing loan(s) as authorized under § 1980.411(a)(12), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral will be required by FmHA when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current position.

(j) *Use of forms.* FmHA numbered forms will be used where shown in both preapplication and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of this Subpart.

(k) *Certificate of need.* If the loan request is for health care facilities (e.g., hospitals or nursing homes), a "Certificate of Need" will be obtained by the applicant from the appropriate regulatory or other agency having jurisdiction over the project. If a significant part of the project's income will be from third party payors, e.g., medicare or medicaid, the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

Administrative

A. The County Supervisor and District Director:

1. Determines if material and information submitted is complete and signed by the appropriate party in the appropriate capacity.

2. Prepares and submits to State Director their comments and recommendations. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders, and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer, and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.

3. The County Supervisor will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application, two copies of Form FmHA 410-9. The individual will sign both copies, retaining one and providing FmHA with the other copy which becomes a part of the loan file.

4. The County Supervisor will provide any source from whom FmHA obtains information concerning an individual with two copies of Form FmHA 410-10. The source

will sign both copies, retain one and provide FmHA with the other copy which becomes a part of the loan file.

B. *The State Director:*

1. Will provide the County Supervisor with assistance as may be necessary to assure that the applicants and lenders are currently and correctly advised throughout preapplication and application processing.

2. Will prepare and submit Form FmHA 2033-37, "Rural Community Facility Applicant/Borrower Definition," Form FmHA 2033-38, "Rural Community Facility and Funding Data," Form FmHA 2033-39, "Rural Community Facility Status Detail," Form FmHA 2033-40, "Rural Community Facility Fund Dispositions," and Form FmHA 2033-41, "Rural Community Facility Actual Verifications of Employment and Users," in accordance with FmHA Instruction 2033-F. The Standard Industrial Classification (SIC) manual will be used in coding of projects.

3. Will forward immediately to the National Office on all projects:

(a) Form FmHA 449-22 (7 copies) for loans over $1,000,000 and when direct employment increases more than 50 employees.

(b) For insured loans where the applicant leases facilities to another, submit Form FmHA 449-22 for such applicant. The lessor(s) will also be required to provide Form FmHA 449-22. Subsequent loan requests require resubmission of Form FmHA 449-22.

(c) Form FmHA 449-4 (5 copies) for all loans over $1,000,000 or for loans, regardless of size, when the State Director believes a character evaluation check is advisable. Applicants should be advised that these clearances will take approximately 60 days to process and that the National Office will take no action to expedite such processing.

Note.—Forms FmHA 449-22 and 449-4 should *only* be processed if a *complete* preapplication or application has been received.

C. *Miscellaneous Administrative provisions:*

1. *Par. (f)* Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the applicant and lender.

2. *Par. (g)* Upon receipt of all preapplications in excess of $5 million, the State Director will transmit to the National Office the material required under 1980.451(f) (1), (4), and (5) of this Subpart together with recommendations and observations including an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities, and intent of the program and will advice the State Director. After receiving the National Office advice or for loans less than $5 million, the State Director will inform the applicant of the decision. (Copy sent to County Supervisor).

3. *Par (i)* State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:

(a) Loan file.

(b) Form FmHA-449-29, "Project Summary," including State Director's spread sheets, financial history, and projections (use attachments to Project Summary if necessary).

(c) Proposed Form FmHA 449-14.

(d) Copy of FmHA State Loan Review Board Minutes.

(e) Notification of required financial and other reports, their frequency, due dates, and fiscal yearend.

4. *Par (i)(9). Credit reports.*

(a) The National Office has contracted with Dun and Bradstreet, Inc., (the contractor, D&B) for a complete credit reference and monitoring system for use by FmHA National and State Offices. The system provides an independent source of credit information for analyzing applications and provides continuous monitoring of all loan accounts registered.

(b) The State Director will appoint a member of the State staff to act as a State Coordinator for the services. Such coordinator will be provided with instructional material necessary to use this service. The contractor will assign a D&B account executive from the nearest D&B office for assistance to the FmHA State Office Coordinator, answer inquiries, assure proper service, deliver the National Reference Books, and deliver inquiry request forms to the State Office Coordinator. The local D&B office should be notified whenever a new Coordinator is assigned. D&S will then make arrangements to instruct the new Coordinator relative to how best to use the D&B service.

(c) The Credit Reference and Monitoring System Service consist of:

(1) *Credit Reference Service*—One set of Dun & Bradstreet National Reference Books will be delivered to each State Office. These books provide as quick source of certain basic information on a business such as:

(A) Function.

(B) Correct business title.

(C) The age of the business.

(D) Capitalization.

(E) Credit appraisal.

(2) *Business Information Report Service*—When it has been determined that a preapplication or application will be considered for further processing, the State Office Coordinator will order a credit report on the business. The contractor will provide each State Office with a supply of prenumbered (separate number for each State) Dun & Bradstreet, Inc. Subscriber Inquiry forms JTC 25592 for use in ordering the credit report. The form will contain a complete and correct business name and address. Insert in the "Remarks" section a list of the name(s) of principal(s). The inquiry form is mailed to the designated D&B office for processing. The credit report will be sent by D&B directly to the State Office Coordinator. Telephone requests for reports will be accepted by all local D&B offices. Dun & Bradstreet has begun a new service known as Duns DIAL (Direct Information Access Line). Duns DIAL provides a Toll Free 800 Number for each FmHA office to call for instant report information direct from the D&B National Information Center at Berkley Heights, N.J.

It provides telephone readouts of reports from D&B's data bank that are as brief or as comprehensive as is needed. States may verify mailing dates of ordered reports, or ask for key-point readout, full report readout, or request priority handling of any inquiry when the D&B report must be updated. If loan dockets are sent to the National Office for review, they will contain a copy of the D&B credit report. (Note: The National Office may also initiate requests for these reports and will notify the State Office). The "normal" delivery of information by Dun & Bradstreet includes all followup reports written during the year following a request for a report. One-Shot Reports are available but, in practice, it is not generally feasible to order a D&B without followups. States will automatically receive Continuous Report Service if a One-Shot Report is not specifically requested.

(3) *Dun's Special Purpose Report*—This is a special comprehensive report on business and principals providing an indepth investigation and detailed information. This report should be ordered if the State Director feels such a report is needed to assist in the review of an application, to make a decision or gain additional information concerning a closed loan. This service is a valuable tool to be used anytime during the life of the loan when a decision must be made. These reports may also be used for non-credit-orientated business decisions.

(4) *Key Account Report*—These may be ordered when a decision concerning short-term credit is needed.

All Dun's Special Purpose and Key Account Reports must be ordered by memo through the National Office. These should be submitted in narrative form explaining in detail the nature of the information requested. Since these reports are charged by the hour, it is imperative that specific and complete information be given. All requests should include the name and address of the borrower, amount of loan requested, purpose of the guarantee, principals involved, and any background which would be relevant to the request. The name and telephone number of the loan officer in charge should also be provided so that the D&B representative may contact him/her if the need arises.

(5) *Change Notification Service*—This is a continuous monitoring service whereby D&B in Washington, D.C., will coordinate with the National Office to provide certain data relating to then existing Business and Industry loans.

(i) Each State Coordinator will provide the

National Office with an initial listing of all existing business names and addresses where Loan note Guarantees or letters of conditions have been issued and thereafter, on a monthly basis, a listing of additional names or deletions.

(ii) The National Office will forward the combined listing to D&B, who thereafter will provide a continuous monitoring of these businesses. D&B will report any significant changes that may have developed which affect the business. Such changes will be reported on a D&B change notice Form 9 W2-11 and will be sent by D&B to the National Office. The National Office will review the change notice and send a copy to the State Office Coordinator who may request a D&B updated credit report or take any appropriate followup action required. (This system is to be used as a supplement for FmHA's monitoring functions).

5. *File documentation.* Applications will be organized in a loan file in accordance with FmHA Instruction 2033-A, which is available in any FmHA office. An 8-position folder with tabs will be utilized. The State Director may supplement the Position Guides to include specific legal requirements within their State. If the applicant prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of FmHA employees who work on application or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions or reasons for FmHA actions on the cases. Particular attention must be given to this requirement on cases that become delinquent or problems in order that FmHA's position will be defensible in the event of an adverse action.

6. *Par (i)(13). Audit agreements and requirements.* FmHA urges the use of a written agreement between the lender and borrower to assure that there is no misunderstanding concerning FmHA audit requirements.

