Sunshine Act Meetings

Federal Register
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Monday, January 30, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 25, 1984.

TIME AND DATE: 10 a.m., Wednesday, February 1, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA v. U.S. Steel Mining Co., Inc., Docket Nos. PENN 82-218, PENN 82-219; Petition for Discretionary Review. (Issues include whether the judge erred in finding violations of 30 CFR 75.1405 and 75.1725(a)).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-2535 Filed 1-26-84; 11:44 am]
BILLING CODE 6820-12-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, February 2, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:*

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed response to the Securities and Exchange Commission on its proposal to require banks that conduct certain securities activities to register as broker/dealers.

Discussion Agenda:

2. Proposed Federal Reserve cash service standards and prices.
3. Proposals with respect to Regulation K (International Banking Operations): (A) Final amendments requiring banking institutions to establish and maintain reserves against certain international assets (proposed earlier for public comment; Docket No. R-0498); and (B) Publication for comment of proposed amendments prescribing (1) uniform rules for the accounting of fees associated with international lending by banking institutions, and (2) reporting and disclosure requirements concerning international assets subject to transfer risk.
4. Relevance of capital adequacy considerations in foreign bank acquisitions of domestic banks.
5. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-2574 Filed 1-26-84; 1:06 pm]
BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12 noon, Thursday, February 2, 1984, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Issues relating to Federal Reserve notes.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any times carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-2575 Filed 1-26-84; 1:07 pm]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:30 p.m., Friday, February 3, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-2576 Filed 1-26-84; 1:08 pm]
BILLING CODE 6210-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATE: 2 p.m., Thursday, February 2, 1984.

PLACE: Room 532, (open); room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Portions Open to the Public:

(1) Oral Argument in Rentacolor, Inc., Docket 9163.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Rentacolor, Inc., Docket 9163.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84-2584 Filed 1-26-84; 1:23 pm]

BILLING CODE 6760-01-M

6

FEDERAL TRADE COMMISSION

TIME AND DATE: 2 p.m., Wednesday, February 15, 1984.

PLACE: Room 532, (open); room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meetings will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in American Medical International, Inc., Docket 9158.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in American Medical International Docket 9158.

CONTACT PERSON FOR MORE INFOMATION: Susan B. Ticknor, Office of Public Information (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84-2585 Filed 1-26-84; 1:23 pm]

BILLING CODE 6760-01-M

7

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: It will commence at 10 a.m. and continue until all official business is completed; Monday, February 6, 1984.

PLACE: Hilton Inn Orlando, LaBodega Room, 3200 West Colonial Drive, Orlando, Florida.

STATUS OF MEETING: Open (Portion of Meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
3. Approval of Draft Minutes of January 6, 1984 Board Meeting
4. Election of Chairman and Vice Chairman
5. Report from the President
   —Report of Executive Session of January 6, 1984
   —Update on Legal Needs Study
6. Report from Appropriations and Audit Committee
   —Acceptance of Audit
   —Allocation of 1983 Carryover Funds
   —Final Fiscal Year 1983 Consolidated Operating Budget
   —Proposed Fiscal Year 1984 Consolidated Operating Budget Including Carryover
   —Selection of Auditor for 1984
7. Report from the Office of General Counsel
   —Final Publication of 45 CFR 1606.2(a)—Definition of Termination
   —Proposed Regulations 1600.1—Definitions 1612—Lobbying 1619—Disclosure of Information
9. Report from the Office of Program Development
   —IOLTA Grants
   —Law School Clinics
   —Legal Clinics
   —NORC Report
10. Report from the Office of Government Relations

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Berstein, Office of the President (202) 272–4040.

Dated: January 25, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-2506 Filed 1-25-84; 4:25 pm]

BILLING CODE 6820-35-M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

TIME AND DATE: 10 a.m., February 1–2, 1984.

PLACE: North Shore Resort Hotel, North Shore Plaza, Coeur d'Alene, Idaho.

STATUS OF MEETING: Open. A portion of this meeting will be closed to the public to discuss pending litigation and other legal matters.

MATTERS TO BE CONSIDERED:

Presentation on Federal Energy Regulatory Commissions' Salmon River Basin Ruling
Status Report on Section 200 Goals Study of the Columbia River Basin Fish and Wildlife Program
Presentation on Willamette River Basin Plan
Status Report on the Amendment Schedule for the Columbia River Basin Fish and Wildlife Program
Model Conservation Standards
Status Report on Northwest-Southwest Intertie Access Policy
Public Comment on Proposed Amendments to the Council's Study of Large Thermal Plant Planning and Conservation Schedules
Council Business
Public Comment will follow each item

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-2590 Filed 1-26-84; 1:59 pm]

BILLING CODE 0000-00-M

2

PAROLE COMMISSION

The Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters.

TIME AND DATE: 2 p.m., Thursday, January 26, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: January 25, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84-2530 Filed 1-26-84; 11:22 am]

BILLING CODE 4410-01-M

Monday
January 30, 1984

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1901, 1924, 1940, 1941, 1942, 1943, 1944, 1945, 1948, and 1980

Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1924, 1940, 1941, 1942, 1943, 1944, 1945, 1948, and 1980

Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation for implementing the National Environmental Policy Act. These amendments are necessary in order to comply with the Council on Environmental Quality's (CEQ) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." The intended effect of these amendments is to make FmHA's regulation consistent with CEQ's regulation as well as serve as a reference point for those environmental laws, Executive Orders and regulations applicable to FmHA programs.

EFFECTIVE DATE: This regulation is effective as follows: Its requirements must be met for those applications for financial assistance, requests for subdivision approval, and other covered actions that are not approved (i.e. Form FmHA 1940-1 has not been issued for an application for financial assistance) on or before March 30, 1984. However, all applicants filing pre-applications, applications, and requests for subdivision approvals after January 30, 1984, must provide the environmental information required by this regulation.

FOR FURTHER INFORMATION CONTACT: John Hansel, Environmental Protection Specialist, telephone (202) 382-9626, Farmers Home Administration, U.S. Department of Agriculture, Room 6305, South Agriculture Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 which implements Executive Order 12291 and has been determined to be non-major. The rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The FmHA programs and projects which are affected by this rule are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 3015. The affected programs are as follows: CFDA Nos. 10.404, Emergency Loans; 10.405, Farm Labor Housing Loans and Grants; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.408, Grazing Association Loans; 10.409, Irrigation, Drainage, and other Soil and Water Conservation Loans; 10.411, Rural Housing Site Loans; 10.413, Recreation Facility Loans; 10.414, Resource Conservation and Development Loans; 10.415, Rural Rental Housing Loans; 10.416, Soil and Water Loans; 10.418, Water and Waste Disposal Systems for Rural Communities; 10.419, Watershed Protection and Flood Prevention Loans; 10.420, Rural Self-Help Housing Technical Assistance; 10.422, Business and Industrial Loans; 10.423, Community Facility Loans; 10.424, Industrial Development Grants; 10,426, Area Development Assistance Planning Grants; 10.427, Rural Rental Assistance Programs; 10.430, Energy Impacted Area Development Assistance Programs; 10.431, Technical and Supervisory Assistance Grants; and 10.432, Biomass Energy and Alcohol Fuels Loans and Loan Guarantees.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), Mr. Charles W. Shuman, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because in terms of the Agency's grant programs, less than 30 grants will be affected annually.

These amendments are necessary in order to comply with the Council on Environmental Quality's (CEQ) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." A basic objective of this rule, then, is to update FmHA's environmental review requirements in order to conform to the CEQ Regulations. Like FmHA's existing requirements, this rule affects all of the Agency's financial assistance programs but it provides more specific guidance in how to complete environmental reviews than previous regulations.

This rule also incorporates the concept of using the environmental impact assessment, and, when necessary, the environmental impact statement (EIS) as the basic mechanism for completing and demonstrating compliance with other major Federal environmental laws, regulations and policies. This concept is utilized by other Federal agencies and encouraged by CEQ. Additionally, the rule provides specific procedures for implementing Departmental Regulation 9500-3, "Land Use Policy."

The major element of this rule is the provision of specific guidance for the preparation of environmental assessments and impact statements, including formats for preparing assessments. Those actions undertaken by the Agency that do not require an environmental assessment are specifically defined under the heading of categorical exclusions. For those actions subject to environmental assessments, two levels or degrees of assessment have been established. Therefore, this procedure differs from the former requirements. The first level of assessment consists of a minimal checklist type review and is done for smaller scale construction projects which are specifically defined under the heading, Class I actions. A more detailed narrative assessment is done for larger construction projects defined as Class II actions. Within this review structure, housing projects of less than 25 units, which were not covered by the former regulation, will now undergo the minimal assessment for a Class I action. Additional major elements include guidance on how the Agency's compliance with environmental laws will be documented in the environmental assessment, or, if necessary, the EIS for the project.

The responsible officials for carrying out the requirements of this rule are identified and each State Director is required to designate a staff member as the State Environmental Coordinator who thereafter will be directly responsible to the State Director for the effective implementation of this rule at the State and field office level. Several other major elements of the rule are discussed in the paragraphs below that address the responses to comments received on the proposed rule.

The Office of Management and Budget's (OMB) clearance has been obtained for the reporting and record keeping requirement which this rule places on the public. This requirement stems from Form FmHA 1940–20, "Request for Environmental Information". As indicated in Section 1940.309, certain applicants must complete this Form as part of their application for financial assistance. The OMB approval number is 0575–0094.

In considering alternatives to the promulgation of this rule, initial consideration was given to whether or not there was a need to change our existing rule on preparing environmental assessments and EISs. Since that rule does not conform to the CEQ Regulations issued subsequent to it, and it must so conform, FmHA had no choice but to prepare a revision. In completing this revision, FmHA faced two major sub-options. The first was to promulgate a rule that dealt only with implementing the National Environmental Policy Act (NEPA). The second option was to address not only the requirements of NEPA but also those of the other major environmental laws and regulations that apply to Federal financial assistance programs. FmHA chose the second option because of its management advantages and related cost-effectiveness. Since an environmental assessment can be used as the vehicle for considering and documenting compliance with other applicable environmental laws, the incorporation of these laws into this rule and the assessment process mandated under it eliminate the need for separate rules for these other requirements. Such incorporation also vividly demonstrates the relationship of these other environmental requirements to the NEPA process. Also, this method of incorporation provides both Agency staff and the public with a centralized reference document for these requirements.

This type of broader rule, then, becomes a statement of the Agency's environmental program. Compliance with it early in the processing of an application will minimize potential delays in project approval and construction that can result from piecemeal review of environmental requirements at random points in the application process. Also, the selected alternative avoids duplicative and recurring requests for environmental information from applicants since the rule contains a uniform data request that covers all major environmental mandates, not just NEPA. For these reasons, FmHA decided to broaden the rule beyond just NEPA compliance.

The selected alternative has the potential for both cost increases and cost savings with the net effect determinable only on a project-by-project basis. With respect to applicants who seek assistance to build residential, commercial, or industrial facilities, land acquisition costs will be somewhat higher in some instances. This rule increases the Agency's emphasis on the utilization of adequate sites for construction projects. Applicants who plan to use sites for non-farm purposes that are located in floodplains, wetlands, or outside of rural settlement patterns will be discouraged from doing so unless there is no practicable alternative to such a location. Since these types of sites are generally less attractive for construction projects, they are normally cheaper. Land costs, therefore, should increase as fewer of these unattractive sites are used. Higher land costs, however, can be offset by lower development costs. For example, floodplain sites require special construction and protective features. FmHA will participate in increased land costs as permitted by program regulations. This increased cost, however, is often short-term when compared to the useful life of the project. Certainly reducing the potential for flood damage over useful life of a project can result in a cost savings. Also, by locating projects and public facilities within established communities, there is a reduction in public service costs and transportation costs and an increase in the positive economic impact on the community. From another perspective, some applicants will have their costs increased because the environmental review will disclose the need for environmental mitigation measures which the applicant did not originally foresee. Such measures could include establishing a vegetative buffer strip or erosion control measures, for example.

As a result of the more specific guidance provided in this rule and the revised CEQ Regulations, FmHA may prepare more environmental impact statements than in the past. The cost of these statements, however, will not be borne by the applicant. The EIS often pays for itself by identifying potentially serious site problems or health and safety problems and providing methods to avoid them. The EIS may also show that a smaller scale project is adequate to meet the applicant's needs, thereby greatly reducing project costs.

All applicants will generally benefit from the cost savings associated with completing comprehensive environmental reviews early in the application review process. This procedure prevents delays in project approval and construction since environmental issues are less likely to surface in these later stages or affected citizens raise unaddressed issues. Such delays can result in both escalated costs or even major project revisions. The occurrence of such delays are minimized by this rule.

On January 12, 1981, a proposed rule was published in the **Federal Register** (46 FR 2900) for a 60-day review and comment period. On February 19, 1981, a public information meeting was held in Washington, D.C. for the purposes of discussing the proposed rule as well as considering comments and questions of interested parties. Following is a summary of the comments received from this public review process and FmHA's responses.

a. The Department of the Interior requested several changes and clarifications in the rule were particular laws under its jurisdiction are discussed, such as the Endangered Species Act. The proposed rule failed to address the legislative requirements that exist for proposed species and critical habitats as opposed to listed species and critical habitats. These changes have been made in the appropriate sections.

b. Several commenters suggested that the proposed thresholds for categorical exclusions be increased. Categorical exclusions, Section 1940.310, are those types of Agency actions or projects that do not require an environmental assessment because, either individually or commulatively, they do not have the potential to significantly affect the quality of the human environment. The thresholds relating to the housing programs and farm programs were referenced in these comments. Several changes have been made to the categorical exclusions for the Farm Programs and they are discussed below in paragraph d. With regard to housing, CEQ has worked with FmHA, the Veterans Administration and the Department of Housing and Urban Development and determined that housing projects of one to four units can be categorically excluded. Therefore, we have not increased this threshold. The proposed and final rule, however, recognizes that small housing projects above four units do not normally require either detailed environmental assessments or the submission of extensive environmental data from applicants. Therefore, a minimal, checklist-type assessment is required for smaller housing projects, 5 to 25 units, for which applicants need only furnish basic site descriptive materials. The final rule also broadens the use of this checklist type assessment to a greater variety of applications under the Farm Programs and the Community and Business Programs.

c. One State agency, a national farm organization and two of its State-level affiliates objected to the proposed requirement that FmHA State Directors prepare natural resource management guides for their respective States. These commenters believe this requirement amounts to Federal land use planning. This is not the case. As can be seen in Section 1940.305(b), the guide will consist of two major elements: (1) a location inventory of designated, important land uses and environmental resources within the State; and (2) a policy statement listing the existing standards and regulations that protect these resources. FmHA officials play no role in designating the resources on the inventory. Designation is accomplished by the Agency having jurisdiction over the resource. For example, in the case of critical habitats for endangered species, the Department of Interior (DOI) is the designating agency. FmHA State Offices must simply maintain up-to-date listings for their States as periodically published in the **Federal Register** by DOI. This is not land use planning on FmHA's part. In some cases, maintaining a current listing of an important resource is required by Federal regulation. The Advisory Council on Historic Preservation requires in its regulations for implementing Section 106 of the National Historic Presevation Act that every Federal agency review the National Register of Historic Places as a first step in considering a project's potential impacts. This review is necessary to determine if any listed historic properties are within the project's area of environmental impact. The reviewer, consequently, must have a current copy of the National Register to do this. In all cases, FmHA staff must have an inventory of designated, sensitive environmental areas within the State in order to prepare environmental assessments.

The second major aspect of the natural resource management guide is a brief document that enumerates the standards and review requirements, if any, that apply to the land uses and resources that make up the inventory. This document is available to the public and includes those major environmental standards and review requirements that have been promulgated at the Federal level as well as those that are particular to the State. This document is intended to served two purposes. First, it provides FmHA State Office staff with a concise listing of the environmental and land use considerations and constraints that they must address in the review and approval of applications for funding assistance. Second, it serves as a useful planning tool for prospective applicants. CEQ's Regulations require that all Federal agencies integrate the environmental impact review process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. The CEQ Regulations go on to stipulate that where projects are planned by private applicants or other non-federal entities before Federal involvement, which is the case for FmHA, that such entities be made aware of what environmental requirements will have to be met to gain Federal approval of the project. (See Section 1501.2 of CEQ's Regulations.) The natural resource management guide provides these entities with this information for use in their project planning process and minimizes the potential for applicants expending energy and local funds on projects that are either not fundable or require substantial redesign and resultant processing delays.

Because the preparation of the natural resource management guide is not Federal land use planning and the guide provides the benefits described above, the requirement has been maintained in the final rule. This position conicides with that of seven commenters on the proposed rule which included two Federal agencies, four State-level agencies, and two national organizations. All of these comments strongly endorsed the national resource management guide because of the further interaction, coordination and communication that it would promote between FmHA State Offices and State governments. A national organization representing county governments was supportive as long as it was clearly spelled out in the rule that FmHA shall not exercise land use powers traditionally reserved to local governments. Since this was never FmHA's intent nor is it within our jurisdiction, we have added this clarification to § 1940.305(b). We have also attempted to clarify in that same Section the responsibilities of FmHA approving officials in reviewing the acceptability of sites for FmHA funded projects as opposed to the land use powers of local and State governments.

d. Two Federal agencies believed that modifications could be made to the thresholds that apply to applications under the Farm Programs without increasing the potential for adverse environmental impacts. Accordingly, some actions have been exempted from review that originally were subject to environmental assessments. For example, any applications that involve changes in land use from an intensive use such as crop production to a less intensive use such as pastures or forestland are now exempt from review regardless of the amount of acreage. Additionally, proposals for creating farm ponds of less than five acres in size are normally exempt from review. The previous threshold was two acres.

Also, a concern was raised that there could be a duplication of environmental reviews between FmHA and the Soil Conservation Service (SCS) for applications under the Farm Programs. Section 1940.311 has been revised to emphasize that if an application under the Farm Programs has initially received technical assistance from SCS or any other Federal agency with respect to the elements of the application, FmHA will review any environmental analysis conducted by the other Federal agency and will adopt it as FmHA's assessment if the requirements of Section 1940.324 are met. If these requirements are not met, FmHA will work with the other Federal agency to supplement the initial environmental review as necessary. For large scale farm projects for which the applicant has not requested SCS's technical assistance before filing an application with FmHA, the Agency will request the applicant to seek SCS assistance. If the applicant does seek such assistance, FmHA will work with SCS to adopt the environmental review conducted as part of the assistance and to incorporate SCS's conservation plan for the application within the loan approval requirements.

A final major change in the manner that applications under the Farm Programs will be processed relates to environmental data submission requirements. FmHA recognizes that any burden that these requirements may cause will fall most seriously upon these applicants. Therefore, this rule contains the provision that no environmental information need be submitted as part of an application meeting the definitions of a Class I action under the Farm Programs (see Section 1940.311(c)) when, as an alternative, a site visit by the FmHA official preparing the environmental assessment suffices. Since for almost all of these actions this official will be the County Supervisor, site visits should be the norm and not the exception. Also, the applicant need not submit any environmental information whenever another Federal agency's environmental assessment is adopted by FmHA.

e. Several commenters raised the concern that FmHA was proposing to do too much in the area of environmental impact review given budget and manpower constraints. Other commenters welcomed the changes over present procedures. FmHA recognizes that this rule increases its workload with respect to environmental matters. It also recognizes that FmHA's existing procedures must be changed thereby ensuring that FmHA's financial assistance programs meet rural America's economic and housing needs while providing a safe and healthy environment. We believe this regulation strikes an effective balance between providing an effective environmental review process and tailoring this process to fit our management system, thereby minimizing workload implications.

f. A national housing organization criticized the proposed rule's policy for indicating that in certain circumstances rehabilitation of housing would be favored over new construction of housing. FmHA has decided not to take a position on rehabilitation versus new construction except on a project by project basis. Therefore, this policy has been deleted from the final rule.

g. The policy contained in the proposed rule regarding financial assistance for projects located on barrier islands has been modified in light of the passage of the Coastal Barrier Resources Act, Pub. L. 97–348. The draft language has been replaced with a brief summary of the Act's requirements along with implementation guidance.

h. Finally, the organization of the final regulation has been modified. Most of the guidance material contained in the proposed rule has been slightly expanded and removed and segregated into appropriately titled exhibits.

List of Subjects for Subpart G of Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

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

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart G—Environmental Impact Statements [Removed and Reserved]

1. Subpart G (§§ 1901.301—1901.309 and Exhibits A–D) of Part 1901 is removed and reserved.

PART 1924—CONSTRUCTION AND REPAIR

Subpart O—Planning and Performing Construction and Other Development

§ 1924.6 [Amended]

2. In § 1924.6, paragraph (a)(9) is revised to read as follows:

§ 1924.6 Performing development work.

* * * * *

(a) * * *

(9) The provisions of Subpart G of Part 1940 of this chapter concerning environmental requirements will apply to all loans and grants including those being assisted under the HUD Section 8 housing assistance payment program for new construction.

* * * * *

PART 1940—GENERAL

3. Subpart G is added to Part 1940 to read as follows:

Subpart G—Environmental Program

Sec.
1940.301 Purpose.
1940.302 Definitions.
1940.303 General Policy.
1940.304 Special Policy.
1940.305 Policy Implementation.
1940.306 Environmental responsibilities within the National Office.
1940.307 Environmental responsibilities within the State Office.
1940.308 Environmental responsibilities at the District and County Office levels.
1940.309 Responsibilities of the prospective applicant.
1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.
1940.311 Environmental assessments for Class I actions.
1940.312 Environmental Assessments for Class II actions.
1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).
1940.314 Criteria for determining a significant enviromental impact.
1940.315 Timing of the environmental review process.
1940.316 Responsible officials for the environmental review process.
1940.317 Methods for ensuring proper implementation of categorical exclusions.
1940.318 Completing environmental assessments for Class II actions.
1940.319 Completing environmental assessments for Class I actions.
1940.320 Preparing EIS's.
1940.321 Use of completed EIS.
1940.322 Record of decision.
1940.323 Preparing supplements to EIS's.
1940.324 Adoption of EIS or environmental assessment prepared by other Federal Agency.
1940.325 FmHA as a cooperating Agency.
1940.326 FmHA as a lead Agency.
1940.327 Tiering.
Sec.
1940.328 State Environmental Policy Acts.
1940.329 Commenting on other agencies' EIS's.
1940.330 Monitoring.
1940.331 Public involvement.
1940.332 Emergencies.
1940.333 Applicability to planning assistance.
1940.334 Direct participation of State agencies in the preparation of FmHA EIS's.
1940.335 Environmental review of FmHA proposals for legislation.
1940.336 Contracting for professional services.
1940.337—1940.349 [Reserved]
1940.350 Office of Management and Budget (OMB) control number.

Exhibits

A—Departmental Regulation 9500–3, Land Use Policy.
B—Development and Implementation of National Resource Management Guide.
C—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500–3, Land Use Policy.
D—Implementation Procedures for the Endangered Species Act.
E—Implementation Procedures for the Wild and Scenic Rivers Act.
F—Implementation Procedures for the Coastal Barrier Resources Act.
G—Timing of FmHA Environmental Impact Review Process.
H—Enviromental Assessment for Class II Actions.
I—Finding of No Significant Environmental Impact.
J—Locations and Telephone Number of Federal Emergency Management Administration's Regional Offices.
K—Locations and Telephone Numbers of U.S Fish and Wildlife Service's Wetland Coordinators.
L—Exceptions to Restrictions of Coastal Barrier Resources Act.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA). It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA decisionmaking process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the

Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508. CEQ's regulations are incorporated by reference as part of this subpart. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA offices.

(c) This subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law, or by Agency practice, so that all such procedures run concurrently rather than consecutively. The environmental document, which results from the implementation of this subpart, provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321.

(2) Safe Drinking Water Act—Section 142 (e), 42 U.S.C. 300h.

(3) Endangered Species Act, 16 U.S.C. 1531.

(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271.

(5) The National Historic Preservation Act, 16 U.S.C 470 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(7) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456.

(8) Farmland Protection Policy Act, Subtitle I, Pub. L. 97–98.

(9) Coastal Barrier Resources Act, Pub. L. 97–348.

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(11) Executive Order 11514, Protection and Enhancement of Environmental Quality.

(12) Executive Order 11988, Floodplain Management.

(13) Executive Order 11990, Protection of Wetlands.

(14) Title 7, Part 1b and 1c, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures.

(15) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(16) Departmental Regulation 9500–3, Land Use Policy (See Exhibit A).

(17) Secretary of Agriculture's Memorandum 9500–3, Policy on Fish and Wildlife.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequences, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are provided for in this Subpart. FmHA environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

(f) Public involvement is desirable, and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decisionmaking process as possible and before decisions are made. Provisions are included for citizens or interested parties to express their views and any concerns.

(g) The FmHA officials responsible for the environmental review process are identified.

§ 1940.302 Definitions.

Following is a list of definitions that apply to the implementation of this Subpart. Please note that § 1940.301(b) incorporates by reference the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500 through 1508. Consequently, the definitions contained in Part 1508 of the Council's regulations apply to this subpart, as well as those listed below.

(a) *Emergency circumstance.* One involving an immediate or imminent danger to public health or safety.

(b) *Evironmental reviewer.* The FmHA official who is primarily responsible for reviewing the potential environmental impacts of the proposed action, and for completing the appropriate environmental review document, i.e., Environmental Checklist For Categorical Exclusions, environmental assessment or Environmental Impact Statement (EIS). Under the circumstances indicated, the following Agency positions and divisions shall act as the environmental reviewer for the actions and documents covered by this Subpart.

(1) County Supervisor or District Director—Checklists and assessments for actions for which this position is the approving official, and the concurrence of the next higher Agency level is not required.

(2) State Office Program Chief or Loan Specialist—Checklists and assessments for actions approved within the State Office or concurred in by the State Office.

(3) State Environmental Coordinator—EISs for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(4) Assistant Administrators for Programs—Checklists, assessments, and EISs for all actions initiated within their program office.

(5) Program Support Staff—Checklists, assessments, and EISs that the Deputy Administrator for Program Operations requests be done.

(c) *Flood or flooding.* A general and temporary condition of partial or complete inundation of land areas, from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source. Two important classifications of floods are as follows.

(1) A 1-percent chance flood or base flood—A flood of a magnitude that occurs once every 100 years on the average. Within any 1-year period there is one chance in 100 of the occurrence of such a flood. Most importantly,

however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) A 0.2-percent chance flood—A flood of a magnitude that occurs once every 500 years on the average. (Within any 1-year period there is one chance in 500 of the occurrence of such a flood.) As with the 1-percent chance flood, the cumulative risk of this flood occurring also increases with time.

(d) *Floodplains.* Lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains, consist of those areas subject to a 1 percent or greater chance of flooding in any given year. The term floodplain shall be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

(1) Base floodplain (or 100-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a 1-percent chance of being equalled or exceeded in any given year).

(2) Critical action floodplain (or 500-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having a 0.2-percent chance of being equalled or exceeded in any given year).

(e) *Indirect impacts.* Those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the Federal project and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate, and the corresponding changes to air and water quality and other natural systems.

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include (1) the deletion, relocation, redesign or other modifications of the project's elements; (2) the dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts; (3) soil erosion and sedimentation plans to control runoff during land-disturbing activities; (4) the establishment of vegetative buffer zones between project sites and adjacent land uses; (5) protective measures recommended by environmental agencies having jurisdiction or special expertise regarding the project's impacts; (6) storm water management plans to control potential downstream flooding effects that would result from a project; (7) zoning; and (8) reuse of existing facilities as opposed to new construction.

(g) *No-action alternative.* The alternative of not approving an application for financial assistance, a subdivision feasibility analysis, or an Agency proposal.

(h) *Practicable alternative.* An alternative that is capable of attainment within the confines or relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following three categories of alternatives:

(1) Alternative project sites or designs,

(2) Alternative projects with similar benefits as the proposed action, and

(3) The no-action alternative.

(i) *Water resource project.* Includes any type of construction which would result in any change in the free-flowing characteristics of a particular river to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers, as well as projects involving withdrawals from, and discharges into such rivers. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA shall consider environmental quality as equal with economic, social, and other relevant factors in program development and decisionmaking processes.

(b) In assessing the potential environmental impacts of its actions, FmHA shall consult early with appropriate Federal, State, and local agencies and other organizations to provide decisionmakers with both the technical and human aspects of environmental planning.

(c) When adverse environmental impacts are identified, either direct or indirect, an examination shall be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review shall be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal shall also be considered particularly with respect to the need for the proposal.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts shall be included in the proposal.

(e) The performance of environmental reviews and the consideration of alternatives shall occur as early as possible in the FmHA decisionmaking process so that the Agency will be in the most flexible and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Important land resources.* (1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500–3, Land Use Policy, which is included as Exhibit A. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as Exhibit J, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that (i) there is no practicable alternative to the proposed action, (ii) the proposal conforms to the planning criteria identified in Paragraph (a)(2) of this section, and (iii) the proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its cental business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500–3. (Exhibit A)

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA requirement that either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to those areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions or to so amend existing plans to incorporate the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects shall be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding Item (ii) of paragraph (a)(2) of this section, which would not be applicable).

(b) *Endangered species.* FmHA shall not authorize, fund, or carry out any proposal or project that is likely to (1) jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or (2) destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA has been granted an exemption for such proposal by the Endangered Species Committee pursuant to subsection (h) of Section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA shall not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA shall not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places, and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of Subpart F of Part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal Barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA shall not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless (1) such activity meets the criteria for an exception, as defined in Section 6 of the Act, and (2) consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA shall encourage the conservation of water and energy in the development of its programs and policies and shall encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA shall advocate, in coordination with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses (1) are caused or encouraged by actions or programs of a Federal Agency, or (2) require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this Subpart serves as the primary mechanism for FmHA (1) incorporating environmental quality considerations into FmHA program and decisionmaking processes, (2) obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA projects, and (3) using all practicable means to avoid or minimize any possible adverse environmental effects of FmHA actions.