7. *Par (i) Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may be not applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM NO. AND TITLE

		Filing position
AD-425	Contractor's affirmative action plan for equal employment opportunity.	1
FmHA 400-1	Equal opportunity agreement	6
FmHA 400-3	Notice to contractors and applicants	6
FmHA 400-4	Assurance agreement	6
FmHA 400-6	Compliance statement	6
FmHA 410-8	Applicant reference letter	3
FmHA 410-9	Statement required by Privacy Act	3
FmHA 410-10	Privacy Act statement to references	3
FmHA 424-12	Inspection report	6
FmHA 440-1	Request for obligation of funds	2
FmHA 440-46	Environmental impact assessment	3
Do	Environmental impact statement	3
FmHA 440-59	Acknowledgment of obligated funds/check requests	2
FmHA 449-1	Application for loan and guarantee	3
FmHA 449-2	Statement of collateral	5
FmHA 449-4	Statement of personal history	3
FmHA 449-5	Personal financial statement	3
FmHA 449-7	Assumption agreement for guaranteed loans (new terms)	2
FmHA 449-8	Assumption agreement for guaranteed loans (same terms)	2
FmHA 449-10	Applicant's environmental impact evaluation	3
FmHA 449-14	Conditional commitment for guarantee	2
FmHA 449-19	Guarantee fee report	2
FmHA 449-22	Certification of nonrelocation and market and capacity information report.	3
FmHA 449-29	Project summary	1
FmHA 1940-1	Request for obligation of funds	2
FmHA 1940-57	Acknowledgment obligation of funds	2
FmHA 449-34	Loan note guarantee	2
FmHA 449-35	Lender's agreement	5
FmHA 449-36	Assignment guarantee agreement	5
FmHA 1980-19	Guarantee fee report	1
	Annual audit report	1
	Borrower financial statements	1
	Chattel security instruments	1
	Report—Exhibit B, FmHA instruction 2015-C	1
	Applicants' certification of indebtedness	1
	Lender's loan agreement	2
	Promissory notes	2
	Bond (speciman) bond ordinances, bond transcripts or similar items.	2
	Running case record	3
	Market analysis information (feasibility study)	3
	Applicant's and lender's preapplication letters	3
	Lender's evaluation and recommendations	3
	Cost estimates and forecast for contingency funds	3
	Dun and Bradstreet reports	3
	Corporate or personal financial statements of guarantors	3
	S.E.C. 10-K report	3
	Pro-forma balance sheet	3
	Current profit and loss statements	3
	Projections of gross revenues and net earnings	3
	Cash flow statements, 3 years with assumptions	3
	Appraisal reports	8
	Documentation for considering refinancing	3
	Financial statements for last 3 years	3
	Complete debt schedule	3
	Interim financial statements	3
	Aging and turnover of receivables and inventory	3
	Credit reports	3
	Records of any pending or final regulatory litigation	3
	Comments on any State development strategies	3
	Flood or mudslide hazard area statement	3
	National Historic Preservation Act statement	3
	State review board minutes	3
	Certificate of need (health care facilities)	3
	Clean Air and Water Pollution Control Act requirements statement.	3
	Correspondence (excluding closing instruments)	4
	Department of Labor certification	4

DESCRIPTION OF RECORD OR FORM NO. AND TITLE—Continued

		Filing position
	Mortgagee title insurance policy	5
	Title opinions	5
	Bylaws, resolutions or regulations and amendments	5
	Articles of incorporation, bylaws, and regulations or charter	5
	Lender security agreements and financing statements	5
	Lender mortgages and notes	5
	Advice of Office of General Counsel from review of docket	5
	Partnership agreements	5
	Other documents used in loan closing	5
	Schedule of stock ownership	5
	Franchise agreement	5
	Construction contracts and compliance statements	6
	Lender's approval of plans and specifications	6
	Engineer's certification of satisfactory completion in accordance with plans and specifications.	6
	Lender's audit of expenditures and project costs	6
	Evidence of concurrence and compliance with construction requirements of State, county, and municipal government (including building permits).	6
	Lender's closing certification	6
	Lender's loan servicing plan	6

§ 1980.452 FmHA evaluation of application.

FmHA will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, and that there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA is able to guarantee the loan, it will provide the lender and the applicant with Form FmHA 449–14, listing all requirements for such guarantees. FmHA will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA 449–1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Office that the Statements of Personal History(s) have been processed and cleared. FmHA State Directors are the only persons authorized to execute Form FmHA 449–14.

Administrative

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405).

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(12) and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.

(a) Obtain a borrower's complete debt schedule. Schedule should agree with applicant's latest balance sheet.

(b) Determine from lender if the applicant's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.

(c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts, and other credit reports.

(d) The percentage of guarantee should be adjusted to assure that the lender does not bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for guarantee.

D. Applications will be analyzed by an FmHA State Loan Review Board before execution of Form FmHA 449–14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those FmHA employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist), and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-FmHA sources for expertise, such as bankers or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transporation and subsistence). (See FmHA Instruction 2036–A which is available in any FmHA office).

3. The Rural Housing Loan Chief will be a member of the FmHA State Loan Review Board if a site development loan (see § 1980.411(a)(7)) is being considered. The Community Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942–A is being considered.

The Farmer Programs Chief will be a member of the board if a project, the success of which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other FmHA programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for FmHA as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other FmHA programs.

4. The County Supervisor and District Director will attend the review board meeting to the extent practical, taking into consideration other work requirements and travel.

5. The State Director will prepare an original and two copies of Form FmHA 1940–1 for each loan to be obligated. Also, for each initial loan, Form FmHA 1940–50, "Add, Delete, or Change Guaranteed Loan Borrower Information, will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA 1940–1 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form FmHA 1940–1 and Form FmHA 449–14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA 1940–1 to the lender in advance of issuance of Form FmHA 449–14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA 1940–1 and retain the original of the form as a permanent part of the FmHA case file. The State Director may retain the remaining conformed copy of Form FmHA 1940–1. The State Director or designee will telephone the Finance Office Check Request Station requesting that the authority

for a particular project be reserved. Form FmHA 1980-50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA 1940-1 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 41 of Form FmHA 1940-1.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received on or after 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request," prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA 440-57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by FmHA Instruction 2015-C.

e. See FmHA Instruction 2015-C (available in any FmHA office) for notification procedures.

6. State Director, through the County Supervisor, notifies the lender and applicant if he/she will not issue the Form FmHA 449-14.

§ 1980.453 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA 449-14, and the options listed on the back of the form, the lender and applicant should complete and sign the "Acceptance or Rejection of Conditions," and return a copy to the FmHA State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA.

(b) If the lender indicates in the "Acceptance or Rejection of Conditions" that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the FmHA State Director.

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA 449-14, "Conditional Commitment for Guarantee." A copy of Form FmHA 449-14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA 449-14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would modify recommendations of the National Office, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449-14 and any amendments thereto.

B. On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form FmHA 449-14 has been accepted:

1. A copy of Form 449-29, "Project Summary, Business Industrial Loan Division."

2. A copy of Form FmHA 449-14 as accepted by the lender and borrower.

3. A copy of FmHA State Loan Review Board Minutes.

4. Notification of required financial and other reports, their frequency, due dates and fiscal yearend.

5. A copy of the proposed loan agreement between the lender and the borrower.

6. When debt refinancing is involved, a copy of the justification for the refinancing.

7. The cover memorandum should indicate whether the Form FmHA 449-34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 1980.60(a) Subpart A of this Part, and, if not, a proposed date for issuance of the Form FmHA 449-34.

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

In addition to compliance with the requirements of § 1980.60 of this Part of Subpart A, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The FmHA State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are *no changes* in the borrower's ownership or control, loan purposes, scope of project and loan conditions in the Form FmHA 449-14 and loan agreement remain the same. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA 449-1. If approved by FmHA, the State Director will issue a letter or amendment to the original Form FmHA 449-14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* FmHA will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in the Form FmHA 449-1, item 15. All requests for exceptions must be approved by the FmHA National Office.

(c) *Changes in terms and conditions in Form FmHA 449-14.* It is the intent of FmHA that once the Form FmHA 449-14 is issued and accepted by the lender, the Commitment not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this Subpart. All requests for changes will require National Office approval.

(d) *Additional requirements for B&I guaranteed loans.* All B&I borrowers and lenders, as applicable, must comply with Appendix D, paragraphs (I) (A) and (B); (II)(A) through (II)(A)(2)(g)(1); (II) (B) and (C); (III) (A), (B), (C), (D), and (E).

(e) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in § 1980.60 and § 1980.61 of Subpart A of this Part. Only when the FmHA B&I Chief or Loan Specialist as required in Paragraph B (Administrative) of this section is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(f) *Loan closing.* When loan closing plans are established, the lender will notify FmHA.

(g) *Closing of working capital loans.* The State Director will not issue a Loan Note Guarantee for a working capital loan prior to the completion of all proposed construction for the project. Working capital loan funds will not be used to pay short-term notes.

Administrative

A. *The State Director reviews:*

1. The loan agreement between the borrower and lender which provides for the frequency of submission of financial statements to the County Supervisor. Monthly financial statements should be required on new business enterprises or those needing close monitoring. However, the annual audit report will always be required.

2. Plans for inspections made on construction projects. These should be coordinated with the lender and borrower. Form FmHA 424-12, "Inspection Reports," may be used by the State Engineer or Architect who will make an inspection of the projects which involve substantial construction. The inspection shall be completed prior to the issuance of the Loan Note Guarantee to assure all construction is complete. The State Loan Specialist or Chief may also participate in the inspections.

3. Cost overruns, if any, and how they will be met. State Directors may approve cost overruns for projects in any amount or percentage within their loan approval authority and not to exceed 10 percent in loan amounts between $1,000,000 and $10,000,000.

4. Basic credit requirements of all loans.

B. In all cases, the Program Chief or the B&I Loan Specialist will conduct a preguarantee review before issuance of the Loan Note Guarantee to assure that all requirements of the application, Conditional Commitment for Guarantee, and Loan Agreement have been met including the required certifications using language specified by the regulations, and will provide such verification in the loan file, including arrangements for annual audit reports. In the conduct of this review, all requirements of § 1980.60(a) of Subpart A of this part will be reviewed and special attention should be paid to reviewing current financial statements of the borrower to assure that no adverse change has taken place. The District Director may participate in the review.

C. The State Director or any other FmHA personnel shall not sign any documents other than those specifically provided for in Subparts A or E of this Part. No certificates shall be signed except the "Certificate of Incumbency and Signature" as set forth as Appendix B of this Subpart in the **Federal Register.**

D. *Par (a) Transfer of Lender.* The State Director will analyze all requests for substituted lenders including the servicing capability, eligibility and experience of the new lender before the request is approved. If approved, notify the Finance Office of the change using Form FmHA 1980-42. Do not deobligate and reobligate the loan if the Form FmHA 449-14 was issued in a previous fiscal year.