(b) *Natural resource management.* The State Director shall develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this Subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide shall be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in Exhibit B and can be summarized as follows:

(1) The guide shall serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide shall summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory;

(3) The contents of the guide, particularly the inventory, shall be considered by the State Director in deciding how FmHA's various program funds will be generally allocated across the State, on a fiscal year basis; and

(4) Applications for individual projects must be reviewed for consistency with the guide.

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA commentors will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element shall be addressed in FmHA's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500-3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency's programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA's implementation procedures for the project review process are contained in Exhibit C.

(e) *Endangered species.* FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA's implementation procedures are contained in exhibit D of this Subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property shall be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior (DOI). FmHA's procedures for completing this review are contained in Exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification shall consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project's area of environmental impact, it may be necessary for FmHA to consult public records and other individuals and organizations, such as university archeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and where the potential for previously unidentified properties is recognized by FmHA, the SHPO, or other interested parties, FmHA shall conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archeological testing, studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA, indicates the presence of historic and cultural properties within the area of potential environmental impact that, in the opinion of the SHPO or FmHA, appear to meet the National Register Criteria (36 CFR 1202.6), FmHA shall request a determination of eligibility from the keeper of the National Register in accordance with 36 CFR 1204. Consultations shall be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR 800, through the implementation of Subpart F of Part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in Subpart F of Part 1901 of this Chapter. These procedures shall be followed whenever a proposal, considered by FmHA, has

the potential to affect National Register or eligible properties.

(h) *Coastal barriers*. In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, shall be reviewed to determine if it would be located within the system and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices shall maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that have been included in the system. FmHA's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in exhibit F. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in Exhibit L.

(i) *Water and energy conservation*. Water and energy conservation measures will be considered at both the program and project level in a manner consistent with program regulations.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator*. The Administrator of FmHA has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this Subpart are reflected and documented in budget requests for departmental consideration.

(b) *Deputy Administrator for Program Operations*. (1) The Deputy Administrator for Program Operations has the delegated overall Agency responsibility for developing and implementing environmental policies and compliance procedures, monitoring their effectiveness, and advising the Administrator on the status of compliance, to include recommendations for any necessary changes in this Subpart. The incumbent is also responsible for developing and documenting, as part of the Agency's budget formulation process, the manpower and financial needs necessary to implement this Subpart.

(2) The specific responsibilities of the Deputy Administrator Program Operations are as follows:

(i) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution, as required by the CEQ regulations;

(ii) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, and orderly community development;

(iii) Coordinate the implementation of this Subpart with affected program offices;

(iv) Provide policy direction and advice on the implementation of this Subpart to Agency staff, particularly to State Environmental Coordinators and technical support personnel within State Offices;

(v) Consult and coordinate, as needed or upon request, with the Department's interagency committees dealing with environmental, land use, and historic preservation matters;

(vi) Monitor the Agency's record in complying with this Subpart;

(vii) Provide training programs and materials for the Agency staff assigned the functions identified in this Subpart;

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and recommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this Subpart;

(ix) Develop and direct Agency procedures for complying with environmental legislation, Executive orders, and regulations, including, but not limited to, those listed in § 1940.301(c) of this subpart;

(x) Maintain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist), who shall serve as the responsible Agency official under the National Environmental Policy Act and the National Historic Preservation Act, maintain liaison on environmental matters with interested public groups and Federal agencies, and serve as the focal point for developing and coordinating the Agency's procedures for the requirements listed in § 1940.301(c) of this subpart; and

(xi) Review and evaluate legislative and administrative proposals in terms of their environmental impact.

(c) *Assistant Administrators for Programs*. The Assistant Administrators for Programs shall:

(1) Ensure, as necessary, that environmental assessments and EIS's for proposed program regulations are prepared by their staff;

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office, contain adequate analyses and documentation of their potential environmental impacts;

(3) Consider and include in the development of program regulations feasible policies and mechanisms that promote program goals in a manner that either enhances environmental quality or reduces unnecessary adverse environmental impacts; and

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally the same duties and responsibilities within the program office as the State Environmental Coordinator has within the State Office (See § 1940.307(b) of this Subpart).

§ 1940.307 Environmental responsibilities within the State Office.

(a) *State Director*. The State Director shall:

(1) Serve as the responsible FmHA official at the State Office level for ensuring compliance with the requirements of this subpart; and

(2) Appoint one individual to serve as the State Environmental Coordinator (SEC). Thereafter, the SEC shall report directly to the State Director on the environmental matters contained in this Subpart.

(b) *State Environmental Coordinator (SEC)* The SEC shall:

(1) Act as advisor to the State Director on environmental matters and coordinate the requirements of this Subpart;

(2) Review those Agency actions which are not categorically excluded from this subpart (see §§ 1940.311 and 1940.312) and which require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the

(i) Anticipated adverse environmental impacts,

(ii) The anticipated benefits, and

(iii) The action's consistency with this Subpart's requirements;

(3) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(4) Maintain liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies;

(5) Serve as the State Director's alternate on State-level USDA committees dealing with environmental, land use and historic preservation matters;

(6) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this Subpart;

(7) Provide technical assistance as needed on a project-by-project basis to State, District, and County Office staffs;

(8) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(9) Provide assistance in resolving post-approval environmental matters at the State Office level;

(10) Maintain records for those actions required by this Subpart;

(11) Coordinate for the State Director the development of the State Office natural resource management guide; and

(12) Provide direction and training to State, District, and County Office staffs on the requirements of this Subpart.

(c) *Program Chiefs.* State Office Program Chiefs shall:

(1) Be responsible for preparing the environmental impact reviews required by this Subpart for all program actions to be approved at the State Office level or concurred in at that level;

(2) Coordinate the above reviews as early as possible with the SEC, so that the latter can assist in addressing the resolution of any unresolved or difficult environmental issues in a timely manner; and

(3) Incorporate into projects and actions measures to avoid or reduce potential adverse environmental impacts identified in environmental reviews.

§ 1940.308 Environmental responsibilities at the District and County Office levels.

(a) The District Director shall be responsible for carrying out the actions required by this Subpart to be completed at the District Office level.

(b) The County Supervisor shall be responsible for carrying out the actions required by this Subpart to be completed at the County Office level.

(c) In discussing FmHA assistance programs with potential applicants, District Directors and County Supervisors shall inform them of the Agency's environmental requirements, as well as the environmental information needs and responsibilities that FmHA applicants are expected to address. (See § 1940.309.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA expects prospective applicants (*and in the case of the loan guarantee programs, prospective borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA's environmental requirements as soon as possible after they decide to pursue FmHA financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA assistance shall be required to provide information necessary to FmHA to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant shall be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant shall also be required to provide data on any expected gaseous, liquid, and solid wastes to be produced and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate such disposal practices.

(c) Form FmHA 1940-20, "Request for Environmental Information," shall be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this Subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in Item 2 of Form FmHA 1940-20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in § 1940.312, all of Form FmHA 1940-20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in § 1940.311, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA official completing the environmental assessment obviates the need for the applicant to complete any of the form and the adoption by FmHA of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants shall ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA.

(e) During the period of application review and processing, applicants shall not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in § 1940.318(e), § 1940.320 (c) and (g), and § 1940.331 (c) and (e) of this subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this Subpart may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter.

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in § 1940.303 through § 1940.305 or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from environmental reviews when located in, or potentially affecting, (1) a floodplain, (2) a wetland, (3) important farmlands, or prime forestlands or rangelands, (4) a listed species or critical habitat for an endangered species, (5) a property that is listed on or may be eligible for listing on the National Register of Historic Places, (6) an area within an approved state coastal zone management program, (7) a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, (8) a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, or (9) a sole source aquifer recharge area. When one or more of these conditions is present, the action must be reviewed under the requirements of § 1940.311. This requirement serves to implement Section 1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Further guidance on the use of these exclusions is contained in § 1940.317.

(b) *Housing assistance.* *(1) The provision of financial assistance for construction of a single family dwelling or a multifamily project serving no more than four families, i.e. units;

*(2) The approval of an individual building lot that is located on a scattered site and not part of a subdivision;

*(3) Rehabilitation and renovation of any existing housing units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Techical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barriers Resources System or in a listed or potentially eligible historic district, in which case the application shall fall under Class I as defined in § 1940.311;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA subdivision provided that (i) the action is consistent with all previously adopted stipulations for the multifamily housing project or subdivision, and (ii) the environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested; and

(9) Appraisals of nonfarm tracts and small farms for rural housing loans.

(c) *Community and business programs.* *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment, and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes;

*(2) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(3) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(4) Projects that solely involve the purchase and installation of office equipment, health care equipment, public safety equipment, or motor vehicles; and

(5) Amendments to approved projects meeting the criteria of paragraph (e)(2) of this section.

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d) (9) and (10) of this section;

(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d) (9) and (10) of this section;

(3) Financial assistance for (i) the payment of annual operating expenses, which does not cover activities specifically addressed in this section or § 1940.311 or 1940.312; (ii) family living expenses, and (iii) refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for on site water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation, rehabilitation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. (If a wetland is affected, the application shall fall under Class II as defined in § 1940.312. Potential effects to an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in § 1940.311.);

(7) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application shall fall under Class II as defined in § 1940.312. Potential effects on a historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in § 1940.311.);

(8) Financial assistance for the conversion of (i) land in agricultural production to pastures or forest, or (ii) pastures to forests;

*(9) Financial assistance for land-clearing operations of no more than 15 acres, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

(10) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in § 1940.312.

(e) *General exclusions.* (1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, and amendments and revisions to approved projects, including the provision of additional financial assistance or their approval documents, that do not alter the purpose, operation,

location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency;

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances; and

*(6) The disposal of real property by FmHA whenever the conveyance is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in § 1940.310 of this Subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are minimal and no further study is required or the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA has classified its smaller scale approval actions as Class I actions. The format which shall be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA 1940-21, "Environmental Assessment for Class I Actions." An important aspect of this classification method is that it allows FmHA's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Following is a listing of Class I actions. Additional guidance on the application of NEPA to Class I actions is provided in § 1940.319.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

(1) Financial assistance for a multifamily housing project, including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots.

(b) *Community and business programs.* Class I assessments will be prepared for the following categories:

(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet all of the following criteria:

(i) There will not be a new discharge to surface or ground waters, or a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a new water withdrawal from surface or ground water or a substantial increase from an existing withdrawal. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit. In making this determination, cluster facilities serving 15 or so existing homes or adjacent lots would not be considered a new discharge or withdrawal.

(ii) There is no extension, enlargement or construction of interceptors, collection, transmission, or distribution lines beyond either (A) the corporate limits of a community, or (B) the developed areas immediately contiguous to the corporate limits, or (C) if an unincorporated area, beyond the developed areas.

(iii) The proposal is designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts.

(iv) For towns with populations of less than 10,000, a proposed expansion of sewage treatment or water supply facilities that would serve a population that is no more than 20 percent greater than the existing population.

(v) The service area for any new or enlarged collection, transmission, or distribution lines is composed of largely built-up, nonfloodplain areas, and the undeveloped portions of the service area do not contain a sensitive environmental land use as listed in Item 2 of the Class I assessment.

(vi) The proposal is not controversial for environmental reasons, nor have relevant questions been raised regarding its environmental impact which cannot be addressed in a Class I assessment.

(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater; and

(3) Financial assistance for the construction or expansion of facilities, such as fire stations, retail stores, libraries, outpatient medical facilities, service industries, additions to manufacturing plants, office buildings, and wholesale industries, that:

(i) Are confined to single, small sites;

(ii) Are not a source of substantial traffic generation; and

(iii) Do not produce unusual types or amounts of gaseous, liquid or solid wastes.

(c) *Farm programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in § 1940.312(d), special attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA shall request from that Agency a copy of any applicable environmental review conducted by it and shall adopt that review if the requirements of § 1940.324 are met. FmHA shall work closely with the other Federal Agencies to supplement previous or ongoing reviews whenever they cannot be readily adopted.

(1) Financial assistance for the installation, rehabilitation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are to be drained, in which case the application shall fall under Class II as defined in § 1940.312;

(2) Financial assistance for the development of farm ponds or lakes of more than 5 acres in size, but no more than 10 acres, provided that no wetlands are inundated. If wetlands are inundated, the application shall fall under Class II as defined in § 1940.312;

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres;

(4) Financial assistance for the construction of energy producing facilities designed for on-farm needs such as methane digestors and fuel alcohol production facilities;

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in § 1940.312;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres; and

(8) Financial assistance for a livestock-holding facility or feedlot having a capacity of at least one-half of those listed in § 1940.312(c)(9). (If the facility is located near a populated area, it shall be treated as a Class II action as required by § 1940.312(c)(10).)

(d) *General.* (1) Any action which is defined in § 1940.310 as a categorical exclusion, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by a government agency, interested group, or citizen;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, and amendments and revisions to all approved actions listed in this section which do not meet the criteria for a categorical exclusion pertaining to amendments as defined in § 1940.310 (e)(2) or (e)(3); and

(3) The disposal of real property by FmHA which meets either of the following criteria:

(i) The disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to the Class I actions defined in this section, or

(ii) The disposal is controversial for environmental reasons, and the real property is equivalent in size or type to the Class I actions defined in this section.

§ 1940.312 Environmental assessments for Class II actions.

Class II actions are basically those which exceed the thresholds established for Class I actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an EIS. The format that shall be used for completing this assessment is included as Exhibit H. Further guidance on Class II actions is contained in § 1940.318. Class II actions are presumed to be major Federal actions and are defined as follows:

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multifamily housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for, or the approval of, a subdivision as well as the expansion of an existing one, which involves more than 25 lots.

(b) *Community and business programs.* Class II actions will be taken for any request for financial assistance which either does not meet the criteria for a categorical exclusion as stated in § 1940.310, a Class I action as stated in § 1940.311, or does not involve a livestock-holding facility or feedlot meeting the criteria for a Class I action as defined in § 1940.311(c)(8).

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA shall first determine if the applicant has sought technical assistance from SCS. If not, the applicant shall be requested to do so. Subsequently, an approved loan shall be structured so as to be consistent with any conservation plan developed with the applicant by SCS. However, the FmHA approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review shall be adopted by FmHA if the requirements of § 1940.324 are met.

(1) Financial assistance for the installation, rehabilitation, or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres or serving any amount of acreage that involves the drainage of or withdrawal from a wetland for irrigation purposes;

(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would inundate a wetland;

(3) Financial assistance for land-clearing operations encompassing more than 35 acres;

(4) Financial assistance for the construction or enlargement of aquaculture facilities;

(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for water control facilities such as dikes, detention reservoirs, stream channels, and ditches;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing more than 10 acres;

(8) Financial assistance for alteration of a wetland;

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities: 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine and sheep; and

(10) Financial assistance for a livestock-holding facility or feedlot located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, water quality, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (c)(9) of this section.