E. *Par (b) Substitution of borrowers.* The State Director will review any request for exceptions to substitution of borrowers and forward such requests with a memorandum of facts and recommendation to the National Office for a decision. The National Office will not approve any request where the legal entity is changed, such as from a corporation to a partnership, etc., or if the ownership changes more than 20 percent.

F. *Par (c) Changes in terms and conditions in Form FmHA 449-14.* The State Director will review any requests for changes to Form FmHA 449-14 and forward such request with a memorandum of facts and recommendations to the National Office for a decision. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

§ 1980.455–1980.460 [Reserved]

§ 1980.461 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement

(See Subpart A, § 1980.61.)

Administrative

A. *Par (a) of Subpart A, § 1980.61.* The original Form FmHA 449-35 will be retained in the FmHA loan file.

B. *Par (b)(1) of Subpart A, § 1980.61.* Copies of all issued Loan Note Guarantees will be kept in the FmHA loan file.

C. *Par (b)(2) of Subpart A, § 1980.61.* The State Director will approve all substitutions of Loan Note Guarantees or Contracts of Guarantee.

D. It is imperative that the original loan covered by a Contract of Guarantee is current.

E. *The Registered Holder will transmit to the County Supervisor:*

1. Request for substitution together with the original Contract of Guarantee.

2. Copies of notes with lender's identification numbers. (All requirements of the Lender's Agreement will be complied with before any new notes are issued.)

3. Certification that the loan is current and in good standing.

4. Certification of outstanding principal amount of the loan.

5. Executed Lender's Agreement. (FmHA provides form to Lender).

6. Executed Form FmHA 1980-19. (See § 1980.21 of Subpart A for calculation of fee due).

7. Payment for appropriate guarantee fee.

F. *County Supervisor will:*

1. Review all the requirements of Paragraph E of this section.

2. If the request is appropriate and complete, forward the request to the State Director.

G. *State Director will:*

1. Verify the sumitted request and if in order, send the guarantee fee and Form FmHA 1980-19 to Finance Office with a notation of the date the new Loan Note Guarantee will be issued. (Note: The substitution of a Loan Note Guarantee for the Contract of Guarantee is not to be considered as a new loan for recordkeeping purposes).

2. Complete the Loan Note Guarantee (appropriate number for attachment to each note), date and sign the instrument. The following statement will be entered at the top of the form: "This Loan Note Guarantee is issued in substitution of Contract of Guarantee dated ——————." The State Director will transfer from the Contract of Guarantee all information pertaining to the Loan Note Guarantee.

3. Execute Lender's Agreement.

4. Cancel the original Contract of Guarantee.

5. Transmit to the County Supervisor the Loan Note Guarantee, Lender's Agreement and cancelled Contract of Guarantee.

6. State Director may retain for the State Director's file copies of the Loan Note Guarantee, Lender's Agreement, and Form FmHA 1980-19.

H. *County Supervisor:*

Will transmit to the lender the original Loan Note Guarantee and a copy of executed Lender's Agreement and retain in the loan file copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, a copy of Form FmHA 1980-19 and the original Lender's Agreement.

All applicable provisions of this Subpart and Subpart A of this Part apply to the loan when the Loan Note Guarantee is signed.

I. *Alternate Procedure:*

If the Registered Holder does not want to deliver the original Contract of Guarantee with his/her request for substitution, the County Supervisor will accept a copy of the Contract of Guarantee and proceed as above. However, the Loan Note Guarantee will be delivered only upon receipt of the original Contract of Guarantee. The County Supervisor will forward the original Contract of Guarantee to the State Director for cancellation. The State Director will return the cancelled Contract of Guarantee to the County Supervisor for retention in the loan file.

J. *Par (b)(3) of Subpart A, § 1980.61.* For reporting purposes where multinotes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

K. *Par (b)(4) of Subpart A, § 1980.61.* The State Director will notify the Finance Office of the transaction.

L. *Par (c) of Subpart A, § 1980.61.* A copy of Form FmHA 449-36 will be kept and a copy of executed Lender's Agreement retained in loan file along with copies of the Loan Note Guarantee with attached original cancelled Contract of Guarantee, copy of Guarantee Fee Report and the original Lender's Agreement.

M. *Par (d) of Subpart A, § 1980.61.* State Director signs all Forms FmHA 449-13, "Denial Letter."

N. *Par (f) of Subpart A, § 1980.61.* The County Supervisor will:

1. Review Form FmHA 1980-19 for completeness.

2. Forward the guarantee fee and original Form FmHA 1980-19 to the Finance Office.

3. Forward a copy of Form FmHA 1980-19, Form FmHA 449-34, Form FmHA 449-35 and Form FmHA 449-36, if applicable, to the State Director.

4. Originals or copies, as appropriate, will be retained in the FmHA loan file.

5. See that the State Director is notified of any discrepancies.

§§ 1980.462—1980.468 [Reserved]

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA of any violations in the Lender's Loan Agreement. (See Paragraph XI of Form FmHA 449-35.)

Administrative

A. While the lender has the primary responsibility for loan servicing and protecting the collateral, the State Director is responsible for seeing that servicing as required by the Lender's Agreement and regulation is properly accomplished. Loan servicing is intended to be a preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

B. *The State Director will assure that:*

1. The lender understands upon initial contact during loan application and in particular at loan closing that the lender is responsible for loan servicing and that annual audited financial statements are required.

2. A timetable for routine site, borrower and lender visitations by FmHA personnel is established before the Loan Note Guarantee is issued. As a guide, visits to newly established borrowers with the lender represented should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually. Special attention problem accounts should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender's visits.

3. During or in preparation for field visits, the following functions are to be performed:

(a) Current financial information is obtained in advance and analyzed for trends.

(b) Any issues revealed or problems not resolved from the last visitation are included in the agenda.

(c) Collateral is observed and its condition, maintenance, protection and utilization by the borrower appears to be satisfactory.

(d) A report of the visit is made on Form FmHA 449-39, "Field Visit Review (Business and Industrial Loans)," or otherwise documented and included in the loan file. The report should include an opinion of the borrower's status based upon observations made during the visit.

(e) Any instructions or directions made to the lender should be confirmed by letter.

4. The Program Chief or Loan Specialist will conduct an annual meeting with each lender or its agent with whom a Loan Note Guarantee(s) or Contract of Guarantee(s) is outstanding. This cannot be redelegated. The District Director should also attend. These meetings may be scheduled at the time FmHA makes periodic field inspections to the borrower's place of business. At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented. Form FmHA 449-39 may be used for this purpose. Servicing exceptions on the part of the lender which are noted by FmHA will be confirmed by letter to the lender.

5. The lender performs an adequate analysis of borrower financial statements for FmHA. FmHA in turn will evaluate the lender's analysis and follow up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis. The financial statement analysis of the lender, the financial statement and a memorandum reflecting FmHA's analysis, including a comparison to previous and projected performance of the borrower, will be forwarded to the National Office, Attention: Business and Industry Division, only for the following loans:

(a) All loans within the first year of loan closing.

(b) Loans over one year old as determined by the State Director or a National Office assigned loan reviewer who is participating in a field review. In event of a disagreement between the State Director and an assigned loan reviewer as to which loans should be included, the assigned loan reviewer's decision will take precedence.

(c) All problem and delinquent loans.

(d) Loans that the State Director would like reviewed by the National Office.

6. A proper followup with the District Director and County Supervisor is made if reports and financial statements are not being transmitted on time or if there are servicing actions needed.

7. Meetings are arranged between the lender, borrower and FmHA to resolve any problems of late payment, etc.

C. *State Director Authorities.*

1. The State Director may delegate authority for the conduct of all functions listed in Section 1980.469 Administrative B., except item B.4.

2. The State Director may approve B&I guaranteed loan servicing actions as authorized in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter.

3. Servicing actions on loans which exceed the State Director's loan approval authority are to be referred together with the State Director's recommendations to the Director, Business and Industry Division, for prior review and concurrence.

§ 1980.470 Defaults by borrower.

(See Subpart A, § 1980.63.)

Administrative

A. In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the State Director or its designee and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solutions will be prepared by the FmHA representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office in writing of the details and will subsequently report the problem loan to the National Office on the quarterly status report. The State Director will notify the lender and borrower of any decision reached by FmHA.

B. In considering servicing options, some of which are identified in paragraph XI.A of Form FmHA 449-35, the prospects for providing a permanent cure without adversely affecting the risks of the FmFA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interest of the lender and FmHA. Some of these actions may require concurrence of the holder(s).

C. Subsequent loan guarantee requests will be processed in accordance with provisions of § 1980.473 of this Subpart.

D. If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In these situations when FmHA is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of OGC, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA endorse the original Form FmHA 449-34 to the lender.

E. The State Director's authority to approve servicing actions is defined in § 1980.469, Administrative C.2.

F. Consultant services may be recommended by the State Director to assist FmHA and the lender in determining which servicing action is appropriate. Requests for consultant services should be made by the State Director and addressed to the Administrator, Attn: Business and Industry Division. A full explanation of the loan history, an evaluation and scope of the proposed study and the need should be included in the request.

G. When the National Office determines it is necessary on individual cases, due to some special requirements, it may, at its option, assume the servicing responsibility on individual cases.

H. The State Director will report all delinquent and problem loans quarterly to the Director, Business and Industry Division, by the 10th day of January, April, July and October.

I. The State Director will notify the Finance Office by memorandum of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§ 1980.471 Liquidation.

(See § 1980.64 of Subpart A of this Part.)

Administrative

A. State Director determines which FmHA personnel will attend meetings with the lender.

B. *Paragraph XII B of the Lender's Agreement.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to result in maximum recovery. When there is unresolved disagreement between FmHA and the lender on the means to maximize recovery through liquidation, the State Director will forward the lender's liquidation plan with appropriate recommendations, along with the State Director's exceptions to the lender's plan, to the Director, Business and Industry Division, for evaluation. Only when compromise cannot be reached on disputed liquidation plans will FmHA consider conducting the liquidation. When FmHA liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA 1980-45, "Notice of Liquidation Responsibility."

C. State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with Subpart A of Part 1901 of this Chapter.

D. *Paragraph XII D.* State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation, after they have been submitted with the State's recommendations to the Director, Business and Industry Division for prior review.

E. *Paragraph XII E 2.* State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this Chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA 449-30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to lender. When a loss claim is involved on a particular loan guarantee, ordinarily one "Estimated Loss Report" will be authorized. Only one final "Report of Loss" will be authorized. A final Form FmHA 449-30 must be filed with the Finance Office at the completion of all liquidations. Finance Office will use this form to close out the account.

F. *Paragraph XII E 3.* Final loss payments will be made within the 60 days required but only after a review by FmHA to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the Director, Business and Industry Division within the 60-day period. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this Chapter) will be submitted to the National Office, Business and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief, or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

§ 1980.472 Protective advances.

(See § 1980.65 Subpart A of this part.)

Administrative

A. Protective advances will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is comtemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower would have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve in writing all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of $500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§ 1980.473 Additional loans or advances.

(See § 1980.66 Subpart A of this part.)

Administrative

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.474 [Reserved]

§§ 1980.475 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited in the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidating proceeding under Chapter 7 or under Section 1123(b)(4) or seek dismissal of the proceedings.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal is necesasary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization cases are not to be deducted from the collateral proceeds. Reasonable and customary liquidation expenses may be deducted from the collateral proceeds in liquidation cases under Chapter 7 or Section 1123(b)(4) *liquidations* provided the lender presents a written justification for each expense and secures FmHA's written concurrence prior to incurring the expense.

Administrative

A. It is the responsibility of the State Program Chief to see that FmHA is being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/deliquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a liquidating 11, reasonable and customary liquidation expenses from that point forward may be shared as provided by the Lender's Agreement.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

§ 1980.476 Transfer and assumptions.

(a) All transfers and assumptions will be approved in writing by FmHA. Such transfers and assumptions will be to an eligible applicant.

(b) Transfers and assumptions will be considered without regard to § 1980.451(d) of this Subpart.

(c) The applicant will submit to FmHA Form FmHA 449-4 for the required character evaluation prior to the execution of the Assumption Agreement.

(d) Available transfer and assumption options to eligible applicants include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same terms.

(4) Less than the total indebtedness may be transferred to another borrower on different terms.

(e) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(1) FmHA must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(2) The FmHA County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this Subpart to the best of borrower's ability.

(f) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guaranteed loan owed, plus any prior liens. If any cash downpayment is made, it may be paid directly to the transferor as payment for equity in the project provided:

(i) The lender recommends and FmHA approves the cash downpayment be released to the transferor. The lender and FmHA may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the tranferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any actions against the transferee in connection with such transfer in the future without first obtaining the written approval of FmHA and the lender.

(iv) The lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(h) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirements for deposits in an escrow account as security to meet its determined equity requirements for the project.

(i) The lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded, as appropriate and legally permissible.

(j) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(k) The assumption will be made on the lender's form of assumption agreement.

(l) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(m) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA, with the concurrence of any holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect and all applicable Truth in Lending requirements will be met.

(n) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA before any borrower or guarantor is released from liability.

(o) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(p) If a loss should occur upon consummation of a complete transfer of assests and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in subsection (e) above, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form FmHA 449-30 to recovery its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form 449-30, lines 13 and 14.

Administrative

A. The State Director may approve all transfer and assumption provisions if the guaranteed loan-debt balance is within his/her individual loan approval authority including:

1. Consent in writing to the release of the transferor and guarantors from liability.

2. Any changes in loan terms.

Note.—The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

B. A copy of the Assumption Agreement will be retained in the FmHA file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA 1980-7, "Notice of Transfer and Assumption of a Guaranteed Loan," and submit Form FmHA 1980-50 for all new borrowers and Form FmHA 1980-51,"And, Change, or Delete Guaranteed Loan Record," in order that Finance records may be adjusted accordingly.

C. Any transfer and assumption of less than the total indebtedness must be submitted to the Director, Business and Industry Division, for review and concurrence.

D. If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the National Office for approval. ATTN: Business and Industry Division.

§§ 1980.477–1980.480 [Reserved]

§ 1980.481 Insured Loans.

Applications from private parties for whom FmHA and such applicants agree that a guaranteed lender is not available and from public bodies shall be processed as insured loans in accordance with the applicable provisions of this Subpart and Subpart A of Part 1942 of this Chapter, including the credit elsewhere requirement, except as provided in § 1980.488 which provides for the guarantee of taxable bond issues of public bodies. Loans to public bodies will be used only to finance:

(a) Community facilities as defined in § 1980.402(b), and

(b) Constructing and equipping industrial plants for lease to private businesses (not including loans for operating such businesses) when the requesting loan is not available under Subpart A of Part 1942 of this chapter.

Administrative

A. Without specific written delegated authority, all insured loans require National Office concurrence prior to approval.

B. Applications from private parties for insured loans will not be encouraged.

C. Loan closings on insured loans will be in accordance with this Subpart, the Regional Attorney and applicable provisions of Subpart A of Part 1942 of this chapter.

§§ 1980.482—1980.487 [Reserved]

§ 1980.488 Guaranteed industrial development bond issues.

(a) Loans to public bodies will be guaranteed only in connection with the issuance of any class or series of industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code of 1954, as amended (IRC)), the interest on which is included in gross income under IRC. No part of the loan guaranteed FmHA may extend to any class or series of industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of such Code. Before the execution of any Loan Note Guarantee, the lender will furnish FmHA evidence regarding interest on bonds being taxable for Federal income tax purposes. Such evidence may be in the form of an unqualified opinion of a recognized bond counsel or a ruling from the Internal Revenue Service. Guaranteed loans to public bodies can only be used for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing and does not provide funds for debt refinancing, working capital, and other miscellaneous fees, charges or services. The lessee will have to provide necessary capital and sufficient financial strength to provide for a sound project.

(b) If FmHA and the applicant agree that a guaranteed lender is not available, the application may be considered for an insured loan under the provisions of § 1980.481.

Administrative

The lender is responsible for notifying the FmHA of the taxability of the proposed bond issue.

§§ 1980.489–1980.494 [Reserved]

§ 1980.495 FmHA forms and guides.

The following FmHA forms and guides, as applicable, are used in connection with processing loan guarantees; they are incorporated in this Subpart and made a part hereof:

(a) Form FmHA 449-1, "Application for Loan and Guarantee" is referred to as "Appendix A,"

(b) The "Certificate of Incumbency and Signature" is referred to as "Appendix B,"

(c) "Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities" is referred to as "Appendix C,"

(d) "Alcohol Production Facilities Planning, Performing, Development and Project Control" is referred to as "Appendix D,"

(e) "Environmental Assessment Guidelines" is referred to as "Appendix E," and

(f) Form FmHA 449-14, "Conditional Commitment for Guarantee" is referred to as "Appendix F."

§§ 1980.496–1980.499 [Reserved]

General Administrative

A. *Office of the General Counsel (OGC).* In performing the FmHA functions with respect to B&I loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all major liquidations and workouts.

B. *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA State Directors should use the following format in formally requesting legal assistance on workouts.

1. *Origination:* All written requests should come from the State Director.

2. *Method.* Request should be made by referral memorandum to the Regional Attorney setting forth a brief statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA's response to the lender's liquidation plan (if any) is due, and a statement on whether it is a "major" case.

3. *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA's planned response. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

4. *Additional materials required for major cases:* In "major" cases, also send principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office.

5. FmHA will consider the following factors in deciding whether a liquidation or workout is "major."

(a) *Projected losses on collateral: e.g.,* projected losses on collateral are expected to be significant.

(b) *Unusual or complex nature of primary collateral: e.g.,* multi-state foreclosures or foreclosure of leases or general intangibles.

(c) *Presence of other major creditors or of senior creditors:* e.g., guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(d) *Litigation is pending or threatened: e.g.,* bankruptcy, other foreclosure suits.

C. *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been issued and proposed closing document prepared by the lender and forwarded to FmHA, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations and indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review in accordance with § 1980.451 Administrative C 5 of this Subpart and indexed and tabbed. The Regional Attorney will review the docket and furnish advice to FmHA on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

D. *Delegation of authority:* The State Director may delegate those administrative duties and responsibilities as authorized in the Administrative sections of this Subpart, except those specifically reserved to the State Director.

§ 1980.500 OMB control number.

The collections of information requirements contained in this rule have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0029.

BILLING CODE 3410-07-M

Appendix A

Form FmHA 449-1
(Rev. 5-16-83)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0021
EXPIRES 10-31-85

APPLICATION FOR LOAN AND GUARANTEE
(Business and Industry)

FmHA Case Number

General Information: The "Application for Loan and Guarantee" is to provide information needed for the analysis and loan determination process. Tear at perforations for ease in use. Specific references are made in this application to sections of the Business and Industrial Loan Instruction. For complete guidance, see FmHA Instruction 1980-A and 1980-E and related FmHA forms.