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in § 1940.311, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions/concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action, Form FmHA 1940–21, as explained in § 1940.319. When several potential impacts are questioned, however, the assessment format (Exhibit H) for a Class II action must be used to address these questions;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations and amendments and revisions to all approved actions listed in this Section that alter the purposes, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under Section 601 Energy Impacted Areas Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's regulations, § 1508.17;

(5) The issuance of regulations and instructions, as well as amendments to these, that describe either the entities, proposals and activities eligible for FmHA financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The disposal of any real property by FmHA which either does not meet the criteria for a categorical exclusion as stated in § 1940.310(e)(6) or a Class I action as stated in § 1940.311(d)(3).

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs shall be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in section 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA actions that on an individual basis may have relatively few environmental impacts but create a potential for significant impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multifamily housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s) (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA shall consult with HUD for determining a significant impact whenever the total of HUD and FmHA housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 47 FR 56273.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may potentially result in a change in stream classification or affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) or similar State authority.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA office to which a potential applicant would go to seek program information and request application materials shall notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA, a formal application to FmHA will not be invited until (1) the applicant has properly completed Form FmHA 1940.20, and (2) the environmental impact review (whether an environmental assessment or EIS) is completed by FmHA. In this manner, there will be as much flexibility as possible to consider alternatives to the project and to develop methods for mitigating identified adverse environmental impacts. Exhibit G, Item I, contains the list of those programs or actions to be processed in this manner.

(c) When a preapplication is not filed, the prospective applicant shall be required to complete Form FmHA 1940–20 at the earliest possible time after FmHA is contacted for assistance but no later than when the application is filed with the appropriate FmHA office. (For the exception to this statement as regards Farm Programs' Class I actions, see § 1940.309(c) of this Subpart.) FmHA shall not consider the application to be complete, until FmHA staff have completed the environmental impact review, whether an assessment or EIS. Exhibit G, Item II, lists programs and actions to be processed in this manner.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," shall be completed by FmHA as early as possible after receipt of the application. The application shall not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* The FmHA official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action shall be the official having approval authority for the action as specified in Subpart A of Part 1901 of this chapter (available in FmHA office).

(b) *State Office level.* (1) When the approving official is at the State Office level, the responsible Program Chief or Loan Specialist shall complete the environmental assessment and execute the recommendations contained in either Form FmHA 1940–21 or Exhibit H, depending on whether the action is Class I or II. Before the assessment is submitted to the approving official for final determinations, it must be provided to the SEC for review. The SEC shall review the assessment and provide recommendations to the State Director.

(2) Whenever the assessment is completed at the State Office level and the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, shall make the final decision on the matter or matters in disagreement. The State Director shall also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter may be forwarded to the National Office for resolution. The Program Support Staff shall coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter shall require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* When the District Director is the approving official, the District Director shall normally perform both the tasks of preparing the assessment and completing the environmental findings and impact determination, except for the circumstances outlined in paragraph (d) of this section. The County Supervisor shall have the same responsibilities as the District Director when the County Supervisor is an approving official. Both District Directors and County Supervisors shall contact, as needed, the SEC for technical assistance in preparing specific assessments.

(d) *Multilevel review.* When either (1) the approving official is the County Supervisor or the District Director but the project must be forwarded to the State Office for concurrence or (2) the application process is initiated at the County or District Office but the approving official is at the State Office level, a preliminary or draft assessment shall be prepared by the District Director. The approrpriate State Office Program Chief or Loan Specialist, however, shall be responsible for the completion and content of the assessments sent to the State Office, and the SEC shall review the assessment in a similar manner as indicated in paragraph (b) of this section. The District Director shall also ensure that the applicant properly completes Form FmHA 1940–20, and shall assist, upon request, the State Office in assembling additional information and performing coordination at the local level. Similar responsibilities and working relationships shall exist between the County Supervisor and District Director when the former forwards a project to the District Director for either concurrence or approval.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment. Section 1508.4 of CEQ's regulations state that "any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see § 1940.310(b)(5)) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filing of 2 acres of wetland, such a potential wetland impact, under the requirements of Section 1940.310(a), represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See § 1940.314.)

(b) The approving official for an action shall be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA 1940–22 shall be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. In completing this checklist, if any block is checked "yes," an environmental assessment for a Class I action must be prepared. If all blocks are checked "no," the checklist is filed with the application and serves as FmHA's documentation of compliance with the environmental laws, regulations and Executive orders listed on the checklist. The checklist shall be completed by the person who is responsible for completing environmental reviews within the County, District, or program approving office. If the approving official is within the State Office or is the Administrator, the FmHA office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA 1940–22 shall be used for all categorical exclusions, e.g., the disposal of real property and the approval of financial assistance, subdivisions, or amendments to these which meet the requirements of § 1940.310. The checklist shall not be completed for loan-closing and servicing activities, construction management activities, or the general exclusions listed in § 1940.310(e), except for real property disposal.

(d) In applying the definition of a categorical exclusion to a project activity, the reviewer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application shall undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a 4-lot subdivision is requested and the application evidences of the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment shall be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA. If an environmental assessment is required, it shall address the environmental impacts of the entire project.

§ 1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the environmental reviewer (as defined in § 1940.302(a) and § 1940.316) is to examine Form FmHA 1940-20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it shall be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment shall be initiated in the format and manner described in Exhibit H. In so doing, appropriate experts from State and Federal agencies, universities, local and private groups shall be contacted for their views. The environmental reviewer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. When correspondence is exchanged, it shall be appended to the assessment. Oral discussions should be documented in the manner indicated in Exhibit H.

(c) At the earliest possible stage in the assessment process, the environmental reviewer shall identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the reviewer shall consult with the involved Federal agencies to determine the nature, timing and results of their environmental analysis. These consultations shall be documented in the assessment and considered or adopted when making the environmental impact determination. (See § 1940.324 of this Subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the environmental reviewer shall further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§ 1940.320(b) and 1940.326.

(d) Consultations similar to those discussed in paragraph (c) of this section shall also be undertaken with those Federal and State agencies which are directly involved in the FmHA action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the environmental reviewer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement shall be prepared. If the other agency does not believe a significant impact will occur, the environmental reviewer shall consider this finding and its supporting analysis in completing the FmHA environmental impact determination. Guidance in adoping an environmental assessment prepared by another Federal Agency is provided in § 1940.324.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the environmental reviewer to assess, consideration should be given to holding a public meeting in the manner described in § 1940.331(e). Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the followup from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site in order to reach a better understanding of the magnitude of the impact and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in Section 1940.331(e). However, a transcript of the meeting need not be prepared, but the environmental reviewer shall make detailed notes for incorporation in the assessment. (See § 1940.331(e).)

(f) Throughout this assessment process, the enviromental reviewer shall keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the reviewer shall so notify the approving official. Those actions specified in § 1940.320 shall then be initiated, unless the approving official disagrees with the reviewer's recommended determination, in which case further review of the determination may be required as explained in § 1940.316(e) of this Subpart. As soon as possible after the need for an EIS is determined, the applicant shall also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed. (See § 1940.309(e).) The applicant's failure to comply with these limitations shall be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration shall be given to incorporating mechanisms into the proposed action for reducing, mitigating or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include (1) the deletion, relocation, redesign or other modifications of the project elements, (2) the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts, (3) soil erosion and sedimentation plans to control runoff during land-disturbing activities, (4) the establishment of vegetative buffer zones between project sites and adjacent land uses, (5) protective measures recommended by environmental agencies having jurisdiction or special expertise regarding the action's impacts, and (6) zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of Exhibit H) and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures shall be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the reviewer shall initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 9b of Form FmHA 1940-21 for a Class I action and Item XXIb of Exhibit H for a Class II action shall result in postponement of further consideration of the application until such problem is alleviated.

(i) When the environmental reviewer has completed the assessment, the related materials and correspondence utilized shall be attached. The environmental reviewer shall then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or shall recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 9a of Form FmHA 1940-21 for Class I action and Item XXIa of Exhibit H for a Class II action.) The recommended environmental findings shall also be completed. (Item 9b of Form FmHA 1940-21 for a Class I action and Item XXIb of Exhibit H for a Class II action.) In those instances specified in § 1940.316, the assessment shall then be forwarded to the SEC for review. The SEC shall coordinate, as necessary, with the environmental reviewer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official.

(j) The approving official shall review the environmental file and recommendations. The official shall then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requierments, the format contained in Exhibit I will be used. If a significant impact is determined, the steps specified in § 1940.320 shall be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this Subpart and listed in Item 9b of Form FmHA 1940-21 for a Class I action or Item XXIb of Exhibit H for a Class II action and there are no feasible alternatives or modifications which could comply, the action shall be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the environmental reviewer or the SEC, this difference shall be addressed in the manner specified in § 1940.316.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. The applicant shall then be requested to provide public notification of these results as indicated in § 1940.331(c). The approving official shall not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they shall be included in the environmental assessment and considered. Any necessary changes resulting from this consideration shall be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they shall be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA 1940-20, and the finding of no significant impact shall be included with the approval documents which are assembled for review and clearance within the approving office.

(l) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure shall be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§ 1940.310 to 1940.313.

§ 1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this Subpart, a main purpose of Form FmHA 1940-21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as well as compliance determinations for other applicable environmental laws, regulations, and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA 1940-21 is exactly the same as for a Class II action. The environmental reviewer (as defined in §§ 1940.302(a) and 1940.316) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related nonfederal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA 1940-21, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenever a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant shall be required to submit the remaining items of the data request.

(d) The environmental reviewer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant shall be required to make the necessary changes and clarification. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in §1940.317(d), shall be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA

1940–21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the reviewer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved shall be attached. However, if more than one listed resource is to be affected, this shall be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action shall be initiated.

(f) Similarly in completing item 3, General Impacts of Form FmHA 1940–21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, shall be incorporated into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature shall warrant the initiation of a more detailed assessment under the format for a Class II action, Exhibit H. Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action, Exhibit H, shall be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis shall then be provided by the approving official to the party or parties which raised the matter with FmHA. When several potential impacts are questioned, however, the more detailed assessment format shall be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA actions recently approved in the area or planned, shall be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and thresholds discussed in paragraphs (e), (f), and (g) of this section, the environmental assessment format for a Class II action shall be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency shall be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the environmental reviewer as the FmHA assessment, assuming the impacts are not significant. (See § 1940.324 of this Subpart.) If the other Agency is doing or planning an EIS, the environmental reviewer shall inform that Agency of our action and request to be a cooperating agency.

(i) The environmental reviewer shall have the responsibility of initiating the assessment format for a Class II action, Exhibit H, whenever the need is identified. This should be done as early as possible in the review process. the reviewer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The reviewer shall simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Public notification of the environmental finding completed as part of a Class I assessment shall not be required. All other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, do apply, however.

§ 1940.320 Preparing EISs.

(a) *Responsibility.* Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director shall be notified. The EIS will be prepared at the State Office and the State Director shall assume the responsibility for preparing it. The State shall in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director shall be responsible for actions initiated within the State. However, in so doing, the State Director shall consult with the National Office to determine that the document meets the requirements of NEPA. State Directors shall be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director shall not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the environmental reviewer shall take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead Agency than FmHA (using the criteria contained in § 1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead Agency. If difficulties arise in completing this determination, the National Office shall be consulted for assistance. All of the parties identified below shall be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in the major environmental issues identified to date;

(4) The Agency responsible for the implementation of the state's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process shall be initiated by the State Director for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process shall be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the environmental reviewer, indicating that

this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it shall be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It shall be the responsibility of the environmental reviewer to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the **Federal Register.** For requirements relating to the timing and publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see § 1940.331(b).

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting shall be chaired by the environmental reviewer and shall be organized to accomplish the following major purposes (as well as other purposes listed in Part 1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decisionmaking schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, shall be prepared and retained by the environmental reviewer as part of the environmental file. The environmental reviewer shall offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS shall be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers shall be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State, and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in § 1940.336.

(e) *Content and format of EIS.* The EIS shall be prepared in the format and manner described in Part 1502 of the CEQ regulations. There is a great deal of specific guidance in that Part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA shall circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the environmental reviewer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS shall be provided to all parties that commented on the draft EIS.

(g) *Public information meetings.* A public information meeting, as specified in § 1940.331(e)(1), shall be held near the project site to discuss and receive comments on the draft EIS.

(h) *Response to comments.* The environmental reviewer shall respond to comments on the draft EIS as required by Part 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting shall also be identified and addressed.

(i) *Timing of review.* The environmental reviewer shall be responsible for ensuring that the timing requirements for FmHA actions and the review periods for draft and final EISs are fully met (Part 1506.10 of CEQ regulations).

§ 1940.321 Use of completed EIS.

(a) The final EIS shall be a major factor in the Agency's decisionmaking process. Agency staff making recommendations on the action and the approving official shall be familiar with the contents of the EIS and its conclusions and shall consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft shall accompany the proposal through the FmHA decisionmaking and clearance process. The alternatives considered by the approving official shall be those addressed in the final EIS.

(b) As part of this review process, the environmental reviewer shall complete the recommendations listed in Item XXI b and c of Exhibit H and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA and before any action is taken on the decision reached on the proposal, the approving official shall prepare, in consultation with the environmental reviewer, a concise record of the decision which will be available for public review. The record shall:

(a) State the decision reached;

(b) Certify that the timinig requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office as appropriate shall prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the environmental reviewer determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the reviewer shall prepare an environmental assessment for a Class II action which shall document the reasons for this determination.

(c) The environmental reviewer shall be responsible for advising the approving official of the need for a supplement. The latter shall make the Agency's formal determination in a manner consistent with § 1940.316.

(d) All of the requirements of this Subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained for any alternative procedures. The final supplement shall be included in the project file or docket and shall be used in the Agency's decisionmaking process in the same manner as a final EIS. (See § 1940.321.)

§ 1940.324 Adoption of EIS or environmental assessment prepared by another Federal Agency.

(a) FmHA may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the environmental reviewer and it is concluded that the document meets the requirements of this Subpart; or

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA and the environmental conditions in the project area have not substantially changed since its publication, FmHA will recirculate the EIS as a "final." The final EIS will contain an appropriate explanation of the the FmHA involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS shall be updated to cover these differences and recirculated as a draft EIS. From that point, it shall be reviewed and processed in the same manner as any other FmHA EIS.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under Part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS shall be reviewed and processed in the same manner as any other FmHA EIS.

(d) FmHA may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies.

§ 1940.325 FmHA as a cooperating Agency.

(a) FmHA shall serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA is directly involved or for an action which is directly related to a proposed FmHA action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA. The State Director shall coordinate FmHA's participation as a cooperating Agency for an action at the State Office level. The Administrator shall have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the environmental reviewer at the level receiving the request shall consider the expertise which FmHA could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency shall be sent to CEQ.