Part A – is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lender.

Part B – is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A and B will be filed with the FmHA State Office.

PART A

Instructions to Proposed Borrower: Complete items one through 20. Submit original and two copies of this application and all supporting documents to the lender. If additional space is required, provide for by an attachment. Additional information may be obtained from any FmHA Office.

1. NAME: *(Show official name without abbreviations unless the abbreviation is a part of the official name. For proprietor or partnership, show name(s) followed by d/b/a and trade name used, if any, and attach a copy of the partnership agreement).*

Street		City	County
State	ZIP Code	Telephone Number	Amount of Loan Requested $
Project Location: City	Population *(Last Census)*	County	State
Franchise ☐ Yes ☐ No	If Yes, submit copy		

2. TYPE OF BUSINESS: | Applicant's Tax Identification Number | SIC Number

3. THIS PROJECT IS:
☐ A new business venture ☐ Other *(Explain)*
☐ A new branch of facility ☐ An expansion of an existing facility
☐ Refinancing debts ☐ Transfer of Ownership

Date Enterprise Established:

4. VETERAN - For individual or partner indicate if veteran ☐ Yes ☐ No
If yes, indicate service from to Branch

5. CITIZENSHIP - Do you meet the citizenship requirements in FmHA Instruction 1980.403? ☐ Yes ☐ No

6. HISTORY OF BUSINESS - Provide a brief description and history of the business *(attach additional sheets if necessary).*

7. COMMUNITY BENEFITS - Comment on the benefits the community will receive if the loan is made *(i.e., taxes, jobs and any other benefits).*

Information requested by this form is collected for determining program eligibility and project analysis. Completion of this form is required to obtain the benefit of an FmHA Business and Industry loan guarantee. This statement is furnished pursuant to P. L. 96-511.

8. **PREVIOUS FEDERAL, STATE, OR LOCAL FINANCING** - List assistance received, requested, or any pending applications. *(Include direct, participation, insured, or guarantee loans and grants from any Federal, State, or local sources).*

9. **LITIGATIONS** - List details of any pending or final disciplinary or legal *(civil or criminal)* action against the proposed borrower, guarantors, partners, principal stockholders and directors.

10. **NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES** - List the names of all attorneys, accountants, appraisers, packagers, agents, and all other parties *(whether individuals, partnerships, associations)* engaged by or on behalf of the proposed borrower *(whether on a salary, retainer or fee basis and regardless of the amount of compensation)* for the purpose of rendering professional or other services of any nature whatever to proposed borrower, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations paid or to be paid for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the proposed borrower together with a description of such services rendered or to be rendered with complete justification for such purposes. NOTE: all fees and charges are subject to FmHA review and approval and may, in some cases, be paid out of loan proceeds. (See FmHA Instruction 1980.411 and 1980.414).

Name and Address *(Include ZIP Code)*	Description of Service Rendered or to be Rendered with complete Justification	Total Compensation Agreed to be Paid*	Compensation Already Paid

Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.

11. **SUBSIDIARIES AND AFFILIATES** - (1) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the proposed borrower, including concerns in which the proposed borrower holds a controlling *(but not necessarily a majority)* interest:

(2) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the proposed borrower. The proposed borrower should comment briefly regarding the trade relationship between the proposed borrower and such subsidiaries or affiliates and if the proposed borrower has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconcilement of net worth *(all not more than 60 days old)* must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of the proposed borrower.

12. PURCHASE AND SALES RELATIONS WITH OTHERS - Does proposed borrower buy from, sell to or use the services of, any concern in which an officer, director, major stockholder, or partner, or proprietor of the proposed borrower has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, stockholder, and partners, names of such concerns and explain the nature of the transaction(s).

13. RECEIVERSHIP - BANKRUPTCY - Has the proposed borrower or any officer or, partner or director of the proposed borrower, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

14. DISCLOSURE OF SPECIAL INFORMATION REGARDING PRINCIPALS - (a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect, financial interest in or association with, the proposed borrower, or any of its partners, officers, directors, principal stockholders including such interest in other enterprise; (b) When the proprietor, or any partner, officer, director, or their spouse, is an employee of the U.S. Government including members of the armed forces, detailed information shall be submitted with the application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

NAMES AND ADDRESS *(Include ZIP Code)*	Details of Relationship or Interest

15. MANAGEMENT - Enter names of (a) all owners, partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all other stockholders having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded. Personal guarantees from major stockholders or owners having a major interest in a corporation, and all partners of partnerships usually will be required. If guarantor cannot provide such guarantee due to existing contractual or legal restrictions, explain in an attachment. Final determinations will be made by the FmHA. Attach, in the case of personal guarantee, current financial statements not over 60 days old at time of filing, and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

(a) Name	(b) Position or Title	(c) Annual Compensation $	(d) % Ownership	(e) Outside Net Worth $	(f) Personal Guarantee Offered* (Yes or No)	(g) Insurance Carried For Benefit of Applicant

*If none offered, provide full explanation why guarantee cannot be offered. *(See FmHA Instruction 1980.443 (b)).*

16. REGULATORY AGENCIES - List all regulatory agencies (*(National, State, or Local)* which affect this business or project and explain if there are any pending matters with such regulatory agencies. Indicate if permits, licenses or clearance are necessary and their status. *(See FmHA Instruction 1980.45 and 1980.451)*

____

____

____

17. INSTRUCTION TO PROPOSED BORROWER - Attach to this application the following supporting documents. Reference for 1980-A include section 1980.1 thru 1980.100 and reference for 1980-E include sections 1980.401 thru 1980.500:

(a) Comments from state and local governments, if not already submitted. *(See FmHA Instruction 1980.451 (f) (8)).*

(b) Form FmHA 449-4, "Statement of Personal History," if not already submitted. *(See FmHA Instruction 1980.451 (f) (3)).*

(c) Form FmHA 449-22, "Certification of Non-Relocation and Market and Capacity Information," if applicable. *(See FmHA Instruction 1980.412 (c) and (d).*

(d) Financial data for new or existing businesses are required in accordance with FmHA Instruction 1980.451 (i) (7) and (8).

(e) Aging of accounts receivable and payable. *(Use 30, 60, 90 days with individual account explanation of items over 90 days old). (See FmHA Instruction 1980.451 (i) (15)).*

(f) For companies listed on major stock exchanges and subject to the Securities and Exchange Commission regulations, a copy of the latest SEC 10K report. *(See FmHA Instruction 1980.451 (i) (16)).*

(g) Provide supporting documentation for your projections, including economic factors, markets, management, etc. For loans in excess of $1 million see FmHA Instruction 1980.442 .

(h) If construction is involved, *(See FmHA Instruction 1980.451 (i) (11)).* Final plans and specifications must be submitted to the lender for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need be attached. *(See FmHA Instruction 1980.451 (i) (4) and 1980.454 (d)).*

(i) If construction is involved, provide applicable equal opportunity and nondiscrimination forms. *(See FmHA Instruction 1980.41).*

(j) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation." *(See FmHA Instruction 1980.40 and 1980.451 (i) (3)).*

(k) Evidence whether the project is located in a flood or mudslide hazard area. *(See FmHA Instruction 1980.42 and 1980.451 (i) (17)).*

(l) Provide a written statement of effect project would have on Historic Places, if any. *(See FmHA Instruction 1980.44 and 1980.451 (i) (15)).*

(m) If application is for health care facility, attach a "Certificate of Need," from appropriate regulatory agency having jurisdiction over the project. *(See FmHA Instruction 1980.451 (k)).*

(n) If loan is in excess of $100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act. *(See FmHA Instruction 1980.43).*

(o) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.

(p) For all persons listed under MANAGEMENT, item 15, provide a brief description of education, technical training, employment and business experience *(resumes may be used).*

(q) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of the creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. You may use Form FmHA 449-29 Attachment I.

18. POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES:

(a) A proposed borrower may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examination, etc.

(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and will subject the parties to such a transaction to prosecution.

(c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtain ng or trying to obtain a loan.

(d) Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, and the nature and extent of the services rendered by such representative.

(e) It is the responsibility of the proposed borrower to set forth in Section 10 of this application the names of all persons or firms engaged by or on behalf of the proposed borrower. Proposed borrowers are also required to advise FmHA in writing of the names and fees of any representatives engaged by the proposed borrower subsequent to the filing of the application. Failure to so notify FmHA constitutes "misrepresentation" and will cause FmHA to contest the guarantee if lender had knowledge of this omission.

(f) Any proposed borrower having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

19. AGREEMENT OF NONEMPLOYMENT OF FmHA PERSONNEL. In consideration of FmHA guaranteeing any part of the loan applied for in this application, the proposed borrower hereby agrees with FmHA that proposed borrower will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Consolidated Farm and Rural Development Act and other acts administered by FmHA from time to time.

20. CERTIFICATION - The proposed borrower hereby certifies that:

(a) The Proposed borrower has read FmHA policy and regulations concerning representatives and their fees *(18 above)* and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for other than for services and expenses authorized pursuant to paragraph 18 above.

(b) The proposed borrower has not paid or incurred any obligation to pay any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the proposed borrower agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.

(c) Information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the proposed borrower and are submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the proposed borrower. Whether or not the loan herein applied for is approved, the proposed borrower agrees to pay or reimburse the lender for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by nonlender personnel with consent of the proposed borrower.

(d) The proposed borrower hereby covenants, promises, agrees and gives herein the ASSURANCE that in connection with any loan to the proposed borrower which FmHA may guarantee as a result of this application, it will COMPLY with the requirements of Executive Order 11245 regarding Equal Credit Opportunity. Proposed borrower further agrees that in the event it fails to comply with said applicable provision, FmHA may cancel, terminate, accelerate repayment of or suspend in whole or in part the financial assistance provided or to be provided by FmHA, and that FmHA or the United States Government may take any other action that may be deemed necessary or appropriate of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, religion, color, sex, marital status or national origin recipients of Federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records. These requirements are applicable to all transferees and successors in interest.

NOTICE: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

The proposed borrower hereby agrees to provide the lender and FmHA timely periodic financial statements including the annual financial statement required by FmHA Instruction 1980.451 (i)(13). Failure to provide such reports will be considered a default of the loan in accordance with Form FmHA 449-35, "Lender's Agreement," which is a part of Subpart E of Part 1980, Title 7 CFR.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of credit by the Farmers Home Administration.

*Proposed Borrower Name:

____

____

CORPORATE SEAL

By ______________________________

Title ______________________________

Attest: ______________________________

Date Signed: ______________________________, 19__

____
(Title) (Title)

Proposed Borrower's Contact Person

____
Name

____
Address

____
Telephone

(Individual, general partner, trade name, or corporation name).

PART B

INSTRUCTIONS: Lender completes item 21 through 33 and submits the original and one copy of this application and all supporting documents to FmHA.

21. REQUEST FOR GUARANTEE: *(For use only by lender)*

LENDER TAX IDENTIFICATION NO. ____________

We propose to make and service a loan to the proposed borrower named on page 1 of this application. We request an FmHA loan guarantee subject to the provisions of the applicable FmHA Instructions.

22. TERMS AND CONDITIONS OF LOAN: Percent of Guarantee Requested ________%

(1) Type	Amount	Terms (yrs.)	Interest*	Monthly Payments
Real Estate	$ ________	____ yrs.	____ %	$ ________
Machinery and Equipment	$ ________	____ yrs.	____ %	$ ________
Working Capital	$ ________	____ yrs.	____ %	$ ________
Other ________	$ ________	____ yrs.	____ %	$ ________
TOTAL	$ ________			$ ________

*If the variable rate, follow by a "v" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: ________%. NOTE: Guaranteed borrower must have the right to prepay their loans. Prepayment penalties are permitted if reasonable and approved by FmHA. Attach amortization schedule for loan.

23. (a) SOURCE AND USE OF FUNDS: Loan funds will be disbursed and used for the following purposes, in the following amounts.

Building and Improvements	$ ________	Machinery and Equipment	$ ________
Land and Rights	________	Contingencies	________
Fees *(List below)*	________	Debt Refinancing*	________
Legal and Engineering Fees	________	Working Capital	________
Interim Interest	________	Other *(Specify)* ________	________
			$ ________

*Attach complete justification for the request *(include long and short term debt)*

(b) Describe in detail the source and use of funds from (a) above and any other source of funds for the project and its amount and indicate whether the amounts and sources are proposed or definite.

24. COLLATERAL AND LIEN POSITION: (Describe collateral in detail, show whether now owned or to be acquired). (Use Form FmHA 449-2 with appropriate appraisal reports and indicate any prior liens that may exist on the collateral).

25. PLANNED DISBURSEMENTS: Record plans for distributing the loan. *(See FmHA Instruction 1980.60 and 1980.454).*

26. (a) PERSONAL AND/OR CORPORATE GUARANTEES RECOMMENDED: *(See FmHA Instruction 1980.443).*
(b) COLLATERAL OFFERED FOR PERSONAL AND/OR CORPORATE GUARANTEES:

27. INSURANCE: (List requirements for Life, Hazard, Federal Flood, and Liability).

28. COMMENTS OF LENDER: *(Attach additional sheets, if necessary).*

(a) Evaluate proposed borrower's management, past record, repayment ability and other financial analysis.

(b) State whether any officer, director, stockholder, or employee of the lender has a financial interest in the proposed borrower or vice versa. If so, give details:

(c) Is proposed borrower indebted to lender? ☐ Yes ☐ No If yes, provide history of debt repayment and other details:

(d) List all fees and charges for the loan, including those for preparation of application, servicing, etc. Indicate whether the guarantee fee will be passed on to proposed borrower. *(See FmHA Instruction 1980.411 and 1980.414).*

(e) Provide loan servicing plans, including field inspections, frequency of obtaining periodic and annual financial statements and their analysis, use of correspondents or other outside consultants, location of office servicing the loan, and complying with servicing responsibilities set forth in the "Lender's Agreement," Form FmHA 449-35.

29. LOAN AGREEMENT: Attach proposed lender and borrower loan agreement *(See FmHA Instruction 1980.451 (i) (13)).*

30. LENDER'S EXPERIENCE WITH FmHA:
   (a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No
   If yes, check program area: ☐ Farmer Programs ☐ Rural Housing ☐ Business and Industry.
   (b) If proposed borrower has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?
   ☐ Yes ☐ No If yes, explain.

   ____

   ____

   (c) Have you ever been debarred from participation in FmHA programs? If yes, explain.

   ____

31. Verify and comment on proposed borrower's debt schedule: ______________________________

   ____

   ____

   ____

32. PLANS FOR CONSTITUTING THE LOAN: *(See Form FmHA 449-35, "Lender's Agreement," paragraph III A).*

   (a) Will retain entire loan ☐ Yes ☐ No
   (b) Will utilize secondary market for guaranteed portion *(indicated by check).*
   Assignment ______ Participation ______ Multi-note ______
   (c) Participation of unguaranteed portion ☐ Yes ☐ No
   (Lender must retain 5% of the unguaranteed portion of loan in its portfolio).

33. OPINION: In our opinion, the loan has repayment ability, appears feasible and all FmHA requirements in FmHA Instruction 1980-A and 1980-E will be met.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee.

LENDER:

____

Contact Person ______________ ______________________________

Telephone Number ______________ ______________________________

Date ______________, 19____ ______________________________

By: ______________________________
Authorized Officer

____
Title

Appendix B

U.S. Department of Agriculture—Farmers Home Administration

Certificate of Incumbency and Signature

I, (Name)———, (Title)——— of the Farmers Home Administration, (FmHA), an Agency of the United States Department of Agriculture, DO HEREBY CERTIFY that the following person holds the office of (State Director, State Program Loan Chief, District Director, or County Supervisor)——— of ———, for FmHA and that the signature appearing below and that the signatures appearing above that person's name on the following described document is the genuine signature of such person:

1. Form(s) FmHA 449-34, "Loan Note Guarantee," dated——— relating to loan made by (Lender's Name)——— to (Borrower's Name)———, FmHA Loan Identification No.—.

2. Form(s) FmHA 449-35, "Lender's Agreement," dated——— relating to loan made by (Lender's Name)——— to (Borrower's Name)———, FmHA Loan Identification No.—.

3. Form(s) FmHA 449-36, "Assignment Guarantee Agreement," dated——— relating to loan made by (Lender's Name)——— to (Borrower's Name)———, FmHA Loan Identification No.—.

Signature——— (Name Type)———.

In witness whereof, I have hereunto signed my name this —— day of ———, 19—.

Farmers Home Administration.

By — ———

(Title) ———

Appendix C

Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities

(1) *Alcohol Production Facility.* An alcohol production facility is a facility in which alcohol, suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks and not suitable for beverage purposes, is manufactured from biomass.

(2) The alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project. Further refinements, such as gasoline blending or the construction of facilities which use the alcohol or by-products in another manufacturing process, are not considered part of the alcohol production facility.

(3) Applications will be reviewed by both Business and Industry personnel and the State Office engineer and forwarded to the National Office if approval is recommended.

(4) The maximum loan size will be $20,000,000.

(5) The applicant should have a startup *tangible* book equity of 20-25 percent. (Appraisal surplus and subordinated debt are not eligible equity items.)

(6) Loan maturity maximums will be as follows:

Real Estate=15-20 years
Machinery & Equipment=10 years or less depending on the estimated life of the equipment involved
Working Capital=3 years (It is assumed that the additional equity required for these projects will provide much of the working capital needs.)

(7) Farmers Home Administration will ordinarily only finance new facilities and will not get involved in the refinancing of existing ones.

(8) Priority consideration will be given to the use of a primary fuel other than petroleum or natural gas.

(9) A positive energy balance must be indicated and supported by appropriate data; i.e., the energy content of the alcohol produced at the alcohol production facility must be greater than the energy used to produce the alcohol and by-products.

(10) Plant location, in relation to feedstocks, primary fuel and markets for product and by-products, will be an important consideration.

(11) Debt refinancing will only be considered in modest amounts and only when necessary to provide a satisfactory lien position.

(12) Feasibility studies are very important and required and will be prepared by competent and knowledgeable independent parties.

(13) Participating lenders must either have expertise or the availability of expertise in this field.

(14) The proposed operating managers must have experience in this or a related field.

Appendix D

Alcohol Production Facilities Planning, Performing Development and Project Control

(I) *Design Policy.* The borrower shall ensure or cause to be ensured that:

(A) All project facilities are designed utilizing accepted engineering practices and are conformed to applicable Federal, State and local codes and requirements.

(B) Proven equipment and processes are employed in all project facilities unless an exception is granted by the Administrator or designee of the Farmers Home Administration (FmHA) ("Administrator") in accordance with paragraph (B)(2) hereof and pilot equipment or processes are used instead.

(1) Equipment and processes shall be considered "proven" if they have been successfully employed in other commercial facilities.