(c) As a cooperating Agency, FmHA shall participate in the development and implementation of the scoping process period. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director shall request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA shall use the EIS as its own as long as (1) FmHA's comments and concerns are adequately addressed by the lead Agency and (2) the final EIS is considered to meet the requirement of this Subpart. It shall be the responsibility of the environmental reviewer to formally advise the approving official on these two points. The failure of the lead Agency's EIS to meet either of these stipulations shall require FmHA to follow the steps outlined in § 1940.324 prior to the approving official's decision on the FmHA action.

§ 1940.326 FmHA as a lead Agency.

(a) When other Federal agencies are involved in an FmHA action or related actions that require the preparation of an EIS, the environmental reviewer shall consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination shall be those contained in Part 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office shall be contacted. The assistance of CEQ shall then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA environmental reviewer shall request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b).

§ 1940.327 Tiering.

To the extent possible, FmHA may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It shall be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the environmental reviewer shall determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified shall be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State shall be considered in the FmHA's review, and any supporting information used by the State shall be requested. However, the State's finding can never be the total basis for FmHA's environmental impact determination. An independent and thorough review in accordance with the requirements of this Subpart must be conducted by the environmental reviewer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This fact shall be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA's. In such a case, if the environmental reviewer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment should be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the environmental reviewer. An environmental impact determination shall then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA to prepare an impact statement. Consequently, as soon as it is clear to the environmental reviewer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and of the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate state personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specified as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation, Exhibit A. Copies of comments addressing land use questions should be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director shall notify the Administrator.

§ 1940.330 Monitoring.

(a) FmHA staff who normally have responsibility for the postapproval inspection and monitoring of approved projects shall ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, shall review the action's approval documents and consult with the environmental reviewer prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The environmental reviewer should directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff shall obtain the position of the environmental reviewer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA staff, the environmental reviewer shall be immediately informed. The approving official shall then take appropriate steps, in consultation with the responsible program office and environmental reviewer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) The basic objective of FmHA's public involvement process is threefold. It is to ensure that interested citizens (1) can readily obtain knowledge of the environmental review status of FmHA's funding applications, (2) have the opportunity to input into this review process before decisions are made, and (3) have access to the environmental documents supporting FmHA decisions.

(b) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA in the **Federal Register** are explained in § 1940.320. With respect to notification within the project area, the applicant shall be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice shall be published in easily readable type in the nonlegal section of the newspaper(s). It shall also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice shall be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; owners and occupants of nearby or affected property; and to any other parties that the environmental reviewer has identified to be so notified. It shall also be posted at a readable location on the project site. The applicant shall provide FmHA with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting shall be accomplished at least 14 days prior to the date of the meeting.

(c) For projects that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice shall be published in the same manner as a notice of intent to prepare an EIS but shall appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies shall be sent to the same parties as specified in a notice of intent with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant shall provide FmHA with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice.

(d) The above notification procedure will not apply to actions reviewed solely on the basis of a Class I assessment.

(e) Public information meetings shall be held for an action undergoing environmental impact statements as specified in § 1940.320. Such meetings may also be held in the completion of environmental assessments as indicated in § 1940.318.

(1) As part of the EIS process, a public information meeting shall be held near the project site to discuss and receive comments on the draft EIS. It shall be scheduled no sooner than 15 days after the release of the draft EIS. It shall be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification should also be developed in the same manner. The meeting shall be chaired by the State Director or a designee and shall be fully recorded so that a transcript can be produced. The applicant shall be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting shall be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the competition of an environmental assessment, it shall be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting shall not be required. Rather, a summary of the meeting to include the major issues raised shall be prepared by the environmental reviewer.

(f) FmHA Officials shall promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director for project activities and from the Administrator on other activities subject to environmental review.

(g) The public notification procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in Exhibit C of this Subpart.

§ 1940.332 Emergencies.

When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this Subpart or the CEQ regulations, the Administrator shall be so notified. If possible, the Administrator shall consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this Subpart, an emergency circumstance is defined as one involving an immediate of imminent danger to public health or safety.

§ 1940.333 Applicability to planning assistance.

The award of FmHA funds for the purpose of providing technical assistance or planning assistance shall not be subject to any environmental review. However, applicants shall be expected to consider in the development of their plans and to generally document within their plans:

(a) The existing environmental quality and the important environmental factors within the planning area, and

(b) The potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed.

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA EISs

FmHA may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA relieved of its responsibilities for the scope, objectivity, and content of the entire statement or any other responsibility under NEPA.

(a) The FmHA applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (State or Federal Agncy responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA proposals for legislation.

(a) As stated in § 1940.312(d)(4), all FmHA proposals for legislation shall receive an environmental assessment. The definition of such a proposal is contained in § 1508.17 of the CEQ regulations.

(b) The environmental assessment and, when necessary, the EIS shall be prepared by the responsible Agency staff that is developing the legislation.

(c) If an EIS is required, it shall be prepared according to the requirements of § 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EISs, assessments, or portions of them. Such assistance shall be secured according to the Federal and Agriculture Procurement Regulations contained in Chapters 1 and 4 of Title 41 of the Code of Federal Regulations.

(b) The contractor shall be selected by FmHA in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work shall be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator shall provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants shall not be required to pay the costs of these professional services.

§§ 1940.337—1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0094.

Exhibit A to Subpart G

Departmental Regulation

Number: 9500-3.
Subject: Land Use Policy.
Date: March 22, 1983.
OPI: Land Use Staff, Soil Conservation Service.

Section

1 Purpose
2 Cancellation
3 Policy
4 Abbreviations
5 Definitions
6 Responsibilities
7 Appendix A

1 Purpose

The Nation's farmlands, forest lands, rangelands, flood plains, and wetlands are unique natural resources providing food, fiber, wood, and water necessary for the continued welfare of the people of the United States and protection from floods. Each year, large amounts of these lands are converted to other uses. Continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets. Continued conversion of the Nation's wetlands may reduce the availability of adequate supplies of suitable-quality water, indigenous wildlife species, and the productive capacity of the Nation's fisheries. Continued encroachments on flood plains decrease the natural flood-control capacity of these land areas, create needs for expensive manmade flood-control measures and disaster-relief activities, and endanger both lives and property.

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

It is Departmental policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to (a) assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs of high-quality food, fiber, wood, and other agricultural products that may be needed; (b) assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses; and (c) assure appropriate levels of environmental quality.

In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f) and provisions of the Farmland Protection Policy Act, Subtitle I, Title XV, Pub. L. 97-98, the Department sets forth this statement of policy on land use.

2 Cancellations

This regulation supersedes Secretary's Memorandum 9500-2 dated March 10, 1982.

3 Policy

Federal agencies, in implementing programs, make decisions that affect current and potential uses of land. The Department will:

a. Promote and support planning procedures that allow landholders, interest groups, and State and local governments to have input at all appropriate stages of the decisionmaking process for public projects, programs, or activities; that recognize the rights and responsibilities of landholders in making private land use decisions; and that recognize the responsibility of governments in influencing how land may be used to meet public needs.

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

c. Manage both its land use-related programs and USDA-administered land in such manner as to (1) demonstrate leadership in meeting short- and long-term needs for growth and development, while assuring adequate supplies of needed food, fiber, and forest products; (2) assure appropriate levels of environmental quality and adequate supplies of water; and (3) discourage unwarranted expansion of peripheral boundaries of existing settlements. Whenever practicable, management of USDA-administered lands shall be coordinated with the management of adjacent private and other public lands.

d. Conduct multidisciplinary land use research and education programs responsive to identified State, local, and national needs and, when requested, assist State and local governments, citizens groups, and individual landholders in determining a alternative land use values, thereby enabling local officials to make judicious choices to meet growth and development needs and to protect the community's farm- and forest-related economic base.

e. Assist landowners and State and Federal agencies in the reclamation of abandoned surface-mined lands. This reclamation will help eliminate safety, health, and environmental problems.

f. Assist in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration. This restoration would reestablish or enhance food, fiber, or forest productivity or contribute to other beneficial uses of the land as mining is completed in defined areas as sites.

g. Advocate among Federal agencies:

(1) The retention of important farmlands, rangelands, forest lands, and wetlands, whenever proposed conversions to other uses (a) are caused or encouraged by actions or programs of a Federal agency or (b) require licensing or approval by a Federal agency, unless other needs clearly override the benefits derived from retention of such lands; and

(2) Actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains; and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or Federal rehabilitation assistance in the event of flooding.

4 **Abbreviations**

USDA—U.S. Department of Agriculture.
NRE—Natural Resources and Environment Committee.

5 **Definitions**

Complete definitions for the terms "farmlands," "forest lands," "rangelands," "wetlands," and "flood plains" are found in appendix A.

6 **Responsibilities**

a. The Office of the Secretary is responsible for (1) encouraging, assisting, and coordinating efforts of other Federal departments and agencies to implement policies and procedures supportive of the objectives of this regulation; (2) resolving issues and acting on recommendations raised to the Secretary's Policy and Coordination Council by the Departmental committees; and (3) raising unresolved issues and recommending actions to the appropriate Cabinet Council.

b. The NRE Committee, created under the Secretary's memorandum dated July 22, 1981, will provide departmentwide leadership for the implementation of this policy statement. In implementing this policy, the NRE Committee will:

(1) Recommend Departmental guidelines to the Secretary and schedule reviews of each agency's procedures for implementation;

(2) Monitor implementation of this policy;

(3) Encourage, support, and provide guidance to State- and local-level USDA committees in implementing this policy;

(4) Coordinate the work of USDA agencies in carrying out the provisions of this regulation; and

(5) Advise the Secretary annually as to progress and problems encountered.

c. Each USDA agency will review and make the necessary administrative changes in existing and proposed rules, regulations, guides, practices, or policies and propose needed legislative changes to bring agency programs into compliance with the provisions of this regulation.

d. Each USDA agency having programs that will be affected by this regulation shall develop implementing procedures, consistent with the guidelines provided by the NRE Committee, and shall provide to all offices of the agency copies of this policy statement, Departmental guidelines, and agency procedures to implement this policy.

e. USDA agencies will encourage State and local governments and individual landholders to retain important farmlands, rangelands, forest lands, and wetlands and to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. Appropriate agencies will assist State and local governments, citizens groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

f. USDA agencies will encourage other Federal, State, and local government agencies to exchange information on plans or projects that may impact on important farmlands, rangelands, forest lands, wetlands, or flood plains and to involve appropriate USDA agencies early in the planning process. USDA agencies will participate in a timely manner at appropriate stages in the planning process on Federal or federally assisted projects or activities when requested. Where opportunity for such participation is not forthcoming, the Department may intercede, consistent with policy contained in this regulation, at appropriate stages in the decisionmaking process through review and comments on plans, as provided for in authorized administrative review procedures for such projects, activities, or actions.

g. When land held either in public or private ownership will be directly affected by USDA actions, the implementing agency will notify the affected landholders at the earliest time practicable of the proposed action and provide such landholders an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it.

h. Agencies of USDA will assure that their actions, investments, and programs on nonfederal lands will conform, to the extent practicable, with the uses permitted under land use regulations adopted by State or local governments.

i. When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or flood plains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

Appendix A.—Definitions

The following definitions apply to this Departmental Regulation.

1 **Important Farmlands** [1]

a. Prime Farmlands [1]

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

(2) *Specific Criteria.* Prime farmlands must meet all the following criteria. Terms used in this section are defined in these USDA publications: "Soil Taxonomy, Agriculture Handbook 436," "Soil Survey Manual, Agriculture Handbook 18," "Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282," "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346," and "Saline and Alkali Soils, Agriculture Handbook 60."

(a) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches, or in the root zone (root zone is the part of the soil that is penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include but are not limited to grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or

3. Acidic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an 0 horizon is higher than 47 degrees Fahrenheit; in soils that have no 0 horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep; and

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and

(e) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhoc/cm and the exchangeable sodium percentage is less than 15; and

(f) The soils are not flooded frequently during the growing season (less often than once in 2 years); and

(g) The product of K (erodibility factor) times the percent slope is less than 2.0, and the product of I (soils erodibility) times C (climatic factor) does not exceed 60; and

[1] 7 CFR 657.5.

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees Fahrenheit or higher; and

(i) Less that 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

b. Unique Farmland [1]

(1) *General Criteria.* Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce, economically, sustained high-quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific Characteristics.* Unique farmland is used for a specific high-value food or fiber crop. It has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed irrigation system. It combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

c. Additional Farmland of Statewide Importance [1]

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

d. Additional Farmland of Local Importance [1]

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

2 Prime Forest Lands [2]

Because of the multiple use of forested lands, several categories, e.g., timber, wildlife, and recreation, may be developed. For purposes of this regulation only, the following timberland definitions will apply.

a. Prime Timberland [2]

Prime timberland is land that has soil capable of growing wood at the rate of 85 cubic feet or more/acre/year (at culmination of mean annual increment) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest. Delineation of these lands will be in accordance with national criteria.

b. Unique Timberland [2]

Unique timberlands are lands that do not qualify as prime timberland on the basis of producing less than 85 cubic feet/acre/year, but are growing sustained yields of specific high-value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality. Delineation of these lands will be in accordance with national criteria.

c. Timberland of Statewide Importance [2]

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance [2]

In some local areas, there is concern for certain additional forest lands for the growing of wood, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

3 Wetlands [3]

Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

4 Flood Plains [3]

The term "flood plain" means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

4 Prime Rangeland [4]

Prime rangeland is rangeland which, because of its soil, climate, topography, vegetation, and location, has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

Exhibit B to Subpart G.—Development and Implementation of Natural Resource Management Guide

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this Subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in § 1940.305 of this Subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the consulation requirements of Executive Order 12372, as well as interested localities, groups, and citizens. Also at least one public information meeting shall be held on the draft which shall be followed by a 30-day period for the submission of public comments. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See § 1940.320(c) of this Subpart). Additionally, the public shall be informed that copies of the draft guide will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft State Supplement to the Administrator for review and approval. Any concerns and comments of the Administrator will be addressed by the State Director and the guide completed. Upon the Administrator's approval and the fulfillment of the requirements of paragraph 4. of this Exhibit, the natural resource management guide shall then become part of any program investment strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a 12-month period has been established for the completion of a natural resource management guide, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive orders or the Departmental Regulation 9500–3, Land Use Policy, with respect to individual project reviews, nor giving anyone any rights or claims with respect to the completion or content of the guide.

2. The natural resource management guide needs to be developed in full recognition of its role as an internal Agency planning tool and with sensitivity to the Agency's mission.

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those parties intending to seek FmHA assistance or to coordinate FmHA assistance programs with their own programs will be able to gain for their planning needs an understanding of our guide.

4. Completed natural resource management guides shall be reviewed every 2 years and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the national, State, regional or local level. They will also be

[2] Prime Forest Land Definition and Criteria, U.S. Forest Service, May 26, 1977.

[3] Definitions contained in Executive Orders 11988 and 11990.

[4] USDA proposed definition for intradepartmental use only.

revised, as necessary, through appropriate guidance from the Administrator. Revisions shall be transmitted to the Administrator for postapproval and shall be considered approved if either no comments are raised by the Administrator within 30 days of receipt of the State Director's transmittal letter or the administrator specifically approves them before the 30 days expire. Public review of a revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management guide, a public review shall be conducted of the revision in the same manner as that described in paragraph 1 of this Exhibit for the development of the original guide. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that at the expiration of any 2-year review period there is need to update the guide, a statement to this effect shall be filed with the Administrator.

5. The foundation for the natural resource management guide is the identification of the types of land uses or environmental factors deserving attention and their geographical location within the State. An inventory or listing shall be developed, therefore, of the important land uses within the State. This inventory will be accomplished by assembling existing data and information compiled by those Federal, State, and local agencies that have jurisdiction or expertise regarding the land uses or environmental factors. At a minimum, the inventory shall consist of available documents, listings, maps, or graphic materials describing the location of the following:

a. National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI), and the State Historic Preservation Plans. This list is issued as a State supplement to Subpart F or Part 1901 of this Chapter;

b. Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the system, as published by DOI;

c. Important farmlands;

d. Prime rangelands.

e. Prime forestlands;

f. Wetland inventory;

g. Floodplain inventory as issued by the Federal Emergency Management Administration;

h. Endangered Species and Critical Habitats as listed or proposed for listing by the Department of Commerce (DOC) and DOI;

i. Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);

j. Air Quality Control Regions as designated by EPA;

k. National Registry of Natural Landmarks at published by DOI;

l. Coastal Barrier Resources System;

m. State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important habitats, and areas of high water quality, or scenic or recreational value;

n. Agricultural districts or other similar zoning classifications for agricultural land protection; and

o. Coastal Zone Management Areas.

6. The Administrator shall be responsible for assisting State Directors in obtaining listings and inventories of resources protected by Federal statutes and regulations. The State Director has the responsibility for assembling documents on important environmental resources or areas identified in State and substate laws, regulations, plans, and policies.

7. Development of the inventory by the State Director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state level. The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000–D, Exhibit A, which is available in any FmHA Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decisionmaking. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

Exhibit C.—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500–3, Land Use Policy

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97–98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Departmental Regulation 9500–3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this Subpart.

2. *Implementation.* Each proposed disposal of real property by FmHA and application for financial assistance or subdivision approval shall be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.* Since these actions have no potential to convert land uses, this finding would simply be made by the environmental reviewer in completing the environmental assessment for the action. For other actions, the following implementation steps must be taken.

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the Appendix to the Departmental Regulation. It is important

*See special procedures in item 3. of this Exhibit if the existing structure is located in a floodplain or wetland.

to note the definition of important farmland because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," the environmental reviewer must determine if the project is either located in or will affect one or more of the land resources covered by the Act or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000-D, Exhibit A, available in any FmHA office.) Many local units of government, with technical assistance from SCS, have or will be developing Agricultural Land Evaluation and Site Assessment (LESA) systems. The LESA systems are designed for two purposes: (i) to evaluate the agricultural lands in a local area by placing each soil in one of about 10 groups, assigning a numerical value to each group, and indicating the important farmland category into which the soils have been placed; and (ii) to assess sites by determining the agricultural viability of the site based on community development apart from soils. Factors considered in the site assessment part of the system include location, land use surrounding the site, existence of agricultural and urban support systems, present land use plans and regulations, effects that land use changes would have on agriculture in the area, plus any other factors that may be selected by local officials. Points are assigned to both the land evaluation and site assessment parts of the system. The higher the points for any given site, the more viable the site is for agriculture. The LESA system can be used in evaluating alternative sites that would involve conversion in order to determine which site has the least negative impact on agriculture. Assistance for the development and use of LESA is available from SCS.

(1) *Important Farmland, Prime Forest Land, Prime Rangeland.*—Review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. If the general area has important farmland, consult with the SCS field office having jurisdiction over the project area and obtain a detailed copy of the SCS soil survey for the site and a list of the important farmland soils for the area. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. For this reason and the fact that important farmland can lose its designation as a result of previous urbanization, direct consultation with SCS personnel is always recommended.

(2) *Floodplain.*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Agency (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800-638-6620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands.*—There is no central data source or inventory for determining the location of wetlands. Many government agencies are in the process of completing wetland surveys. The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Exhibit K contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information is available from other sources. Topographic maps prepared by USGS often depict the general existence of wetlands. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of SCS field staff in reviewing the site can often be the most effective means.

b. Findings.

(1) *Scope.*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the policies of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agencies, the FmHA reviewer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit of local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect.*—If the environmental reviewer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusion based on whichever document is applicable to the action being reviewed.

(3) *Determination of Effect or Incompatibility.*—Whenever the reviewer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken:

(a) *Search for Practicable Alternatives* *—In consultation with the applicant and the interested public, the environmental reviewer shall carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility. Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the environmental reviewer shall contact SCS to determine if the LESA system can be used to examine alternatives.

(b) *Inform the Public.*—The Departmental Regulation requires us in Section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that may convert an important land resource. The notification shall be published and documented in the manner specified in § 1940.331 of this Subpart and shall contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA within 30 days following the date of

* When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

publication. (Specify the FmHA office processing the application or proposal for receipt of comments.)

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists.*—

(i) Alternative Exists—If the environmental reviewer concludes that a practicable alternative exists, the reviewer shall complete step (3)(e)(ii) immediately below and provide the assessment for the approving official's review in the manner specified in § 1940.316 of this subpart. If the findings of this review are similar to the environmental reviewer's recommendation, FmHA shall inform the applicant of such findings and processing of the application shall be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the reviewer shall work closely with the applicant to this end. Upon receipt of the amended application, the reviewer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the environmental reviewer's recommendations, the former shall ensure that the findings are appropriately documented in step (e)(ii) and any remaining consideration given to mitigation measures, step (d).

(ii) No Practicable Alternative Exists—On the other hand, if the environmental reviewer concludes that there is no practicable alternative to the conversion, the reviewer must then continue with step (d) immediately below.

(d) *Search for Mitigation Measures.*—Once the reviewer determines that there is no practicable alternative to avoiding the conversion of incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings.*—Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and [is/is not] compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and [is/is not] incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is a practicable alternative to this action, and that processing of this application be discontinued.

(f) *Implement Findings.*—The completed environmental assessments and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders shall be processed and made according to § 1940.316 of this Subpart. Whenever this determination is as stated in step (e)(i) above, the action shall be so structured as to ensure that any recommended mitigation measures are accomplished. See § 1940.318(g) of this Subpart. Whenever the determination is as stated in step (e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA involvement shall be as specified in Item (c)(i) above.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is The Affected Resource Under Executive Order 11988 and 11990.*

a. *Scope.*

(1) Geographical Area.—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this Exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the environmental reviewer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Multifamily housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact.—The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, should any portion of an action or its related activities require construction activities in a floodplain, for example, there would be an impact to a floodplain. The only exception to this statement is when the reviewer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.*

(1) Non-FmHA-Owned Properties.—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this Exhibit must be accomplished for any action involving the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA-Owned Real Property.—The requirement in paragraph (1) immediately above also applies to any substantial improvements made to FmHA-owned real property. Irrespective of any improvements, whenever FmHA real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the

conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA official responsible for the conveyance, to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Applicable restrictions shall be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3d below and Subpart C of Part 1955 of this Chapter for guidance on the proper formats to be used with respect to notices and deed restrictions.

c. *Mitigation measures.*

(1) Alternative Sites.—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures.—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulation;

(b) Preserve floodplain and wetland values and functions through public ownership, e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains.—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states "agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land."

d. *Additional Notification Requirement.*

(1) Final Notice.—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice shall be published and distributed in the manner specified in § 1940.331 of this Subpart and contain the following information.

(a) A description of the proposed action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigte them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification.—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.*

The National Flood Insurance Program establishes the flood plain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in Subpart B or Part 1806 of this chapter (FmHA Instruction 426.2) It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA financial assistance unless the project area is participating in the National Flood Insurance Program.

Exhibit D.—Implementation Procedures for the Endangered Species Act

1. FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA and to all FmHA applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See § 1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

2. State Directors shall ensure that State, District, and County Offices maintain current publications of listed and proposed species as well as critical habitats found in their respective jurisdictions.

3. When an application to FmHA involves financial assistance or permit approval from another Federal agency(s), the FmHA reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs the approporiate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

a. For applications subject to environmental assessments, this review shall be accomplished as part of the assessment.

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA with this list. FmHA shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA and FWS or NMFS. Upon completion of the biological assessment, if FmHA determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

5. As indicated in paragraph 4 above, the focus of this review process is to determine if the proposal will affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. Because this impact terminology is specific to the Act, it is important to understand its meaning.

a. To jeopardize the continued existence of a species means to engage in a project which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species.

b. The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include but are not limited to those diminishing the following requirements for:

(i) Space for individual and population growth and for normal behavior;

(ii) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(iii) Cover or shelter;

(iv) Sites for breeding, reproduction, or rearing of offspring; and

(v) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

6. It is also important to note that the consultation procedures differ when the subject of the consultation is a listed species or critical habitat as opposed to a proposed species or critical habitat. The latter are defined as those that the Secretary of Interior or Commerce are considering for listing and have so proposed through notification in the **Federal Register**. When listed species or critical habitats are invloved, FmHA shall initiate formal consultation procedures whenever it determines that a proposed project may affect them, either beneficially or adversely. For proposed species or critical habitats, FmHA shall first determine if the proposed project is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Whenever this determination is made, FmHA shall confer with the appropriate agency identified in paragraph 7 of this Exhibit and, in so doing, shall focus on (i) determining the status of the listing process, and (ii) attempting to cooperatively develop alternatives or measures for inclusion in the project that avoid or mitigate the identified adverse impacts. The results of this process shall be documented in the environmental review being done for the proposed project and, if this review is an environmental assessment, shall be an important factor in determining the need for an environmental impact statement. No action shall be taken by the approving official on the application unitl the requirement to confer on proposed species or critical habitat has been completed. Paragraphs 7 through 9 of this Exhibit outline the formal consultation procedure for listed species or critical habitats.

7. In initiating the review process for a project, the list of species and critical habitats, including proposed, shall be examined to determine the potential for impacts. Projects planned within established communities are less likely to affect listed or proposed species or their critical habitat. Projects to be located in remote areas, heavily forested areas and/or previously undisturbed areas are more likely to affect these species. For projects located in such areas, the reviewer shall, at a minimum, discuss the project's potential impact on listed or proposed species with officials of the appropriate State wildlife protection agency or the Area Manager, FWS, or the Regional Director, NMFS, as appropriate. The latter organization generally has responsibility for marine species. The specific list of species under NMFS's jurisdiction can be found at 50 CFR 222.23(a) and 227.4. Such discussions shall be considered as informal consultations and are not a substitute for the required consultation process outlined below.

a. Whenever the reviewer, after reviewing the list and contacting appropriate experts, formally determines that the proposal will have no effect on a listed or proposed species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph 9 of this Exhibit, or consultation is requested by the appropriate Area Manager, FWS, or Regional Director, NMFS.

b. If the reviewer determines there may be an effect on a listed species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the SEC (assuming the reviewer is not the SEC). The latter shall either (i) convey a written request for consultation, along with available information to the appropriate Area Manager, FWS or Regional Director, NMFS, for the Federal region where the proposal will be carried out, or (ii) request Program Support Staff (PSS) to perform such consultation. FmHA shall initiate this formal consultation process and not the applicant. See paragraph 4.c. of this Exhibit for initiating consultation where an environmental impact statement is being done for the application. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

8. Several possible responses may result from initiation of the formal consultation process with each requiring further specific actions.

a. Whenever the Area Manager, FWS, or Regional Director, NMFS, informs FmHA that insufficient information exists to conclude the consultation process, the SEC with assistance as feasible from the FWS or NMFS and State sources of expertise shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement. (See § 1940.336 of this Subpart.)

b. Whenever the Area Manager, FWS, or Regional Director, NMFS, responds that the proposal will either promote the conservation of a listed species or is not likely to jeopardize the continued existence of a listed or proposed species or result in the destruction or adverse modification of its critical habitat, the FmHA reviewer shall formally make a similar determination, attaching the response as documentation. This concludes the formal consultation process unless new information comes to light as discussed in paragraph 9 of this Exhibit.

c. Whenever the results of the consultation process include recommendations by the Area Manager, FWS, or Regional Director, NMFS, for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from Section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by Section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

a. New information or modification of the proposal reveals impacts that may affect listed or proposed species or their habitats; or

b. A new species is listed that may be affected by the proposal.

Exhibit E.—Implementation Procedures for the Wild and Scenic Rivers Act

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this Subpart, river segments in the Nationwide Inventory shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA official responsible for completing the environmental assessment shall accomplish this review. (See § 1940.316 of this Subpart.)

2. In order to effectively implement this review, State Directors shall ensure that State, District and County Offices maintain current listings of rivers within their respective States that are included in or designated for potential addition to the system as well as those identified in the Nationwide Inventory prepared by NPS.

3. For applications for water resources projects, as defined in § 1940.302(i) of this Subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the system or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. To make these determinations, the reviewer shall consult with the appropriate regional office of NPS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the effected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph 10 of this Exhibit. In all other cases, the review is completed as specified below in paragraphs 4 through 9 of this Exhibit.

4. If the review is at the County or District Office level, the reviewer can request the State Director (see § 1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA and not the applicant. Until consultation is complete, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

5. If NPS or FS advises there is no potential for an adverse effect as described in paragraph 3 of this Exhibit, this review process is concluded, unless the need to reinitiate arises. (See paragraph 10 of this Exhibit.)

6. Whenever the results of the consultation process include recommendations by NPS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph 3 above, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this Exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this Exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS or FS in order to formulate adequate measures or modification to avoid or mitigate the potential adverse effect. The purposes of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with NPS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agrement with NPS or FS on appropriate modifications, the Administrator shall be requested to assist in the further resolution of the matter.

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

Exhibit F.—Implementation Procedures for the Coastal Barrier Resources Act

1. The Act applies to barrier islands that Congress has designated for inclusion in the Coastal Barrier Resources System. Since coastal barriers are only found in East and Gulf Coast States, no other State Offices fall under the requirements of the Act and, therefore, need be concerned with these implementation procedures.

2. On coastal barriers that are included in the system, the Act prohibits any new

expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in Exhibit L of this Subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

3. Exhibit L lists the six categories of exceptions, that is, those actions that may be taken within the system. No exception may be implemented, however, without first consulting with the Secretary of the Interior. It should also be noted that the sixth category is more limited than the first five. Besides meeting the consultation requirement for this sixth category, the sponsoring Agency must also determine whether the proposed exception is consistent with the purposes of the Act.