(2) Equipment and processes shall be considered pilot if they have not been used in a commercial operation but have been operated on a scale such that all design and material problems have been identified and resolved and operations maintained to demonstrate that the equipment and process may be successfully applied to the proposed commercial operation. Pilot equipment and processes may be considered for use in the project subject to the following:

(a) The plans, specifications, and operational data for the applicable facilities are reviewed by the Administrator or designee and lender. If, in the opinion of FmHA, the proposed processes or equipment are insufficiently developed to assure reliable and successful operation of the project, proven processes and equipment will be utilized.

(b) If pilot processes or equipment are used, the Administrator or designee will also require that:

(i) Reasonable provision is made in the project for conversion to proven equipment or processes; and

(ii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(C) Facility and equipment design incorporates cost-effective primary fuel systems, energy recovery systems and conservation measures to the maximum extent that this is feasible and consistent with paragraphs (I), (A), and (B) of this Appendix.

(II) *Technical Services.*

(A) The borrower is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the project to assure that the completed project will operate at the prescribed levels of performance.

In discharging its responsibility the borrower will obtain or cause to be obtained:

(1) Full engineering services for design and construction inspection for all project facilities. Resident inspection by qualified persons will be required.

(2) Agreements for engineering or design/build services which describe the project facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, conversion efficiency, rate of production and fuel consumption and product quality under normal operating conditions. The design parameters will be mutually agreed upon by the borrower, lender, the State Director and the project engineer, and may not be modified without the written concurrence of each of these parties. These agreements for engineering or design/build services will require, or the borrower will otherwise obtain, assurance satisfactory to the State Director that:

(a) The project engineer will maintain adequate insurance to protect the borrower, lender and the Government from incurring expenses resulting from errors and omissions of the engineer in performance of engineering services.

(b) The project engineer will certify that only proven equipment and processes will be utilized in the proposed development. The State Director may request evidence of successful operations of such proven equipment and process. If proven equipment or processes are not used in the project, the project engineer will identify these items and provide the information necessary for acceptance by the Administrator, borrower and lender in accordance with paragraph (I)(B)(2) of this Appendix.

(c) If used equipment or existing facilities are incorporated into the project, they must be inspected by the project engineer or by another qualified engineer of the borrower. This engineer will prepare a report describing the proposed facilities or equipment and will comment on their suitability for use in the project. The report will also identify the modifications necessary for successful integration into the project. A cost estimate will also be included comparing new equipment and facilities to the proposed existing facilities or used equipment. Consideration must be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) The project engineer or qualified individuals representing the manufacturer of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Such personnel will be experienced in the proper operation and maintenance of applicable plant components. A report will be presented to the borrower within two weeks of each site visit advising the borrower of operation and maintenance deficiencies. A copy of each report will be forwarded to the State Director and lender by the borrower.

(e) The project engineer will prepare or supervise the preparation of a record drawing of all facilities. One copy will be submitted to the lender and the borrower.

(f) The project engineer or another group acceptable to the State Director and lender will prepare an operation and maintenance manual and assist the borrower in the start-up of the project. The operation and maintenance manual will describe the specific operation and maintenance procedures which must be performed for the project to operate at its rated capacity and efficiency and outline product testing, quality control, plant safety and emergency shut-down procedures.

(g) The project engineer will assist the borrower in determining acceptability of materials, equipment and construction during the construction period, review shop drawings, payment estimates and change orders, and assist in determining substantial completion of the project and final completion of individual contracts.

(1) The project is substantially complete when:

(i) Construction is sufficiently completed in accordance with plans and specifications so that the project may be used for its intended purpose, and;

(ii) The project is producing products of the quantity and quality and at the conversion and energy efficiencies proposed in the completed application submitted by the lender and borrower and approved by the FmHA.

(2) The State Director must concur that the project is substantially complete. The following evidence, in form and substance satisfactory to the State Director and lender, must be submitted prior to such concurrence:

(i) A certificate from the project engineer stating that all facilities are substantially complete. Engineers who design specialized equipment or processes must also certify that construction/fabrication is acceptable in accordance with plans and specifications previously approved by them. The certification of the project engineer must be based upon a project start-up procedure where the complete project operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure in materials and defects in workmanship. After this pre-startup, the certifying engineers will monitor project operations for a continuous period of at least 72 hours or 3 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of system operation and performance data obtained during project start-up.

(iii) Exceptions to substantial completion and a list of nonsubstantial items which must be completed prior to release of any contractor's retainage.

(3) If the project is not producing products of the required quantity or quality at the prescribed conversion efficiencies, even though the project is otherwise physically complete in accordance with paragraph (1)(i) of this subparagraph, the project engineer will prepare a report identifying the corrective actions including an estimate of costs and additional time necessary to meet established performance criteria.

(4) The project must be certified to be substantially complete by an independent engineer if any portion of the project has been designed or constructed by the borrower or the project engineer has participated in any portion of the construction.

(B) Modification of plans and specifications will not be made without the written authorization of the project engineer.

(C) The Administrator, State Director or their representative's acceptance or concurrence in feasibility studies, preliminary engineering reports, plans, specifications, contract documents and payment estimates will not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction, nor will such acceptance or concurrence be deemed a waiver of any of the Government's rights or remedies against any person or party. Reviews and construction inspections by the Administrator, State Director or their representatives are solely for the benefit of the Government and do not relieve the lender or borrower of their obligation to conduct project reviews and inspections.

(III) *Project Construction.*

(A) Borrower will not award contracts for the construction of any project facilities unless and until:

(1) The borrower obtains applicable construction permits, right-of-ways, licenses and approvals of Federal, State and local authorities for the construction of such facilities.

(2) The State Director concurs in applicable plans, specifications and contract documents. Standard contract documents prescribed for use in Federally assisted projects may be used as a guide for determining the minimum standards for contract acceptability. These standard documents are contained in Guides 18 and 19 of Subpart A of Part 1942 of this Chapter (available in any FmHA office).

(B) The borrower has the responsibility, without recourse to the Government, for the settlement and satisfaction of all contractual and administrative issues arising out of procurements. This includes, but is not limited to, disputes, claims, protests of awards, or other matters of a contractual nature. Matters concerning violation of laws are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(C) The borrower's attorney will review executed contract documents including applicable performance and payment bonds and provide a certificate to the borrower and lender that they have been properly executed and that the persons executing these documents have been properly authorized to do so.

(D) In all contracts for construction or facility improvement awarded in excess of $100,000, the borrower will require bonds and a bank letter of credit or cash deposit in escrow, assuring performance and payment of 100 percent of the contract cost. The surety will normally be in the form of performance and payment bonds. Such assurance shall remain in full force and effect through any warranty period. Companies providing performance and payment bonds must hold a certificate of authority as an acceptable security on Federal bonds and eligible for listing in Treasury circular 510 as amended and be legally doing business in the state the project is located.

(E) Project Changes.

Any change in the project which may affect collateral, its ultimate financial viability or compliance with the conditional commitment must have prior approval of the lender and FmHA.

(1) Construction contracts will require that change orders receive prior approval from the lender when such changes:

(a) increase or decrease contract price,

(b) materially modify contract provisions,

(c) increase or decrease time of completion,

(d) affect project performance.

(2) All change orders will be recorded on a chronologically numbered contract change order as they occur. Change orders will not be included in payment estimates until approved by the borrower, project engineer, the lender and concurred in by FmHA.

(F) Warranty.

(1) All major equipment must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start-up of equipment.

(2) Equipment purchased by a construction contractor or design builder and all other work shall be further warranted to be free from defect in material and workmanship by the contractor or the design builder for a period of one year after substantial completion of the contract.

(3) Applicable provisions to this effect shall be included in equipment purchase orders or construction contracts.

(G) Lease agreements.

Where the right of use or control of any property or equipment not owned by the borrower is essential to the successful operation of the project during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property or equipment and the borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or similiar cancellation clauses and shall provide for the right to transfer and lease without restriction. Such lease contracts or agreements shall be approved by the lender and FmHA.

(IV) *Project Control.*

(A) Lender will adopt project control procedures to assure that loan funds are applied for costs or expenses properly attributable to the project ("Eligible Project Costs") as proposed in the completed application submitted by the lender and borrower and approved by the FmHA. A project monitoring account ("Project Monitoring Account") will be developed by lender for this purpose and concurred in by the State Director. This account will be divided into sufficient budget categories to permit adequate control of expenditures and identification of potential budget overruns.

(B) The first advance ("First Advance") of loan funds to the borrower will not commence from the Project Monitoring Account prior to lender's receipt of evidence that:

(1) The borrower has made adequate provisions for compliance with measures established by FmHA to mitigate adverse historical and environmental impacts.

(2) Applicable engineering, design/build, construction management, inspection and plant start-up service agreements have been obtained and accepted by the State Director and lender.

(3) The project engineer has prepared a detailed cost estimate and construction schedule for all facilities related to the project. This estimate must indicate that the project can be completed with the funds available as shown on the Form FmHA 449-1, "Application for Loan and Guarantee." A reasonable contingency amount will be included in the estimate. This contingency shall be at least 20 percent of the estimated project costs for which firm bids have not been received plus 5 percent of project costs for which firm bids have been received. Construction interest and inspection costs will be based upon a reasonable contingency for unforeseen delays in project completion. The estimate shall include a listing with associated costs of any proposed leasing arrangements for property or equipment that is essential to the successful operation of the project.

(4) All funds necessary for construction of project facilities will be available when needed.

(5) The borrower has retained a project manager with sufficient experience and training to supervise project construction and engineering services on behalf of the borrower.

(C) After the first advance, future advances may be made from the Project Monitoring Account, in accordance with prudent lender practice, for all Eligible Project Costs established in the Project Monitoring Account, provided these payments are made in accordance with the terms of applicable contracts and are approved by the borrower and, when applicable, recommended by the project engineer.

(D) Payments for Eligible Project Costs incurred by the borrower prior to satisfaction of the conditions precedent to the first advance shall be made with borrower's funds or other nonguaranteed loan funds only. These payments however, may be reimbursed through the Project Monitoring Account as authorized by the State Director after compliance with Paragraph (IV)(B) hereof. The lender will not advance and the borrower will not be entitled to loan funds for reimbursement if such costs or expenses incurred by the borrower prior to the first advance, or at anytime thereafter, were for costs or expenses other than Eligible Project Costs. Costs and expenses accruing from but not limited to, interest charges imposed by construction, equipment, material or service contracts, penalty payments, damage claims, awards or settlements are not Eligible Project Costs unless specifically approved by the State Director.

(E) The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are paid for Eligible Project Costs and that problems in project development are expeditiously reported to the State Director.

(F) The lender will prepare a monthly report showing the expenditures made from each budget category of the Project Monitoring Account. This report will include a review of construction progress including proposed and approved contract change orders and, to the extend possible, identify problems or delays in construction or other matters which might affect successful startup of project. This report may be based upon information received from the project engineer and borrower and/or independent observations of the lender. The report will be initialed by the borrower and project engineeer and submitted to the State Director.

(G) Transfer of loan funds between established or new categories of the Project Monitoring Account or any change in the total amount of funds committed to the project will be reported by the lender to the State Director as these changes occur.

Appendix E

Environmental Assessment Guidelines

In completing an assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project and its operation and maintenance. The attainment of the project's major objectives often induces or supports changes in population densities, land uses, community services, transporation systems and resource consumption. The impacts of these activities must also be assessed.

The environmental reviewer should consult with appropriate experts from Federal, State and local agencies, universities and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact should be summarized in the assessment as accurately as possible and include name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The Farmers Home Administration assessment should be prepared in the following format; it should address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant.

These assessment guidelines have been designed to cover the wide variety of impacts which may be encountered. Consequently, not every issue or potential impact raised in these guildlines may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors and issues which may be encountered. In preparing an assessment, each topic heading identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

(I) Project description and need.

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA's position regarding the need for it, and the extent or area of land to be considered as the project site.

(II) Primary beneficiaries and related activities.

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of an FmHA action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA action or are themselves induced or supported by the FmHA action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be Federally permitted or assisted. When they are, identify the involved Federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

(III) Description of project area.

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute" if available) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4) if completed, a standard soil survey for the project and, (5) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

(IV) Environmental impact.

(1) Air Quality—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersals of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality

control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

(2) Water Quality—Discuss, in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by the Environmental Protection Agency (EPA), contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

(3) Solid Waste Management—Indicate all aspects of the project, including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy to these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

(4) Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to the unique or sensitive areas discussed under Section III, Description of Project Area. Also address any changes in land use which may result from demand for feedstock for the plant's operation. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

(5) Transportation—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

(6) Natural Environment—Indicate all aspects of the project, including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

(7) Human Population—Indicate the number of people to be relocated and arrangenents being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc., will effect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

(8) Construction—Indicate the potential effects of construction of the project on air quality, water quality noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

(9) Energy Impacts—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

(10) Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussions with appropriate experts.

(V) Coastal Zone Management Act.

Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings.

(VI) Compliance with Advisory Council on Historic Preservation's regulations.

In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the asessment the results of the coordination process with the Advisory Council on Historic Preservation.

(VII) Compliance with the Wild and Scenic Rivers Act.

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. A summary of discussions held or any required formal coordination shall be included in the assessment.

(VIII) Compliance with the Endangered Species Act.

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

(IX) Compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resource Council's *Floodplain Management Guidelines* for more specific guidance.

(X) State Environmental Policy Act.

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

(XI) Consultation requirements.

Attach the comments of any State or local agency received through the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs.

(XII) Environmental analysis of participating Federal agency.

Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation.

(XIII) Reaction to project.

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

(XIV) Cumulative impacts.

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

(XV) Adverse impact.

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

(XVI) Alternatives.

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative location, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

(XVII) Mitigation measures.

Describe any measures which will be taken or required by FmHA to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

BILLING CODE 3410-07-M

Appendix F

USDA-FmHA
Form FmHA 449-14
(Rev. 5-16-83)

This form may contain certain specific conditions which may require the providing of future reports and information which would have to be agreed to by the lender and proposed borrower in order to obtain the benefit of potentially acquiring an FmHA loan guarantee. This statement is furnished pursuant to P. L. 96-511.

FORM APPROVED
OMB NO. 0575-0024
EXPIRES 10-31-85

CONDITIONAL COMMITMENT FOR GUARANTEE

	Case No.
	State
TO: Lender	County
Lender's Address	Type of Loan
Borrower	Principal Amount of Loan $

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form(s) FmHA 449-34, "Loan Note Guarantee" subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date

of this Conditional Commitment for Guarantee. The interest rate for the loan is ______________ % and, if applicable, the

loan subsidy rate is ________________ % 1/. If a variable rate is used, it must be tied to a base rate which cannot change more often than quarterly and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower. Any change in interest rates from date of issuance of this form must be approved by the FmHA State Director. Such related information may be ascertained from any FmHA office or by consulting the Federal Register.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on Form FmHA 449-1 will be considered.

Additional Conditions and Requirements including Source and Use of Funds: 2/

This conditional commitment will expire on ______________________ 3/ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

By: ______________________

Date: ______________________ FmHA: ______________________
(Title)

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration (FmHA) 4/

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within ______________ days.

____
(Name of Lender)

____________________ *(Date)*

By: ______________________________ *(Signature for Lender)*

____________________ *(Date)*

5/ ______________________________ *(Signature for Borrower)*

1/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

2/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

3/ FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

4/ Return completed and signed copy of this form to FmHA issuing office.

5/ Required in B&I and RH-MF cases, not in other cases.

BILLING CODE 3410-07-C

PART 1900—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES

8. Part 1990 is removed and reserved as follows:

§§ 1990.1–1990.22C, Appendix A and Exhibits A-1, A-2 and B [Reserved]

Sections 1990.1–1990.220 and Appendix A, and Exhibits A–1, A–2 and B are removed and reserved.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93–357, 88 Stat. 392; 42 U.S.C. 8812; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70; 29 FR 14764, 33 FR 9850.

Dated: May 26, 1983.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 83-18057 Filed 7-5-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal; Notification to Foreign State

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds the People's Republic of China to the list of countries with which existing treaties require immediate communication whenever nationals are detained in exclusion or expulsion proceedings.

Consular convention with the People's Republic of China request notification within 4 days of detention.

EFFECTIVE DATE: July 5, 1983.

FOR FURTHER INFORMATION CONTACT:
For General Information: Stanley J. Kieszkiel, Attorney Advisor, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: Hugh J. Brien, Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 Eye Street, NW.,, Washington, D.C. 20536, Telephone: (202) 633–3335.

SUPPLEMENTARY INFORMATION: Existing treaties and conventions with certain foreign states require immediate communication with the appropriate consular or diplomatic officers of the sending States whenever nationals are arrested or detained while in the United States. The Consular Convention with the People's Republic of China, Sept. 17, 1980, United States-People's Republic of China, Art. 35, Treaty Doc. No. 97–3, at 18, provides that whenever a national of the People's Republic of China is arrested or placed under any form of detention while in the United States, the consulate of the People's Republic of China shall be notified immediately, but no later than within four days from the date of arrest or detention.

This rule amends 8 CFR 242.2(e) to add the People's Republic of China to the list of foreign States with which treaties or conventions exist regarding the detention of their nationals.

Additionally, the typographical error appearing in paragraph (e) of 8 CFR 242.2, "exclusion of expulsion proceedings," is changed to read "exclusion or expulsion proceedings."

Compliance with 5 U.S.C. 553 as to notice of rulemaking and delayed effective date is unnecessary because this rule relates to a foreign affairs function of the United States and is exempt therefrom under paragraph (a)(1) thereof.

This order is not a rule within the meaning of 5 U.S.C. 601(2) and the Regulatory Flexibility Act does not apply.

This order is also exempt from the requirements of E.O. 12291 as provided by section 1(a)(2), which relates to regulations issued with respect to foreign affairs function of the United States.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Foreign Service, Treaties.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. In § 242.2, paragraph (e) is amended by revising the introductory text and adding a new footnote as follows:

§ 242.2 Apprehension, custody, and detention.

* * * * *

(e) *Privilege of communication.* Every detained alien shall be notified that he may communicate with the consular or diplomatic officers of the country of his nationality in the United States. Existing treaties require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien, and, in fact, even if the alien requests that no communication be undertaken in his behalf:

* * * * *

[6] Notification must be made within four days.

2. In § 242.2, the list of countries in paragraph (e) is amended by adding in alphabetical sequence, "China, People's Rep. of."

(Sec. 103 and 242 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103 and 1252)

Dated: June 28, 1983.

Joseph F. Salgado,

Associate Commissioner for Enforcement, Immigration and Naturalization Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket 83-041]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document adds Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. Chile was not on this list only because it was infected with foot-and-mouth disease. Data furnished to the Department establishes that foot-and-mouth disease has now been eradicated from Chile. This document also adds Chile to the list of countries free of rinderpest and foot-and-mouth disease which are subject to special restrictions on the importation of their meat and other animal products into the United States. This action will allow importation of cattle, sheep, or other ruminants, or swine, or fresh, chilled or frozen meats of such animals into the United States from Chile under certain restrictions.

DATES: Effective June 29, 1983. Written comments must be received on or before September 6, 1983.

ADDRESS: Written comments concerning this interim rule should be submitted to