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Form FmHA 1940-21, "Environmental Assessment for Class I actions," or by so stating this result in the environmental assessment for Class II Actions (Exhibit H), depending upon whichever format is applicable to the action under review.

5. For those actions that would be located within the system, one of the following two steps must be taken:

a. If the environmental reviewer concludes that the action does not meet the criteria for an exception, as listed in Exhibit L, the reviewer shall so inform the approving official and a final determination made in the manner indicated in § 1940.316 of this Subpart. If this determination is consistent with the environmental reviewer's conclusion, the action must be denied by the approving official and the affected applicant or party informed of the reason for denial. If it is determined that the action may qualify for an exception, the steps identified in Item b immediately below must be implemented prior to a decision on this question.

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information:

(1) A detailed description of the action and its location;

(2) A description of the affected environment within the System and the impacts of the proposed action;

(3) The applicable exception criteria and FmHA's reasons for believing they apply to this action; and

(4) If a Section 6(a)(6) exception is claimed, FmHA's reasons for believing the action to be consistent with the purposes of the Act.

Should the Secretary concur in the exception criteria being met, that portion of the environmental assessment relating to compliance with the Act shall be completed and the corresponding documentation attached. Should the Secretary not concur, a final decision on the approval or denial of the action must be made by the Administrator.

Exhibit G.—Timing of FmHA Environmental Impact Review Process

Item I.—Whenever a preapplication is either filed or required under the following programs, completion of the environmental impact review process shall be required prior to the authorization of an application.

Business and Industry Guaranteed and Insured Loans.
Multi-Family Housing Programs.
Water and Waste Disposal Loan and Grant Program.
Community Facilities Loan Program.
Industrial Development Grant Program.
Watershed Loan Program.
Resource, Conservation and Development Loan Program.
Financial Assistance for Energy Impact Areas (excluding the award of planning funds).

Item II.—For the following programs and actions, completion of the environmental impact review process shall be required prior to the application being considered complete.

Farm Programs.
Single Family Housing Financial Assistance.
Request for Subdivision Feasibility Analysis.

Exhibit H.—Environmental Assessment for Class II Actions

In completing this 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, its operation and maintenance, the operation of all identified primary beneficiaries, and the attainment of the project's major objectives, whether they be an increased housing stock, community improvement, economic development, or greater agricultural productivity. This last category, the attainment of the project's major objectives, often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The scope of the assessment is broadened even further when there are related activities involved. The impacts of these activities must also be assessed.

The environmental reviewer shall 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 shall be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA environmental assessment shall be prepared in the following format. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA 1940-20, "Request for Environmental Information."

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment 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.

For example, a small community center may not require detailed information on air emissions or solid waste management, but an industrial facility would. Similarly, an irrigation project for a farming operation would concentrate on such factors as water quality and fish and wildlife, rather than land use changes. The extension of a water or sewer system or the approval of a subdivision, on the other hand, would have to give close attention to all factors, with potential land use changes being a particularly important one.

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 a 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 dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meterological 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. Evalute 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 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 of 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 those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V–XI. 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 arrangements 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 affect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. 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 disucssion 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 (Item XXI below).

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 assessment 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. See Exhibit E for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

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* Complete only if coastal or Great Lakes State.

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. See Exhibit D for specific implementation instructions for this Act.

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 Farmland Protection Policy Act and Departmental Regulation 9500-3, Land Use Policy

Indicate whether the project will either directly or indirectly convert an important land resource(s) identified in the Memorandum other than floodplains or wetlands which should be addressed below in Item X. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See Exhibit C of this Subpart for specific implementation guidance.

X. 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 Resources Council's *Floodplain Management Guidelines* for more specific guidance as well as Exhibit C of this Subpart.

XI. Compliance With Coastal Barrier Resources Act

Indicate whether the project is located within the Coastal Barrier Resources System. If so, indicate whether or not the project meets an exception criteria under the Act and the results of any consultation with the Secretary of the Interior regarding its qualification as an exception. See Exhibit F of this Subpart for specific implementation instructions as well as Exhibit L for a listing of the exception criteria. (Those States not having any components of the system within their jurisdiction need not reference this item in their assessments.)

XII. 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. (See § 1940.328 of this Subpart for further guidance.)

XIII. Consultation Requirements of Executive Order 12372, Intergovernmental Review of Federal Programs

Attach the comments of State, regional, or local agencies (if this review process is required for the project) and respond to all comments that deal with the subject matters discussed in this assessment format or are otherwise of an environmental nature.

XIV. 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. (See § 1940.318(d) of this Subpart for further guidance.)

XV. 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.

XVI. 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.

XVII. Adverse Impact

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

XVIII. Alternatives

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative locations, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project. If alternatives have been fully discussed above in any of Items VI through X, simply reference that discussion.

XIX. 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.

XX. Consistency With FmHA Environmental Policies

Discuss the project's consistencies and inconsistencies with the Agency's environmental policies and the State Office's Natural Resource Management Guide. See §§ 1940.304 and 1940.305 for a discussion of these policies and Exhibit B for a discussion of the guide.

XXI. Environmental Determinations

The following recommendations shall be completed:

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will have (#) a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared; will not have (#) a significant effect on the quality of the human environment.

b. I recommend that the approving official make the following compliance determinations for the below-listed environmental requirements.

Not in compliance	In compliance	
....	....	Clean Air Act.
....	....	Federal Water Pollution Control Act.
....	....	Safe Drinking Water Act—Section 1424(e).
....	....	Endangered Species Act.
....	....	Coastal Barrier Resources Act.
....	....	Coastal Zone Management Act—Section 307(c) (1) and (2).
....	....	Wild and Scenic Rivers Act.
....	....	National Historic Preservation Act.
....	....	Archeological and Historic Preservation Act.
....	....	Executive Order 11988, Floodplain Management.
....	....	Executive Order 11990, Protection of Wetlands.
....	....	Farmland Protection Policy Act.
....	....	Departmental Regulation 9500-3, Land Use Policy.
....	....	State Office Natural Resource Management Guide.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

——— be approved.

——— not be approved because of the attached reasons.

Signature of preparer* ———

Date ———

Title ———

*See § 1940.316 of this Subpart for listing of officials responsible for preparing assessment.

State Environmental Coordinator's Review (When required by § 1940.316 of this Subpart)

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are attached as Exhibit ——.

Do not concur	Concur	
....	....	Adequate Assessment.
....	....	Environmental Impact Determination.
....	....	Compliance Determinations.
....	....	Project Recommendation.

Signature of State Environmental Coordinator

Date ———

Exhibit I

SUBJECT: Finding of No Significant Environmental Impact and Necessary Environmental Findings for (insert name, location, and any identification number of project).

TO: Project File.

The attached environmental assessment has been completed for the subject proposal by the FmHA environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also find that the assessment properly documents the proposal's status of compliance with the environmental laws and requirements listed therein.

Insert signature and title of approving official as specified in § 1940.316 of this Subpart.

Exhibit J

LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES

Federal region	Location	FTS No.*	Commercial No.
I	Boston, MA	223-4741	(617) 223-4741
II	New York, NY	264-8980	(212) 264-8980
III	Philadelphia, PA	597-9416	(215) 597-9416
IV	Atlanta, GA	257-2400	(404) 881-2400
V	Chicago, IL	353-1500	(312) 353-1500
VI	Dallas, TX	749-9201	(817) 387-5811
VII	Kansas City, MO	758-5912	(816) 374-5912
VIII	Denver, CO	234-2553	(303) 234-2553
IX	San Francisco, CA	556-8794	(415) 556-8794
X	Seattle, WA	396-0284	(206) 481-8800

*This is the main number for the regional office. For floodplain information, ask for the Natural and Technological Hazards Division.

Exhibit K.—Locations and Telephone Numbers of U.S. Fish and Wildlife Service's Wetland Coordinators

The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each regional office of the FWS has named a staff member as a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Listed below are the FWS regional offices and their areas of responsibility.

Region I

Portland, OR—FTS 429-6154; Commercial (503) 231-6154.

Areas Covered: California, Hawaii, Idaho, Nevada, Oregon, Washington, U.S. Pacific Trust, Territories and Possessions.

Region II

Albuquerque, NM—FTS 474-3152; Commercial (505) 766-2914.

Areas Covered: Arizona, New Mexico, Oklahoma, Texas.

Region III

Twin Cities, MN—FTS 725-3593; Commercial (612) 725-3593.

Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region IV

Atlanta, GA—FTS 242-6343; Commercial (404) 221-6343.

Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

Region V

Newton Corner, MA—FTS 829-9379; Commercial (617) 965-5100, Ext. 379.

Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Region VI

Denver, CO—FTS 234-5586; Commercial (303) 234-5586.

Areas Covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Alaska Area Office

Anchorage, AK—Commercial (907) 263-3403.

National Office

St. Petersburg, FL—FTS 826-3624; Commercial (813) 893-3624.

Exhibit L.—Exceptions to Restrictions of Coastal Barrier Resources Act

*Section 6 Exceptions**

(a) Notwithstanding Section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for—

(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;

*Quoted from Section 6 of the Act, Pub. L. 97-348.

(2) The maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(4) Military activities essential to national security;

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1452 et seq.).

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of Subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such improvement or structure was appropriated before the date of the enactment of this Act.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

4. In § 1941.23, paragraph (a)(1) is revised to read as follows:

§ 1941.23 General provisions.

(a) *Compliance requirements.* * * *

(1) *Environmental assessments and statements.* Subpart G of Part 1940 of this Chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

* * * * *

5. In Exhibit A, paragraph C, the list of forms under "Docket preparation" is revised to read as follows:

Exhibit A—Processing Guide—Insured Operating Loans

* * * * *

C. Eligibility Determination.

* * * * *

Docket Preparation.

* * * * *

Form No.	Name	
400–4	Assurance Agreement	(*)
427–8	Agreement with Prior Lienholder	(*)
1940–1	Request for Obligation of Funds	(*)
440–4	Security Agreement (Chattels and Crops).	(*)
440–4A	Security Agreement (Crops)	(*)
440–6	Severance Agreement	(*)
440–9	Supplementary Payment Agreement	(*)
1940–20	Request For Envrionmental Information.	(*)
440–25/ 440A25.	Financing Statement	(*)
440–26	Consent and Subordination Agreement.	(*)
1940–21, 1940–22, or Exhibit H, Subpart G of Part 1940.	Environmental Review	(*)
441–5	Subordination Agreement	(*)
1941–7	OL and Other Credit Analysis	(*)
441–8	Assignment of Proceeds from the Sale of Products.	(*)
441–10	Nondisturbance Agreement	(*)
441–12	Agreement for Disposition of Jointly Owned Property.	(*)
441–13	Division of Income and Nondisturbance Agreement.	(*)
441–17	Certification of Obligation to Landlord	(*)
441–18	Consent to Payment of Proceeds from Sale of Farm Products.	(*)
441–25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	(*)
492–19	Characteristics of Approved Applicants.	(*)

* * * * *

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

6. In § 1942.2, paragraph (d) is removed; paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively; paragraphs (a)(3), (4) and (b) are added and paragraphs (a)(1), (a)(2)(iii) and (c) are revised, to read as follows:

§ 1942.2 Processing preapplications.

(a) Preapplications. (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, Form AD–621, "Preapplication for Federal Assistance." The County Supervisor will assist applicants as needed in completing Form AD–621, and in filing written notice of intent and request for priority recommendation with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1901.352(c) of Subpart H of Part 1901 of this chapter). The County Supervisor will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms that applicant is not eligible for FmHA financing. Preapplications will be filed in the County Office and forwarded immediately to the District Office. The applicant will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. The District Director will meet with the applicant whenever appropriate to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully review it. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of Form AD–621.

(iii) Clearinghouse comments.

(iv) Priority recommendations.

(2) * * *

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD–622 "Notice of Preapplication Review Action."

* * * * *

(3) The following statement must be added to Form AD–622 when notifying preapplicants who are eligible and can compete with similar applications from other applicants:

You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment. You will be notified whether or not to proceed with a full application after you have provided the following materials to this office and FmHA has completed its review.

(i) Form FmHA 1940-20, "Request for Environmental Information."

(ii) Preliminary Engineering or Architectural Report.

(iii) Professional services agreement for engineering or architectural services.

(4) The following statement must be added to Form AD-622 when notifying preapplicants who are eligible but do not have the priority necessary for further consideration at this time.

You are advised against incurring obligations which would limit the range of alternatives to be considered or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work; taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications; or inviting construction bids until notified by Farmers Home Administration (FmHA) to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with Subpart G of Part 1940 of this chapter and submitted to the State Director. Prior to requesting an application, the State Director will ensure that the appropriate environmental review is completed. Preapplicants must submit the following additional information:

(1) Form FmHA 1940-20.

(2) Preliminary engineering or architectural report.

(3) Professional services agreement for engineering or architectural services.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include Form AD-624, "Application for Federal Assistance" (for construction programs), and other related forms, materials, and information. The application will be assembled in accordance with Guide 15 of this Subpart or appropriate State guides developed in accordance with § 1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completion of items using Form FmHA 442-39, "Processing Check List (Other Than Public Bodies)," or Form FmHA 442-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences to extend and update the processing checklist.

* * * * *

7. In § 1942.17, paragraphs (j)(7) and (m)(1) are revised to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(j) * * *

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA in accordance with Subpart G of Part 1940 of this chapter. The applicant will provide any information required.

* * * * *

(m) * * *

(1) *Preapplications.* Applicants desiring loans will file Form AD-621, "Preapplication for Federal Assistance," and comments from the appropriate A-95 clearinghouse agency normally with the appropriate FmHA County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

* * * * *

Subpart G—Industrial Development Grants

8. In § 1942.310, paragraph (b) is revised to read as follows:

§ 1942.310 Other considerations.

* * * * *

(b) *Environmental requirements.* Environmental assessments and statements will be prepared in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

9. In § 1942.411, paragraph (g) is revised to read as follows:

§ 1942.411 Other considerations.

* * * * *

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act in accordance with Subpart G of Part 1940 of this chapter. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by SCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the SCS environmental review fails to meet the requirements of Subpart G of Part 1940 of this chapter. The FmHA State Director should document the action taken by SCS in compliance with the requirements of the National Environmental Policy Act and fomally adopt the impact statement or assessment, if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the FmHA State Director will make necessary arrangements with the State SCS Conservationist for such action to be taken before a loan is made.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

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

10. In § 1943.23, paragraphs (d)(1), (d)(2) and (d)(3) are removed and introductory paragraph (a) and paragraphs (a)(2), and (d) are revised to read as follows:

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this Subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G, Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.32 [Amended]

11. In § 1943.32 the table of forms in paragraph (a) is amended as follows: In the entry for FmHA Form number 400-4, by changing the name of the form from "Nondiscrimination Agreement" to " Assurance Agreement"; In the entry for FmHA Form number 440-1, by changing the form number from "440-1" to "1940-1";

In the entry for FmHA form number 440-46, by changing the form number from "440-46" to "1940-21, 1940-22," or Exhibit H, Subpart G, Part 1940, and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449-10, by changing the form number from "449-10" to "1940-20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

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

12. In § 1943.73, paragraphs (d)(1), (d)(2) and (d)(3) are removed and the introductory text of paragraph (a), and paragraphs (a)(2), and (d), are revised to read as follows:

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.82 [Amended]

13. In § 1943.82 the table of forms in paragraph (a) is amended as follows:

In the entry for FmHA form number 400-4, by changing the name of the form from "Nondiscrimination Agreement" to "Assurance Agreement";

In the entry for FmHA Form number 440-1, by changing the form number from "440-1" to "1940-1";

In the entry for FmHA form number 440-46, by changing the form number from "440-46" to "1940-21, 1940-22, or Exhibit H, Subpart G, Part 1940" and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449-10, by changing the form number from "449-10" to "1940-20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

14. In § 1943.123, paragraphs (d)(1), (d)(2) and (d)(3) are removed and the introductory text of paragraph (a) and paragraphs (a)(2) and (d) are revised to read as follows:

§ 1943.123 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The hazard will be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.132 [Amended]

15. In § 1943.132, the table of forms in paragraph (a) is amended as follows:

In the entry for FmHA form number 400-4, by changing the name of the form from "Nondiscrimination Agreement" to "Assurance Agreement";

In the entry for FmHA form number 440-1, by changing the form number from "440-1," to "1940-1";

In the entry for FmHA form number 440-46, by changing the form number from "440-46" to "1940-21, 1940-22, or Exhibit H, Subpart G, Part 1940" and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449-10, by changing the form number from "449-10," to "1940-20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

16. In § 1944.164, paragraphs (l), and (m) are revised to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(l) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1940 of this chapter.

(m) *Guidelines for projects affecting floodplains.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency. Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) applies. It should be emphasized, however, that FmHA's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, "Floodplain Management," FmHA shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

17. In § 1944.171, the table in paragraph (d) is revised to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(d) * * *

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
AD-621	Preapplication for Federal Assistance	3	1	2-O and 1C	1-C.
Exhibit A-1 (or Exhibit A-2)[2]	Information to be Submitted for Labor Housing (LH) Loan or Grant	2	0	1-O	1-C.
	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by § 1944.170(c).[2]	1		1-O	
AD-622	Notice or Preapplication Review Action	3		2-C	1-O.
AD-625	Application for Federal Assistance (Short Form)	3	1	2-O and 1C	1-C.
Exhibit A-1 (or Exhibit A-2)[2]	Information to be Submitted for an LH Loan or Grant	2	0	1-O	1-C.
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O and 3C	1q
FmHA 1940-1	Request for Obligation of Funds	4	2-O and 1C	3-O and 2C	1.
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C.
FmHA 400-3[2]	Notice to Contractors and Applicants	3		2-O and 1C	1-C.
FmHA 400-4	Assurance Agreement	2	1	1	1.
FmHA 400-6[2]	Compliance Statement	3		2-O and 1C	1-C.
HUD 935.2	Affirmative Fair Housing Marketing Plan	2		2-O and 1C	
	Evidence of Legal Authority (copies or citation of specific provisions of State constitution and statutory authority).[2]	2	1	1-O	1-C.
	Appraisal report with attachments	1		1-O	
FmHA 1940-20[2]	Request for Environmental Information	1	1	1-O	
FmHA 1940-21	Environmental Assessment For Class I Actions	1		1-O	
FmHA 1940-22[2]	Environmental Checklist For Categorical Exclusions	1		1-O	1.
Exhibit H Subpart G of Part 1940[2]	Class II Environmental Assessment	1		1-O	1.
FmHA 426-1	Valuation of Buildings	1		1-O	
FmHA 440-9[2]	Supplementary Payment Agreement	2	1	1-O	1-C.
Other Loan Docket Items. Preliminary Title Opinion or a title insurance binder, and a copy of deed, purchase contract, or other instrument of ownership, or an option.					
	Proof of Organization (certified copy of charter or articles of incorporation)[1]	2	1	1-O	1-C.
	Certified copies of bylaws or regulations[1]	2	1	1-O	1-C.
	List of names and addresses of officers, directors, and members and membership interest held by each.[1]	2	1	1-O	1-C.
	Certified copy of Loan Resolution[1]	1	1	1-O	1-C.
	Loan Agreement[2]	2	1	1-O	1-C.
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction.[2]	2	1	1-O	1-C.
Exhibit A-5[2]	Statement of Budget and cash flow	2	1	1-O	1-C.
FmHA 431-2[2]	Farm and Home Plan	2	1	1-O	1-C.
When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concern prior mortgage(s).					

[1] When applicant is an organization.
[2] When applicable.

Exhibit A-1—[Amended]

18. In Exhibit A-1, paragraph I.C. is revised to read as follows:

Exhibit A-1—Information To Be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. * * *

C. *Environmental Information.* The applicant will complete Form FmHA 1940-20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter. The applicant shall provide all information requested; the District Office will provide any assistance necessary in completing this form.

* * * * *

Exhibit A-2—[Amended]

19. In Exhibit A-2, paragraph I.I. is revised to read as follows:

Exhibit A-2—Information To Be Submitted by Individuals, Farmowners and Family Farm Corporations or Partnerships for Labor Housing Loans

I. * * *

I. *Environmental Information.* The District Office will advise the applicant of the applicability of FmHA's environmental requirements under Subpart G of Part 1940 of this chapter, which are primarily based on the size of the proposed project. If applicable, the applicant will complete Form FmHA 1940-20, "Request for Environmental Information." The District Office will provide assistance and guidance to the applicant in completing this form.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

20. In § 1944.215, paragraphs (o) and (p) are revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1940 of this chapter. Projects involving Section 8/515 loans shall also comply with Exhibit H of this Subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA).

Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will apply as well as the review and implementation requirements of E.O. 11988 as specified in Subpart G of Part 1940 of this chapter.

* * * * *

Exhibit A-6—[Amended]

21. In Exhibit A-6, paragraph 5 is revised to read as follows:

Exhibit A-6—Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loans

* * * * *

5. *Form FmHA 1940-20, "Request for Environmental Information."*

22. In Exhibit H, paragraph V.E.1. is revised to read as follows:

Exhibit H—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

* * * * *

V. * * *

E. *Environmental Standards.* 1. Subpart G of Part 1940 of this chapter outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts which are unacceptable under FmHA policies.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

23. In § 1944.523, paragraph (b) is revised to read as follows:

§ 1944.523 Other administrative requirements.

* * * * *

(b) The policies and regulations contained in Subpart G of Part 1940 of this chapter regarding Environmental Assessments.

24. In § 1944.526, paragraphs (a)(5), (b)(1)(i), and (c)(1)(i) are revised to read as follows:

§ 1944.526. Preapplication procedure.

(a) * * *

(5) An original and one copy of Form FmHA 1940-20, "Request for Environmental Information."

(b) * * *

(1) * * *

(i) Complete any required environmental review procedures as specified in Subpart G of Part 1940 of this chapter and attach to the application.

* * * * *

(c) * * *

(1) * * *

(i) Make a determination on Form FmHA 1940-21, Form FmHA 1940-22 or Class II Environmental Assessment in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

25. In § 1944.531, paragraphs (c)(10) and (c)(11) are revised to read as follows:

§ 1944.531 Application submission.

* * * * *

(c) * * *

(10) Form FmHA 1940-20, "Request for Environmental Information."

(11) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," Form FmHA 1940-21, "Environmental Assessment for Class I Actions" or Exhibit H, Subpart G of Part 1940 entitled, Environmental Assessment for Class II Actions.

* * * * *

26. In Exhibit B, paragraph A-4 is revised to read as follows:

Exhibit B—Administrative Instructions for State Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Form FmHA 1940-20, "Request for Environmental Information."

* * * * *

27. In Exhibit C, paragraph A-4 is revised to read as follows:

Exhibit C—Instructions for District Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Form FmHA 1940-20, "Request for Environmental Information."

* * * * *

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

28. In § 1945.173, paragraphs (e)(1), (e)(2) and (e)(3) are removed and the introductory text of paragraph (b), and paragraphs (b)(2)(ii), and (e) are revised to read as follows:

§ 1945.173 General provisions-compliance requirements.

* * * * *

(b) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Supart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

* * * * *

(2) * * *

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

* * * * *

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

* * * * *

29. In Exhibit A, paragraph IV, D. is revised to read as follows:

Exhibit A—Processing Guide—Insured Emergency (EM) Loans

* * * * *

IV. * * *

D. Use the following FmHA Forms as appropriate:

Form No.	Name	Use
400-4	Assurance Agreement	(X)
427-8	Agreement With Prior Lienholder	(*)
440-4	Security Agreement (Chattels and Crops).	(*)
440-4A	Security Agreement (Crops)	(*)
440-6	Severance Agreement	(*)
440-15	Security Agreement (Insured Loans to Individuals).	(*)
1940-20	Request for Environmental Information.	(*)
440-25	Financing Statement	(*)
440-A25	Financing Statement (Carbon-Interleaved).	(*)
440-26	Consent and Subordination Agreement.	(*)
1940-21, 1940-22, or Exhibit H, Subpart G, Part 1940.	Environmental Review	(*)
441-5	Subordination Agreement	(*)
441-8	Assignment of Proceeds From the Sale of Products.	(*)
441-10	Nondisturbance Agreement	(*)
441-12	Agreement for Disposition of Jointly-Owned Property.	(*)
441-13	Division of Income and Nondisturbance Agreement.	(*)
441-17	Certification of Obligation to Landlord	(*)
441-18	Consent to Payment of Proceeds From Sale of Farm Products.	(*)
441-25	Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest.	(*)
443-16	Assignment of Income From Real Estate Security.	(*)
443-17	Agreement To Sell Nonessential Real Estate.	(*)
1940-1	Request for Obligation of Funds	(*)

* * * * *

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants

30. Section 1948.23 is revised to read as follows:

§ 1948.23 Environmental requirements.

The policies and regulations contained in Part 1940, Subpart G of this chapter apply to grants made under this part.

31. Section 1948.29 is amended by removing paragraph (d)(4); redesignating paragraph (d)(5) as (d)(4); removing paragraphs (j)(12) and (j)(13); redesignating paragraph (j)(14) as (j)(12) and revising paragraph (e)(2) as follows:

§ 1948.29 Application procedure.

* * * * *

(e) * * *

(2) Complete environmental review as required by Subpart G of Part 1940 of this chapter.

* * * * *

Exhibit B—[Amended]

32. Exhibit B is amended by removing the fourth item under Paragraph I. 2 copies of Form FmHA 449–10, "Applicants Environmental Impact Evaluation."

33. In Exhibit B, the material titled "Administrative Instructions for FmHA State Offices Regarding Their Responsibilities in the Administration of the Area Development Assistance Planning Grant Program" is amended by removing in the first undesignated paragraph, first sentence, the phrase "Form FmHA 449–10, 'Applicant's Environmental Impact Evaluation,' "; in the third undesignated paragraph by removing the second sentence; in the ninth undesignated paragraph, item number 3. and renumbering items 4. and 5. to 3. and 4. respectively.

34. In Exhibit B, the material titled "Instructions for FmHA County Offices Regarding Their Responsibilities in the Administration of the Area Development Assistance Planning Grant Program" is amended by removing from the first undesignated paragraph, first sentence, the phrase "Form FmHA 449–10, 'Applicant's Environmental Impact Evaluation' ", and removing the last sentence in the second undesignated paragraph.

PART 1948—RURAL DEVELOPMENT

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

35. In § 1948.62, paragraph (a) is revised to read as follows:

§ 1948.62 Environmental requirements.

(a) The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made and other actions under this program.

* * * * *

§ 1948.79 [Amended]

36. In § 1948.79, paragraphs (d)(4), (k)(11) and (k)(12) are removed and the remaining paragraphs under paragraphs (d) and (k) renumbered accordingly.

37. In § 1948.84, paragraphs (d), (e), and (i) are amended by removing paragraphs (d)(11) and (e)(5) and renumbering the remaining paragraphs in paragraph (d) accordingly and revising paragraphs (d)(8), (e)(2), (i)(13), and (i)(14) as follows:

§ 1948.84 Application procedure for site development and acquisition grants.

* * * * *

(d) * * *

(8) An original and one copy of Form FmHA 1940–20;

* * * * *

(e) * * *

(2) Comply with environmental requirements set forth in Subpart G of Part 1940 of this chapter;

* * * * *

(i) * * *

(13) Form FmHA 1940–20, if required by Subpart G of Part 1940 of this chapter;

(14) A copy of the appropriate FmHA environmental review required by Subpart G of Part 1940 of this chapter;

* * * * *

PART 1980—GENERAL

Subpart A—General

38. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

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 1940–20, "Request for Environmental Information." If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. The 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 the requirement of Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and 7 CFR Subpart G of Part 1940 of this chapter are met.

39. In § 1980.42(a), paragraph (3) is added to read as follows:

§ 1980.42 Flood or mudslide hazard area precautions.

(a) * * *

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

* * * * *

PART 1980—GENERAL

Subpart B—Farmer Program Loans

40. In § 1980.114, paragraph C. under the heading "Administrative" is revised to read as follows:

§ 1980.114 FmHA evaluation of applications.

* * * * *

Administrative:

* * * * *

C. When Form FmHA 1940–20, "Request for Environmental Information" is required, follow the requirements of Subpart G of Part 1940 of this chapter.

Subpart E—Business and Industrial Loan Program

41. Section 1980.432 is revised to read as follows:

§ 1980.432 Environmental requirements.

(See Subpart A, § 1980.40 and Subpart G of Part 1940 of this chapter.)

Administrative:

When required by Subpart G of Part 1940 of this chapter, the approving official will review Form FmHA 1940–20, "Request for Environmental Information," submitted by the applicant and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment, when required. If the approving official determines that an EIS is required, he/she will notify the applicant and lender in writing.

42. In § 1980.451, paragraph (i)(3) is revised to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(i) * * *

(3) Form FmHA 1940–20, "Request for Environmental Information," when

required by Subpart G of Part 1940 of this chapter.

* * * * *

43. In § 1980.451, the table entitled, "Description of Record or Form Number and Title," following Administrative paragraph C. 7 is amended as follows: by changing the number for Form FmHA "440-1" to "1940-1"; by adding immediately below the entry for Form FmHA 1940-1 the following entry:

"FmHA 1940-22 Environmental Checklist for Categorical Exclusions by changing the entry for Form FmHA "440-46" to read		3";
"FmHA 1940-21 Environmental Assessment for Class I Action by adding immediately below the entry for Form FmHA 1940-21 the following entry:		3";
"Exhibit H, Subpart G, of Part 1940	Environmental Assessment for Class II Action	3";
by changing the entry for Form FmHA "449-10" to read as follows: "FmHA 1940-20 Request for Environmental Information		3".

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 P.L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Dated: October 5, 1983.

Charles W. Shuman,

Administrator, Farmers Home Administration.

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